



THE STATE
of **ALASKA**
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February 14, 2013

Sue Masica, Regional Director
National Park Service – Alaska Region
240 W. 5th Avenue
Anchorage, AK 99501

Dear Ms. Masica:

The State of Alaska reviewed the 2013 Proposed Compendiums for Alaska park units, as posted on the National Park Service Alaska Regional Office web site. The following are consolidated state agency comments. The Alaska Department of Fish and Game is submitting additional comments under separate signature on the proposed wildlife closures under 13.40(e), which affect multiple Alaska park units and are incorporated herein by reference.

The State supports the changes made to the Compendium process initiated over a decade ago to meet with state representatives annually and as otherwise necessary, to discuss park issues and to incorporate an annual public review process. While we are not always in agreement on the issues, both the process and opportunities for dialog have served the State and the Service well over the years.

Temporary vs. Permanent Restrictions

As illustrated in the attached letter from the State regarding the 2010 Proposed Compendiums, the State and the Service have a long-term, fundamental disagreement over the Service's use of "temporary" restrictions. While the Service has indicated a general commitment to move recurring temporary restrictions to permanent rulemaking when warranted, it is becoming increasingly problematic for the State to tolerate the use of the Compendiums as a placeholder for the regulatory closure process required under Alaska-specific regulations at 36 CFR § 13.50(e) and 43 CFR § 36.11(h).

In particular, the regulations require specified time limitations and procedural steps depending on whether proposed restrictions or closures are either temporary or permanent. While both temporary and permanent restrictions require notice and hearing, permanent restrictions include

the added requirement of rulemaking in the Federal Register and a minimum comment period of sixty days.

In an apparent effort to implement restrictions more expeditiously, the Service frequently identifies what are clearly intended as “permanent” restrictions or closures as “temporary;” thereby avoiding the cumbersome and time-consuming rulemaking process. In many instances, these “temporary” closures remain in the Compendia for years, pending development of a formal regulation package. In some instances, they are proposed as renewals and the notice, hearing, and analysis requirements are repeated; in others they simply remain in the main body of the Compendia.

When the Service’s justification clearly indicates a proposed restriction will be permanent, such as what appears to be the case with the currently proposed wildlife closures, under Service regulations the 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*** (36 CFR 13.50(e)), and similarly, under Department of Interior regulations “***Permanent closures shall be published as rulemaking...with a minimum public comment period of 60 days and shall not be effective until after a public hearing(s) is held in the affected vicinity and other locations as deemed appropriate...***” (43 CFR 36.11(h)(3)).

For example, in 1988, the Service followed both the temporary and permanent processes when it determined there was a need for a restriction on same-day airborne hunting in Alaska preserves. The restriction was initially introduced as temporary and the September 16, 1989, Service News Release clarified it “*would be in effect a maximum of one year.*” According to a November 15, 1994, Federal Register Notice (59 FR 58806), which recounted the earlier proposal, the Service concurrently started working on a proposed rule for a permanent closure, which was published in the Federal Register on June 9, 1989 (54 FR 24852). That action included an opportunity for public comment and public hearings were held during the summer of 1989. While subsequent consultation with the State led to actions that negated the need for permanent restrictions, it is important to recognize the Service appropriately identified the restrictions as either temporary or permanent, and then followed the required closure processes, including a strict adherence to the 12 month time limitation for temporary closures, pursuant to 36 CFR 13.30 (the applicable regulatory citation is now 36 CFR 13.50).

In another example, following the formal Compendium process in 2010, the Service determined there was a need for a temporary closure in Yukon-Charley Rivers National Preserve that prohibited the taking of wolves from April 14, 2010 through May 31, 2010. Prior to implementing the closure, in accordance with regulatory requirements, the Service consulted with the State, held a public hearing in Eagle, and also accepted written comments on the proposed closure. The following year, while the temporary restriction was included in the Proposed 2011 Yukon Charley Compendium, in response to the State’s comments that continuing the closure was unwarranted, the Service responded “*A temporary closure to the take of wolves for sport purposes was inadvertently included in the proposed compendium. Based on current information, the NPS does not believe a closure is warranted at this time. Accordingly, this provision has been removed from the final compendium.*” While at the time the State

objected to the closure as unnecessary to maintain the sustainability of wolf populations, the required process was followed and the temporary restriction was removed when the justification for the closure was re-evaluated and determined to be no longer necessary.

As noted, the test for many closures seems to default to whether the Service has time to adequately develop a formal regulation package. When resources are not at immediate risk and the closures are intended as permanent, it is both unnecessary and inappropriate to implement a proposed restriction as “temporary.” In addition, it is questionable whether the resulting temporary restriction is even legal or enforceable.

In 2002, when the new Compendium process was first implemented, the Service committed to using formal rulemaking when legally required and acknowledged that the issue of whether repeating seasonal closures were temporary or permanent needed further attention. Despite this commitment and over a decade later, we are still at odds over what should be a basic process issue. This past fall, state representatives requested and participated in a meeting with the Service to discuss this and other Compendium process issues; however, no progress has been made toward resolution and we are again faced with reviewing proposed restrictions that are inappropriately characterized as temporary, and as such, are not being properly implemented in accordance with the Service’s own regulations.

