



December 3, 2014

Commercial Filming in Wilderness
USDA, Forest Service
Attn: Wilderness & Wild and Scenic Rivers (WWSR)
201 14th Street, SW
Mailstop Code: 1124
Washington, DC 20250-1124

Via email: reply_lands@fs.fed.us

Dear Sir/Madam:

The State of Alaska has reviewed the Federal Register Notice (Notice), which proposes to incorporate interim directive 2709.11-2013.1 into Forest Service Handbook (FSH 2709.11, chapter 40) regarding National Forest Service Special Use Administration for Commercial Filming in Wilderness. This letter represents the consolidated views of state agencies responsible for natural resource management and tourism business development.

We understand the need for a reasonable permitting and fee structure for commercial activities; however, the proposed policy arbitrarily limits the use of still and video photography and commercial filming irrespective of the level of impact to wilderness, creating an undue burden on the public. The proposed policy makes no distinction among the levels of impacts from various types of operations. A single person taking still photos or videos has no different an impact to wilderness character than any other visitor with a camera, whereas a large feature-length filming operation would potentially have greater impacts. We request the level of regulation be commensurate with the expected impacts.

In addition, the proposed policy is out of sync with the modern photography and journalism industry; creating an unnecessarily complex and subjective permit system that would be exceedingly difficult to fairly enforce. The line between recreational photographers and commercial photographers has blurred. For example, the proliferation of stock photo websites which easily connect photographers with customers along with the improved quality of affordable camera equipment has created a vastly increased opportunity for recreational photographers to sell the occasional photo or video and therefore inadvertently fall within the proposed policy. Likewise, recreational bloggers whose blogs feature the occasional sponsored post or advertisement would presumably fall within the proposed policy. The images captured by these largely amateur photographers and bloggers fill a unique niche because they are generally people who would be out enjoying wilderness regardless of whether they are selling photos or blog advertisements, and the experiences they portray often represent values of wilderness that may not be expressed in larger commercial filming enterprises. For many, their own wilderness experience is their priority, and the future sale of any photos or videos is

incidental to their visit to the wilderness rather than the reason for their visit. We request the proposed rule clarify its application to the current photography and journalism industries.

Criterion (g) of the same subsection requires that a proposed activity cannot advertise any product or service. When it is the activity itself that has the potential to impact wilderness character, it is unclear why the use of a product is being prohibited. Whether a photo of a hiker features a certain brand of hiking apparel, for instance, makes no difference to the impacts to wilderness. In addition, strict adherence to this criterion would prevent guides and outfitters who conduct business within designated wilderness from using photos or videos of their clients or activities to promote or advertise their wilderness-based businesses. Scientific or educational expeditions or projects are often sponsored by outdoor equipment manufacturers through product donations, with the implicit understanding that photos and videos of team members using the products in the course of their work will provide incidental publicity. Such relationships foster research opportunities that may otherwise be financially infeasible.

We are also concerned the proposed directive will create an additional economic burden to still and video photography and commercial film projects, as well as to commercial visitor service providers, particularly in Alaska. Due to the size, scale and general remoteness of Alaska (including designated wilderness areas), still and video photography and commercial film projects and visitor service providers are already faced with extensive costs. In particular, trips in Alaska tend to be of a much longer duration than those in the lower 48. And, to adequately provide for public safety and visitor enjoyment, commercial companies and service providers need specialized skills and costly equipment. Alaska also has a very limited road system; therefore, expensive methods of access, such as air and water transport, add to operating costs. Additional fees associated with filming could prove to be cost prohibitive, especially for smaller local businesses, including guides and outfitters.

The Notice also provides neither supporting justification for the proposed criteria applicable to designated Wilderness areas (other than general citations) nor guidance for managers to interpret subjective criteria. For example, section 45.1c(5)(c) requires a proposed activity to be “wilderness-dependent” but does not specify the basis for determining whether a proposed activity could be conducted outside of designated Wilderness. As written, this criterion also allows for categorical denial of proposed activities without consideration of permit stipulations, which could allow for the activity while protecting wilderness character.

We request the Forest Service fully consider these and other potential consequences of these general requirements and provide justification for all proposed criteria. Further, at a minimum, we request that the directive allow permit stipulations be taken into consideration when evaluating proposals and that this proposal be directed at projects solely related to commercial still photography and filming productions, exempting incidental filming related to other businesses (e.g. commercial guides).

For clarity and consistency in interpretation and application, we request the final directive also contain specific grounds for denial of a permit request and include definitions of the following terms: “commercial filming”, “model”, “non-commercial still photography”, “breaking news”, “resource damage”, “sets and props”, and “still photography.”

Designated wilderness areas in Alaska are managed as conservation system units (CSUs) under the Alaska National Interest Lands Conservation Act (ANILCA). Numerous provisions in

ANILCA also need to be taken into consideration when considering proposed activities, including:

- Section 810 requires consideration of impacts to subsistence uses and resources;
- Section 1110 authorizes the use of motorized methods of access for traditional activities, and;
- Section 1307 guarantees the continuation of existing revenue-producing visitor services.

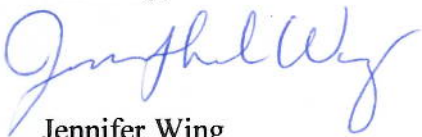
The Alaska Region has prepared or participated in the preparation of two important regional documents, which summarize provisions in ANILCA that apply to designated Wilderness in Alaska – What Can I Do in Wilderness, ANILCA and Wilderness on National Forests in Alaska, dated November 2005, and the 2006 Alaska Supplement to the Minimum Requirements Decision Guide. We request the directive also cite relevant regional reference materials.

We remain generally concerned about the ever increasing restrictions being applied to designated wilderness in pursuit of maintaining wilderness character at the expense of public use and enjoyment. We also question whether the additional criteria in the directive, which are applicable to designated wilderness areas, are even necessary. As an administrative activity, the issuance of a special use permit in designated wilderness is already subject to a minimum requirement analysis when a use involves an activity prohibited under the Wilderness Act. These additional criteria, specific only to commercial filming in designated Wilderness, are not only duplicative; they have the potential to conflict with other guidance and directives that apply to other commercial activities.

Finally, we note that the Federal Register notice references Interim Directive FSH 2709.11, chapter 40, section 45.51b being incorporated into its parent text at section 45.1c. We were unsuccessful at finding the parent text for 45.1 in our searches on the web. Please ensure that the document in its entirety is available for review to avoid any difficulties in determining what specific activities are being regulated.

Thank you for your consideration of these comments. Feel free to contact me at 907-334-2563 or jennifer.wing@alaska.gov if you have any questions.

Sincerely,



Jennifer Wing
ANILCA Project Coordinator

cc: Susan Magee, ANILCA Program Coordinator