

STATE OF ALASKA

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Wilderness Stewardship
DO-41 Review
National Park Service
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The State of Alaska reviewed the National Park Service (Service) *Director's Order 41: Wilderness Stewardship*. This letter represents the consolidated views and comments from the State of Alaska. The Order represents the next incremental expansion of administrative wilderness management, starting with the 2006 Management Policies. Taken together, even lands that are merely found “eligible” for wilderness designation will be managed as if they were designated by Congress. We find this intent blatantly disregards that wilderness is exclusively a Congressional designation, not administrative. Furthermore, in Alaska, the fundamental administrative direction violates Section 1326 of the Alaska National Interest Lands Conservation Act (ANILCA).

CONTEXTUAL INTRODUCTION

The State of Alaska remains opposed to any new wilderness studies, recommendations, or designations in Alaska. This long-held position is based on a number of factors, including Section 101(d) of ANILCA,

This Act provides sufficient protection for the national interest in the scenic, natural, cultural and environmental values on the public lands in Alaska, and at the same time provides adequate opportunity for satisfaction of the economic and social needs of the State of Alaska and its people... Congress believes that the need for future legislation designating new conservation system units... has been obviated thereby.

ANILCA continues at Section 1326(b),

No further studies of Federal lands in the State of Alaska for the single purpose of considering the establishment of a conservation system unit... shall be conducted unless authorized by this Act or further Act of Congress.

Wilderness designations tie the hands of managers, making it more difficult to support the continuation of activities that are protected by ANILCA. For example, ANILCA provides for motorized access necessary for subsistence purposes, but a wilderness overlay could pressure managers to unnecessarily curtail that access. Wilderness enthusiasts unfamiliar with rural life in Alaska tend to advocate for unrealistic management objectives, which in turn polarizes the debate and overshadows all other issues in any planning process.

We also remain concerned about long-standing Service policy to manage non-designated wilderness as if it were designated wilderness. This de facto wilderness management appears to stray from the original intent of the Wilderness Act, which clearly states, “[a] *recommendation of the President for designation as wilderness shall become effective only if so provided by an Act of Congress.*” (Emphasis added.) Even modification of an existing designated wilderness boundary requires Congressional action. Applying the requirements of the Wilderness Act to areas other than designated wilderness is a significant deviation from Congressional intent. Wilderness Act “*protections*” apply only *after* an area is formally designated by Congress. Moreover, Service enabling legislation and regulations provide adequate “*protection*” for the area until Congress acts.

SPECIFIC COMMENTS ON DIRECTOR’S ORDER 41

1. Background and Purpose

We appreciate including the reference to ANILCA in Section 1, although we recommend additional clarification. All wilderness managers in Alaska need to be aware of the special provisions that amend the Wilderness Act and provide the Service and the public with unique guidance concerning access, subsistence, commercial services, and other uses in designated wilderness. ANILCA governs over 40% of the entire national park system and over 75% of the Service’s designated wilderness. ANILCA, therefore, deserves more clarity and certainty in this Director’s Order. Ideally, we recommend a section or subsection dedicated to Alaska to help managers understand the proper relationship between ANILCA and the Wilderness Act and to enhance accountability, consistency, and continuity in the wilderness stewardship program. In Alaska, the responsibility for developing regional guidance would likely fall to the Regional Wilderness Coordinator as part of their duty to “*provide policy interpretation in their region*” (3.6 on page 3). Such guidance could be developed incrementally as issues arise. In the meantime, we request the introductory section reference supplemental guidance that already exists for Alaska – The *Alaska Supplement to the Minimum Requirements Decision Guide* – and note that nothing in the current DO 41 modifies the previously referenced ANILCA exceptions in the 2006 Management Policies.

Consistent with our Introduction, we are also concerned about applying “*wilderness*” terminology to all categories of eligible, proposed, recommended, and designated wilderness (Section 1, paragraph 2). We see this terminology, as well as other language in the Order, as a directive to manage additional acreage as de facto wilderness. **This is substantially different from maintaining the area in a manner that does not preclude it from future designation as wilderness, which is all that is necessary to maintain Congress’ ability to designate wilderness in the future.** We also request minimizing subjectivity, i.e. “*spirit.*”

In light of the above comments, we request the following actions:

- Separate the definition of “*designated wilderness*” from the non-designated classifications. For all non-designated areas (eligible wilderness, proposed, recommended, and potential wilderness) limit the policy to direction that maintains the area’s *eligibility* for wilderness designation, rather than managing “*to preserve wilderness character*” or “*as if it were designated wilderness.*” The latter approaches are overly restrictive and exceed direction in the Wilderness Act. Our use of the term *eligibility* in this context stems directly from the Wilderness Act and 6.2.1.1 of the 2006 Policies, without the additional management connotations applied to the term in the draft DO 41.
- For Alaska, the Service may avoid actions that would irreversibly preclude recommended wilderness from designation. Beyond that, our reading of ANILCA Section 1317(c) is that the Service need not take additional measures toward wilderness-style management, even on areas with wilderness characteristics.
- Revise the first sentence of the Order “. . . *to guide Service-wide efforts in meeting the letter and spirit requirements of the Wilderness Act (16 USC 1131-1136).*”

