

STATE OF ALASKA

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CITIZENS' ADVISORY COMMISSION ON FEDERAL AREAS

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Sue Masica
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240 West 5th Avenue, Room 114
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Dear Ms. Masica:

The Citizens' Advisory Commission on Federal Areas has reviewed the proposed revisions to the compendiums for Denali National Park & Preserve, Gates of the Arctic National Park & Preserve, Glacier Bay National Park & Preserve, Katmai National Park & Preserve, Lake Clark National Park & Preserve and Wrangell-St. Elias National Park & Preserve. We offer the following comments and suggestions.

General Comments

The original Citizens' Advisory Commission on Federal Areas was extensively involved in efforts to improve the National Park Compendium process during the 1990's. To be candid, it was a frustrating and not particularly productive experience for our commission, the National Park Service, or the public. Many procedural and substantive issues remained unresolved at the time we ceased operation in June 1999. However, thanks to the continued hard work of the State of Alaska ANILCA Program staff and the National Park Service Alaska Regional Office there have been noteworthy improvements in the entire process. We commend those efforts that concluded with a comprehensive review of the 1981 "interim" Part 13 regulations and the promulgation in 2004 of new regulations to implement a number of provisions found in park compendiums.

We appreciate the opportunity provided to the public annually to review the proposed revisions to these park compendiums. This is a great improvement over the previously used process where limited opportunities for public involvement existed. Since resuming operations in 2008, the

Commission has encouraged the public to participate in the annual review of park compendiums. At the same time, we are familiarizing ourselves with the compendium review and revision procedures in an effort to better understand how they work and perhaps suggest ways in which they might be improved.

With regard to the proposed 2010 revisions to the various compendiums, our concerns are primarily about process and the proposer application of the regulatory procedures for implementing public use limits, restrictions and closures. We contend that there are a number of the proposed actions that cannot be implemented solely by revising a park compendium. At the risk of being seen as simply engaging in regulatory hair-splitting, we offer the following explanation of the basis for our contention.

Lake Clark Compendium

We will use the Lake Clark compendium as an example. It contains a proposal for a seasonal closure (May 1 through August 31) of a meadow area north of the slough in Chinitna Bay to visitor use. This closure is being proposed because of the possibility of bear-human conflicts and concern over critical bear habitat in this area of the park and preserve. The authority cited in the compendium for this seasonal closure is 36 CFR §1.5(a)(1). The proposal, as required by §1.5(c), contains an explanation of why the closure is necessary and why less restrictive measures will not be effective.

The Commission does not necessarily disagree with NPS in its justification for public use limits in this area. Public safety is always a factor and the potential for adverse impacts to park resources does exist. We understand that the Alaska Department of Fish & Game has worked with Lake Clark Staff on this issue and tentatively supports the proposed closure.

Under the general provisions of National Park Service regulations, park superintendents clearly have authority to place limits on public use or designate closures. However, within Alaska units of the National Park System, Part 13 of the regulations in Title 36 specifically applies. 36 CFR § 13.2(a) Applicability and scope states: *“The regulations contained in part 13 are prescribed for the proper use and management of park areas in Alaska and supplement the general regulations of this chapter. The general regulations contained in this chapter are applicable except as modified by part 13.”* The regulations at 36 CFR §13.50 Closures, modify the general closure authority found in § 1.5 by prescribing procedures that must be followed in order to implement an emergency, temporary or permanent closure.

The proposal in the compendium is to close this meadow area seasonally. There is no indication in the compendium that this is an emergency or temporary closure. Even if the proposal was being presented as a temporary closure, such closures under §13.50(d)(3) cannot exceed 12 months and cannot be extended.

As presented, the proposed closure of this area constitutes a permanent seasonal closure which may only be properly implemented after complying with procedures for a permanent closure in 36 CFR § 13.50(e) which states: *“Permanent 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.”

We also note that §1.5(b) states that “*Except in emergency situations, a closure, designation, use or activity restriction or condition, or the termination or relaxation of such, which is of a nature, magnitude and duration that will result in a significant alteration in the public use pattern of the park area, adversely affect the park’s natural, aesthetic, scenic or cultural values, require a long-term or significant modification in the resource management objectives of the unit, or is of a highly controversial nature, shall be published as rulemaking in the FEDERAL REGISTER.*” While, arguably the proposed closure may not be of sufficient magnitude to trigger the requirements in §1.5(b), it does require compliance with the criteria and procedures in §13.50.

