

APPENDIX A

ANILCA SECTION 810(A) SUMMARY OF EVALUATIONS AND FINDINGS

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I. Introduction

This evaluation and finding was prepared to comply with Title VIII, section 810 of the Alaska National Interest Lands Conservation Act (ANILCA). It evaluates the potential restrictions to subsistence activities which could result from the permanent closure of the former Mount McKinley National Park area (also referred to as "the old park") of Denali National Park and Preserve to the use of snowmobiles.

II. The Evaluation Process

Section 810(a) of ANILCA states:

"In determining whether to withdraw, reserve, lease, or otherwise permit the use, occupancy, or disposition of public lands . . . the head of the Federal agency . . . over such lands . . . shall evaluate the effect of such use, occupancy, or disposition on subsistence uses and needs, the availability of other lands for the purposes sought to be achieved, and other alternatives which would reduce or eliminate the use, occupancy, or disposition of public lands needed for subsistence purposes. No such withdrawal, reservation, lease, permit, or other use, occupancy or disposition of such lands which would significantly restrict subsistence uses shall be effected until the head of such Federal agency:

1. gives notice to the appropriate State agency and the appropriate local committees and regional councils established pursuant to section 805;
2. gives notice of, and holds, a hearing in the vicinity of the area involved; and
3. determines that (A) such a significant restriction of subsistence uses is necessary, consistent with sound management principles for the utilization of the public lands, (B) the proposed activity would involve the minimal amount of public lands necessary to accomplish the purposes of such use, occupancy, or other disposition, and (C) reasonable steps would be taken to minimize adverse impacts upon subsistence uses and resources resulting from such actions."

ANILCA created new units and additions to existing units of the national park system in Alaska. Denali National Park and Preserve additions were created by ANILCA section 202(3)(a) for the purposes of:

"The park additions and preserve shall be managed for the following purposes, among others: To protect and interpret the entire mountain massif, and additional scenic mountain peaks and formations; and to protect habitat for, and populations of fish and wildlife, including but not limited to, brown/grizzly bears, moose, caribou, Dall sheep, wolves, swans and other waterfowl;

and to provide continued opportunities including reasonable access, for mountain climbing, mountaineering, and other wilderness recreational activities."

The potential for significant restriction must be evaluated for the proposed action's effect upon " . . . subsistence uses and needs, the availability of other lands for the purposes sought to be achieved and other alternatives which would reduce or eliminate the use." (Section 810(a))

III. Proposed Action on Federal Lands

The proposed action alternative would permanently close the former Mount McKinley National Park area to snowmobile use for traditional activities. This permanent snowmobile closure within the former Mt. McKinley Park would not change the current management policy regarding snowmobile use in the ANILCA additions to Denali National Park and Preserve. Neither the proposed action nor any of the following alternatives would directly affect subsistence activities, since lands within the former Mt. McKinley National Park are not open to subsistence use. However, under alternatives 1 and 2, the local abundance and availability of wildlife resources could be indirectly affected on lands open to subsistence use due to further displacement of wildlife from adjacent areas within the old park by use of snowmobiles.

Other alternatives considered in the Environmental Assessment include:

Alternative 1: No Action

Under this alternative, no additional closures would be instituted in the old park until a course of action is decided in the GMP Amendment or the Backcountry EIS. The twelve-month temporary closure to the use of snowmobiles for traditional activities in the old park would expire on February 3, 2000. After that date, the use of snowmobiles for traditional activities would be allowed.

Alternative 2: Partial Closure of the Old Park to Snowmobile Use

Under this alternative, the old park would be closed to the use of snowmobiles for traditional activities north of the crest of the Alaska Range and southwest of the drainage divide of the West Fork of the Chulitna River. This action would leave approximately 180,000 acres open to snowmobile use out of the 2,000,000-acre former Mt. McKinley National Park.

Alternative 3: Temporary Closures of the Old Park to Snowmobile Use

Under this alternative, a series of twelve-month temporary closures would be instituted to the use of snowmobiles for traditional activities in the old park. As required by ANILCA Section 1110(a), hearings would be scheduled for public testimony and findings would be published to support each temporary closure action.

IV. Affected Environment

Introduction

In the last five years, snowmobile use has expanded dramatically in and adjacent to the southeastern areas of the park, particularly in the area near Cantwell and Broad Pass. Along with increasing popularity for snowmobiling have come dramatic improvements in snowmobile

technology. Greatly increased reliability, power and floatation ability in the newer snowmobiles have made possible access to many more distant areas and operations in significantly steeper and higher terrain than in past years.

Open habitat, mountain slopes, and reasonably good snow deposition in the Broad Pass area have attracted increasing numbers of snowmobile riders from throughout the Parks Highway accessible areas of the state. Snowmobilers ride through the new park additions, which are open to snowmobiling and subsistence uses, enroute to mountain slopes and passes adjacent to and often within the former Mt. McKinley Park. Snowmobile groups also have expressed interest in other destinations further within the former park area such as Anderson Pass, Eielson Visitor Center, the Denali Park Road corridor, and Wonder Lake. Use of these other areas would increase snowmobile traffic through the ANILCA park additions.

Park Environment

Denali National Park and Preserve is located in the interior of Alaska and is dominated by an east to west line of towering glaciated mountains known as the Alaska Range. The range rises abruptly from lowlands 500 to 2,000 feet in elevation to the pinnacle of Mount McKinley, North America's highest mountain, at 20,320 feet. The range is perpetually snowclad above approximately 7,000 feet on the north and 6,000 on the south. Glaciers are numerous and tend to be larger and longer on the south side of the range than on the north.

Moisture from the Gulf of Alaska is blocked by the Alaska Range causing a continental climate to the north of the range and more of a maritime climate to the south. Moisture laden air from the south results in greater levels of precipitation on the southern flanks of the range. The average annual precipitation at park headquarters is 15 inches, while at some higher elevations in the park, the total precipitation exceeds 80 inches and snowfall exceeds 400 inches. Normal snowpack throughout the region averages between 20 and 40 inches.

Vegetative cover in Denali is typical of interior Alaska taiga. Lowland floodplains are dominated by dense, deciduous or coniferous forest, or by a mixed forest of balsam poplar and white spruce. Upland forests tend to be more open with mixed or continuous stand of black spruce, white spruce, or aspen. Upland forests give way to shrub communities at elevations above approximately 2,400 feet. Glacial rivers flowing from the Alaska Range create broad floodplains that are sparsely vegetated. Tall shrub communities of willow and alder grow on moist slopes and along drainages, and low shrub communities of dwarf birch and willow grow at higher elevations or on dry slopes. Alpine tundra, composed of dryas and dwarf willow shrub, mat and cushion species, or grass and sedge mixes grows on slopes and ridges to about 6,000 feet. More than 650 species of flowering plants inhabit the slopes and valleys of the park.

The original Mount McKinley National Park was established in 1917 primarily as a refuge for large mammals. In 1980, ANILCA enlarged the old park to more than 6 million acres, and redesignated the area as Denali National Park and Preserve. The protected subarctic ecosystem of Denali provides habitat for 30 species of mammals, at least 152 species of breeding birds, 16 species of fish (twelve resident species and four anadromous Pacific salmon species), and 1 amphibian. The American peregrine falcon is the only endangered species known to occur in the

park and preserve. A proposal has been put forth for delisting the peregrine falcon from endangered, but no official action to delist it has yet been taken. No known threatened aquatic or wildlife species are known to exist in the park and preserve.

About 100 archeological sites are recorded within Denali National Park and Preserve. Archeological investigations conducted within and immediately adjacent to the park strongly suggest that sites dating from the Paleoarctic tradition (10,000 years before present) through the Protohistoric period (200 years before present) exist within the park. Excavations at the Dry Creek site, situated near the northeastern park boundary, have yielded one of Alaska's earliest dates, 11,000 B.P. The Carlo Creek site situated along the Nenana River on the eastern park boundary is dated at approximately 8,000 B.P. These sites may depict tool technologies and subsistence patterns representing the earliest peopling of North America by means of the Bering Land Bridge.

Historically, the Denali area was used by several Athabaskan Indian groups. The Ahtna people of Cantwell arrived from the east, the Tanana people came into the area from the north traveling up the Nenana and Toklat Rivers, the Koyukon people who lived at Lake Minchumina ascended the McKinley-Foraker-Herron Rivers, the Upper Kuskokwim people who still live in Nikolai and Telida, approached the park from the west, and the Dena'ina people approached the park from the south. Subsistence activities included large mammal hunting, fishing, and small game trapping.