2. Authority

We suggest the Order, perhaps in the authority section, contain a brief description of the hierarchical relationship between the 2006 Management Policies, this Director’s Order, and Reference Manual #41 (RM-41). We had to seek clarification from the Alaska Regional Office to understand this relationship well enough to be able to comment effectively. We request the Service post RM-41 on the *wilderness.net* website, and further request RM-41 include the Alaska Supplement to the Minimum Requirement Decision Guide.

3. Roles and Responsibilities

We request appropriate coordination with state agencies be explicitly referenced in these sections. At a minimum, we request inclusion of a state member, appointed by the Association of Fish and Wildlife Agencies, on the Wilderness Leadership Council. In addition, all Regional Directors and Superintendents should have specific requirements to coordinate with states.

The functions of the following bodies relative to each other are unclear:

- NPS Wilderness Leadership Council (a subset of the National Leadership Council?)
- Interagency Wilderness Policy Council
- Interagency wilderness steering committee
- Arthur Carhart National Wilderness Training Center
- Aldo Leopold Wilderness Research Institute

First, it would be helpful to clarify the roles and inter-relationships of these various bodies. Secondly, the close of this review period would be an appropriate time to consider streamlining or consolidating the responsibilities of these groups and processes, and thereby reducing spending – both in numbers of staff and administrative procedures. As noted above, if changes are made, we strongly request state participation through the Association of Fish and Wildlife Agencies to provide a perspective from non-federal agencies that have significant responsibilities for managing wilderness resources.

3.5 Regional Directors

The draft specifies that Regional Directors will ensure that all superintendents and deputy superintendents managing wilderness resources receive wilderness training within two years. We request this objective be expanded to include training regarding other statutory guidance that informs wilderness management, which in Alaska includes ANILCA. This comment also applies to section 4: *Training Requirements*.

5.1 Wilderness Eligibility Assessment; and 5.5 Designated Potential Wilderness

Consistent with our introductory comments and Section 1317 of ANILCA, which provided a one-time wilderness review process, we maintain these sections of the Order do not apply to Alaska. We strongly oppose efforts to increase the acreage eligible or recommended for designation as wilderness over 30 years after the passage of ANILCA. We offer the following comments with regard to the contiguous states and Hawaii.

Wilderness Eligibility Assessment

This section requires reevaluation of ineligible lands if the nonconforming uses cease or are removed. We recognize the intent of such a reevaluation, but question the need to do so within one year of the cessation of the nonconforming use. This sounds impractical and in most cases unnecessary. Instead, such a reevaluation could take place during routine planning updates as appropriate unless there is a compelling reason to undertake this task sooner.

The term “*released*” in the fourth paragraph is ambiguous. We request clarification of the way(s) that such release is achieved. We assume this refers to an area being removed from administrative consideration as designated wilderness at any point within the eligibility, study, proposal, or recommendation process. It is also not clear if the interim management will be lifted as soon as it is no longer under consideration for designated status. We also request an explanation of any Congressional actions that would trigger a legislative “*release*.” (See 5.4 Designated Wilderness, last sentence.)

Designated Potential Wilderness

The Order is not clear about how much of this intent is driven by Congress and how much is discretionary policy proposed by the Service. We understand that Congress is free to provide direction to the Service regarding specific nonconforming parklands, as well as inholdings, which may someday meet the criteria for wilderness designation.

Our objection begins at the point the Service becomes pro-active in pushing out nonconforming uses, especially on non-federal private inholdings. The Order’s intent that the “*National Park Service will seek to remove temporary, nonconforming conditions*” sets up the potential for abuse of authority and effective harassment of inholders who have legitimate property rights. In Alaska, this policy is also inconsistent with the 2007 *Interim User’s Guide to Accessing Inholdings in National Park System Units in Alaska*, including the first guiding principle:

Residents within Alaska’s national parks are part of the essential fabric of the parks. We acknowledge their value in providing services to park visitors and continuing traditional lifestyles.

The Service should only respond to Congressional direction, and not create rules for which it does not have a specific mandate. Additionally, unless specifically directed by Congress, any interim management of federally-owned designated potential wilderness should be limited to avoiding actions that would irreversibly disqualify the area for wilderness designation. Moreover, in Alaska where wilderness resources are abundant we see no need for interim wilderness-related prescriptions.

