

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) 269-7529 / FAX: (907) 334-2509
susan.magee@alaska.gov

November 10, 2010

Bruce Rogers, Project Manager
Wrangell-St. Elias National Park and Preserve
P.O. Box 439
Copper Center, AK 99573

Dear Mr. Rogers:

The State of Alaska reviewed the Wrangell-St. Elias National Park and Preserve Draft Environmental Impact Statement (DEIS) for the Nabesna Off-Road Vehicle (ORV) Management Plan (Plan). This letter represents consolidated state agency comments.

The State appreciates the considerable efforts of the Service to work with local communities and other stakeholders throughout this planning process to develop a reasonable range of alternatives that address the broad range of uses that occur within this discrete area. We support the overall intent in the preferred alternative (Alternative 5) to improve and maintain existing trails to minimize resource impacts, while continuing to provide reasonable, sustainable access for subsistence users, general hunters, and other recreational users. We also support, but at a lower priority, the creation of non-motorized trails to expand visitor-use opportunities. In the interest of protecting fish habitat and preserving these important recreational and subsistence opportunities, the State – in particular the Alaska Department of Fish and Game (ADF&G) – is available to assist the Service in its efforts to secure labor, funds and equipment to improve the trail system.

We recognize that certain park constituents are opposed to allowing continued recreational ORV use on “park” lands, in part based on concern that doing so will open the door to more recreational ORV use in other park areas within the Wrangell-St. Elias complex, or to other parks in Alaska. We believe this concern is unwarranted. The National Park Service has shown restraint in allowing non-subsistence use of ORVs on parklands in Alaska. The few allowances are site-specific, based on well-documented established use, and are accompanied by management prescriptions to avoid, mitigate, or repair resource damage. The Nabesna ORV Plan is no exception. As a result of the 2007 court settlement, established recreational ORV use will only be allowed (if at all) subject to rigorous conditions, including interim closure of routes that are not currently sustainable. The Service’s legal and policy environment does not foster a casual expansion of recreational use of ORVs on parklands, nor does the State advocate for such an expansion. The Service needs the flexibility to make judicious, site-specific allowances when necessary to honor Alaska’s rich history of backcountry access.

While supportive of achieving a sustainable trail system and the Service's efforts overall, we offer several suggestions for improvement. Key suggestions are summarized here. These and other comments are subsequently discussed in more detail below.

- Pending funding for long-term improvements, consider less expensive short-term resource protection measures to facilitate interim use.
- Clarify that fees collected from recreational ORV users will be used exclusively for trail maintenance and improvements that benefit these users.
- Work with stakeholders, including the State, to develop priorities for spending trail improvement funds.
- Revise downward the projections of future trail use by de-linking these projections from the number of permits issued.
- Designate and manage a Black Mountain Trail extension for subsistence purposes (but not recreational ORVs).
- To alleviate management challenges, expand the areas recently determined to be ineligible for wilderness designation to create more contiguous management units with fewer potential conflicts.
- Apply monitoring standards and management tools to address potential off-road subsistence access impacts in designated wilderness.

Funding Constraints

Trail improvements are dependent upon adequate funding levels, which in turn is subject to ongoing administrative decision-making. Until funding is fully secured for trail improvements, which the DEIS estimates will take 10-15 years, the park will have discretion to open and close trails to federal subsistence users, either in part or in full, while maintaining closures of unimproved trails to recreational users. To reduce any subjective incentive to avoid or restrict funding, and to facilitate greater interim use, we recommend the park continue to assess alternative means to maintain motorized access for both subsistence and recreational users. For example; short-term trail maintenance or re-route efforts, combined with more stringent weight restrictions or weather-dependent closures could effectively extend use while funding is sought for higher quality, long-term solutions.

We recommend the final plan clearly identify how the Service will prioritize trail improvements. While we understand a priority schedule must remain flexible enough to accommodate unknown or unforeseen funding sources and opportunities, we are concerned that without clear direction in the plan, upgrades for some trails (e.g., trails used for general hunting, such as the Suslota Trail) could be neglected. Furthermore, the evolution of open and closed trails and availability to specific user groups may influence wildlife management issues such as hunter displacement. For this reason, we request that, prior to establishing priorities, the Service work with ADF&G to identify potential wildlife management issues associated with individual trails. In addition, we recommend prioritizing improvements on existing motorized trails over constructing new non-motorized routes and trails.