More comprehensive descriptions of the affected environment within Denali National Park and Preserve can be found in the following park documents:

- *Environmental Impact Statement (EIS) on the Entrance Area and Road Corridor Development Concept Plan for Denali National Park and Preserve, 1996.*
- *EIS on the South Side Denali Development Concept Plan, 1996.*
- *EIS on the Cumulative Impacts of Mining in Denali National Park and Preserve, 1990.*
- *An Overview and Assessment of Archeological Resources, Denali National Park and Preserve, Alaska, Research/Resources Management Report AR-16, Kristen Griffin, 1990.*
- *EIS on the Wilderness Recommendation, Denali National Park and Preserve, Alaska Planning Group, 1988.*
- *General Management Plan, Land Protection Plan, Wilderness Suitability Recommendation, Denali National Park and Preserve, 1986.*
- *Land Use in the North Additions of Denali National Park and Preserve: An Historical Perspective, Research/Resources Management Report AR-9, William Schneider, Dianne Gudgel-Holmes and John Dalle-Molle, 1984.*

V. Subsistence Uses and Needs Evaluation

Background Information

The 1980 additions to Denali National Park and Preserve are open to subsistence uses in accordance with Section 202 (3)(a) of ANILCA. Lands within the former Mount McKinley National Park are closed to subsistence activities.

Denali National Park and Preserve has a total of about 320 eligible local rural residents who qualify for subsistence use of park and preserve resources. Denali's subsistence users primarily reside in the communities of Cantwell, Minchumina, Nikolai, and Telida. Other local rural residents who do not live in these designated resident zone communities, but who have customarily and traditionally engaged in subsistence activities within the park, may continue to do so pursuant to a subsistence permit issued by the park superintendent. Individuals from McKinley Village, Nenana, Healy, and Tanana have received subsistence use permits.

Areas receiving the most extensive subsistence use activities are the northern park and preserve region near Lake Minchumina, and the southeastern park region near Cantwell. Primary subsistence resources harvested for the southeastern region are moose, caribou, bear and fish, with a limited number of households engaging in trapping of furbearers. Cantwell area subsistence users primarily use park lands in the Windy Creek, lower Cantwell Creek, and Bull River drainages. In the northern region, moose, fish, and furbearers are the major resources harvested, with trapping being a significant subsistence use activity. In the northern region, traplines extend throughout the ANILCA park and preserve additions up to the boundaries of the former Mt. McKinley National Park.

Overall, Denali's main subsistence species are moose, caribou, ptarmigan, spruce grouse, hare, and few species of freshwater fish. Large mammals account for 70% of the resources used and fish account for 21%. Marten, mink, red fox, wolf, lynx, weasel, wolverine, land otter, beaver, muskrat, and coyote are important fur animal resources.

The National Park Service recognizes that patterns of subsistence use vary from time to time and from place to place depending on the availability of wildlife and other renewable natural resources. A subsistence harvest in a given year may vary considerably from previous years because of such factors as weather, surface snow conditions for traveling, wildlife migration patterns, natural population cycles, and wildlife conservation practices of leaving a trapline fallow periodically.

Potential Impacts to Subsistence Users

For several years, subsistence users have expressed concerns about the impacts and conflicts of increasing snowmobile use on subsistence resources and subsistence activities. Members of Denali's Subsistence Resource Commission have specifically expressed concerns regarding the

effects of increasing levels of snowmobile use in the Broad Pass/Cantwell area upon moose, furbearers ^{A1} and ptarmigan ^{A2} populations and their distributions.

To determine the potential impacts of the proposed action on existing subsistence activities, three evaluation criteria were analyzed relative to existing subsistence resources:

- the potential to reduce important subsistence fish and wildlife populations by (a) reductions in number, (b) redistribution of subsistence resources, or (c) habitat losses;
- what affect the action might have on subsistence fisherman or hunter access;
- the potential for the action to increase fisherman or hunter competition for subsistence resources.

1. The potential to reduce populations

(a) Reduction in Numbers:

Neither the proposed action for a permanent snowmobile closure in the old park area nor any of the other alternatives are expected to cause a direct reduction to wildlife populations. If anything, the closure of the old park to snowmobiling is likely to provide a refuge area for wildlife species displaced by increasing snowmobile use in the adjacent ANILCA park/preserve additions.

(b) Redistribution of Resources:

A long research history documents that many species move back and forth between the old park and the new additions of Denali National Park and Preserve in a manner that creates an interrelated system. The permanent closure of the former Mt. McKinley Park area to snowmobiling would provide areas of undisturbed habitat thereby reducing displacement distance for certain wildlife species and/or stress to animals created by snowmobile traffic and activity in the adjacent park/preserve additions.

In particular for the Cantwell area, the closure would be beneficial for maintaining preferred or critical winter ranges for moose and caribou along the Alaska Range, and secondarily for furbearers throughout this area. The closure also would be beneficial for nesting habitat of ptarmigan during early spring and for bear movements during and after emergence from their den sites. The increased ability for wildlife to remain in their preferred habitats would likely provide a positive effect on distribution, densities, and availability of wildlife for subsistence use.

^{A1} Denali Subsistence Resource Commission Meeting Minutes, April 29, 1996.

^{A2} Denali Subsistence Resource Commission Meeting Minutes, August 9, 1996,
Denali Subsistence Resource Commission Meeting Minutes, June 28, 1993.

Without a closure on snowmobile use in the old park, the noise and presence of an anticipated increasing amount of snowmobile traffic would temporarily and locally displace wildlife. Potential adverse impacts on wildlife most likely would occur during mid-to-late winter, when wildlife is likely to be in a nutritionally-stressed condition.

Caribou

The Cantwell group of the Nelchina Caribou herd uses areas both within the former Mount McKinley National Park and the ANILCA park additions of Windy Creek, Cantwell Creek, and the Bull River drainages during late winter. These areas along the Alaska Range in the vicinity of Windy Pass provide important winter habitat for caribou, because snow depths associated with the pass area are less than in other areas.

Failure to implement the closure could result in increased snowmobiling in the old park area, which likely would cause further displacement of caribou from both old and new park lands. This, in turn, could result in Cantwell subsistence hunters having to travel further to harvest Nelchina caribou during the winter caribou season. In 1998, one hundred twenty Federal Registration Permits for caribou were issued to sixty subsistence users eligible to hunt in the ANILCA park additions near Cantwell. The Federal subsistence winter caribou season is open from October 21 to March 31.

Moose

Windy areas with reduced snow depths in Windy Creek, Cantwell Creek, Jack, and Nenana Rivers are important winter use areas for moose. Both local traditional knowledge and wildlife surveys recognize the importance of the Lower Windy Creek and Cantwell Creek areas as critical winter ranges for moose in Broad Pass. These important winter use areas overlap both old park and new park additions.

Failure to implement the closure could result in increased use of snowmobiles which likely would cause further displacement of moose from both old and new park lands during late winter and from critical wintering areas on park lands in the Windy and Cantwell Creek drainages. This could significantly increase the stress and nutritional demands upon moose and result in some moose mortality, depending on the environmental conditions and the body reserves of moose in a given year. In 1998, fifty-one Federal registration permits for moose were issued to fifty-one households eligible to hunt in the 1980 additions to Denali National Park near Cantwell.

Furbearers

Limited information is available on populations of furbearers or their distributions for the southern regions of the park. However, several local subsistence trappers from the Cantwell area have stated they curtail their trapping efforts in mid winter due to displacement of furbearers as a result of increased recreational snowmobiling in the Broad Pass area^{A3}. Without a snowmobile closure in the old park areas, furbearers likely would be displaced even further than they currently are from the Cantwell region.

^{A3} Denali Subsistence Resource Commission Meeting Minutes, April 29, 1996.

Ptarmigan

Due to concerns about the declining number of ptarmigan in Wildlife Management Unit 13, hunting bag limits have been reduced and the season shortened to close on March 31st. One of the reasons for shortening the season from April 30th to March 31st was to avoid hunting and activity during the nesting period in April. Failure to implement the closure could result in increased snowmobiling in the alpine zones of the park areas during April. This could have a negative affect by causing displacement of ptarmigan populations during their sensitive breeding and nesting period ^{A4}.

Permanently closing the former Mount McKinley National Park (old park) to snowmobiling (Alternative 4) and/or instituting temporary closures of the old park to snowmobiling (Alternative 3), are not expected to have an adverse impact on wildlife populations or to cause the temporary redistribution of subsistence resources from those lands.

No action (Alternative 1) and partial closure of the old park (Alternative 2) are not expected to have an adverse impact on wildlife populations, but likely would result in the temporary redistribution of some subsistence resources.

(c) Habitat Loss:

Neither the proposed action nor any of the alternatives would result in habitat loss.

2. Restriction of Access:

All of the alternatives, including the proposed alternative for a permanent snowmobile closure, would be in effect on lands within the former Mount McKinley National Park. This area is not open to subsistence use activities. None of the alternatives would change the current management policy regarding snowmobile use in the ANILCA additions to Denali National Park and Preserve.

Access for subsistence uses on the ANILCA park and preserve additions is granted pursuant to sections 811(a)(b) and 1110(a). During periods of adequate snow cover, section 811(b) authorizes the use of snowmobiles for subsistence access and section 1110(a) authorizes the use of snowmobiles for traditional activities.

