

STATE OF ALASKA

SEAN PARNELL, Governor

ANILCA IMPLEMENTATION PROGRAM Office of Project Management and Permitting

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USDA Forest Service, Alaska Region
Jeffrey DeFreest, KMRD District Ranger
Ketchikan-Misty Fiords Ranger District
3031 Tongass Avenue
Ketchikan, AK 99901-5743

Dear Mr. DeFreest,

The State of Alaska reviewed the Ketchikan-Misty Fiords Ranger District (KMRD) Outfitter and Guide Management Draft Plan Environmental Impact Statement (DEIS). The following consolidated state agency comments were compiled by the State's Alaska National Interest Lands Conservation Act (ANILCA) Implementation Program.

In general, the State supports increased opportunity for recreational activities including guided recreational activities. We appreciate that, with the exception of a few highly utilized areas, the plan recommends increased opportunities for outfitting and guiding in nearly all areas of the district. While we do not agree with all of the conclusions, we also appreciate the District included the Wilderness Needs Assessments for the designated wilderness areas of KMRD in the Appendix and the accompanying explanation in the plan. Additionally, we recommend the District continue its increased efforts to work with the public and visitor industry during plan implementation.

Background

The plan describes guided use in terms of service days per unit, and while precise, these numbers are difficult to conceptualize in terms of actual use. In order to provide the public with a useful framework for evaluating the plan alternatives, a concise narrative description of the existing guided use on KMRD is essential. While guided use in the Monument is described on page 74 and pages 2-5 of Appendix A, this is only 43% of the total guided use on the district and there is no equivalent concise description of guided use on the rest of KMRD, or on KMRD as a whole. For example, the Appendix indicates 95% of guided use within in the Monument is flight seeing tours on Misty Core Lakes but does not specify what constitutes the majority of guided use outside of the Monument or on KMRD as a whole.

We recommend adding the following key information to Chapter 1: the proportion of use by activity type (e.g. flight seeing landing tours; bear hunting, fishing); major locations for the different activity types (e.g. Misty Core Lakes for flight seeing tours); the trend in the number of outfitter/guides; the trend in visitor numbers and whether visitors arrive by cruise ship or independently; and the trend in commercial service days.

State-owned Navigable Waters

The plan includes several statements that assert the Forest Service has jurisdiction over fresh water lakes within the District. For example, Appendix A, page 12 includes the following statement: “*Floatplane landings on lakes and shoreline excursions are under the Forest Service’s jurisdiction.*” Pursuant to the Equal Footing Doctrine, the Submerged Lands Act of 1953, and the Alaska Statehood Act, the State automatically received at statehood title to inland submerged lands beneath navigable waters and to land submerged under tidal waters between mean high tide and seaward to three geographical miles from the coastline of the state. ANILCA also specifically exempts state-owned lands and waters from regulations applicable solely to conservation system units. Therefore, the Forest Service does not have blanket jurisdiction over state-owned navigable waters, nor does it have the authority to require commercial operators to obtain a special use permit without a corresponding upland use (above the ordinary high water line), such as float plane landings. Our understanding is that the commercially guided flight-seeing tours referenced in the plan include a corresponding upland use and we request this be clarified.

In addition, it appears the plan does not directly impact marine water excursions or marine water floatplane landings adjacent to Misty Fiords National Monument. We appreciate the plan identifies the potential for displacement to State-owned marine waters. As the Forest Service acknowledges, these marine waters are outside their jurisdiction. If displacement occurs, it will be within the State’s jurisdiction to evaluate and address any impacts.

Lastly, the generally-drawn mapped recreation area boundaries include state-owned navigable waters. We request the maps include a footnote to explain that, under the Equal Footing doctrine, the Submerged Lands Act of 1953, the Alaska Statehood Act, and ANILCA, the recreation areas do not include state-owned navigable waters.

ADF&G Administrative Structures

Appendix B on page 41 indicates that no additional Alaska Department of Fish & Game (ADF&G) administrative structures will be authorized on Forest lands. While we appreciate the Service’s continued cooperation and coordination with regard to our mutual responsibilities of conserving wildlife and their habitats, an outfitter/guide management plan is not the appropriate place to address ADF&G administrative facilities. We request this section be removed from the plan. If necessary, we are available to discuss this important issue.

Carrying Capacity

It appears the plan has taken a balanced approach to analyzing guided use capacity for the recreation units. For example, on one of the most heavily used units, Misty Core Lakes, the proposed action (Alternative B) would allocate a level of guided use that is lower than the peak use it receives now, but sets the highest level of any of the alternatives. However, we remain generally concerned that capacity limits on outfitters and guides may also impact public access. Since a high percentage of the public depends on outfitter/guides to utilize the Tongass National Forest, including designated wilderness areas, limits on the number of outfitter/guides service days may effectively restrict public use.

