

**FISH AND WILDLIFE SERVICE
NATURAL AND CULTURAL RESOURCES MANAGEMENT**

Natural and Cultural Resources Management

Part 610 Wilderness Stewardship

Chapter 5 Special Provisions for Alaska Wilderness

610 FW 5

5.1 What is the purpose of this chapter? The purpose of this chapter is to describe the special provisions of the Alaska National Interest Lands Conservation Act (ANILCA) (Public Law 96-487) that we must consider together with the policy in 610 FW 1-4 in administering National Wildlife Refuge System (Refuge System) wilderness areas in Alaska.

5.2 What is the scope of this chapter? This chapter covers congressionally designated wilderness areas in Alaska, including areas designated by Public Laws 91-504, 93-632, and 94-557 prior to the passage of ANILCA, and areas designated by ANILCA (see 610 FW 1, Exhibit 1).

5.3 How do the other chapters in the Service's wilderness policy (610 FW 1-4) apply to Alaska wilderness?

A. ANILCA contains a number of special provisions that limit and sometimes modify the applicability of certain management provisions of the Wilderness Act and affect how we administer refuge management activities and refuge uses in Alaska wilderness. A number of these ANILCA provisions pertain to the conservation system unit (section 102(4)) as a whole, applying equally to wilderness and nonwilderness refuge lands. Stewardship of wilderness in Alaska requires that we take into account the provisions of both the Wilderness Act and ANILCA.

B. We administer wilderness areas in Alaska in accordance with the policy in 610 FW 1-5. The policy addresses the special provisions for Alaska wilderness in ANILCA, and there should be no conflicts. If there is any conflict, we follow the more specific provisions of ANILCA and the implementing regulations at 43 CFR part 36 and 50 CFR part 36.

5.4 How do the special provisions of ANILCA affect the need for a minimum requirement analysis (MRA) for proposed refuge management activities and facilities in Alaska wilderness? We conduct MRAs in accordance with 610 FW 1.18 - 1.21 for all proposed refuge management activities in Alaska wilderness whether or not the actions involve a generally prohibited use. We document and review uses and management actions approved through MRAs for their individual and cumulative impacts on wilderness character during the development and any subsequent revisions of the wilderness stewardship plan (WSP) and comprehensive conservation plan (CCP).

5.5 What special provisions apply to public access for traditional activities and travel to and from villages and homesites? Section 1110(a) of ANILCA authorizes the use of snowmachines, motorboats, airplanes, and nonmotorized surface transportation for traditional activities and for travel to and from villages and homesites (43 CFR 36.11). Rights for this special access are subject to reasonable regulations to protect natural and other resource values. We may close an area on a temporary or permanent basis to such use only if we find that the use would be detrimental to the resource values of the area, and then only in accordance with the procedures set forth in 43 CFR 36.11(h).

5.6 What special provisions apply to access to inholdings in Alaska wilderness areas? Section 1110(b) of ANILCA requires that we give the owners of valid inholdings adequate and feasible access, for economic or other purposes, across a refuge, including a designated wilderness area. An inholding is State-owned or privately owned land, including subsurface rights underlying public lands, valid mining claims, or other valid occupancy that is within or effectively surrounded by one or more conservation system units. We require a right-of-way permit for access to an inholding only when section 1110(b) does not provide adequate and feasible access without a right-of-way permit (43 CFR 36.10(b)). When a right-of-way permit is necessary under this provision, we process the application in accordance with regulations in 43 CFR 36.10 and 50 CFR 29.21.

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5.7 What special provisions apply to public access to subsistence resources? The nonwasteful subsistence uses of fish and wildlife and other renewable resources must be the priority consumptive uses of Alaska refuges (50 CFR 36.11(c)). On refuge lands in Alaska, including wilderness areas, section 811(b) of ANILCA authorizes the use of snowmobiles, motorboats, dog teams, and other means of surface transportation traditionally employed by local rural residents engaged in subsistence activities (50 CFR 36.12(a)). The refuge manager may restrict or close a route or area to such access only in accordance with regulations at 50 CFR 36.12(b) and (c). People operating under this authorization must comply with the requirements of 50 CFR 36.12(d).