The proposed permanent closure and the temporary snowmobile closure within the old park likely would mitigate the distance some wildlife species would be displaced and increase the availability of critical winter habitat for moose and caribou in the Cantwell and Broad Pass area. Increased snowmobiling within the adjacent ANILCA park additions may cause the temporary displacement of certain wildlife species to other areas both within and outside of Denali National

^{A4} Denali Subsistence Resource Commission Meeting Minutes, August 9, 1996;

Denali Subsistence Resource Commission Meeting Minutes, June 28, 1993.

Park, resulting in some subsistence users having to travel greater distances to locate and harvest resources. However, these alternatives are not expected to significantly restrict subsistence opportunities in the park or preserve.

The no action alternative and the partial closure of the old park alternative have the potential to displace local wildlife resources even further from the new park and preserve additions which are opened to subsistence activities. This could result in less wildlife being locally available to the park and preserve additions, which in turn could result in local subsistence users having to travel even further to locate and harvest subsistence resources. The displacement of wildlife due to increasing snowmobile use within the old park would be one more factor, in addition to the naturally occurring conditions, which would contribute to the potential change in patterns of subsistence use. However, neither of these alternatives is expected to result in significantly restricting subsistence opportunities in the park or preserve additions.

3. Increase in Competition:

Hunting

None of the alternatives would result in an increase in competition for subsistence hunting or trapping on ANILCA park additions since park lands are only open to NPS-eligible subsistence users. Due to the remoteness of Denali's preserve lands and the distance of these lands from hunters, they are not accessed by passage through the former Mt. McKinley Park area. No increase in competition is expected in the preserve for subsistence or sport hunting and trapping as a result of any of these alternatives.

All of the alternatives have the potential to focus recreational snowmobile activities into the regions of the park and preserve where subsistence uses occur. Introducing new recreational uses into these areas increases the potential for conflict between consumptive and non-consumptive users. Subsistence trappers may be adversely affected during certain times of the year by displacement furbearers, and subsistence hunters also may be adversely affected during winter hunting seasons by the temporary displacement of wildlife, particularly moose and caribou. This could result in less wildlife being locally available in the park and preserve additions, which, in turn, could result in local subsistence users having to travel further to locate and harvest subsistence resources.

To minimize potential conflicts, recreational snowmobiling visitors planning trips into Denali would need to be educated about authorized subsistence use activities and use areas within the park and advised of current hunting and trapping seasons.

VI. Availability of Other Lands

No other lands are suitable for the proposed action or the other alternatives without causing significant impact upon subsistence users or subsistence access. Neither the proposed action nor the other alternatives are expected to result in adverse impacts on subsistence uses.

VII. Findings

This analysis concludes that the proposed action would not result in a significant restriction of subsistence uses. This is because the closure would occur on lands within the old park, and these lands are not open to subsistence use.

APPENDIX B

PROPOSED RULEMAKING

Billing Code 4310-70-P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 5

36 CFR Part 13

RIN 1024-AC58

National Park System Units in Alaska; Denali National Park and Preserve, Special Regulations

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: For National Park System units in Alaska, the proposed rule would establish a definition for "traditional activities" as the term is used in Alaska National Interest Lands Conservation Act (ANILCA) section 1110(a) and 43 CFR § 36.11. The rule would close the area within Denali National Park that was formerly Mount McKinley National Park to the use of snowmachines (snowmobiles) for traditional activities. The rule would also consolidate, expand and codify certain designations, closures, and permit requirements for Denali National Park and Preserve. This proposal includes requirements for vehicular traffic, vehicle use limits, public health and safety, and resource protection postings and closures. It also replaces the out-of-

date references to "Mount McKinley National Park" with the Alaska National Interest Lands Conservation Act name "Denali National Park and Preserve." Consistent with the requirements of Section 1110(a) and the implementing regulations of 43 CFR 36.11(h), The National Park Service (NPS) will hold hearings in the vicinity of the Park concerning the proposed closure to snowmachines and the other portions of this proposed rule. NPS will analyze all timely comments, modify the Rule as needed and publish a Final Rule in early 2000.

DATES: Written comments will be accepted through January 11, 2000. Commenters are advised that the Department of the Interior intends to make the names and addresses of commenters public, but that commenters may request that this information not be released and the Department will then determine whether the information may be withheld under the Freedom of Information Act (5 U.S.C. § 552)

ADDRESSES: Address comments to: Superintendent, Denali National Park and Preserve, PO Box 9, Denali National Park, AK 99755.
Attention: Ken Kehrer, Jr.

FOR FURTHER INFORMATION CONTACT: Ken Kehrer, Jr. at the above address or by calling 907-683-2294.

SUPPLEMENTARY INFORMATION:

Background

Denali National Park and Preserve is a vast area that provides visitors of all abilities with opportunities for superlative, inspirational, recreational, wilderness, and wildlife experiences in keeping with its legislative mandates. Over the long term, preserving the wilderness, and its continually evolving natural processes, is essential to ensuring opportunities for outstanding resource-based visitor experiences.

In the NPS Organic Act of 1916, Congress directed the Secretary of the Interior and the NPS to manage national parks and monuments to "conserve the scenery and the natural and historic objects and the wild life therein and to provide for the

enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations." 16 U.S.C. § 1. The Organic Act also granted the Secretary the authority to implement "rules and regulations as he may deem necessary or proper for the use and management of the parks, monuments and reservations under the jurisdiction of the National Park Service." 16 U.S.C. § 3. In 1917, Congress established Mount McKinley National Park to "set apart as a public park for the benefit and enjoyment of the people . . . for recreation purposes by the public and for the preservation of animals, birds, and fish and for the preservation of the natural curiosities and scenic beauties thereof . . . said park shall be, and is hereby established as a game refuge" (39 Stat. 938).

In 1980, Congress passed the Alaska National Interest Lands Conservation Act (ANILCA), which enlarged Mt. McKinley National Park and renamed it Denali National Park and Preserve. P. L. 96-487, Dec. 2, 1980, 94 Stat 2371. Consistent with the 1917 Act that created the park, ANILCA recognized the importance of protecting habitat for, and populations of, fish and wildlife. The legislative history of ANILCA states that certain NPS units

in Alaska, including "Mount McKinley [National Park] . . . are intended to be large sanctuaries where fish and wildlife may roam freely, developing their social structures and evolving over long periods of time as nearly as possible without the changes that extensive human activities would cause." Sen. Rep. No. 96-413, 96th Cong., 1st Sess. 137 (1979); and, Cong. Rec. H10532 (Nov. 12, 1980). The heart of the new Park and Preserve lies on the lands that once comprised Mount McKinley National Park, where predator-prey relationships have functioned for many decades without significant human interference. This "core" area of Denali National Park (also known as the Old Park) has historically been the only place in the interior and northern parts of Alaska where wildlife protection has been ensured through minimal disturbance to wildlife and habitat. This core area's dedication to wildlife protection is essential to the wilderness wildlife experience of over 300,000 visitors who travel into the park each season.

Limiting motor vehicle use on the Denali Park Road, and prohibiting snowmachine use in the adjacent Denali wilderness, have been essential factors in maintaining the natural systems in

the park interior and in providing continued outstanding visitor experiences. The overall visitor experience depends in large part on seeing the spectacular variety of wildlife along the park road and the opportunity to observe natural predator-prey interactions. Vehicle use above certain levels displaces the wildlife that can be seen from the road and otherwise disrupts the park's ecosystems and is therefore detrimental to the resources, values and purposes for which the park was established. Because the core area of the park was established in 1917, over 63 years before ANILCA, park guidelines and patterns of use and administration for the core area have developed over time and in ways uniquely suited to the local conditions and needs. With the passage of ANILCA and improved highway access to the park, it has become necessary to consolidate many of these requirements and practices in the park specific regulations.

Section-by-Section Analysis

36 CFR 5.2(b), 5.4(a) and 5.10(a).

NPS proposes updates to these sections to reflect the name change to the park that occurred on December 2, 1980. With the adoption

of ANILCA, the name of the park was changed from Mount McKinley National Park to Denali National Park and Preserve (P.L. 96-487 § 202(3)(a), Dec. 2, 1980). The proposed revisions here would delete references to the former name and substitute the new name. In section 5.4(a) the reference to "McKinley Park Hotel" in the existing regulations would be replaced with "Denali Park Railroad Depot." This change reflects the fact that the 1996 Final Denali Entrance Area and Road Corridor Development Concept Plan Environmental Impact Statement (1996 Final Entrance and Road Plan), which was approved in a 1997 Record of Decision, adopted September 2001 as the closing date for the hotel. The railroad depot, which is just across the road, would be substituted for the hotel because the depot will remain open. No change is proposed for the regulatory content of the other sections.

