



February 12, 2016

Bert Frost, Alaska Regional Director
National Park Service
240 W. 5th Avenue
Anchorage, AK 99501

Dear Mr. Frost:

The State of Alaska reviewed the 2016 Proposed Compendiums for Alaska park units. Proposed changes apply to the following park units: Katmai National Park and Preserve, Glacier Bay National Park and Preserve, Kenai Fjords National Park, Lake Clark National Park and Preserve, and Wrangell-St. Elias National Park and Preserve. The following comments represent the consolidated views of state resource agencies.

Written Determinations

National regulations at 36 CFR 1.5 provide direction for implementing or terminating closures or restrictions in national park units through the Compendia, which includes providing written determinations justifying the actions. A written determination provides rationale for the action – both the reason for the restrictions and an explanation for why less restrictive measures will not suffice. The regulation further indicates that the determination “*shall be available to the public upon request.*”

Alaska is unique in that for more than 10 years the proposed Compendiums have annually been made publically available for a 30-day review prior to implementation. An agreement to provide this comment opportunity along with an annual meeting with state staff was developed in response to concerns expressed by the State of Alaska and the Citizen’s Advisory Commission on Federal Areas that the 36 CFR Part 13 public closure process specific to Alaska was not being implemented as written or as intended when originally promulgated in 1981.

Now that the 2015 revisions to 36 CFR 13.50 closure process increases the Service’s discretionary authority to implement restrictions and closures without public input or consultation with the State, this public process is all the more essential to ensure Alaskans who are dependent upon these vast park resources are aware of changes that could directly affect their ways of life and livelihoods. While not required by regulation, the Service has indicated it will continue this informal regional policy to issue proposed Compendiums accompanied by a 30-day public comment period. We support that decision.

However, the proposed 2016 Compendiums do not consistently provide complete determinations as required under 36 CFR 1.5(c). Context and justification for a proposed closure are an integral part of providing the public with a meaningful comment opportunity. Without it, it is difficult for the public to provide substantive comments, especially given the limited timeframe for review and inquiry. We

therefore request that all proposed Compendiums be presented for public review in a similar format that includes complete determinations pursuant to 36 CFR 1.5(c).

More detailed comments specific to individual Compendiums are provided below.

Glacier Bay National Park and Preserve

13.1130(c) Commercial Fishing. List of existing fisheries and gear types for the park's outer waters

The changes to this Compendium entry amend the fishery and gear list to specify that troll gear is by "hand and power" and adds new criteria to define "expanded fishery." This entry does not include a written determination as required by 36 CFR 1.5(c) for either change, therefore, the rationale for the proposed changes is unclear. In addition, the proposed "expanded fishery" criteria exceed the discretionary authority granted the Superintendent in 36 CFR 13.1130(c)¹ to "*compile a list of existing fisheries and gear types used in the outer waters.*"

Instead, 36 CFR 13.1130(a)² and Section 123 of the Omnibus Consolidated and Emergency Supplemental Appropriations Act for FY 1999 require that commercial fishing be administered by a cooperatively developed State/federal park fisheries management plan, and require that the management plan provide for "the prohibition on any new or expanded fisheries." Accordingly, any criteria to identify a "new or expanded fishery" should be adopted as part of the management plan. That a plan has not been developed does not justify the Service's proposed action to unilaterally establish these criteria and define these terms in the Compendium. Any attempt by the Service to change the law 17 years after the 1998/1999 legislation must be done in compliance with the Administrative Procedures Act, including the provisions that provide for public notice and comment. Alternatively, and preferably, the Service should, as it has in the past, work through the Board of Fisheries to identify and comment on any proposals to change state fishing regulations that may expand existing fisheries. Where state regulations governing the existing fisheries have not substantially changed, it is unreasonable and incorrect to deem an existing fishery as having expanded. If interpreted broadly, the proposed "expanded fishery" criteria could limit the adaptability of the listed fisheries and their management relative to changing ocean conditions, timing, abundance or spatial availability. A fishery that has adapted to changing circumstances is not necessarily an expanded fishery.