5.8 What special provisions apply to authorization of temporary access to non-Federal lands?

A. Section 1111 of ANILCA requires the Service to authorize and permit temporary access across wilderness to State or private land by a landowner for the purpose of survey, geophysical, exploratory, or other temporary uses where access will not result in permanent harm to the resources of the area or lands. Regulations at 43 CFR 36.12 implementing section 1111 of ANILCA define temporary access to State or private lands as limited, short-term access, which does not require permanent facilities.

B. The landowner seeking access must complete an application for temporary access (SF 299). After evaluating the application and ensuring that no permanent harm will result to the resources of the area, the refuge may issue a special use permit with the necessary stipulations and conditions.

5.9 What special provisions apply to helicopter access in Alaska wilderness areas? Subject to an MRA, we may permit the use of helicopters at designated landing areas through a special use permit or memorandum of understanding (43 CFR 36.11(f)(4)) for uses including volcano monitoring, geologic hazards evaluations, and fisheries and wildlife management activities. Section 4 of the Wilderness Act authorizes helicopter landings for emergency or search and rescue operations without a permit. Helicopter landings for initial-attack fire suppression must comply with operational guidance in the appropriate interagency and refuge fire management plans.

5.10 What special provisions apply to rights-of-way for transportation and utility systems in and across Alaska wilderness areas? We review and process right-of-way applications for transportation and utility systems in and across Alaska wilderness areas. This includes National Environmental Policy Act (NEPA) compliance, in accordance with Title XI of ANILCA and the implementing regulations at 43 CFR part 36. We may not issue rights-of-way for transportation and utility systems in wilderness areas under Title XI without a Presidential recommendation and congressional approval. We must recommend approval for such rights-of-way in wilderness areas if the proposed systems would be compatible with the refuge purposes, including Wilderness Act purposes, and there is no economically feasible and prudent alternate route (43 CFR 36.7(b)).

5.11 What special provisions apply to assessment, exploration, and development of mineral resources on Alaska wilderness areas?

A. Subject to valid mineral rights existing on December 2, 1980, section 304 of ANILCA withdrew all Refuge System lands from all forms of appropriation or disposal under the public land laws, including location, entry, and patent under the mining laws, but not from operation of mineral leasing laws. We only authorize exploration and development of mineral resources on wilderness areas in Alaska under limited circumstances in accordance with 610 FW 2.9 and 2.14: existing private rights or reserved or excepted mineral rights on acquired refuge lands that allow exploration and development of mineral resources. See sections 5.6 and 5.8 for policy on access.

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B. Section 1010 of ANILCA requires the Secretary to assess oil, gas, and other mineral potential on all public lands in Alaska, including wilderness areas. The mineral assessment program may include, but is not limited to, techniques such as sidelooking radar imagery and core and test drilling, notwithstanding any restrictions on such drilling under the Wilderness Act. The mineral assessment program does not include exploratory drilling of oil and gas test wells. Section 1010 of ANILCA authorizes access by air for assessment activities. If we allow mineral assessment activities, we will issue a special use permit with conditions to ensure that the activities are compatible with refuge purposes and would not result in lasting environmental impacts that would appreciably alter the natural character or biological or ecological systems in the wilderness area.

5.12 Does the Service allow the use of motorized equipment in Alaska wilderness areas? Under ANILCA, we may authorize by special use permit the use of motorized equipment for mineral resources assessments (section 1010) and the operation, construction, and maintenance of navigation aids and other facilities (section 1310). As part of the authorization process, we evaluate whether the use of motorized equipment constitutes the minimum tool and establish the terms and conditions for the use of motorized equipment in the special use permits issued for these activities.