36 CFR 13.1(u).

NPS proposes to define "traditional activities" as the term is used in Section 1110(a) and 43 CFR 36.11 for National Park System units in Alaska. This proposal is discussed as part of the snowmachine discussion, below.

36 CFR 13.2(c).

The purpose of this section is to indicate those parks statutorily excepted from applicability of subsistence regulations found in Part 13, subpart B. In the case of Denali, only part of the park was statutorily excepted (i.e., that "core" part formerly known as Mount McKinley National Park). NPS proposes to revise this regulation to use that terminology to clarify the meaning of the current § 13.2(c) phrase ". . . and parts of Denali National Park." The proposed change more clearly specifies the intended area and does not change the regulatory application of the section.

36 CFR 13.63(d) Denali Park road: motor vehicle traffic.

NPS proposes this new special regulation to consolidate existing motor vehicle rules and restrictions currently compiled separately by the Superintendent in accordance with 36 CFR § 1.7(b). Because a portion of the motor vehicle traffic on the Denali Park road is destined for commercial lodges and other private inholdings in Kantishna at the western end of the road, the proposed regulation includes consideration of the requirements of ANILCA § 1110(b). ANILCA § 1110(b) directs NPS to

give inholders such rights as may be necessary to ensure adequate and feasible access to their land for economic and other purposes, subject to reasonable regulations that protect the natural and other values of the conservation system unit. Therefore, this section would be implemented in consideration of the requirements of 43 CFR § 36.10 (Access to inholdings).

Before the completion of the George Parks Highway in 1972, annual visitation to Mt. McKinley National Park did not exceed 30,000 visitors, with a majority of those arriving by railroad. Significant increases in visitation began in 1972, and the resulting demands of private motor vehicle traffic for use of the road into the park was greater than could be accommodated without disturbing and displacing wildlife that could be seen from the road. In 1997, visitors to Denali National Park exceeded 300,000, a tenfold increase from 1972.

The primary visitor attraction at the park is the unparalleled array of Alaska wildlife regularly seen from the Denali Park Road and the opportunity to see natural predator-prey interactions. In 1972, to ensure that the increasing number of visitors would

continue to see grizzly bears, caribou, moose, Dall sheep, the occasional wolf, as well as other species of Alaska wildlife in their natural habitat, NPS developed a shuttle bus system that replaced most of the private vehicular traffic with buses each capable of transporting more than 36 passengers. Concurrently, general private vehicular traffic was limited to the improved, easternmost 15 miles of the 88-mile park road. This action allowed an increase in the number of visitors who could travel the road without unduly impacting the wildlife viewing experience.

The other option that NPS considered in 1972 -- adding additional private vehicular traffic to the road -- proved untenable for a number of reasons. NPS determined that the increase in activities associated with additional private vehicle use caused the greatest disturbance to wildlife given that such vehicles could stop at will to allow passengers to approach wildlife on foot. As a previous rulemaking noted, when an unchecked flow of traffic was allowed to use the Denali Park road for a few weeks each fall and spring, park resource managers observed that wildlife abandoned the road corridor after three or four days,

depriving visitors of the opportunity to watch and photograph them (48 FR 14978). Although bus passengers may choose to be dropped off at any safe point along the road, when wildlife is near, passenger discharge is controlled to avoid conflicts with, and displacement of, wildlife. Accordingly, opportunities for viewing and photographing wildlife abound while the bus is stopped for those purposes.

In 1986, a General Management Plan (GMP) for Denali National Park and Preserve was developed through public hearings and other public input. The GMP authorized a motor vehicle use level of 10,512 vehicle round trips on the unimproved portion of the Denali Park road during the visitor season, which runs annually from Memorial Day weekend through mid-September. The 10,512 vehicle level was established by using 1984 use levels as a base and allowing a maximum 20 percent increase in shuttle and tour bus traffic. This increase in bus traffic was offset by reductions of non-bus traffic and by consideration of such factors as road wear and maintenance, natural resource protection (including maintaining the opportunity for unparalleled wildlife watching), environmental impacts and traffic safety.

Shuttle and tour buses have been operating at, or near, their GMP-established level for several years. Additionally, since the mid-1980s, three new businesses have opened at the west end of the park road on private land in Kantishna. The park has permitted motor vehicle access to these businesses for their guests, a trend that is likely to continue. Also, individual inholders will continue to be able to obtain road access permits to use their private vehicles on the unimproved, restricted access section of the Denali Park road to regularly access their property.

The 1996 Final Entrance and Road Plan called for retaining the annual season motor vehicle traffic level (10,512) as established in the 1986 GMP. Public comment on the Draft Entrance Area and Road Corridor Development Concept Plan (Draft Plan) during summer 1996, including public hearings at several different locations in Alaska and a 60-day comment period, indicated widespread support for retaining the GMP level. NPS received 262 written comments and heard testimony from 40 people; no comments were received opposing the overall level of 10,512 motor vehicle permits

although there were numerous comments that supported more restrictive regulation of vehicle traffic than was adopted in the final plan. In the proposed regulations, the NPS would codify the annual visitor season traffic level of 10,512 motor vehicle permits. The Denali Entrance Area and Road Corridor Development Concept Plan was designed to be applicable for 10-15 years. NPS intends to reevaluate the road use levels established by this rule in 10 years or sooner if significant change in circumstances should occur.

Traffic safety is also a significant factor for limiting use to the GMP allocation. Studies of visitor satisfaction, and both formal and informal visitor comments, consistently support the NPS decision to maintain most of the Denali Park Road in its rustic, unimproved condition. The character of the park road and its relationship with the landscape through which it passes are integral to the visitor experience at Denali. Consequently, 72 miles of the road are graded gravel, much of which varies between one and one-and-one-half lanes wide. As the road traverses scenic mountain passes between broad river valleys, it often dips and climbs and winds as it clings precipitously to the mountains'

supporting contours. The road, which was originally designed for 1930s era vehicles and levels of use, must now accommodate 1999 traffic levels -- a mix of large tour and shuttle buses, private vehicles for inholder access, park administrative and maintenance traffic, and service vehicles traveling to Kantishna lodges.

NPS concern over traffic safety is also based on bus accidents that occurred in 1969, 1974, 1981 and 1989, and resulted in six fatalities and serious injuries to park visitors. The historic character of the road warrants special attention to safety procedures for its use. Known locally as the "rules of the road," practices such as driving with lights on and specific procedures for yielding to buses have developed through time and are practiced by many, although not all, drivers on the unimproved, restricted access section of the road. Permitted users, such as those traveling to inholdings, are advised of these rules, and the rules are mandatory for NPS staff. However, to avoid unanticipated actions by vehicle operators, mandatory observance of "the rules" is necessary, particularly for NPS to use large, 52 passenger buses to accommodate more visitors. To ensure a safe, enjoyable experience for all visitors,

interactions between vehicles must be managed in the safest possible manner and all drivers must participate. To date, and when properly observed, these safety procedures have been effective in minimizing traffic problems and accidents. This rulemaking provides that "rules of the road" will apply, as a term and condition of a permit to operate a vehicle on the restricted access section of the Denali Park Road.

To manage the annual traffic level of motor vehicle permits set by the GMP and the 1996 Final Entrance and Road Plan, NPS would limit motor vehicles in the various authorized user categories as proposed in, and adopted by, the 1996 planning process.

Recognizing that ANILCA § 1110(b) provides inholders with access as may be necessary to assure adequate and feasible use for economic and other purposes, the 1996 plan addresses both the commercial and private uses of inholders. Through careful analysis and negotiation, the park superintendent will continue to balance: the number of bus trips provided for visitors; access by inholders; the level and duration of permits, and; the administrative requirements of the agency. Accordingly, this rulemaking proposes to explicitly provide the superintendent with

the regulatory authority to annually evaluate anticipated-use requirements and to reasonably apportion motor vehicle permits for the restricted access section of the road among authorized users.

A system for allocating permits among the various authorized users was proposed as part of the 1996 Draft Plan. NPS received a few comments that raised questions about the distribution of vehicle permits among Kantishna lodges. The 1996 Final Entrance and Road Plan included a method of allocating motor vehicle permits for Kantishna business traffic that was developed in cooperation with existing Kantishna businesses, according to their established business practices, within the road traffic limits of the 1986 GMP. Specific allocations for Kantishna motor vehicle traffic will help ensure long-term protection of the current visitor experience and of wildlife populations along the road corridor. Kantishna businesses will be able to continue using both the Kantishna airstrip and the NPS visitor transportation system buses for guest access, as well as operate buses and other vehicles on the park road as allocated below.