6. Wilderness Stewardship

A “*natural and wild*” landscape is not required by the Wilderness Act, nor does the Act include this terminology. Wilderness areas are a place “*where the earth and its community of life are untrammelled by man, where man himself is a visitor who does not remain.*” Wilderness is defined as “*undeveloped federal land retaining its primeval character and influence, without permanent improvements or human habitation... and which generally appears to have been affected primarily by the forces of nature, with the imprint of man’s work substantially unnoticeable....” [Emphasis added.]*

The Service is responsible for

... preserving the wilderness character of the area and shall so administer such area for such other purposes for which it may have been established as also to preserve its wilderness character. Except as otherwise provided in this Act, wilderness areas shall be devoted to the public purposes of recreational, scenic, scientific, educational, conservation, and historical use.

Additionally, we disagree with the premise that future generations will be able to enjoy the area “*only if all NPS employees understand*” the necessity of keeping these areas natural and wild. More importantly, employees need to fundamentally understand the law and work cooperatively with state fish and wildlife agencies, other state agencies and governments, and other partners.

We are also concerned that the first sentence could be interpreted to give the park managers authority to extend wilderness stewardship principles to non-wilderness areas or onto adjacent non-park lands. We would object to such an intent and request clarification to avoid confusion.

To address our comments on this section, we offer the following revision for your consideration, which also removes the unnecessary subjectivity:

The goal of wilderness stewardship is to preserve the wilderness character of the area ~~keep these areas as natural and wild as possible in the face of competing purposes and impacts brought on by activities that take place elsewhere in the park and beyond park boundaries.~~ Future generations will be able to experience use and enjoy national park wilderness, designated or not, ~~and other areas within the National Wilderness Preservation System~~, only if all NPS employees understand this goal, work together, and engage other wilderness management agencies and partners, specifically state fish and wildlife agencies, to accomplish it.

6.1 Consistency

What does “*maximum protection*” in the first sentence mean? We do not find this guidance in the Wilderness Act. We recommend language from the Act whenever possible, for example:

... to ensure that in designated wilderness, ~~resources receive maximum protection~~ wilderness character is preserved.

Also, while we do not have any specific suggestions to improve the tone, the intent of the second paragraph appears to be that the Service is eager to engage with other agencies, but only if they play by Park Service rules. The language comes across as unnecessarily cavalier.

6.2 Wilderness Character

The previous section focuses on “*minimizing administrative differences*.” To further facilitate such consistency, we recommend incorporating the definitions used by the Arthur Carhart National Wilderness Training Center for untrammelled, natural, undeveloped, and opportunities for solitude or primitive and unconfined recreation. Additionally, providing fixed indicators for each will not always serve the needs of park managers. We recommend converting these to examples, and/or delegated to the context of national and regional trainings.

6.3 Wilderness Planning

We question the need and fiscal responsibility associated with developing a stand-alone Wilderness Stewardship Plan for the various administrative wilderness categories that have not been formally designated by Congress. The Wilderness Act requires a “*report to the President*” outlining recommendations regarding the suitability or unsuitability of each area, but not a wilderness management plan. Instead, we recommend that management guidance supporting the retention of wilderness characteristics be incorporated into routine land use plans as they occur, unless a site-specific need calls for action sooner.

6.4 Minimum Requirements

We appreciate the reference to ANILCA at the end of the first paragraph. We additionally request reference to the Alaska Supplement, which clarifies the application of the minimum requirements analysis in Alaska. An extremely important component of the Supplement is recognition that airplanes are allowed in designated wilderness in Alaska subject to reasonable regulation. Airplanes are also an *essential* tool for administrative activities in Alaska park units.

The Order inappropriately extends the minimum requirements “*concept*.” The minimum requirement provision is identified in Section 4(c) of the Wilderness Act only addresses administrative activities that pertains to the prohibition of certain uses:

Except as specifically provided for in this Act, and subject to existing private rights, there shall be no commercial enterprise and no permanent road within any wilderness area designated by this Act and, except as necessary to meet minimum requirements for the administration of the area for the purpose of this Act (including measures required in emergencies involving the health and safety of persons within the area), there shall be no temporary road, no use of motor vehicles, motorized equipment or motorboats, no landing of aircraft, no other form of mechanical transport, and no structure or installation within any such area.

The assertion that the minimum requirements concept also applies to activities not specifically prohibited by Section 4(c) of the Wilderness Act or otherwise allowed by enabling legislation is not founded in the Wilderness Act. The minimum requirement tool is not appropriate in the broad protection of wilderness character and is a prime example of the Service extending management authority well beyond the intentions of Congress.