Regarding fees for recreational ORV use, we recommend clarifying that fees will be reasonable and affordable. At best, fees will only play a minor role in generating income, so there is no point in making them overly burdensome. While the DEIS is not clear whether recreational *non-motorized* trail users will also be assessed a fee, it is clear that fees paid by recreational users of existing motorized trails will be used to offset the cost of motorized trail improvements. We therefore recommend giving existing motorized trail improvements a higher ranking, which will also serve to restore historical recreational use before facilitating additional new use.

Exceptions to the funding priority rankings could be made if dedicated funding from an outside source is targeted to a particular trail or user group.

Trail Use Projections

Throughout the DEIS there are references to an expected doubling of trail users should trails be improved. There is little evidence for this given the patterns over the past 20 years. While trails have had little improvement, ORVs have improved substantially, evolving from three-wheelers and small track vehicles to the four- and six-wheelers used today. If more people wanted to use the trails, we suspect data would already show increasing trends based on these more capable technologies. Given the distance from major population centers and the lack of private recreational property off the Nabesna Road, we do not expect to see high numbers of recreational ORV riders in this area. We suspect the increase in recreational ORV use permits issued between 1985 and 2005 is largely attributable to increased compliance.

We expect that hunting pressure north of Nabesna Road will not increase significantly, if at all, with trail improvement. These short trails go straight to hunting areas in the mountain foothills and hunter numbers have naturally leveled in this area. Local users have utilized the area south of Nabesna Road for generations and the number of hunters has not significantly changed for over 20 years. These trails, for the most part, also have reachable destinations in the mountain foothills – trail improvement likely will not change this. There is little to suggest the improved trails will cause the number of hunters to significantly increase beyond normal fluctuations (see attachment).

The Swede Lake Trail at milepost 16 of the Denali Highway is similar to the Nabesna ORV trails in that it is primarily utilized by hunters. After trail hardening, Bureau of Land Management managers have not noted significant levels of increased usage. Instead, managers have found that use on the trail is dependent on the movements and the availability of the wildlife resources in the Swede Lakes area. Nabesna ORV trail use will most likely follow a similar pattern. Wildlife populations and the ability to hunt drive recreational use on the Nabesna ORV trails more than trail conditions.

The DEIS indicates subsistence users are expected to increase by two or three percent a year on the basis of past trends of permit issuance; however, the number of permits issued is not reflected in any of the subsistence harvest data nor does the DEIS include actual data. Permits are not required for subsistence users, so increases in permit numbers more likely reflect existing users getting permits for the first time.

We request the DEIS (Page 3-20, Section 3.3.2.3) indicate when subsistence ORV trail permits were first made available and add the most recent 5 years of ORV permit data to Table 3-4. It seems reasonable to expect the percentage of subsistence users obtaining ORV permits has increased over the years due to education. As such, estimating 25 percent of subsistence users obtain permits is likely understated. The highest number of federal subsistence moose hunters (FM714) is 54 in 2007 (hunters using the Nabesna area, reporting ORV use); therefore, it seems that a substantially higher percentage of subsistence users are obtaining ORV permits.

We also suggest noting the possibility that while a permit holder may have a permit, they may not actually make the trip to the Nabesna area. For example, when the trails were closed this past summer, a week before hunting season, many individuals with permits may not have made the trip.

Black Mountain Trail Extension

We recommend extending the Black Mountain Trail to the Copper River just south of Black Mountain. This relatively new access route does not appear in Figure 3-2; however, subsistence hunters have been accessing this area by ORV for more than ten years. Because it is very difficult to boat that far up the Copper River, subsistence hunters transport rafts on ORVs to this crossing point at the Copper River to further access hunting opportunities on the west side. Allowing this trail extension will also help disperse sheep hunters to relieve pressure and alleviate concerns over increased ORV traffic in the Black Mountain and Tanada Peak areas. If the trail extension is not designated, subsistence hunting opportunities would be severely restricted in both the upper west side of the Copper River, as well as the east side of the Copper Glacier.