Overall allocations for Kantishna motor vehicle business traffic will be based on recent use levels (1994-96 seasons). The allocation will allow for some additional expansion provided that the businesses continue current patterns of transporting guests to and from Kantishna. The allocations established by the 1996 Final Entrance and Road Plan for the total number of round trips during the visitor season for the existing business are:

- Denali Backcountry Lodge: 315
- Kantishna Roadhouse: 420
- Northface Lodge/Camp Denali: 315

As previously expressed in the 1996 Final Entrance and Road Plan, Proposed Section 13.63(d)(4) would not permit recreational vehicle (RV) travel (motor homes, trailers, and campers) for the purpose of transporting guests to and from Kantishna businesses is not permitted. Motor vehicle permits will not be transferable from one business operation to another. Additionally, when a business is sold to a different entity, NPS will re-evaluate the access requirements of the new entity. If a business ceases to operate, or changes dramatically, the superintendent, through appropriate planning, would be able to re-allocate use among all users.

Motor vehicle permits for present and future Kantishna businesses would be subject to reallocation in accordance with proposed section 13.63(d)(2) within the annual limit of 10,512 permits. However, Kantishna businesses would be encouraged to use a combination of park road permit allocations, the existing NPS visitor transportation system buses and the Kantishna airstrip, to accommodate increased guest access. Kantishna businesses could also work to provide for shared vehicle access (for example, for supply vehicles) to minimize the effects on other travel requirements.

A total of 1,360 vehicle round trips for Kantishna inholders would be authorized, comprising 13 percent of all annual traffic.

This total includes other Kantishna traffic (individual inholders, mining claim owners, and others), which generally has averaged less than 100 round trips per year, and should decline as mining claims are acquired by the federal government.

NPS intends to reserve a small number of motor vehicle trips to cover emergency vehicles. In the unlikely event that the number

of emergency vehicle trips exceeds this level, emergency use can still be authorized under the general administrative exception at 36 CFR § 1.2(d).

NPS believes that adoption of these regulatory measures would implement the GMP and the 1996 Final Entrance and Road Plan to: maintain the appropriate level of safety on the Denali Park road; meet the present and future requirements of authorized users; ensure NPS facilities are sufficient to accommodate projected visitation levels; minimize impacts on the resources and support a quality visitor experience. NPS believes that adopting this rule would achieve these goals without unduly disturbing the cornerstone of the park's existence the superlative and unparalleled array of wildlife that is viewed by the public from the Denali Park road.

36 CFR ~~13.63~~(g) Firearms.

The provisions of ANILCA Title VIII govern subsistence management and use. Section 814 directs the Secretary to prescribe such regulations as are necessary and appropriate to carry out his responsibilities under Title VIII. Section 816 recognizes the

Secretary's general authority to designate areas where, and establish periods when, the taking of wildlife is prohibited for reasons of public safety. The proposed rule would establish a seasonal closure to the discharge of firearms on public lands in the developed area of Kantishna, except for the protection of life or property. The closure would apply on: the Kantishna Airstrip; the approximately 4.5 mile-long State Omnibus Act Road right-of-way, and; and all public lands located within one mile of the Kantishna Airstrip or the State Omnibus Act Road right-of-way (within the park addition at Kantishna).

During the applicable seasons, eligible subsistence users in the Kantishna area may hunt black bear, brown bear, moose, coyote, red fox, hare, lynx, wolf, wolverine, grouse and ptarmigan, and may trap beaver, coyote, red fox, lynx, marten, mink, weasel, muskrat, otter, wolf and wolverine. The closure would be effective seasonally beginning the Saturday of Memorial Day weekend through the second Thursday following Labor Day or September 15, whichever comes first. This period is the time of heaviest overlap between subsistence hunting and other seasonal visitor activities. The intent of the proposal is to protect

public safety while accommodating the various public user groups to the fullest extent possible. The purpose of the closure is to reduce the level of risk of firearm-related injury inherent in heavy use areas without otherwise affecting authorized subsistence uses. The restriction would not apply on private inholdings. This proposal follows consultation with the State of Alaska. NPS invites written comments on this proposal as a part of this rulemaking. NPS will also accept comments during public hearings on the proposed rule.

36 CFR 13.63(h) Snowmachines (snowmobiles)

The purpose of the proposed rule is to modify and make permanent the current snowmobile closure for traditional activities in the former Mount McKinley National Park. The closure does not affect the park's four-million-acre ANILCA additions where snowmobile use is permitted for traditional activities and for travel to and from villages and homesites, subject to reasonable regulations (43 CFR § 36.11(c)). The proposed rule also requires the superintendent to determine that snowcover is adequate for snowmachines in order to protect the underlying vegetation and soils. This determination is necessary to prevent damage to

exposed vegetation, as observed by park rangers and resource management staff during the past winter. This process is similar to a provision at the Kenai National Wildlife Refuge (50 CFR § 36.39(i)(4)(i)) which NPS understands has worked well since it was adopted in 1986. (see also, Denali State Park, 11 AAC § 20.425).

The proposed rule follows NPS's February 3, 1999, publication of a Statement of Finding: Temporary Closure of the Former Mt. McKinley National Park Area of Denali National Park and Preserve to the Use of Snowmobiles for Traditional Activities (Statement of Finding). The NPS notes that this Temporary Closure is currently under litigation in Alaska (see Alaska State Snowmobile Assoc. v. Babbitt, (U.S.D.C. Alaska, No. A99-0059 CV [JWS])). A copy of the Statement of Finding and maps of the affected area can be obtained by visiting the park's web site at www.nps.gov/dena/statement.htm or by writing or calling the Superintendent at the address or number printed at the beginning of this proposed rule.

NPS will also hold a series of public hearings in compliance with

43 CFR § 36.11(h), as a part of this rulemaking, to continue gathering public comment on snowmobile use in the Old Park. NPS will announce the locations, dates, and times of the public hearings by publication in local area newspapers.

ANILCA § 1110(a) and 43 CFR § 36.11 govern the use of snowmachines (snowmobiles) on public lands in Alaska for traditional activities and for travel to and from villages and homesites. Snowmobile use for these purposes is permitted (during periods of adequate snow cover), subject to reasonable regulations to protect the natural and other values of, in this case, Denali National Park and Preserve. Section 1110(a), as enacted, was derived from a provision originally reported by the Senate (S. Rep. No. 413, 96th Cong. 1st Sess. 66-67 (1979)) Section 1110(a) was drafted to address concerns that the subsistence access provisions under consideration did not protect similar access for non-qualifying people who engaged in subsistence-like activities (hunting, fishing, berry picking and trapping) as part of the unique Alaska lifestyle. Senate Committee On Energy and Natural Resources, Alaska (d) (2) Lands - Mark Up, August 1, 1978, pgs. 50-75. The Senate Committee Report

and the House Report (Committee on Interior and Insular Affairs) list several examples of traditional activities: subsistence and sport hunting, fishing, and berry picking, provided that the activity was generally occurring before the area's designation in ANILCA. S. Rep. No. 413, 96th Cong., 1st Sess. pp. 247-248 (1979); H.R. Rep. No. 96-97, 96th Cong., 1st Sess. Pt. I at 238 (1979).

The NPS Organic Act of 1916 directs NPS to manage the national parks to conserve their scenery, natural and historic objects and wildlife, and to provide for public enjoyment in a manner and means that leave the parks unimpaired for the enjoyment of future generations (16 U.S.C. § 1). Mount McKinley National Park (Old Park) was established, in part, as a game refuge (16 U.S.C. § 352). Since 1917, activities in the Old Park have been compatible with the protection of the park's values and purposes.

The legislative history of ANILCA recognized that the Old Park would continue to function as a "large sanctuar[y] where fish and wildlife may roam freely, developing their social structures and evolving over long periods of time as nearly as possible without the changes that extensive human activities would cause." Sen.

Rep. No. 96-413, 96th Cong., 1st Sess. 137 (1979); Cong. Rec. S11126 (August 18, 1980), and; Cong. Rec. H10532 (Nov. 12, 1980). As such, the Old Park remains "off-limits" to such traditional Alaska activities as sport and subsistence hunting. Other subsistence activities have never been authorized and no winter fishing or wintertime berry picking took place. Accordingly NPS does not believe that any discernible traditional activities, supported by snowmobiles, lawfully occurred in the Old Park before the enactment of ANILCA.

Nor was there snowmobile travel to and from villages or homesites. There are no inholdings in the Old park, and in the past 19 years (i.e., since the enactment of ANILCA), NPS is only aware of one attempt to cross the Old Park by snowmobile to reach a homesite to the west of the Old Park. That 1981 attempt ended in an accident. All homesites and villages outside the boundary of the Old Park (including Kantishna) have reasonable alternate routes for snowmobile access (including routes through other portions of the park) that have been regularly used for such access.

The Old Park was closed to snowmobile use prior to ANILCA (see 36 CFR § 2.34 Snowmobiles and § 7.44 Mount McKinley National Park, Alaska (1980 ed.)). After ANILCA, the Old Park remained closed by 36 CFR § 2.18 and orders published in the Denali National Park and Preserve Superintendent's Compendium. NPS has consistently managed the two-million-acre Old Park for nonmotorized winter recreation in a way that allows visitors to experience solitude and natural sounds, such as dog mushing, snowshoeing, and cross-country skiing. As far back as 1981, in the implementing regulations to ANILCA, NPS cautioned "[p]rospective snowmachine users [to] note that the legislative history of section 1110(a) defines a traditional activity in terms of a use generally occurring in a park area prior to its designation." 46 FR 3184, June 17, 1981.