Lastly, the final sentence of the second paragraph is confusing. A minimum requirements analysis informs the NEPA process and is not, by itself, a part of the NEPA analysis. We further maintain that use of section 4(c) prohibited uses does not necessarily require an EA or an EIS. A categorical exclusion, depending on the circumstance, may be viable.

6.5 Scientific Activities

While we appreciate the statement that “*Scientific activities will be encouraged in wilderness,*” we disagree with the apparent notion (second sentence) that “*undisturbed*” ecological processes or ecosystems exist in the United States. The Wilderness Act does not include the term “*undisturbed.*” This statement further implies a desire for reduced levels of human activities, which is not consistent with the purposes of the Wilderness Act. Moreover, implying that ecosystems are “*undisturbed*” ignores the historical presence of American Indians and Alaska Natives who thrived in these landscapes for over 10,000 years.

The notion of “*undisturbed*” wilderness appears to hinge on the opinion that areas must be pristine in order to qualify as Wilderness – an argument denied by Congress:

. . . Congress has itself not hesitated to embrace wilderness that was less than pristine. For example... the House Interior Committee disapproved of the view that an area could be disqualified where ‘any trace of man’s activity’ was present, and where the sights and sounds of cities (often many miles away) could be perceived from anywhere in candidate areas. It welcomed consideration of areas not necessarily ‘entirely free of the marks of mankind, but [which are] fully capable of providing in the long term, wilderness benefits to many people.’ H.R.Rep. No. 540 (95th Cong., 1st Sess. 4-6 (1977))

We therefore request a suitable revision relying more closely on the language in the Wilderness Act. We also request the following specific revision.

Monitoring systems must be implemented to ensure ~~that the~~ wilderness character resource is preserved ~~not degraded~~.

Furthermore, although the Order is silent, state fish and wildlife management activities are not scientific activities. For the record, they are administrative activities.

6.6 Climate Change

We request replacing the phrase “*climate disruption*” with “*climate change.*” We further request removing the phrase “*reduction of the influence... of humans*” as human use of the parks has no significant effect on climate change. We also request reference to state fish and wildlife agencies associated with “*interagency management collaboration.*”

6.8 Abandoned Mine Lands

We suggest consideration of historic values among the factors that inform decisions about management of abandoned mine areas.

6.9 Cultural Resources

In addition to references to Native American groups, we request this section also specifically refer to Alaska Natives.

6.10 Interpretation and Education

We agree that all commercial guides should be familiar with and apply Leave No Trace principles. However, forcing attendance at off-site workshops may be problematic for certain commercial operators, especially in rural Alaska.

6.11 Naming of Geographic Features

This policy is unnecessarily restrictive in Alaska, where many wilderness landscapes have very few official place names, but may have unofficial place names stemming from indigenous people and those who followed. It does not make sense to arbitrarily stop the formal recognition of traditional and locally evolving place names. This policy disrespects local culture and lacks recognition of the on-the-ground situation in Alaska.

7.3 Commercial Services

We appreciate that decisions regarding “*whether and to what extent*” commercial services are necessary in park wilderness will be made within the context of a public planning process to ensure public input is considered. Many individuals would not be able to experience designated wilderness, especially in the Alaska, without the aid of a transporter or guide. Similarly, the Order directs decisions regarding commercial and private wilderness use allocation within the context of a public planning process. We agree that when there is a significant planning issue, this may be an appropriate tool. As such, we request the Order specify this direction be applied “*where appropriate*” so that land managers have the latitude to determine whether (or not) a use allocation is necessary or appropriate to address a specific issue. There is no need to force an allocation system, along with inevitable public controversy, if there are no allocation issues.

There appears to be a typo in the last sentence of the first paragraph, as the authority to allow commercial services is found in section 4(d)(6), not “4(d)(5) of the *Wilderness Act*.”

The last sentence in the third paragraph clarifies that supply caches are not allowed unless specifically authorized within a park’s enabling wilderness legislation or ANILCA. We request the Order explain this is a clarification of the 2006 policy, which cited ANILCA Section 1316 but did not reference it as being applicable to equipment and supply caches. Also, since “*supply caches*” under ANILCA are specifically mentioned in this section, it would be helpful to note that other ANILCA sections are also applicable, including Sections 1303, 1307, 1315, and 1316.

Conclusion

We have raised a number of serious and substantive issues with this Order. We request the Service respond to these and other substantive comments prior to, or upon release of, the final document.

Thank you for your consideration of these comments. If you have any questions, please contact me at 907-269-7477, or Sue Magee at 907-269-7529.

Sincerely,

A handwritten signature in black ink, appearing to read "Sally Gibert". The signature is written in a cursive, flowing style.

Sally Gibert
State ANILCA Program Coordinator

cc: Gary Taylor, Association of Fish and Wildlife Agencies