Other Alaska park units have used the §13.50 process to implement permanent seasonal closures. As one example, Glacier Bay National Park & Preserve has promulgated park specific regulations to implement similar permanent seasonal as well as other year round closures and restrictions. These are found in §13.1174 *Whale Water Restrictions*; §13.1176 *Special restrictions*; §13.1178 *Closed Waters, islands and other areas*; and §13.1180 *Closed waters, motor vessels and seaplanes*.

The Commission fully appreciates that the rulemaking process is both time consuming and labor intensive, particularly when public meetings are required. Some people maintain that it may not always provide managers with the flexibility they need. In looking at the 2004 regulations, at least one member of the public expressed concerns that the change from compendium rules to Part 13 rules would result in reduced resource protection. The NPS response was that it believed that the new rulemaking system could achieve the goal of providing more up to date rules with greater public participation in the process and in a manner that would be responsive to changing resource needs and the public interest.

As we stated previously, the compendium process has been improved dramatically. There are some areas of the process that remain unclear. We would welcome the opportunity to discuss these in more detail with National Park Service staff. Foremost of which are proposals similar to the one we have discussed for Lake Clark. On one hand, the proposal is relatively narrow in its effects on park visitors and is within the scope of the authority for a park superintendent to implement under the general regulations. On the other hand the Alaska specific regulations in Part 13 place additional requirements and limits on the agency before it can implement this type of restriction on public use in an Alaskan park unit. What is not acceptable is for closures or restrictions to be implemented through a park compendium and to remain in place indefinitely until such time as the required rulemaking process is complied with. The annual review process should not result in only the addition of new restrictions or public use limits, it should also identify those actions that require further compliance with procedural requirements and a timeline to meet those requirements.

Firearms

The 2010 Compendiums for Glacier Bay National Park & Preserve, Denali National Park & Preserve and Katmai National Park & Preserve, Klondike Gold Rush National Historical Park

and Sitka National Historical Park require revision to accurately reflect provisions in Section 512 of Public Law 111-24, the *Credit Card Act of 2009*. This section of the law allows individuals to possess firearms in any unit of the National Park System provided the individual is not otherwise prohibited by law from possessing the firearm and the possession is in compliance with the laws of the state in which the park unit is located. This law goes into effect on February 22, 2010, prior to the time the 2010 compendiums become effective.

We are pleased to note that the websites for each of these five park units contain updated information advising park visitors of the change in law. These sites also provide links to National Park Service regulations, State of Alaska and Federal statutes that are applicable to possession of a firearm. The current compendiums for Klondike Gold Rush NHP and Sitka NHP do not address possession of firearms. However, the current compendiums for Glacier Bay, Katmai and Denali read as follows:

Glacier Bay National Park & Preserve

2.4(a)(2)(i) Carrying, using, or possessing weapons at designated locations and times

Under current law, weapons and traps may not be carried or used within areas designated as in the former Glacier Bay National Monument except in vehicles or vessels when they are either inoperable or inaccessible. A change in federal law that allows carrying of firearms in many locations goes into effect in February 2010. Superseded by 13.30(b)-(f) in the Park additions and Preserve.

The intent of this requirement is to provide maximum wildlife protection by not allowing the carrying of weapons or traps within the Park unless the weapon is broken down or made inaccessible during transport. Weapons or traps may be carried within the Preserve during times the taking of fish or wildlife is authorized by State law.

Denali National Park & Preserve

2.4(a)(2)(i) Carrying, using, or possessing weapons at designated locations and times

Under current law, weapons and traps may not be carried or used within areas designated as in the former Mt. McKinley National Park except in vehicles or vessels when they are either inoperable or inaccessible. A change in federal law that allows carrying of firearms in many locations goes into effect in February 2010.