Guided Deer Hunting

We are concerned with the District’s decision to no longer authorize special use permits for guided deer hunting in KMRD. ADF&G is responsible for the management and sustainability of all fish and wildlife in Alaska, including for subsistence purposes, regardless of land ownership or designation, unless specifically preempted by federal law. The reasons listed in the plan for prohibiting guided deer hunts

include; low demand for guided deer hunts, lack of a guide requirement for non-resident deer hunters, and the possibility that substantial increases in guided deer hunts could conflict with subsistence use. We do not agree these reasons justify prohibiting guided deer hunting, and currently the State has no significant issues with the level of guided deer hunting within the District. Any conflict, or potential conflict, between federally qualified subsistence users and non-subsistence users is best addressed by the Alaska Board of Game and the Federal Subsistence Board. Prohibiting guided hunts based solely on allocation concerns through this plan would circumvent these existing public regulatory processes. We therefore request that the District recognize these existing authorities and processes in the EIS and continue to permit guided deer hunting on the non-wilderness and wilderness portions of the District.

Special Use Permits

We recognize that guided use allocations allow for a more streamlined Outfitter Guide (special use) permit process. In future plan amendments, we recommend the Forest Service quantify or demonstrate the effectiveness of the new process.

Transporters/Air and Boat Charters

We are encouraged that the plan indicates unguided visitors will continue to enjoy KMRD as they do now; however, we request more explicit recognition that public access to KMRD via transporters, including boat and air charters, will not be affected by this plan. As written, it is unclear to readers whether this is the case. We further recommend clearly defining transporter activities in contrast to outfitter and guide activities, so that readers are not confused about the plan's intentions.

Adaptive Management

We appreciate the District's adaptive management strategy, which would first implement management actions that would cause the least impact to visitors should the District determine that action is necessary to address resource concerns. Through adaptive management the KMRD managers' flexibility in working with Outfitter and Guides is enhanced. For example, it clarifies the means by which managers can administer special use permits, such as adding service days under a permit when appropriate.

Page Specific Comments

Page 10, Public Involvement, 2nd paragraph: The plan indicates that ADF&G and the ANILCA office were consulted "*as the Needs Assessment was being developed.*" This statement is incorrect. While the Needs Assessments were provided to us upon request, at the time of the request they were already completed. No input was sought from the State during their development and as stated previously, the State does not agree with all conclusions in the assessments.

Page 80, Wilderness Character (Opportunities for Primitive and Unconfined Recreation), third paragraph: Self-discovery and exploration are very subjective benefits. The assertion that these benefits cannot be realized through use of an outfitter or guide is ill-founded. Individuals do not need to be self-guided to experience "wilderness" benefits. Furthermore, it is unclear how the mere "opportunity" to use outfitter and guide services affects wilderness character. An individual still has the option to visit designated wilderness without the service of an outfitter or guide.

Page 134, Affected Environment, sixth paragraph: Both quotes on this page are from Title VIII of ANILCA, not Title VII. We request this technical correction in the final plan.

Page 137, Competition, second paragraph, first sentence: Since there is not yet a moratorium on brown and black bear guides and hunts, this should read:

With the current moratoriums on new brown and black bear guides and hunts....

Page 137, Competition, second paragraph, third sentence: ANILCA Section 804 states that subsistence uses shall be accorded a priority opportunity whenever it is necessary to restrict the taking of populations of fish and wildlife to protect the viability of populations, or to continue subsistence uses. The presence of competition for wildlife resources does not invoke this priority opportunity.

Volume B, Appendix A:

Page 12, Lake Landings: This section includes the following:

The Alaska National Interest Lands Conservation Act (ANILCA) allows these uses, but does not discuss their use for commercial purposes, nor does it address the levels of motorized use. Section 707 of ANILCA states that “except as otherwise expressly provided for in this Act wilderness designated by this Act shall be administered in accordance with applicable provisions of the Wilderness Act...” Ultimately, any use must leave the wilderness resource unimpaired for future use and preserve the wilderness character.

We disagree that ANILCA does not address levels of motorized use and request this discussion be expanded to clarify that ANILCA Section 1110(a) specifically allows motorized access into and within designated wilderness in Alaska for traditional activities, such as hunting and fishing, “*subject to reasonable regulation...to protect the natural and other values...and shall not be prohibited unless...such use would be detrimental to the resource values*” As noted, Section 707 states “*except as otherwise expressly provided for in this Act.*” The allowance for motorized use in designated wilderness is expressly the type of exception referenced in Section 707. The level of use depends upon whether there are quantifiable impacts to resource values. Any restrictions to public motorized use must be reasonable (i.e. justified), the result of a detrimental effect to resource values, and implemented through regulation. Similarly, because limits to commercial use could affect the public’s ability to access these remote areas, adequate justification is needed before implementing restrictions to motorized commercial use.

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

Sincerely,



Susan Magee
ANILCA Program Coordinator