We urge the Service to address this process issue so that we can continue efforts to work productively in a cooperative manner through the Compendia process as originally intended, to address management issues that affect park resources and the public.

Following are comments on proposed restrictions for individual park units, some of which raise similar process issues.

Park Specific Comments

Denali National Park and Preserve

4.21(b)-(c) Speed limits: designation of a different speed limit

Although the speed limits and seasonal adjustments in proposed subsection 4.21(b)-(c) appear consistent with the Alaska Department of Transportation and Public Facilities (Alaska DOT&PF) current Speed Zone Order and current practice for this segment of the Parks Highway, the language should not be included in the compendium.

AS 19.10.070 and 19.10.072 assign Alaska DOT&PF (Department) authority and responsibility for determination of speed limits and zones, and establish criteria for considering factors in the determination. Department Policy and Procedure (P&P) 05.05.020 clarifies the Department’s process for implementing the applicable statutes. Although the Parks Highway passes through boundaries of the national park, the Department reserves authority for management of this National Highway System route within and outside the park boundary. Including the language in the Compendium would create a conflict if the department needed future speed limit adjustments in this area, as may be necessary according to Alaska Statute and Department P&P.

If reference to the Parks Highway speed limit is essential in the Compendium, we propose the following revised language:

The speed limit along Alaska Highway 3 will be established and posted by Alaska DOT & PF according to Alaska Statute and Alaska DOT & PF Policy and Procedure. The current speed limits are posted as 65 MPH from the south boundary to mile post 236, and 55 MPH from mile post 236 to the north boundary. During summer months, the posted speed limit is reduced to 45 MPH from mile post 237 to the north boundary. Alaska DOT & PF may make future adjustment to these posted speed limits as necessary according to Alaska Statute and Alaska DOT & PF Policy & Procedure.

Klondike Gold Rush National Historical Park

36.11(e) Temporary closures to the use of non-motorized surface transportation

When first implemented in 2009, the State understood that the underlying need for this and a similar restriction to snowmachine use was to protect valuable cultural resources and artifacts from ground disturbance. It was further understood that the restrictions were considered temporary pending the completion of a planning process for the Dyea Area, which was underway with an Environmental Assessment (EA) scheduled for release later that year. The 2013 proposal to renew the seasonal closure to horses includes similar justification and indicates the Dyea Area EA is currently expected to be released later in 2013. While we understand planning delays cannot always be avoided, the extended period in which these closures have been in place calls into question whether the appropriate process has been followed for implementation of the restrictions and in part illustrates why the State takes issue with the process regarding recurring temporary closures.

In addition, closure procedures for temporary restrictions at 43 CFR 36.11(h) require public notice and hearing. In accordance with the Service's process for renewing temporary closures, the regulatory requirements must be complied with every year temporary restrictions are proposed for renewal. It is not clear whether that process was followed in previous years or is being followed this year. However, since these restrictions have been in place several years and the underlying need to protect cultural resources is not going to change, we request the Service reconsider whether the restrictions should instead be proposed as permanent closures and implemented by rulemaking pursuant to 43 CFR 36.11(h).

Wrangell-St. Elias NPP

13.170 Designated cabins or other structures for general public use

The Service is proposing to close the Bremner Bunkhouse to public use because the bunkhouse is unstable and creating a public safety concern. The Compendium notes that the bunkhouse was partially stabilized in 1998, but not sufficiently stabilized or rehabilitated to a level suitable for public use. It also indicates visitors have also been using an unsafe, non-historic, woodstove found in the bunkhouse and because legal firewood is practically non-existent in the immediate area, visitors have been burning wood salvaged from artifacts and other structures within the Bremner Historic Mining District.

While the Service notes that further structural stabilization will need to be completed, it is not clear when or how proposed improvements will take place. As a result, it is not known, or at

least not stated, how long the proposed closure would be in place. Since it appears that the use of an unsafe and unauthorized wood stove in the bunkhouse is the more immediate concern, a better approach that avoids a closure would be to remove the stove and post a notice in the bunkhouse that states fires are not allowed and that there are no legal sources of wood in the historic district, along with prohibitions of burning historic buildings or artifacts. This would allow the bunkhouse to remain available for shelter while the Service continues efforts for future improvements. We also recommend the Service contact visitors, non-profit organizations, and the State Historic Preservation Office for potential solutions pertaining to funding, labor, material, and improvement methods required for conducting the repairs.

13.35(f)(1) Natural features: size and quantify restrictions for collection

While this entry indicates the proposed restriction was inadvertently dropped from the Compendium, we request the Service re-state the need for the restriction, and to ensure the public is properly notified, repeat the notice requirements in 36 CFR 13.35(f)(2).

Thank you for this opportunity to comment. I look forward to continued dialog on the compendium process and other issues raised in this letter. Please contact me at (907) 269-7529 if you have any questions.

Sincerely,

/ss/

Susan Magee
ANILCA Program Coordinator

Enclosure

cc: Joel Hard, Deputy Regional Director
Andee Sears, NPS Alaska Region
Douglas Vincent-Lang, Alaska Department of Fish and Game