Wilderness Eligibility Assessment

As a matter of policy, the State cannot support actions that expand wilderness management within the park. On the other hand, we appreciate the reevaluation (application) of the 1986 criteria that reclassifies selected areas as ineligible. Considerable evidence confirms motorized trail use prior to designation of the park, preserve, and wilderness areas. Excluding these trails from wilderness eligibility will also help decrease the inherent tension between wilderness management and maintaining opportunities for motorized access provided by ANILCA. In fact, we recommend excluding more of the general area from eligible wilderness based on the recognized historical and current motorized use to enhance management continuity.

Recreational ORV Closures

Closures (including interim closures) to recreational ORV use in the park will significantly reduce opportunities for both hunters and other recreationalists to utilize the backcountry. In particular, hunters access sheep and moose hunting areas within the preserve using the Tanada Lake Trail. The Goat Creek / Wait Creek area is another extremely popular sheep hunting area in the preserve. Loss of the Tanada trail for recreational ORV use would effectively eliminate an affordable hunting opportunity. The only ORV access to these areas of the preserve is through the park. While the proposed non-motorized route from the end of the Nabesna Road may offer an alternative to those

who desire a non-motorized hunting experience, it would not be a practical alternative for many hunters with heavy loads. In particular, given the alternative is a 20 mile “route,” it would effectively preclude access to hunting parties that include children, the elderly, or the disabled. As a result, some hunters in the preserve may resort to access by aircraft, thereby concentrating hunting into smaller areas and potentially increasing resource impacts. We strongly urge the Service to retain recreational ORV access opportunities across the park to these preserve lands as best reflected in Alternative 5.

Monitoring Process

We appreciate the DEIS identifies both standards and indicators for assessing damage to improved and unimproved trails, and management tool options to mitigate resource impacts. This will help assure consistency for users over time and under different park managers. We request a corresponding commitment to consultation with the State as part of that process. In addition, we recommend on-going consultation with the Wrangell-St. Elias Subsistence Resource Commission for implementation decisions affecting subsistence access.

Off-Trail Subsistence Access

While we support the efforts to improve degraded trails in the Nabesna District, we are generally opposed to restricting off trail subsistence access without appropriate justification pursuant to 36 CFR 13.460(b), which states “...*if the Superintendent determines that such use is causing or is likely to cause an adverse impact on public health and safety, resource protection, protection of historic or scientific values, subsistence uses, conservation of endangered or threatened species, or the purposes for which the park area was established.*”

Section 811(b) of ANILCA states “[n]otwithstanding any other provision of this Act or other law, the Secretary shall permit on the public lands appropriate use for subsistence purposes of snowmobiles, motorboats, and other means of surface transportation traditionally employed for such purposes by local residents, subject to reasonable regulation.” Closing lands to subsistence access would preclude activities such as game retrieval. It is not clear why the monitoring standards and management tools described in the DEIS could not also be effective in addressing potential impacts in designated wilderness. Given the very limited area and the importance of subsistence activities to rural residents, we recommend permitting off-trail ORV use in designated wilderness, subject to monitoring and restrictions as necessary to protect resources.

Analysis of ORV Effects on Wildlife Populations

We question the assertion that Alternative 5 will have a “*moderate*” effect on wildlife, especially considering the DEIS determined the no action alternative, with no improvements, would have a “*minor*” effect. For example, ORV trails have the general effect of creating exposed organic and mineral soil areas – prime substrate for sedge and grass growth. The DEIS effects analysis neglects to mention this new vegetation, available during the summer months, is seasonally beneficial to brown and black bears, moose, and caribou. While ORV traffic can damage lichens, affecting winter caribou range, caribou prefer the resultant quick growing sedge and grass growth during the

summer months. Additionally, wildlife – particularly moose and caribou – frequently utilize certain ORV trails for travel as it provides a route through brush.