Katmai National Park & Preserve

2.4(a)(2)(i) Carrying, using, or possessing weapons at designated locations and times

Under current law, weapons and traps may not be carried or used within areas designated as in the former Katmai National Monument except in vehicles or vessels when they are either inoperable or inaccessible. A change in federal law that allows carrying of firearms in many locations goes into effect in February 2010

We suggest that the compendiums for these 3 park units as well as those for Klondike Gold Rush NHP and Sitka NHP be revised to read:

2.4(h) Weapons, traps and nets

Notwithstanding any other provision in this Chapter, a person may possess, carry, and transport concealed, loaded, and operable firearms within _____ National Park in accordance with the laws of the State of Alaska, except as otherwise prohibited by applicable Federal law. Superseded by 13.30(b)-(f) in the Park additions and Preserve.

Although this is outside the present Compendium revision process, the regulations in 36 CFR §2.4 should be reviewed and, if necessary, revised to ensure that they are in compliance with the provisions of Section 512 of Public Law 111-24 since they were promulgated prior to passage of the statute. Additionally, to ensure similar compliance and consistency between the two parts, the NPS should initiate a review and rulemaking to amend or delete as necessary, appropriate, sections of 36 CFR §13.30 **Weapons, traps and nets**.

Katmai National Park & Preserve Compendium

Proposed Revision

3.8(b)(3) Operating a vessel in excess of flat wake speed in designated areas

For the purposes of this section float planes are considered vessels while operating on the water.

Designated no-wake zones are established in the following areas:

1. Naknek Lake within 200 yards of Naknek Lake beach within the Brooks Camp Developed Area, as marked by white and red No Wake buoys.

Comments

While this appears to represent a minor change, expanding the definition of “vessel” to include floatplanes while operating on the water within Katmai through the compendium process is not appropriate and likely is not legally enforceable. Additionally, there is no discussion of the need to expand the definition.

The FAA Flight Information Supplement for Alaska currently advises pilots of conditions in the vicinity of Brooks Camp in Katmai National Park. This includes advising pilots that for seaplanes: *“Surface ops are limited to idle maneuvers within 200 yards of Brooks Camp Beach on Naknek Lake. Step taxi ops, initiation of takeoffs and landings within this zone is prohibited. Buoys note no-wake area.”*

National Park Service regulations at 36 CFR 1.4 clearly define vessel as follows: *“Vessel means every description of watercraft, or other artificial contrivance used, or capable of being used, as a means of transportation on the water. This definition does not apply to a seaplane on the water.”*

In adopting these regulations, the NPS explained its decision in defining “vessel” as follows: *“The proposed definition deviated too much from the widely accepted USCG definition for vessel and had the potential to create controversial situations and confusion. Therefore the NPS*

will be using the USCG [U.S. Coast Guard] statutory definition found in 1 U.S.C. 3, modified with an exception for seaplanes on the water¹. (72 FR 13700, emphasis added)

Although the statutory definition of vessel provides no exception for floatplanes (seaplanes), the NPS made a deliberate decision to do so in its regulations. Any change to this exception within Katmai National Park & Preserve or other Alaska park units would require a regulation change.

There is precedent for defining a floatplane as a vessel within an Alaska park unit. Regulations for Glacier Bay National Park & Preserve at 36 CFR §13.1103 define vessel to include floatplanes when operating on the water: “*Vessel includes every type or description of craft used as a means of transportation on the water, including a buoyant device permitting or capable of free flotation and a seaplane while operating on the water.*”

This definition was adopted as part of the regulation package implementing the vessel management plan for Glacier Bay. (61 FR 21008). Those regulations implement closures and use restrictions for vessels within various parts of Glacier Bay to avoid conflicts with park wildlife and resources. It is our understanding that classifying floatplanes (seaplanes) as vessels for the purposes of the Glacier Bay closures and restrictions was considered necessary to ensure consistency.

We suggest that if the advisory information in the Alaska Flight Supplement is inadequate to protect the safety of park visitors or resources, a change in the definition of *vessel* applicable to Katmai NP&P will require initiation of a rulemaking.

Proposed Revision

13.1204 Traditional redfish fishery: conditions established by the Superintendent

This section has been clarified regarding who is eligible to take redfish and applicable regulations.

Revised language: Seasons for the take of redfish by other than hook and line under this regulation will be set by the Alaska Department of Fish and Game as posted in the 2009-2010 Subsistence and Personal Use Statewide Fishing Regulations booklet.

