



THE STATE  
of **ALASKA**  
GOVERNOR SEAN PARNELL

**Department of  
Fish and Game**

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April 26, 2013

Mr. Jonathan B. Jarvis, Director  
National Park Service  
1849 "C" Street Northwest  
Washington, DC 20240-0001

Dear Director Jarvis:

I am deeply concerned by the influence the National Park Service, Alaska Region (Region) continues to exert over State of Alaska wildlife management authorities on national preserve lands. To date, the Region has preempted state hunting regulations that provide for the customary and traditional take of black bears at den sites with the aid of artificial light, additional wolf and coyote harvest opportunities based on increased levels of harvestable surplus, and the regulated take of brown bears over black bear bait stations. These actions significantly and negatively affect the State of Alaska, Department of Fish and Game's (Department) ability to fulfill its constitutional mandates regarding fish and game conservation and management. Congress expressly recognized and protected these state mandates, as well as hunting and fishing under state regulations in national preserves, in enacting the Alaska National Interest Lands Conservation Act (ANILCA).

As you are likely aware, substantial dispute exists between the Department and the Region regarding the legitimacy of these federal actions. Congress explicitly stated in ANILCA 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; 16 U.S.C. § 3201) While we recognize that ANILCA also gave the National Park Service (Service) the authority to *"designate zones where and periods when no hunting... may be permitted for reasons of public safety, administration, floral and faunal protection, or public use and enjoyment"* (16 U.S.C. § 3201), we have significant concerns with the process the Region used to implement this authority and the lack of meaningful consultation employed. Individual park superintendents are preempting the Department's sovereign authority to manage fish and wildlife without any discernible standards for doing so. Repeated requests for the Region to identify clear standards have been unsuccessful.

### **Compendium Process**

On April 5, 2013, the Region finalized closures using 36 CFR § 13.40(e) that establish and extend "temporary" restrictions to state hunting regulations on preserve lands. In doing so, the

Region failed to give and denied any need for a reasoned and supported analysis demonstrating that the closures are necessary. Instead, the Region simply asserted perceived impacts to unspecified park resources and values. The Region failed to detail a cause and effect relationship between the preempted state regulations and actual impacts to specific resources and/or values; demonstrate how the preempted state regulations were out of balance with specified park values, especially considering Congressional direction that hunting “*shall be allowed*,” and show that an unacceptable adverse impact likely would result. Without identifiable thresholds and standards to reconcile competing park values and determine if an unacceptable impact to park resources is likely, it becomes impossible for the Department to understand the basis or need for agency actions. More than that, it becomes impossible to predict when and where perceived or feared impacts from other state regulations might compel similar actions in the future.

For example, the Region preempted the regulated take of brown bears over black bear bait stations, despite there being an acknowledged harvestable surplus of brown bears. The preempted state regulation provides that should a brown bear come to a registered black bear bait station, take is authorized in accordance with existing brown bear bag limits. No additional take was authorized by this regulation. The Region supported preemption by asserting this practice “*will lead to more food conditioned bears and possible hazard to people*.” This reason does not survive even limited scrutiny. Black bear bait stations will still be there, the only difference being that a brown bear cannot be lawfully harvested. The Region also noted that “*the practice of allowing take of bears – brown or black – over bait has long been questioned....*” If the concern relates to baiting, no logical connection to competing values or unacceptable impacts to resources can be inferred from selectively preempting the take of brown bears and not black bears.

Yet another alternative grounds offered for this closure, and one that places an impossible burden on hunting and other human activity in preserves, is found in the Region’s assertion that “*the burden of proof lies with the ability to prove that there is **no possibility** of new or additional state authorizations disrupting naturally-functioning ecosystem processes (see NPS Management Policies §§ 1.4.7, 1.4.7.1, 1.5).*” (Emphasis added.) Without a clear understanding of how the Region defines a “naturally-functioning ecosystem process,” which the Department requested and was denied, it is a challenge to even begin to argue for or against this as a workable standard. At a more basic level, however, proving a negative in this manner is for all practical purposes impossible. This applies not only to the state hunting regulations in question, but nearly all human uses. Further, this unattainable standard appears inconsistent with Service Policy, which states:

***Virtually every form of human activity that takes place within a park has some degree of effect on park resources or values, but that does not mean the impact is unacceptable or that a particular use must be disallowed [and when] an NPS decision-maker becomes aware that an ongoing activity might have led or might be leading to an impairment of park resources or values, he or she must investigate and determine if there is or will be an impairment.*** (Emphasis added; see §§ 1.4.7.1 and 1.4.7)

I am further concerned that in justifying this and other restrictions, the Region cites concerns about perceived impacts to generalized park resources and values and relies on Service

Management Policies without addressing the unique legal status, purposes, resources, and values of Alaska preserves. While we recognize that preserves are to be managed as national parks, ANILCA expressly distinguishes between these units by stating that “*the taking of fish and wildlife for sport purposes and subsistence uses, and trapping shall be allowed....*” (Emphasis added; 16 U.S.C. § 3201) The Region appears to ignore this important distinction from the enabling legislation in the determination of need, decision process, and subsequent response to comments.

This addresses just one of the compendium closures. The other closures likewise suffer from a lack of reasoned analysis. I urge you to read the enclosed proposed compendium executive summary, the Department’s comments, and the Region’s responses in their entirety to get the full picture of the irrational, standardless decision-making underlying these closures. As you will see, the Region’s justifications do not provide any reasonable indication why these preemptions were necessary and authorized, or even any indication that impacts were investigated or analyzed – nothing beyond broad law and policy statements. Even more alarming, the justifications are so broad and ambiguous that the Department cannot predict what other authorizations might be at risk of such arbitrary restriction. The same justifications conceivably could be asserted against any hunting or trapping on national preserve lands, despite ANILCA’s express authorization. Perhaps some of this can be attributed to a breakdown in the Region’s ability to meaningfully exchange views and data prior to action.

### **Coordination and Consultation**

On October 25, 2012, the Region informed the state that the regulations in question violated park values and would be preempted unless the Department conformed its authorizations to an interpretation of subjective federal mandates that is both vague and lacks identifiable standards. There was no presentation and discussion of objective criteria or biological information necessary for informed decision making. In short, my staff was left with more questions than answers.

On December 11, 2012, at the request of Senator Lisa Murkowski, the Region provided the Department with a four-page overview regarding Service closure authorities. While this compilation of known authorities was appreciated, the document was simply an assortment of references to legal authorities without any explanation of how those authorities supported the Region’s proposed actions.

The Department developed a series of follow-up questions aimed at clarification and increased understanding as to how the proposed and continuing closures fit into the framework created by Congress, including through ANILCA. These questions were included in the Department’s February 14, 2013, proposed compendium comment letter. In this letter, we also requested more information regarding the validity of multi-year “temporary” closures under 36 CFR § 13.50, among other concerns.

The response from the Region was insufficient, and, frankly, disappointing. The majority of the Department’s most pressing inquiries were referred to as, essentially, “asked and answered” without even a basic summary of the “answer.” For example:

*The State commented that the relationship between the Organic Act, Redwoods Amendments, ANILCA, and NPS Management Policies are not clear. The Service believes this has been adequately explained on multiple occasions, including the determinations of need, written correspondence, in-person meetings, and other publicly available documents (including NPS Management Policies).*

*The State... restated their objection to the NPS interpretation of regulations regarding closures. The Service believes this has been adequately explained on multiple occasions, including in-person meetings and the 2010 Final Compendiums (see, e.g., Preamble, 2010 Final Compendium for Denali National Park and Preserve).*

The Department carefully considered, crafted, and targeted our follow-up questions to clarify Service authorities as applied to this situation. The detail and research that went into the very specific questions should have amply demonstrated to the Region that these issues have not been “adequately explained.”