5.13 What provisions apply to commercial enterprises and services in Alaska wilderness areas?

A. Except as described in section 4(d)(6) of the Wilderness Act, commercial enterprises are prohibited in wilderness (see 610 FW 2.12). However, sections 304(d) and 707 of ANILCA in conjunction with section 4(c) of the Wilderness Act authorize the exercise of valid commercial fishing rights in Alaska refuge system wilderness.

(1) We may restrict or prohibit the exercise of these rights or privileges pertaining to the use of Federal lands if, after conducting a public hearing in the affected locality, we determine that they are inconsistent with the purposes of the refuge and that they constitute a significant expansion of the commercial fishing activities within the refuge beyond the level of such activities during 1979.

(2) Under section 1316(a), we allow, subject to reasonable regulation, temporary campsites, tent platforms, shelters, and other temporary facilities and equipment (including the use of motorized vehicles) and aircraft landings (also see section 4(d) of the Wilderness Act) directly related to the exercise of valid commercial fishing rights (see section 5.15 for guidance on temporary facilities and equipment related to the taking of fish and wildlife).

(3) We issue special use permits for existing commercial cabins associated with commercial fishing operations following the regulation at 50 CFR 36.33(e)(3). We do not allow new commercial cabins in wilderness areas. (See section 5.14 for guidance on management of structures and installations.)

B. We manage visitor services using special use permits following section 1307 of ANILCA and the regulations at 50 CFR 36.37 and 36.41.

5.14 What special provisions apply to management of structures and installations in Alaska wilderness areas? Section 4(c) of the Wilderness Act generally prohibits structures and installations in wilderness areas. ANILCA, however, contains specific direction about the authorization and management of the types of structures and installations described in the following sections. We conduct and document an MRA as a part of the authorization process for the facilities described below and include it in the WSP. (See section 5.15 for guidance on temporary facilities and equipment related to the taking of fish and wildlife.)

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A. Cabins. We manage cabins within Alaska wilderness areas in accordance with sections 1303 and 1315 of ANILCA and the implementing regulations at 50 CFR 36.33.

(1) Subsistence and commercial cabins. We authorize the use and occupancy of cabins existing prior to the passage of ANILCA on December 2, 1980 (pre-ANILCA), for traditional and customary uses that are compatible with the purposes for which the refuge was established, including wilderness purposes.

(a) We authorize these cabins through a nontransferable, renewable, 5-year special use permit subject to restrictions necessary to preserve wilderness character (see ANILCA section 1303(b)(2)).

(b) We may authorize construction of a new trapping cabin in a wilderness area where trapping has been a traditional and customary use, the proposed cabin is necessary to provide for continuation of that use, and no reasonable alternative site exists (see ANILCA section 1303(b)(1) and 50 CFR 36.33(d)). New trapping cabins in wilderness will be available for public use to ensure public health and safety (50 CFR 36.33(d)(5)).

(c) We do not allow new commercial cabins in wilderness areas (50 CFR 36.33(e)(3)). We will not issue a special use permit for private recreational use of existing or new cabins (see ANILCA sections 1303(b)(1) and (2)).

(2) Public use and administrative cabins. The public may continue to use, and we may maintain or replace existing (pre-ANILCA) public use cabins in wilderness areas. We may place restrictions on their use that are necessary to preserve the wilderness character of the area (see ANILCA section 1315(c)). We may construct or authorize construction of new administrative or public use cabins in wilderness areas if they are built specifically for the administration of the area (section 4(c) of the Wilderness Act) or for public health and safety (section 1315(d) of ANILCA).

(3) Congressional notification requirements for public use cabins. Section 1315(d) of ANILCA requires the Secretary to notify the House and the Senate authorizing committees of our intent to remove an existing or construct a new public use cabin or shelter in wilderness.