Not all who qualify for and obtain a subsistence fishing permit, issued by the Alaska Department of Fish and Game in King Salmon, are allowed to take fish under this section within Katmai National Park. Persons must meet the federal regulatory definition of local residents who are descendants of Katmai residents who lived in the Naknek Lake and river drainage.

¹ The statutory definition of *vessel* found at 1 USC 3 is as follows: § 3. “**Vessel**” as including all means of water transportation The word “vessel” includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water. (July 30, 1947, ch. 388, 61 Stat. 633.)

Comments

Please clarify what the federal regulatory definition is and/or where those specifications can be found. It is our understanding that these modifications are result of confusion in the existing verbiage, thus making further clarification here useful to the public.

Wrangell-St. Elias National Park & Preserve Compendium

Proposed Revisions

13.170 Designated cabins or other structures for general public use

The Caribou Creek cabin is proposed to be available for general public use.

13.25(a) Temporary closures and restrictions to camping

The following restrictions on groups camping at Donoho Basin are proposed.

From May 1 through October 1, group size may not exceed 12 individuals at Donoho Basin.

From May 1 through October 1, associated groups may not camp within ½ mile of another party at Donoho Basin.

From May 1 through October 1, groups of 8 or more individuals must register to camp at Donoho Basin. Registration can be done online, over the telephone, or in person at the NPS visitor center.

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

The collection or gathering of mushrooms for personal use is limited to two 5-gallon containers of whole, fresh mushrooms per person, per day.

Comments

The Commission historically supports public use cabins within conservation system units and commends the designation of Caribou Creek Cabin as a public use cabin. The Commission does not have other comments on this designation or the proposed limits on size and quantity of natural products (mushrooms) gathered. These authorities are granted to the superintendent under CFR §§ 13.170 and 13.35(f)(1).

Likewise, the superintendent is given authority in CFR §13.25(a) to restrict camping under section “[13.25] ...the provisions of §13.50, or as set forth for specific park areas in subparts H through V of [that] part”. However, similar to our concerns outlined above for the Lake Clark proposed closure, we caution that §13.25(a) should be used in conjunction with the specific language outlined in §13.50 and the definitions found in §13.1. The closures, although seasonal, constitute a permanent closure, because they extend beyond the 12 month period allowed for temporary closures.

In the proposed compendium, bullet point nine under the reasons for the restriction indicates that this measure is intended to be interim; however, it also states “(t)hese compendium provisions may be adjusted accordingly”. We suggest that this be changed to say “these compendium provisions will expire after a period of 12 months or will expire on April 1, 2011.” If these restrictions become permanent, the procedures outlined in §13.50(e) should be followed. We find no regulatory authority for the implementation of “interim” measures that result in closures or public use restrictions beyond those provided for in the part 13 regulations.

Also of issue in regards to this language is a temporary closure on camping that exists in both the 2008 and the 2009 compendiums. This closure restricts camping at and adjacent to the information kiosk and spur road on the north side of the McCarthy Road at mile 59. This is a seasonal closure from April 15 through October 15. Since this closure has been in place for at least 24 months, it has exceeded the definition of a temporary closure and constitutes a permanent seasonal closure and should go through the §13.50(e) process.

The Commission is not categorically opposed to group size limits, when the need for such limits is demonstrated. Public safety is frequently a factor and the potential for adverse impacts to bears or other park resources in the Donoho Basin does exist. However, we would strongly urge the NPS to first give consideration to less restrictive measures. It has been suggested that voluntary registration of groups be considered as an alternative. This registration could be used to gather information about groups and inform the public about when large groups may be present in the area in the event that other groups want to avoid the area during those times. There should also be some provision made to allow exceptions to group size limits under special circumstances, particularly if no other large groups are present at the same time. There are already regulatory restrictions in §13.25 on the length of time someone may be camped in one location. The superintendent may also require a camp be relocated if a problem exists. These provisions, in conjunction to the authorities for emergency or temporary closures should be sufficient until such time as the park’s Front Country Management Plan is completed.

Glacier Bay National Park & Preserve

Proposed 2010 Revision

36 CFR 13.1116: Camping Permit Requirements in Glacier Bay National Park

The park is proposing to establish the following terms and conditions to the camper permit requirement. All individuals who are required to obtain a camping permit must participate in a camper orientation. The change would increase camper safety and resource protection by ensuring every camper is briefed on life safety information, critical habitat closures, and park regulations. Proposed text:

From May 1 through September 30, all campers, when entering for the first time during a calendar year, must complete a backcountry camper orientation at the Visitor Information Station or must be guided by a permitted concessionaire.