Since NPS had never promulgated a regulatory definition for "traditional activities," however, the State of Alaska and other interested groups and individuals questioned whether NPS's compendium closure was legally sufficient. A newsletter article was published last year urging recreational snowmobilers to travel throughout the Old Park. Alaska Snow Rider (October 1998),

Volume 9, Issue 6. In response, NPS published the Statement of Finding on February 3, 1999, as a temporary closure in compliance with the requirements of ANILCA section 1110(a) and the implementing regulations at 43 CFR § 36.11(h). Following notice and public hearings, NPS determined that snowmobile use for traditional activities would be detrimental to the resource values of the Old Park portion of Denali National Park and Preserve and that it was necessary and appropriate to close most of that area to the use of snowmobiles for traditional activities.

Snowmobile use in, and near, the Old Park area began to increase in the early 1990s. The increased use occurred simultaneously with an increase in snowmobile sales and use throughout Alaska. In addition to increased snowmobile activity, the character and pattern of use also changed. Snowmobile manufacturers began producing more reliable, higher performance vehicles that could access steep terrain and travel greater distances (see The mountain was screaming, Anchorage Daily News, March 28, 1999) Snowmobiling changed from a utilitarian form of access for the traditional activities discussed in ANILCA, such as hunting, into

a new and popular recreational activity in and of itself. Since NPS had not defined the term "traditional activity," recreational snowmobilers began using the ANILCA additions to Denali National Park near the George Parks Highway. Technological advances have enabled snowmobilers to reach, and lately, enter some corridors in the Old Park in a limited number of drainages on the south side of the Alaska Range. This has caused NPS tremendous concern that the resources of the Old Park would be detrimentally affected by snowmobiles. These concerns have prompted NPS to analyze the effects that section 1110(a) snowmobile use would have on the resources of the Old Park, and explicitly close the Old Park to such use.

The Statement of Finding, published on February 3, 1999, analyzed and discussed a number of key issues, including: the detrimental effects that snowmobiles would have on wildlife, vegetation, and soils; the conflicts that snowmobiles create with resource values and historically-occurring recreational uses; the interference snowmobiles can present to subsistence opportunities on nearby lands; and, additional concerns such as the impact snowmobiles have on air and water quality. As discussed in the Statement of

Finding, the Old Park contains important wintering ground and spring calving areas for ungulates and also serves as denning habitat for wolves and bears. One of the primary purposes for establishing Denali National Park and Preserve was to provide protection for wildlife and wildlife habitat. Since its establishment in 1917, the Old Park has been protected and is, in fact, the only place in the Interior and northern parts of Alaska where wildlife has been protected through minimal disturbance of natural wildlife conditions. Thus, a very special natural system has developed where predator-prey relationships have functioned without significant human interference. The unparalleled array of Alaska wildlife regularly seen from the Denali Park Road and the opportunity to see natural predator-prey interactions is the primary visitor attraction at the park. The key factors in the development of this balance were the policies of restricting the use of private vehicles on the park road during the summer months and prohibiting snowmobile use in the winter. The Statement of Finding (pages 9-13) cites observations of, and studies on, wildlife, including moose and caribou, which indicate that snowmobile activity alters the behavior of a wide variety of animals. These studies confirm that exposure of wildlife to

snowmobile use results in behavioral alteration, habitat avoidance, and energy expenditures at critical times when animals are under extreme stress from winter privations. Winter is an extremely difficult time of year for animals in the Old Park.

As noted in the Statement of Finding:

The health of this shielded ecological system is the foundation for one of the world's finest wildlife viewing opportunities. The possibility of seeing bears, wolves, caribou, moose, Dall sheep, and many other animals against the backdrop of a spectacular subarctic, alpine landscape and vegetation is the cornerstone of a multimillion-dollar tourism industry in Alaska. These wildlife populations in the old park area are available for this unparalleled viewing opportunity precisely because they have been protected from intrusive interactions with humans for decades.

Id. at 5.

Any increase in stress through added energy expenditure or loss of preferred habitat is a concern in the difficult times of winter. In the former Mt. McKinley National Park, there is the

possibility of many additional miles of snowmobile trails and increased snowmobile activity levels throughout all types of habitats. This area of previously protected habitat is particularly vulnerable to increased disturbance given its close proximity to the George Parks Highway. This new pattern of use will leave little opportunity for wildlife avoidance and refuge. This major change in the level and extent of human activity in this historically undisturbed winter environment will affect many animals over a large area. It would also represent a significant change from the long-standing patterns of non-intrusive human interaction with wildlife.

Id. at 10

NPS believes that snowmobile use in this area would compromise the park's successful long-term resource protection strategy and would be detrimental to the internationally-significant resources and the opportunity to view them. NPS also believes that snowmobile use would be detrimental to the resource values of

natural quiet, solitude and the sounds of nature - among the values for which the Old Park has been managed, that are generally unique to the Old Park, and that snowshoers, cross-country skiers and dog mushers have long enjoyed.

Therefore, based on the Statement of Finding and additional information gathered in the interim, NPS believes that the temporary snowmobile closure of the former Mount McKinley National Park should be implemented on a permanent basis by this rulemaking in accordance with 43 CFR § 36.11(h).

Traditional activities: proposed definition.

In 1986, the Department of the Interior promulgated regulations to implement the provisions of Title XI of ANILCA (51 FR 31629, September 4, 1986). That rulemaking included the implementing regulations for "Special Access" (ANILCA section 1110(a), 43 CFR § 36.11). Responding to comments suggesting that "traditional activities" should be defined, the Department stated:

Because these regulations apply to a number of areas under the administrative jurisdiction of three agencies, it has been decided that it would be unwise, and perhaps impossible to develop a

definition that would be appropriate for all areas under all circumstances. Exactly what "traditional activities" are must be decided on a case-by-case basis. Once the agencies have had the opportunity to review this question for each area under their administration, it may be possible to specifically define "traditional activities" for each area.

Id. at 31627.

Defining the term "traditional activity," in the context of the Special Access provisions of ANILCA section 1110(a) and National Park System units in Alaska is an important part of Section 13.1(u) of the proposed rule. In 1986, the Denali National Park and Preserve General Management Plan discussed the meaning of "traditionally employed" surface transportation and "snowmachine . . . transportation . . . for traditional activities." NPS stated that:

In applying the provisions of ANILCA . . . section 1110

[NPS] has relied on the following definitions of 'tradition(al)' from Webster's Third New

International Dictionary of the English Language
(unabridged), 1976:

2. The process of handing down information, opinions, beliefs, and customs by word of mouth or by example: transmission of knowledge and instruction through successive generations without written instruction . . .

3. An inherited or established way of thinking, feeling or doing; a cultural feature (as an attitude, belief, custom, institution) preserved or evolved from the past (as of a family or nation); as . . . a doctrine or practice or a body of a doctrine and practice preserved by oral transmission . . .

_____ 5.a: Cultural continuity embodied in a massive complex of evolving social attitudes, beliefs, conventions, and institutions rooted in the experience of the past and exerting an orienting and normative influence on the present.

_____ b: the residual elements of past artistic styles or periods.

To qualify under ANILCA, a . . . 'traditional activity has to have been an established cultural pattern, per these definitions, prior to . . . when the unit was established.

Denali National Park and Preserve General Management Plan (1986), page 45 and at Appendix I.

In determining whether any traditional activities had occurred in the Old Park prior to the enactment of ANILCA, NPS is proposing the immediate following definition which is drafted to be consistent with the legislative history underlying section 1110(a). This definition draws also from, but attempts to simplify, the dictionary definition.

Traditional activity - An activity that generally and lawfully occurred in a unit or a geographically defined area of a unit prior to enactment of ANILCA, and that was typically associated with that region as an integral and established part of a utilitarian Alaska lifestyle or cultural pattern.

Applying this definition to the Old Park, NPS is unable to

identify any specific traditional winter activities. The examples of traditional activities identified in the House and Senate Committee reports are subsistence and sport hunting, fishing, and berry picking. While various winter recreational activities did take place in the Old Park, the legislative history reveals that these activities were not traditional as that concept was debated in Congress. Therefore there could not now be traditional activities within this area for which a snowmachine is authorized under section 1110(a) or 43 CFR 36.11. Accordingly, Proposed section 13.63(h)(1) would implement on a permanent basis the previous temporary closure of snowmachines for traditional activities in most of the former Mount McKinley portion of the park, and also serve as the Service's determination that traditional activities did not take place in this area during periods of adequate snow cover. NPS specifically requests commenters to address both the proposed definition and its application to the Old Park. In connection with the latter, NPS requests that commenters address, wherever possible, where and when such activities may have lawfully occurred, or report the absence of such activities, and the basis for the commenters knowledge. For the reasons previously discussed NPS believes

that the Old Park is unique, and the application of this definition should not be viewed as a precedent for determining whether traditional activities took place in the ANILCA additions, the preserve or any other park unit in Alaska.

