

STATE OF ALASKA

SEAN PARNELL, Governor

ANILCA IMPLEMENTATION PROGRAM Office of Project Management and Permitting

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March 21, 2012

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

Dear Ms. Masica:

The State of Alaska reviewed the Subsistence Collections and Uses of Shed or Discarded Animal Parts and Plants from NPS Areas in Alaska Environmental Assessment (EA). The following comments represent the consolidated views of the State's resource agencies.

The State fully supports collection of shed and discarded animal parts and plants on national park lands, and therefore supports the general intent of this EA. While we recognize that existing national and Alaska-specific regulations have been viewed by the Service as an impediment to allowing this long practiced activity in park and preserve areas in Alaska, the Alaska National Interest Lands Conservation Act (ANILCA), along with state statute and regulations, fully support such an allowance. Therefore, we are encouraged by this current effort to respond to the multiple requests received from Subsistence Resource Commissions (SRC) and Regional Advisory Councils (RAC) over the years to align Service regulations with the intent of ANILCA; however, we are concerned that the EA's action alternatives are overly restrictive and onerous to users.

ANILCA is clear that the subsistence priority opportunity afforded rural Alaska residents includes customary and traditional uses of "*wild, renewable resources*" on national park lands in Alaska.

As used in this Act, the term "subsistence uses" means the customary and traditional uses by rural Alaska residents of wild, renewable resources for direct, personal or family consumption as food, shelter, fuel, clothing, tools, or transportation; for the making and selling of handicraft articles out of nonedible byproducts of fish and wildlife resources taken for personal or family consumption; for barter, or sharing for personal or family consumption; and for customary trade. (ANILCA Section 803, emphasis added)

In addition, the preamble to the NPS 36 CFR Part 13 regulations promulgated in 1981 was clear that the intent of Congress was "...to avoid a subsistence permit system to the extent possible." The discussion also clarified that "*The subsistence permit described in §13.44 of the regulations is not a federal hunting permit; rather, it is part of the system contemplated by ANILCA for*

identifying the “local rural residents” who are authorized to engage in subsistence uses in national park and monuments.” (52 FR 31841) However, Alternatives C and D give Superintendents considerable discretion to impose additional restrictions on eligible subsistence users, including requiring a permit.

Collection of these resources is generally opportunistic and incidental to other allowed subsistence activities, such as hunting and berry picking. As such, this allowance is not going to substantially increase overall subsistence use nor will it lead to increased impacts associated with ANILCA protected modes of access, which the Service can regulate separately, as needed. Furthermore, as acknowledged by the SRCs and RACs quoted in the EA, the making of handicrafts is labor intensive and time consuming, which inherently limits the amount of resources sought and utilized at any given time and alleviates conservation concerns.

Absent any documented resource impact, this use should be allowed to occur as intended by ANILCA, without the added requirement of a permit system or additional restrictions that further complicate the federal subsistence program and burden subsistence users. In addition, while we appreciate the allowance for the use of airplanes to transport handicraft materials in preserves, we request this include other areas where there is a subsistence aircraft exemption (e.g., Gates of the Arctic and Wrangell St. Elias).

We request the Service simply expand the allowances under the existing 36 CFR Part 13 regulations and rely on existing definitions and closure processes for implementation. We concur with the EA that under *all* action alternatives, including Alternative B, which allows for the broadest level of eligibility among subsistence users without permits, the potential for impacts is minor, if not negligible. Limiting eligibility or further restricting the use by requiring permits, as described under Alternatives C and D, is unjustified. If unchanged, these additional burdensome requirements may instead serve as a deterrent to users, thereby effectively nullifying the Service’s good intentions to allow this traditional use on park lands in Alaska.

Lastly, it appears Congress intended that the collection and use of shed or discarded animal parts be allowed in Alaska preserves for *both* federally qualified and non-qualified users. Section 1313 of ANILCA states:

*A National Preserve in Alaska shall be administered and managed as a unit of the National Park System in the same manner as a national park except as otherwise provided in this Act and except that the **taking of fish and wildlife** for sport purposes and subsistence uses, and trapping **shall be allowed** in a national preserve under applicable State and Federal law and regulation.* (Emphasis added)

As provided under Section 102 of ANILCA “*the term ‘fish and wildlife’ means any member of the animal kingdom, including without limitation any mammal... and includes any part, product, egg, or offspring thereof, **or the dead body or part thereof**”* (emphasis added). Additionally, “*the term ‘take’ or ‘taking’ as used with respect to fish or wildlife, means to pursue, hunt, shoot, trap, net, capture, **collect**, kill, harm, or attempt to engage in any such conduct”* (emphasis added). By incorporating these definitions, the intent of Section 1313 reads as follows:

*A National Preserve in Alaska shall be administered and managed as a unit of the National Park System in the same manner as a national park except as otherwise provided in this Act and except that the **[collecting] of [the dead body or part(s)] of fish and wildlife** for sport purposes and subsistence uses, and trapping **shall be allowed** in a national preserve under applicable State and Federal law and regulation. (Emphasis added.)*

While we recognize that regulations at 36 CFR 2.1 prohibit this activity nationally, limiting the proposed allowance in preserves to subsistence use may be inconsistent with ANILCA. We request the Service also consider further expanding this allowance to all users in preserves.

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 Magee
ANILCA Program Coordinator

cc: Bud Rice, NPS Alaska Region