

**RESPONSE TO COMMENTS
SUPERINTENDENT’S COMPENDIUM
2020**

LAKE CLARK NATIONAL PARK AND PRESERVE

The compendium is a list of designations, closures, permit requirements and other authorizations and restrictions adopted pursuant to authority in the Code of Federal Regulations (CFR) applicable to areas administered by the National Park Service (NPS). On January 15, the NPS published proposed changes for the 2020 compendium and invited public comment on those proposed changes through February 15. A summary of comments and NPS responses is provided below.

36 CFR 13.50 Electronic Bicycles

1. Comment: A commenter suggested the definition of an e-bike be modified. The commenter noted that the proposed definition of an e-bike includes cycles with either two or three wheels. The commenter noted that a “bicycle” by definition is limited to two wheels. The commenter also stated that three wheeled devices are more likely to damage vegetation along single-track trails since the wheel base may be wider than the trail.

1. NPS Response: The definition of “low speed electric bicycle” in the Consumer Product Safety Act includes devices with two or three wheels. 15 U.S.C. 2085. The NPS also includes three-wheeled cycles within its definition of “e-bike” so that these devices are not categorically excluded from areas where they may be appropriate. Based upon existing information, the NPS believes use of three-wheeled vehicles on single track trails will be infrequent and not likely to damage vegetation. The Superintendent retains the authority to restrict these devices in certain locations to protect resources or for other reasons.

2. Comment: A commenter stated that allowing e-bikes and e-trikes on trails open to traditional bicyclists would cause conflicts with other users and consequently should only be allowed on roads and parking areas.

2. NPS Response: The NPS has evaluated the roads, parking areas, and trails where traditional bicycles are authorized and, based on existing information, does not believe user conflicts are likely with the addition of e-bikes in those locations. The Superintendent retains the authority to close areas to e-bikes to prevent user conflict or for other reasons.

3. Comment: Some commenters stated the provision proposing to allow e-bikes is inconsistent with nationally applicable NPS regulations because they do not meet the regulatory definition of “bicycle” in 36 CFR 1.4.

3. NPS Response: The NPS agrees that e-bikes do not meet the definition of bicycle in NPS regulations because e-bikes are not “solely human powered”. This means they are not specifically regulated by 36 CFR and therefore may be managed under the Superintendent’s authority in 36 CFR 1.5(a)(2) to “designate areas for a specific use or activity, or impose conditions or restrictions on a use or activity”.

4. Comment: One commenter said that the e-bike proposal was overly restrictive in limiting e-bikes to roads, parking areas, and trails in Alaska NPS units.

4. *NPS Response:* NPS regulations at 36 CFR 4.30 limit traditional bicycles to public roads, parking areas and designated administrative roads and trails. Under Federal law applicable to Alaska, “nonmotorized surface transportation for traditional activities . . . and for travel to and from villages and homesites” is allowed notwithstanding any other provision of law. 16 USC 3170(a). Because e-bikes have a motor, they do not fall under this provision. The NPS policy memorandum recognizes the Superintendent’s authority to manage e-bikes differently than traditional bicycles based on considerations involving public health and safety, natural and cultural resource protection, and other management activities and objectives. The decision of the NPS to limit e-bikes to roads, parking areas and trails that are open to traditional bikes (unless noted in this compendium) will ensure the NPS manages e-bikes in Alaska the way it manages e-bikes outside of Alaska. This helps achieve a consistent management framework for use of e-bikes within the National Park System. In addition, the NPS has no data on the level of bicycle use on more 20 million acres that are not in designated wilderness. Given the lack of information, NPS is not able to assess the potential impacts to park resources and associated management challenges that could occur from allowing e-bikes in those vast areas. Consequently, NPS has determined that e-bike use in Alaska NPS units will be allowed only on roads, parking areas, and trails that are open to traditional bicycles.

5. *Comment:* One commenter stated that prohibiting e-bikes on trails in designated wilderness would also close sport and subsistence hunting opportunities.

