

LEGISLATIVE GUIDANCE APPLICABLE TO NPS WILDERNESS PRESERVATION AND MANAGEMENT

The Wilderness Act of September 3, 1964, established the National Wilderness Preservation System and identified the National Park Service (NPS) as one of the four federal agencies responsible for the protection and preservation of the nation's wilderness resource. The language within the Wilderness Act clearly shows Congress intended wilderness within units of the National Park System receive special attention in addition to that resulting from other laws and policies affecting national park resources. Wilderness is to be given supplemental and permanent protection beyond that normally afforded other backcountry resources. This requires park managers to know and understand the laws, policies, and procedures that apply to wilderness in addition to those that apply to national park areas in general.

There are several laws, or specific provisions within those laws, that have significant implications to the way the NPS preserves and manages wilderness. NPS employees whose responsibilities include wilderness planning and stewardship should become familiar with the way the NPS interprets those laws or provisions.

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A. The Relationship Between the Wilderness Act and the NPS Organic Act

The 1916 Organic Act of the National Park Service states that the purpose of the national parks is 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). Under this statute, the NPS fostered the steady development of national parks, as early managers responded to the perceived need to promote increased visitation and support for the national park idea. Development has taken the form of roads and trails, visitor centers, employee housing and infrastructure, patrol cabins, communications towers, airstrips and helicopter landing sites, campgrounds, livestock enclosures, and other recreational facilities.

The amount and degree of park development throughout the decades of the 1930's, 1940's and 1950's caused a growing concern in the environmental community, and among many NPS staff, that the NPS was placing too much emphasis on development and not enough on the preservation of pristine lands. This concern led Congress to include the NPS within the scope of the Wilderness Act of 1964 (P. L. 88-577, 16 U.S.C. 1131 et seq.)

While the Wilderness Act of 1964 echoes many of the words of the Organic Act, it provides a degree of protection to the resources of the National Park System that the National Park Service Organic Act does not. The Wilderness Act directs that wilderness, even within national parks, "shall be administered for the use and enjoyment of the American people in such manner as will leave them unimpaired for future use and enjoyment **as wilderness**" [emphasis added].

While the National Park Service Organic Act and the Wilderness Act speak in comparable terms about preserving the integrity of resources, the Wilderness Act prohibits activities in national park wilderness that the Organic Act permits or leaves open to interpretation by park managers. The effect of the Wilderness Act is to unambiguously place an additional layer of protection on wilderness within the National Park System.

NPS Management Policies and Director's Order on wilderness preservation and management reflect the purpose of the Wilderness Act and are intended to establish consistent servicewide direction for the preservation, management, and use of wilderness. Certain requirements, however, may be affected by statutory provisions that apply to individual wildernesses, by rights reserved by former landowners, and in Alaska, by applicable provision of the Alaska National Interest Lands Conservation Act (ANILCA, 16 USC 3101 et seq.)

B. Clarifying Section 4(a)(3) of the Wilderness Act

The Wilderness Act contains language section 4 (a)(3), 16 U.S.C. 1133(a)(3), which states: "*Nothing in this Act shall modify the statutory authority under which units of the national park system are created. Further, the designation of any...unit of the national park system as a wilderness area shall in no manner lower the standards evolved for the use and preservation of such park, monument or other unit of the national park system.*" Some park managers and staff erroneously interpret this statement to imply that units of the National Park System might be exempt from the requirements of the Wilderness Act. The following information is intended to clarify this misunderstanding.

Congress included some sections within the Wilderness Act that are generally applicable only to U.S. Forest Service and Bureau of Land Management wilderness. These sections included the ability to conduct mineral surveys, locate mineral claims, authorize water projects, continue grazing allocations, and provide access to inholdings and mining claims. To avoid the implication that these exceptions were somehow applicable to units of the National Park Service, Congress added the above section 4(a)(3) statement. This language was meant to guard against interpretations that would make these special provisions in the Act applicable to the NPS unless specifically provided by legislation. In a 1967 opinion, the Department of the Interior Solicitor wrote, "it is obvious that Congress could only have intended by the Wilderness Act that wilderness designation of national park system lands should, if anything, result in a higher, rather than a lower, standard of unimpaired preservation."

The intention of the Congress to provide additional protection to NPS wilderness is further emphasized in Section 4(a) of the Wilderness Act, which states: "*The purposes of this Act are hereby declared to be within and supplemental to the purposes for which national forests and units of the national parks and national wildlife refuge system are established and administered.*" Section 4(b) also states that "*...each agency administering any area designated as wilderness shall be responsible for preserving the wilderness character of the area and shall so administer such area for such other purposes for which it may have been established as also to preserve its wilderness character.*"

C. Clarifying Section 4(d)(1) of the Wilderness Act

NPS wilderness managers need to carefully read their individual authorizing legislation to understand Congressional intent with respect to section 4(d)(1), 16 U.S.C. 1133(d)(1) of the Wilderness Act. In most NPS wilderness, Congress purposefully provided the Secretary of the Interior with some of the same authorities as the Secretary of Agriculture to permit the continued operation of certain pre-existing aircraft or motorboat uses to continue, subject to such restrictions as the Secretary might deem desirable. Such pre-existing uses should be addressed by the NPS in wilderness studies as well as in wilderness stewardship planning.

D. Additional Emphasis on Preservation Provided by the Redwoods National Park Expansion Act of March 27, 1978

The protection and preservation of natural resources as the primary purpose of the various areas of the National Park System was emphasized by the Redwoods National Park Expansion Act of 1978 (P.L. 95-250, 92 Stat. 163, as amended, 1978). This Act re-emphasized that park management must be consistent with "the first section of the Act of August 25, 1916," and that management actions "shall not be exercised in derogation of the values and purposes for which these various areas have been established, except as may have been or shall be directly and specifically provided by Congress."

In 1986 the U.S. District Court for the District of Columbia, in the case of the National Rifle Association v. Potter, stated: "In the Organic Act Congress speaks of but a single purpose, namely conservation." The court further stated that "finally, in its 1978 rider to the Redwood National Park Expansion Act, Congress reiterated its intention that the National Park System be administered in furtherance of the 'purpose' (not purposes) of the Organic Act, that being, of course, the conservation of...wildlife resources." Wilderness preservation should be considered among the purest applications of the NPS's responsibilities for protecting 'wildlife,' its habitat, and the conservation of associated resources.

E. Significance of the Eastern Wilderness Areas Act

While the Eastern Wilderness Areas Act (P.L. 93-622, 16 U.S.C. 1131, et. seq.) does reference "certain areas in the National Park System in the eastern half of the United States..." in its stated purpose of expanding the National Wilderness Preservation System, the law contains no specific direction concerning NPS lands and targeted "National Forest areas east of the 100th meridian." Nevertheless, it resolved a long-standing debate concerning how "pure" an area must be before it can be considered for wilderness designation. By including lands that had previously been clearcut or had abandoned roads, Congress implied that wilderness did not have to consist solely of pristine old-growth forests, and that lands previously disturbed could be rehabilitated to meet wilderness standards and qualities.

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