To foster opportunities for information gathering, NPS excluded two corridors from the temporary closure announced in the Statement of Finding: Cantwell Creek from the wilderness boundary north to the Cantwell Glacier; and Bull River from the wilderness boundary northwest through Easy Pass, then south returning to the wilderness boundary on the West Fork of the Chulitna River.

However, since NPS believes that no section 1110(a) snowmobile use for traditional activities can be identified in the Old Park, NPS must comply with the Wilderness Act's general prohibition of motorized vehicles in wilderness (16 U.S.C. § 1133 (c)).

Accordingly, the proposed rule does not exclude these two corridors.

Once implemented by a final rule, NPS intends to review this closure action as part of the upcoming Denali National Park and Preserve backcountry management planning process. NPS is not

using this rulemaking to examine what traditional activities may have taken place in the preserve and park additions -- which, NPS recognizes, have a different history of use and management prior to ANILCA. NPS intends to also undertake that examination as part of the upcoming backcountry management planning process, and if necessary, in a future rulemaking. As noted previously, this process to specifically identify traditional activities for each area on a case-by-case basis was recognized by the Department of the Interior in the final regulations implementing ANILCA section 1110(a). (51 FR 31619, September 4, 1986). The impending backcountry management planning process will also consider whether additional, reasonable regulations under ANILCA section 1110(a) should be applicable to snowmobile use in the preserve and park additions. NPS notes, however, that where snowmobile activity is presently authorized by section 1110(a) in other areas of the National Park System in Alaska, such snowmachine activity remains subject to the regulations found at 36 CFR § 2.18 (a), (b) and (d).

36 CFR 13.63(i) Wildlife protection during sensitive periods.
NPS proposes to codify the Denali National Park and Preserve

superintendent's site-specific, wildlife habitat closure procedures that are employed during breeding, nesting, denning, and other sensitive periods. These procedures permit periodic evaluations of, and changes to, closure boundaries to allow optimize visitor access to, and use of, the affected areas. Wolves, for example, have an extensive recurring history of using denning sites, but may skip a year or more, or move pups completely out of the area at any time. Known denning areas and the lands immediately around them are seasonally closed to entry, on a recurring basis. However, if wolves move pups from one area to another, the protective closure can be shifted, reduced or opened to the public. These closure procedures may also be safety related. For example, a bear may bury a large kill and return to feed on the carcass for a week or more. Approaching a kill site during this period is extremely dangerous. This proposal would standardize NPS actions to safeguard visitors and prevent unnatural displacement and other disturbances that are detrimental to wildlife and habitat resource values. It would also enable NPS to continue to periodically review the most current biological data and modify closure boundaries, allowing optimum visitor access and use of Denali National Park and

Preserve. Limited closures to the public of this nature do not fall under ANILCA section 1110(a) and thus are not subject to the procedures for such closures. ("Nothing in this section shall limit the authority of the appropriate Federal agency to restrict or limit uses of an area under other statutory authority." 43 CFR § 36.11(h)(6)). The Secretary of the Interior is authorized to close areas or restrict use for a variety of reasons apart from those under Section 1110(a), such as health and safety. See also 36 CFR § 1.5 and 51 FR 31618, September 4, 1986. Similar closures were proposed in the rulemaking found at 48 FR 14978, 14979; April 6, 1983. NPS invites written comments on this proposal as a part of this rulemaking. NPS will also accept comments during public hearings on the proposed rule.

Drafting Information

The primary authors of this rule are Ken Kehrer, Jr., Mike Tranel, Joe Van Horn and Russel J. Wilson, Denali National Park and Preserve; and Lou Waller and Paul Hunter, NPS Alaska Support Office.

Compliance with Laws, Executive Orders and Department Policy
Regulatory Planning and Review (E.O. 12866)

This rule is a significant rule and has been reviewed by the Office of Management and Budget under Executive Order 12866.

This rule will not have an effect of \$100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. The NPS has prepared a Preliminary Cost-Benefit Analysis (9/1/98) that is available from the Denali National Park and Preserve superintendent. Based on this analysis, the NPS anticipates positive net benefits such as: increased public safety; improved public understanding of park regulations; and, continued protection of wildlife, preservation of natural interactions among wildlife, and the minimization of habitat disturbances that contributes to visitors' use and enjoyment of park resources. This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The rule does not alter the budgetary effects, entitlements, grants, user fees, loan programs or the rights or obligations of their recipients. The rule may raise novel legal

or policy issues, however, the primary effect of the proposed action is to consolidate in the Code of Federal Regulations or otherwise clarify requirements that already exist under separate NPS authorities.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule does not have an annual effect on the economy of \$100 million or more; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. The primary effect of this proposed action is to consolidate in the Code of Federal Regulations or otherwise clarify requirements that already exist under separate NPS authorities. Copies of a Preliminary Cost-Benefit Analysis (9/1/98) are available from the Denali National Park and Preserve superintendent. The analysis found that no significant costs would result from this action.

Regulatory Flexibility Act

The Department of the Interior has determined that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.). The primary effect of this proposed action is to consolidate in the Code of Federal Regulations or otherwise clarify requirements that already exist under separate authorities. Only one of the requirements addressed by the proposed action is new. This new requirement adopts "rules of the road" that have generally been followed on a voluntary basis for some years and is therefore not anticipated to inconvenience drivers or otherwise adversely impact any small entity.

Substantial areas exist nearby where Park users can go who may be displaced as a result of firearms and snowmachine closures in this proposed action. The wide availability of such substitute-use areas would lessen, or eliminate, any impact on park users, including small entities. The only direct compliance cost that would be imposed by this proposed action is the requirement to provide drivers license information, vehicle license plate information, and a vehicle description for purposes of issuing a

permit to operate a motor vehicle on the restricted access section of the Denali Park Road. That requirement is not anticipated to impose significant costs on the public, including small entities. No other direct compliance costs would be imposed. Therefore, significant impacts on small entities are not expected from this proposed action. Copies of a Preliminary Cost-Benefit Analysis (9/1/98) are available from the Denali National Park and Preserve superintendent.

Unfunded Mandates Reform Act

The NPS has determined and certifies pursuant to the Unfunded Mandates Reform Act (2 U.S.C. 1502 et. seq.), that this rule will not impose a cost of \$100 million or more in any given year on local, state or tribal governments or private entities. Copies of a Preliminary Cost-Benefit Analysis (9/1/98) are available from the Denali National Park and Preserve superintendent. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 et seq.) is not required.

Takings (E.O. 12630)

In accordance with Executive Order 12360, the rule does not have

significant takings implications. The primary effect of this proposed action is to consolidate in the Code of Federal Regulations or otherwise clarify requirements that already exist under separate NPS authorities. A takings implication assessment is not required.

Federalism

In accordance with Executive Order 12612, the rule does not have federalism implications which warrant the preparation of a Federalism Assessment. This rule applies mainly to the portion of Denali National Park and Preserve that was formerly known as Mount McKinley National Park and which is under the exclusive jurisdiction of the United States. The primary effect of this proposed action is to consolidate in the Code of Federal Regulations or otherwise clarify requirements that already exist under separate NPS authorities.

Civil Justice Reform (E.O. 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and does not meet the requirements of

sections 3 (a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This regulation requires an information collection from 10 or more parties and a submission under the Paperwork Reduction Act is required. The information collection requirements contained in this rule at 13.63(d)(2) have been approved by the Office of Management and Budget and assigned clearance number 1024-0026. This information is being collected to solicit information that is necessary for the Superintendent to issue vehicle permits. The public is being asked to provide this information in order for the park to track the number of permits issued and to whom they are issued. The information will be used to grant administrative benefits. The obligation to respond is required in order to obtain a benefit.

Specifically, the NPS needs the following information to issue the permit:

- (1) Drivers license number and State of issue.
- (2) Vehicle license plate number and State.
- (3) Vehicle description, including year, make and model.

The public reporting burden for the collection of information in this instance is estimated to be 0.10 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden of these information collection requests to: Information Collection Officer, National Park Service, 1849 C Street, NW, Washington, D.C. 20240; and the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for Department of the Interior (1024-0125), Washington, D.C. 20503.

The Department has determined that this rule meets the applicable standards provided in Section 3(a) and 3(b)(2) of Executive Order 12988.