5. *NPS Response:* Because of the 1964 Wilderness Act prohibition on “motor vehicles, motorized equipment . . . [or] other form of mechanical transport,” NPS does not have authority to allow e-bikes in designated wilderness. Nothing in ANILCA modifies this prohibition with respect to e-bikes. NPS notes that e-bikes are a new and emerging form of technology. Accordingly, such devices have not been traditionally used by sport or subsistence hunters. This action does not establish any closures or restrictions on sport or subsistence hunting. These activities may continue to occur on NPS lands in the same manner as before.

6. *Comment:* One commenter stated the procedures for closing areas to e-bikes should be those in 43 CFR Part 36, which implements access under ANILCA (16 USC 3170 and off-road vehicles).

6. *NPS Response:* Department of the Interior regulations at 43 CFR 36.11 implement the special access provisions in ANILCA discussed above. They also address off-road vehicle (ORV) use. E-bikes are motorized and therefore do not fall under the special access provisions implemented by section 36.11. Neither are they ORVs. For this reason, the closure procedures at 43 CFR 36.11 do not apply.

36 CFR 2.10(a) Bear resistant electric fencing required for camping

Comment: One comment was received opposing the proposal to require electric fences along the coast for several reasons, including being costly, difficulty for people to set fences up properly, and being contrary to ANILCA section 203 which prohibits charging fees for entrance or admission. The NPS received one comment contending the bear fencing requirement is the equivalent of an admission fee contrary to sec. 203 of ANILCA. The commenter additionally suggested the electric fence requirement would impose a disparate

socioeconomic impact, as people without the means to purchase a fence would be unable to visit the park. The commenter also argues the scientific literature recommends against the use of electric fences for bear protection due to difficulties in setting them up. The commenter suggested that in place of a requirement for all overnight visitors to use an electric fence, the NPS educate visitors on the benefits of voluntary fence use. The commenter also suggested the requirement be limited to certain commercial groups rather than all visitors.

NPS Response: The fence requirement is not an admission or entry fee. As such, it is consistent with ANILCA section 203. The change will only apply for the activity of camping and within ½ mile of the Cook Inlet coastline in the park, an area characterized by high densities of brown bears and terrain and vegetation make it especially challenging to mitigate risks of adverse encounters with bears. Furthermore, upon reviewing the comment it was determined that the opportunity existed to make the requirement seasonal from May 1 to November 1, rather than year-round. Given the limited area the requirement will apply and the nature of the concerns, NPS has determined the benefits of requiring a fence outweigh the cons. Given that the concerns exist for all user groups, NPS declines to limit the requirement to commercial groups.

36 CFR 2.14(a)(9)(b) Sanitation: disposal, carrying of human body waste

Comment: The NPS received one comment regarding the proposed sanitation disposal restrictions that would apply at the designated historic sites at Kijik and Proenneke’s Cabin, near NPS structures, and within ½ mile of the Cook Inlet coastline of Lake Clark National Park & Preserve. The commenter did not object to this change at specific sites where waste disposal has been an issue. However, the commenter objected to the application of this compendium change to the park’s Cook Inlet Coastline. Specifically, the commenter expressed concerns over impacts from this change to access to adjacent areas.

NPS Response: The NPS has observed improperly disposed human waste in the areas this compendium change would cover. There are numerous commercial products available that cost-effectively and safely address the need of packing out solid human waste.

36 CFR 2.60(a)(3) Livestock use and agriculture

Comment: The NPS received one comment on a proposed change regarding grazing pack animals in the park. The commenter expressed concern that the proposed change conflicts with ANILCA’s authorization for nonmotorized surface transportation, which includes pack animals.

NPS Response: NPS has decided not to proceed with this proposed change for the 2020 season to evaluate this issue further.

The Lake Clark National Park and Preserve compendium is approved and all previous versions are rescinded.

SUSANNE GREEN
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