The citation found on page 4-85 (ADF&G (1996)) pertaining to ORV displacement of moose, is not reflective of the pressure found in the Nabesna area. The referenced report pertains to state lands where there are few, if any, designated trails; ongoing trail use tends to incrementally increase the number and length of discernible trails over time; and more categories of hunters have access. In the Nabesna area, hunting pressure is already restricted in the park by federal subsistence regulations and in the preserve by existing and proposed trail restrictions.

Concerns about impacts to wildlife will also be mitigated by responsive wildlife management. The State of Alaska is responsible for the management and sustainability of all fish and wildlife, including for subsistence purposes, regardless of land ownership or designation, unless specifically preempted by federal law. Fish and wildlife conservation is the top priority of ADF&G. If necessary, emergency orders ensure sustainability of fish and wildlife. Currently, ADF&G does not have concerns with wildlife populations or the level of hunting effort within the Nabesna area. ADF&G routinely manages wildlife populations in conjunction with roads and trails. If determined necessary, the Alaska Board of Game could implement restrictions to reduce associated hunting pressure, e.g., restrict hunting bag limits, methods, or means. Furthermore, if federal subsistence hunting were to cause a biological concern in this area, ADF&G would pursue similar restrictions through the Federal Subsistence Board.

Minimum Requirements Analysis

The minimum requirements analysis (MRA) in this DEIS is both premature and inaccurate. First, it is premature to evaluate the full range of alternatives as an “administrative action” before the NEPA process is complete and a properly vetted alternative is selected. The impacts to wilderness are considered within the context of the EIS, along with other considerations and mandates that affect the entire planning area, not just designated wilderness. Second, using an MRA to determine which alternative is considered the “minimum tool” is a misapplication of the MRA process. The minimum tool (step 2) is not a method for determining which alternative has the least impact on designated wilderness. It is the method used to determine how a “necessary” administrative action (step 1 - the selected alternative) is to be implemented to have the least impact on wilderness character, while still providing for completion of the project. We therefore request the MRA be removed from the EIS and appropriately deferred to the implementation phase (or phases) of the selected alternative.

Revised Statute (RS) 2477 Rights-of-Way

We appreciate Section 3.5.2.3 (*Documented Cultural Resources along ORV Trails in the Analysis Area*) identifies 9 of 11 trails in the analysis area as being historic RS 2477 rights-of-Way (ROWs). We offer the following comments regarding proposed fees, permanent closures, and re-routes to maximize consistency with state law and policy.

Fees

Alternatives 4 and 5 would require recreational ORV users to pay an annual user fee. The State generally objects to assessing fees to use RS 2477 ROWs; however, recognizing the purpose of the fee is to help maintain this important recreational access, we request the Service ensure the project conforms with state management of RS 2477s, as follows:

1. Fees assessed to users are applied to the cost of continued recreational access through improvement and maintenance of trails.
2. Fees support access to an area or trail that would otherwise be subject to closure due to substantial resource degradation.
3. If fees are only assessed to users of motorized equipment, such fees should not be used for non-motorized trail improvements, as previously noted.

Closures

The State understands that federal law gives the Service the authority to reasonably regulate use of RS 2477 trails to protect park resources; however, the State strongly objects to permanent closure of RS 2477s, especially as represented by Alternatives 3 and 4. The option to improve trails to a maintainable condition should remain on the table. Service actions to close or re-route trails along RS 2477 ROWs do not diminish the State's assertions of validity nor the State's ability to pursue improvements or other supplemental management actions.

Re-Routes

Alternatives 4 and 5 propose to re-route several RS 2477s. The Alaska Department of Natural Resources has two processes for realignment of RS 2477s, as follows:

*An owner of land affected by an unplatted R.S. 2477 right-of-way may request the department's approval to reroute the right-of-way elsewhere on that owner's land to an alignment that less adversely affects the landowner's interests. **The department will approve the realignment if the realignment provides access reasonably comparable to the original, does not affect land in other ownership, and connects to the original route where it enters and exits the landowner's land.** The realignment of an R.S. 2477 right-of-way under this subsection within a parcel of land does not constitute a vacation under this section. (11 AAC 51.065(k)) [emphasis added]*

If a proposed RS 2477 realignment does not meet the three requirements in 11 AAC 51.065(k) (requirements in bold above), a vacation of easement under 11 AAC 51.065 is required, which includes a public notice period. It appears that all the proposed re-routes in the DEIS can be performed through an administrative action by the State.