Further, the entry does not indicate whether or how the Service will be examining current or future fisheries for compliance with the new "expanded fishery" criteria. It also does not indicate how related decisions will be implemented, specifically with regard to the National Environmental Policy Act, public comment and notice procedures, scheduled fishing seasons or openings, consultation with the state, or Board of Fisheries regulatory cycles. In addition, the State does not manage any troll fishery by

¹ 36 CFR 13.1130(c) "A new or expanded fishery is prohibited. The Superintendent shall compile a list of the existing fisheries and gear types used in the outer waters and follow the procedures in § 1.5 and 1.7 of this chapter to inform the public."

² 36 CFR 13.1130(a) "Commercial fishing shall be administered pursuant to a cooperatively developed State/federal park fisheries management plan, international conservation and management treaties, and existing federal and non-conflicting State law. The management plan shall provide for the protection of park values and purposes, the prohibition on any new or expanded fisheries, and the opportunity to study marine resources."

hand or power exclusively, and as such, there is no need to add qualifiers to the troll fishery description. We therefore request the Service remove the “expanded fishery” criteria and the change to the gear list from the Compendium.

We also request that any specific commercial fisheries resource concerns first be raised through consultation with the Alaska Department of Fish and Game (ADF&G) and the Board of Fisheries regulatory process per ADF&G’s Master Memorandum of Understanding.

Katmai National Park and Preserve

13.25 (a) Closures and restrictions to camping – Camping and fishing have been occurring at the confluence of Moraine Creek and Funnel Creek for many years. That area has also become a popular site for commercial bear viewing in the fall. Based on the information provided in the written determination and in conversations between park and state staff, it is unclear what specifically is driving this area camping closure. The determination does not identify specific user conflicts or discuss less restrictive means that could address the general issues identified. For example, bear/human interactions may be addressed through site-specific management rather than the bear distance regulation. Human waste disposal regulations are already in effect, and campers have the option of using waste alleviation and gelling (WAG) bags. Camping time limits are another option to mitigate user conflicts. The service could also work to better educate park visitors and commercial outfitters about the issues and identify and encourage camping in other locations that would still allow reasonable access to the Moraine and Funnel Creek confluence.

We strongly support management efforts that encourage the coexistence of different opportunities for the public’s enjoyment of fish and wildlife, including both fishing and bear viewing, and we encourage the Service to first consider less restrictive means that would avoid an area closure.

13.1204 Traditional redfish fishery: conditions established by the Superintendent – This compendium entry is not accompanied by a written determination; however, we understand from conversations with park staff that it has been challenging to compile and maintain a list of individuals who are authorized to participate in the redfish fishery. Allowing village and tribal councils to identify authorized participants appears to be a reasonable solution.

13.1206 (d)(4) Wildlife distance conditions – The proposed entry indicates the wildlife viewing area at Geographic Harbor has been eliminated through erosion. We support maintaining a wildlife viewing site in this area. Wildlife viewing areas are effective in reducing negative human/bear encounters; therefore, we request locations for new wildlife viewing areas be selected with multi-year consistency in mind so that human presence at the site is consistent and predictable for bears. We also request that ADF&G biologists be included in the superintendent’s annual on-site evaluation to determine the designated wildlife viewing area.

Kenai Fjords National Park

While the individual reasons provided for the proposed changes seem reasonable, the entry lacks a clear summary of the changes and does not explain why less restrictive measures would not suffice.

Lake Clark National Park and Preserve

These entries provide reasonable justification but do not include an explanation for why less restrictive measures would not suffice.

Wrangell-St. Elias National Park and Preserve

13.170 Designated cabins or other structures for general public use - We support the proposal to place Nugget Creek Cabin back on the list of reservation only cabins. Until fairly recently this popular cabin was on the reservation system; however, it was removed due to budget issues. The cabin is located at the end of the 15-mile Nugget Creek Trail and requires significant logistical effort to access it. Because the location is quite remote, the current first come, first serve approach has led to some user conflicts in recent years when more than one party makes the effort to access the location at the same time without knowledge of the other.

The Park and Preserve has a rich history, and unique, rustic cabins let visitors experience that history. The Nugget Creek Cabin is an excellent example of a homesteader's hand scribed log cabin with steel "bear proof" window shutters and glass water jug windows. We commend local staff for prioritizing limited resources to maintain this popular cabin on the reservation system.

Thank you for the 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