In addition, the response essentially reiterated the Region’s previous verbal response to the Department’s concerns regarding preemption provided at the October 25 meeting:

*To be very clear, we have never asked the State of Alaska to cede its sovereign responsibility and authority to manage fish and wildlife populations across Alaska. We have only asked that you use the lawful discretion provided to you by the Alaska Legislature as you manage wildlife, to address management concerns of the NPS in limited circumstances.*

*The NPS prefers a State regulatory solution to this conflict rather than annual restrictions or permanent closure or restrictions. Using the temporary closure process affords the State the opportunity to resolve the conflict in lieu of a Federal rulemaking. If that were to happen, the NPS would not need to act.*

The Region appears to be saying that cooperation is only possible if the Department manages fish and wildlife to its satisfaction. This is a completely inappropriate way to address the issue of preemption and runs contrary to ANILCA’s recognition of the Department’s sovereign responsibilities and authorities, and the explicit allowance of hunting and trapping activities on national preserves in Alaska. I can assure you, there is no lawful discretion in the Alaska Constitution which allows us to manage wildlife in accordance with a perceived risk which has not been supported or even explained – nor, I submit, does ANILCA authorize preemption of state hunting regulations based on such vague fears and perceptions.

Lastly, prior to release of the final compendium to the public, we informed the Region that many of its responses misconstrued the purpose and intent of our comments, did not fully respond to our comments, or simply ignored our comments. The Region again rejected these concerns, even very basic technical comments, without substantive comment.

**In Closing**

Director Jarvis, we are not simply frustrated with the results of a process. We are frustrated with the process itself. The Region has and continues to interfere with state management without proper explanation or meaningful consultation as required under 16 U.S.C. § 3201 and 36 CFR § 13.40(e), as demonstrated by its unjustified preemption of state regulations, failure to explore available alternatives to preemption, and refusal to respond to clarification requests. The Region rationalizes this interference by noting that “[t]he vast majority of State general hunting regulations remain applicable in the preserves.” In my view, the implication that an acceptable threshold exists for unsubstantiated interference of this nature is astounding. Whether the majority of state hunting regulations remain in place on preserve lands is irrelevant to our concern over the preempted regulations in question.

Therefore, I have the following requests of your office:

- Review the Department’s February 14, 2013, comment letter and the Region’s April 3, 2013, response and work with the Department to address our concerns and requests for clarification and for adequate analysis as required under federal law and executive order (E.O. 13132 of August 4, 1999, entitled Federalism).
- Independently identify clear, workable standards to appropriately reconcile competing park values and to quantitatively determine when Alaska hunting regulations present unacceptable impacts to park or preserve lands in Alaska, while taking into consideration specific enabling legislation.
- Independently identify what park resources and values may be impacted based on the purposes and functions of the particular preserves and considering the Congressional direction that hunting and trapping shall be allowed on national preserves in Alaska.

Without any genuine attempt at meaningful analysis and consultation by the Region, the Department is left with few viable alternatives to cooperatively fulfill its responsibility to manage fish and wildlife across Alaska under the Alaska Constitution and ANILCA. The Region has recently assured me that no administrative relief is available; however, it is my sincere hope your office can satisfactorily address the above requests to avoid an unnecessary and major shift in our historically cooperative relationship.

Thank you for your attention to this significant matter. I am available to meet with you and members of your staff – independent of the Region – to further explain my significant concerns.

Sincerely,



Cora Campbell  
Commissioner

Enclosures: Denali National Preserve – Press release

Denali National Preserve – Proposed Compendium Executive Summary

Region – Closure background and authority

Department – Comments on the proposed compendium

Region – Response to comments

Department – Electronic correspondence from Director to Deputy Director

Region – Electronic correspondence from Deputy Director to Director

Department – Letter from Director to Deputy Director

Region – Letter from Deputy Director to Director

cc: The Honorable Lisa Murkowski, United States Senate, Enclosures  
The Honorable Mark Begich, United States Senate, Enclosures  
The Honorable Don Young, United States House of Representatives, Enclosures  
The Honorable Sean Parnell, Governor, State of Alaska  
The Honorable Michael Geraghty, Attorney-General, State of Alaska  
Pat Pourchot, Special Assistant for Alaska Affairs, Department of the Interior, Enclosures  
Sue Masica, Alaska Regional Director, National Park Service  
Joel Hard, Alaska Deputy Regional Director, National Park Service  
Susan Magee, ANILCA Program Coordinator, State of Alaska  
Stan Leaphart, Executive Director, Citizens' Advisory Commission on Federal Areas  
Ron Regan, Executive Director, Association of Fish and Wildlife Agencies, Enclosures