We are somewhat confused by this proposed requirement and are requesting additional explanation of the purpose and effect of the revision. In researching the history of this specific regulation, we found that the proposed regulation (13.65(b)(3)(ix)(C)(6) would have required that: *“From May 1 through September 30, all persons camping within Glacier Bay as defined by this section up to 1/4 nautical mile (1519 feet) above the line of mean high tide must receive an NPS-approved camping orientation. A camping orientation is required for each visit. Failure to receive an NPS-approved camping orientation is prohibited.”* (69 FR 17366)

However, in the final regulation the requirement for an orientation was dropped and the NPS offered this explanation for the change:

“The NPS agrees that a camping permit that incorporates an orientation and information on backcountry conditions at the time of issuance, would be useful in accommodating campers need for up to-date information as well as management of an area of concentrated visitor use. The NPS further concurs that camping permits are widely used, accepted and understood by the public, and that the use of the terminology “required orientation” could lead to confusion among the visiting public. To minimize the burden on the public, however, the permit requirement will be limited to the area in Glacier Bay National Park with the majority of the visitor safety and resource protection issues related to visitor camping. Camping permits will only be required in the area within 1/4 nautical mile above the mean high tide of Glacier Bay, as this is an area of concentrated visitor camping and is also a bear feeding and migration area. This permit requirement does not authorize limits on the number of campers.” (69 FR 70065)

The final regulations (since renumbered as 13.1116) reads as follows:

§13.1116 Do I need a camping permit in Glacier Bay?

From May 1 through September 30, camping within Glacier Bay as defined by this subpart up to 1/4 nautical mile (1519 feet) above the line of mean high tide without a camping permit is prohibited. The Superintendent may establish permit terms and conditions. Failure to comply with permit terms and conditions is prohibited.

We agree that an orientation for campers is likely beneficial and can help avoid unfortunate situations, but a more thorough explanation is needed. The proposed compendium revision appears to require, not only an orientation for each camper when entering for the first time each year, but also a permit for all campers in the park and not just those camped within the ¼ nautical mile zone above the mean high tide. If this is the case, it represents a change to a formal regulation that is outside the scope of the compendium revision process. If a required orientation is part of the permit terms and conditions the superintendent is authorized to establish, we are uncertain how this would be less confusing to the public than the terminology “required orientation” that was dropped from the final regulations. We are requesting clarification for this proposal.

Denali National Park & Preserve
Gates of the Arctic National Park & Preserve

Proposed Revision

13.40(e) Temporary closures or restrictions to the taking of fish and wildlife

From October 15 through April 30, artificial light may not be used to take a black bear at a den site except to retrieve a dead bear or dispatch a wounded bear as authorized by state law.

From October 15 through April 30, a person may not take a cub bear or a female bear accompanied by a cub bear at a den site.

Comments

The Commission defers to the State of Alaska's comments on these proposed revisions. In the discussion section of the compendiums for these park units, the NPS states that it has consulted with the State of Alaska and is working with the State to exempt NPS Preserves from these authorizations. This is consistent with other cases where federal and state objectives differ. The discussion continues to state that should the State of Alaska modify state regulations to exclude NPS areas, this restriction would not be necessary to protect park resources and would not be implemented. It is our understanding that there is currently before the Alaska Board of Game an NPS proposal that would exempt national preserves from the authorization to use an artificial light to take a black bear at a den site or to take a cub bear or female bear accompanied by a cub at a den site. We encourage the NPS to defer any final decision on the proposed revision until such time as the Board of Game acts on this proposal.

Again, the Commission appreciates the opportunity to review and comment on the proposed revisions to the 2010 National Park Compendiums. We trust that you will find our comments useful in completing the revisions. As stated previously, we would welcome the opportunity to discuss both the proposals and the entire compendium process in greater detail with National Park Service staff. If we can provide any additional information or if we need to clarify any of our comments, please contact our office.

Sincerely,



Stan Leaphart
Executive Director

Cc: Sally Gibert