National Environmental Policy Act

The NPS has determined that most aspects of this rulemaking, with the exception of the portion on snowmobile useage, have been previously addressed pursuant to the National Environmental

Policy Act, 42 U.S. C. 4332, in environmental documents prepared in conjunction with park management plans. These are the environmental assessment prepared in conjunction with the park General Management Plan which was approved in a 1986 Finding of No Significant Impact, or the environmental impact statement prepared in conjunction with the Denali Entrance Area and Road Corridor Development Concept Plan which was approved in a 1997 Record of Decision. Copies of these environmental documents are available from the Denali National Park and Preserve superintendent.

Associated with that portion of this regulation regarding snowmobile useage, the NPS has prepared an environmental assessment (EA) on the proposed action and three alternatives. The proposed action provides for the closure of the Old Park to snowmobiles for traditional activities as described in this proposed rule. The second alternative is a partial closure and regulatory program that would generally restrict snowmobile use to the south side of the Alaska Range. Where use was still allowed, the NPS would develop a program to protect park resources and values by further regulating snowmobile useage

(i.e. speed, snow conditions, slope angles, etc.). To implement this alternative, additional regulations would need to be promulgated. The third alternative considers a temporary closure of the Old Park to snowmobiles for traditional activities, as allowed under ANICLA and its implementing regulations at 43 CFR 36.11(h). A no action is also considered and evaluated, which would leave the Old Park open to snowmobile use for traditional activities.

The EA is available for public review during the comment period provided for in this rule so that interested parties can comment contemporaneously on both documents.

Clarity of this regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings,

paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A "section" appears in bold type and is preceded by the symbol "§" and a numbered heading; for example, **§ 13.63 Denali National Park and Preserve.**) (5) Is the description of the rule in the "Supplementary Information" section of the preamble helpful in understanding the proposed rule? What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW, Washington, DC 20240. You may also e-mail the comments to this address: Exsec@ios.doi.gov

Public Comment Solicitation

If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to Superintendent, Denali National Park and Preserve, PO Box 9, Denali National Park, AK 99755. Attention: Ken Kehrer, Jr. You may also comment

via the Internet to: dena superintendent@nps.gov

Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "Attn RIN 1024-AC58" as the subject, and your name and return address in the body of your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at National Park Service, Denali National Park and Preserve (907) 683-9581.

Finally, you may hand-deliver comments to Denali National Park Headquarters, Mile 3.2, Denali National Park Road. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. All submissions from organizations or businesses, and from individuals identifying themselves as

representatives or officials of organizations or businesses, will be made available for public inspection in their entirety. NPS will also hold public hearings on this rulemaking at which verbal and written comments will be received, the public hearing schedule will be published in the local newspapers.

List Of Subjects

36 CFR Part 5

Alcohol and alcoholic beverages, Business and industry, Civil rights, Equal employment opportunity, National parks, Transportation.

36 CFR Part 13

Alaska, National parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, the NPS proposes to amend 36 CFR Chapter I, Parts 5 and 13 as follows:

PART 5 - COMMERCIAL AND PRIVATE OPERATIONS

1. The authority citation for part 5 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 17j-2, 462.

2. In § 5.2(b), the words "Mount McKinley" in the first sentence are revised to read "Denali".

3. In § 5.4(a), the words "Mount McKinley (prohibition does not apply to that portion of the Denali Highway between the Nenana River and the McKinley Park Hotel)" in the first sentence are revised to read, "Denali National Park and Preserve (prohibition does not apply to that portion of the Denali Park road between the Highway 3 junction and the Denali Park Railroad Depot)."

4. In § 5.10(a) the words "Mount McKinley" in the first sentence are revised to read, "Denali".

PART 13 - NATIONAL PARK SYSTEM UNITS IN ALASKA

5. The authority citation for part 13 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 462(k), 3101 et seq.; § 13.65 also issued under 16 U.S.C. 1a-2(h), 20, 1361, 1531, 3197.

6. Section 13.1 is amended by re-designating paragraphs (u) and (v) to read (v) and (w) and by revising paragraph (u) to read as follows:

(u) The term traditional activity means an activity that generally and lawfully occurred in a unit or a geographically defined area of a unit prior to enactment of ANILCA, and that was typically associated with that region as an integral and established part of a utilitarian Alaska lifestyle or cultural pattern.

7. In § 13.2(c), the words "and parts of Denali National Park" are revised to read "the former Mt. McKinley National Park."

8. Section 13.63 is amended by revising paragraph (d) and adding paragraphs (g) through (i) to read as follows:

§ 13.63 Denali National Park and Preserve.

* * * * *

(d) Operation of motor vehicles on the Denali Park road west of

the Savage River.

(1) Do I need a permit to operate a motor vehicle on the Denali Park road west of the Savage River? Yes, you must obtain a permit from the superintendent to operate a motor vehicle on the restricted section of the Denali Park road. The restricted section begins at the west end of the Savage River Bridge (mile 14.8) and continues to the former Mt. McKinley National Park boundary north of Wonder Lake (mile 87.9).

(2) How many permits will be issued each summer? The superintendent is authorized, under this regulation, to issue no more than 10,512 motor vehicle permits each year for access to the restricted section of the road. The superintendent will issue the permits for the period that begins on the Saturday of Memorial Day weekend and continues through the second Thursday following Labor Day or September 15, whichever comes first. Each permit allows one vehicle one entry onto the restricted portion of the park road.

(3) How will the superintendent manage the permit program?

(i) The superintendent will apportion motor vehicle permits among authorized users following the procedure in 36 CFR 13.31. Authorized users are individuals, groups and governmental

entities who are allowed by law or policy to use the restricted section of the road.

(ii) The superintendent will establish an annual date to evaluate permit requests and publish that date, along with the results of the annual apportionment, in the superintendent's compendium of rules and orders. The superintendent's compendium is available to the public upon request.

(iii) The Superintendent may establish terms or conditions in the permits issued under paragraph (d) of this section, including rules for the safe use of the park road.

(iv) The Superintendent will re-evaluate the access requirements of any business that is sold, ceases to operate or that significantly changes the services currently offered to the public.

(4) What is prohibited? (i) No one may operate a motor vehicle on the restricted section of the park road without a valid permit.

(ii) No one may violate a term or condition of a permit.

(iii) No one may use a motor home, camper or trailer to transport guests to a lodge or other business in Kantishna.

(iv) No one may transfer or accept transfer of a Denali Park road permit without the superintendent's approval.

* * * * *

(g) Kantishna area summer season firearm safety zone.

(1) What is prohibited? No one may fire a gun during the summer season in or across the Kantishna area firearm safety zone, unless they are defending life or property.

(i) The summer season begins on the Saturday of Memorial Day weekend and continues through the second Thursday following Labor Day or September 15, whichever comes first.

(ii) The Kantishna Area firearm safety zone is: the Kantishna Airstrip; the State Omnibus Act Road right-of-way; and all public lands located within one mile of the Kantishna Airstrip or the State Omnibus Act Road right-of-way, from the former Mt. McKinley National Park boundary at mile 87.9 to the south end of the Kantishna Airstrip.

(h) Snowmachine (snowmobile) operation in Denali National Park and Preserve.

(1) Where is snowmobile use prohibited? No one may use a snowmobile in that part of Denali National Park formerly known as Mt. McKinley National Park.

(2) Where can I operate a snowmobile? You can use a snowmobile for traditional activities outside of the area formerly known as Mt. McKinley National Park.

(3) What types of snowmobiles are allowed? The types of snowmobiles allowed are defined in § 13.1(q) of this chapter under snowmachine or snowmobile.

(4) What other regulations apply to snowmobile use? Snowmobile use is governed by regulations at § 2.18(a) of this chapter, traffic safety, § 2.18(b) state laws and § 2.18(d) prohibited activities; and 43 CFR § 36.11(a)(2) adequate snow cover, and § 36.11(c) traditional activities.

(5) Who determines when there is adequate snowcover? The superintendent will determine when snowcover is adequate for snowmobile use. The superintendent will follow the procedures in §§ 1.5 and 1.7 of this chapter to inform the public.

(i) Temporary and seasonal restrictions to protect wildlife.

(1) How may the superintendent restrict access? To protect wildlife and wildlife habitat during breeding, nesting, denning, and other sensitive periods the superintendent may:

(i) Seasonally close or restrict public access or use to a part of the park or preserve;

(ii) Change the size of a closed or restricted use area as needed;

(iii) Continue the closures or restricted use area seasonally in subsequent years; or

(iv) Reopen an area to park visitors.

(2) Before continuing a seasonal closure or restricted use area under part (i)(1)(iii) of this section, the superintendent will evaluate biological data. The superintendent will publish a schedule for evaluating the biological data in the superintendent's compendium of rules and orders. The compendium is available to the public upon request.

(3) How will the public be informed? To establish, terminate, and provide public notice of closures and restricted use area, the superintendent will follow the procedures in §§ 1.5 and 1.7 of this chapter.

(4) What activities are prohibited? No one may enter a closed area or disobey a requirement for a restricted use area established under § 13.63 (i).

* * * * *

Dated:

Donald J. Barry

Assistant Secretary for Fish and Wildlife and Parks