(a) Refuge managers must request approval for new construction or the removal of any public use cabins or shelters at least 18 months in advance of the proposed action.

(b) For the Regional Director to make a decision, the refuge manager's request must be accompanied by a supporting MRA, documentation of NEPA compliance, and a health and safety analysis. The Regional Director will send the completed proposal to the Director for submission to the Secretary. The 18-month advance notice of a proposed action allows the agency to meet ANILCA's congressional notification requirement.

B. Navigation Aids and Other Facilities. Section 1310 of ANILCA authorizes reasonable access to, and operation and maintenance of, existing air and water navigation aids, communications sites, and related facilities, as well as existing facilities for national defense purposes, weather, climate, and fisheries research and monitoring. We will authorize establishment of new structures and facilities identified in section 1310 after consultation between the head of the requesting Federal department or agency and the Secretary and in accordance with such terms and conditions as mutually agreed on to minimize the adverse effects of such structures and facilities.

C. Administrative Sites and Visitor Facilities. We may establish new administrative sites or visitor facilities in refuges, including wilderness areas, in accordance with section 1306 of ANILCA, only if the

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facilities conform to the CCP and are compatible with refuge purposes, including Wilderness Act purposes.

5.15 What temporary facilities and equipment related to the taking of fish and wildlife does the Service authorize in Alaska wilderness areas? Section 1316 of ANILCA authorizes the use of temporary campsites, tent platforms, shelters, other temporary facilities, and equipment directly related to and necessary for the taking of fish and wildlife on refuge lands in Alaska, including wilderness areas, subject to reasonable regulation to ensure compatibility. These facilities and equipment must be constructed, used, and maintained in a manner consistent with the protection of the wilderness character of the area. Any new facilities must be constructed with materials that blend with the landscape. We may, after adequate notice, deny establishing new facilities and using equipment for these activities if we determine that they are a significant expansion of existing facilities or uses which would be detrimental to the refuge's purposes (section 1316(b) of ANILCA).

5.16 What special provisions apply to management of fish populations on Alaska wilderness areas? In accordance with section 304(e) of ANILCA and subject to reasonable regulations, an MRA, and in accord with sound fisheries management principles, we may permit scientifically acceptable means of maintaining, enhancing, and rehabilitating fish stocks where compatible with refuge purposes, including Wilderness Act purposes. Any new facilities associated with these activities should be temporary whenever feasible.

5.17 Does the Service conduct wilderness reviews of refuge lands in Alaska? We have completed wilderness reviews for refuges in Alaska in accordance with section 1317 of ANILCA. Additional wilderness reviews as described in the refuge planning policy (602 FW 1 and 3) are not required for refuges in Alaska. During preparation of CCPs for refuges in Alaska, we follow the provisions of section 304(g) of ANILCA, which requires us to identify and describe the special values of the refuge, including wilderness values. Subsequently, the CCP must designate areas within the refuge according to their respective resources and values and specify the programs for maintaining those values. However, ANILCA does not require that we incorporate formal recommendations for wilderness designation in CCPs and CCP revisions.

5.18 What is the Service's general policy for managing wilderness study areas (WSAs), recommended wilderness, and proposed wilderness in Alaska? The review provisions of ANILCA (see section 1317(c)) do not affect the normal administration and management of the affected areas of the refuge until Congress takes action. We will manage WSAs, recommended wilderness, and proposed wilderness according to the management direction in the CCP for these areas. In Alaska, MRAs are not required for proposed refuge management activities and commercial services in WSAs, recommended wilderness, and proposed wilderness.

/sgd/ Rowan W. Gould
ACTING DIRECTOR

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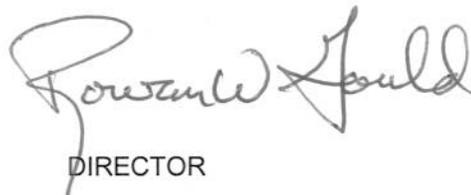
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