Page-specific Comments

Page 1-6, Visitor Access Opportunities, first bullet: We recommend including photography and/or wildlife viewing in this section.

Page 1-22, 1.7.3.4: We question the inclusion of 36 CFR 4.10(b) as it is superseded by 36 CFR 36.11(g)(2).

Page 1-25, 1.7.5.2: We request adding Section 707 of ANILCA as a separate bullet.

Page 1-25, 1.7.5.2, fourth bullet: We recommend including additional direction found in Section 1303 of ANILCA, which provides for the “*temporary use, occupancy, construction, and maintenance of new cabins or other structures if... determine[d]... necessary to reasonably accommodate subsistence uses or is otherwise authorized by law.*”

Page 1-27, 1.7.6.1: We request Section 815 of ANILCA also be referenced here, which states:

“Nothing in this title shall be construed as... authorizing a restriction on the taking of fish and wildlife for nonsubsistence uses on the public lands (other than national parks or national monuments) unless necessary for the conservation of healthy populations of fish and wildlife, for reasons set forth in section 816, to continue subsistence uses of such populations, or pursuant to other applicable law....”

Page 1-27, 1.7.6.1: We request adding Section 1314 of ANILCA as a separate bullet as a reminder that the State manages fish and wildlife except as specifically preempted by federal law.

Page 3-1, 3.2, first paragraph: We request this discussion more accurately reflect the actual distance and length of time it takes to travel to the Nabesna area from Anchorage. Although the border of the park is “*less than 200 miles east of Anchorage,*” the highway distance to the beginning of the Nabesna Road is 263 miles, taking approximately 5 hours travel time. Since that is significantly longer than 200 miles on a typical interstate highway elsewhere, some readers may reach inaccurate conclusions about the area’s accessibility

Page 3-64, Section 3.5.2.3: The Northern Land Use Research (NLUR) studies provided information on cultural resources along ORV trails in the analysis area. Several trails were identified as RS 2477 ROWs. After identifying these historic ROWs, an NLUR survey is cited as stating “*NLUR personnel did not observe any signs of the RS2477 historic trail.*” It is not clear what would be construed as a “sign” of an RS 2477 ROW; however, we object to including the above reference on the basis that readers may interpret them as relating to the validity of the RS 2477 ROW. To avoid such misconceptions, we recommend deleting “RS2477” from the quoted sentence wherever it appears in the trail subsections.

Page 3-68, 3.5.3, Subsistence: The State of Alaska also provides subsistence opportunities within the preserve; therefore, we recommend starting the first sentence of this section with “*Federally qualified subsistence use is allowed...*”

Page 4-155, second paragraph: The second sentence states “...*the anticipated increase in ORV use associated with improved trails would result in moderate impacts to opportunities for solitude and a primitive experience.*” This impact would also be associated with anticipated use of proposed new, non-motorized trails. We recommend clarification to remove potential bias.

Page 6-1, Bibliography: We found no mention of the 1995 ADF&G study of pre-ANILCA traditional access in the park “*Documenting Traditional and Subsistence Access in Wrangell-St. Elias National Park and Preserve*” by Terry Haynes and Stan Walker. This comprehensive report was compiled in consultation with, and with technical support from, the National Park Service, and provides substantiation of statements such the first sentence of the last paragraph on page 1.2.

Thank you for this opportunity to comment. Please contact me at (907) 269-7529 if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'S. Magee', written in a cursive style.

Susan E. Magee
ANILCA Project Coordinator

cc: Sally Gibert, ANILCA Program Coordinator

Attachment

State Sheep and Moose hunting pressure in the Nabesna Road area 1990-2009
Data source: State harvest database.

GS000 is the state sheep harvest ticket - hunt data includes state and federal hunters.
GM000 is the state moose harvest ticket - hunt data includes state and federal hunters.
Hunt data includes foot, highway vehicle, and ATV/ORV transportation methods.



