STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES
OFFICE OF PROJECT MANAGEMENT AND PERMITTING
ANILCA IMPLEMENTATION PROGRAM

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Gary Candelaria
Superintendent, Wrangell-St. Elias National Park and Preserve
Post Office Box 439
Copper Center, AK 99573

Dear Mr. Candelaria:

The State of Alaska reviewed the January 2004 National Park Service Environmental Assessment (EA) addressing temporary access to two inholdings along McCarthy Creek in the Wrangell-Saint Elias National Preserve. This letter contains the consolidated views of state resource agencies and addresses the proposed action as described in Alternative C. State management authorities are involved in this action; therefore we request advance consultation if changes to the proposal are considered prior to signature of the Record of Decision.

The technical review is provided, in part, to improve the accuracy of the document and the basis for decision making. While some of our technical comments may not affect the outcome in the Record of Decision, they are nonetheless offered in the event the Affected Environment or analyses content are used in future decision documents.

RS2477 Right of Way Recognition

The State disagrees with the Service characterization on page 8 of the validity of the RS 2477 route from McCarthy to the Marvelous Millsite (RST 135, the McCarthy-Green Butte Trail). The State established the validity of the right-of-way by documenting construction and use before the land was withdrawn from the public domain. State acceptance of the self-executing federal grant contained in RS 2477 for this route is confirmed in Alaska Statute 19.30.400. This state-owned right of access provides the public with the right to travel over the route and includes use by off-road vehicles. It is a valid existing right recognized under the Federal Land Policy and Management Act and the Alaska National Interest Lands Conservation Act. To use heavy equipment, however, a user must apply for a permit from the Alaska Department of Natural Resources (DNR) Division of Mining, Land and Water, and is subject to reasonable stipulations by the Service to protect the underlying land. The description on page 8 should acknowledge that this route was once a well established road with bridges and tunnels, but accessibility was curtailed by periodic flooding and landslides following the active mining period. The EA should also acknowledge this route previously provided access to these patented private lands. Although the use of the road decreased following the closure of the mines, this reduction in use does not invalidate the creation of the right of way under RS 2477.

Alignment

The DNR has not surveyed the original RS 2477 right of way alignment on the ground. Over the years, and even prior to withdrawal from the public domain, parts of the original route fell into disuse and new routes were established, creating a braided trail system in some sections. The Service proposes issuing a temporary permit for travel along a route that, with some exceptions, is the route used and bladed with a bulldozer by the applicants during the fall/winter of 2002-03.

The extent to which the alignment proposed by the Service is within the original 100-foot RS 2477 right of way is unknown; however, segments of the proposed route may lie outside of the original right of way on Service-managed land.

The State determined that the RS 2477 right of way is valid across the University land, which is platted as a 100-foot right of way dedicated to public use. The RS 2477 right of way is also valid across private properties: USS 6081, Big Ben Millsite and Green Butte Millsite. The location of the route is shown on the federal surveys of these parcels. While the right of access exists across these properties, the State requires the applicant to contact the owners about the proposed use of the right of way. Bypasses around these properties would undoubtedly be outside the 100-foot RS 2477 right of way as shown on the federal survey plats.

The Service proposes use of approximately one mile of new routing (the "East Side Alignment") which appears to more closely conform to the original alignment and avoids the "Cutbank Area" previously constructed by the applicants. We appreciate intent to use the original right of way, although identification of the original location is not necessary to grant the temporary access request in this EA. It is more appropriate to address this issue if and when a request for permanent access is received.

Method of Travel/DNR Land Use Permit

Under the preferred alternative, a D-5 or smaller caterpillar would be permitted to tow a trailer laden with freight from McCarthy to the Marvelous Millsite. The blade would be kept up except for 2 short segments where the surface would need to be leveled for safe passage. Travel with this equipment would only be allowed on frozen ground for a total of 18 round trips.

As previously stated, the use of heavy equipment on this RS 2477 right of way requires the applicant to submit a Land Use Permit Application to the Department of Natural Resources, Division of Mining, Land and Water. See 11 AAC 51.100 and 11 AAC 96.010.

Title 41 Fish Habitat Permit

No fish habitat permit under Alaska Statutes Title 41 is required at this time. AS 41.14.870 (Anadromous Fish Act) requires that an individual or governmental agency provide prior notification and obtain approval from the DNR Office of Habitat Management and Permitting "to use wheeled, tracked, or excavating equipment or log-dragging equipment in the bed" of a specified anadromous waterbody, including the placement, excavation, deposition, disposal, or

removal of any material. Since McCarthy Creek is not currently listed in the "Catalog of Waters Important for the Spawning, Rearing, or Migration of Anadromous Fishes," a Fish Habitat Permit Application need not be submitted by the applicants until (and if) McCarthy Creek is added to the Catalog in the 2005 regulatory cycle.

General Fisheries Comments

As illustrated in our page-specific comments below, some of the assumptions regarding the Dolly Varden population require further data collection to support. The presence of large Dolly Varden in other Copper River tributaries is documented; therefore, anadromous Dolly Varden in McCarthy Creek are not unique to the Chitina River drainage. A sample of one large fish does not demonstrate a spawning population of Dolly Varden. Salmonids often stray and pioneer new streams. Determinations of spawning populations require consecutive years of sampling large Dolly Varden spawners in McCarthy Creek. Because populations of dwarf Dolly Varden exist in other systems in the Chitina River drainage, the small Dolly Varden captured during sampling may be part of a resident dwarf population.

The number of stream crossings proposed by the applicants have the potential to cause damage to the McCarthy Creek floodplain. If open water crossings are necessary, we recommend they be at shallow water, gravel substrate sites to protect fish and aquatic invertebrate populations. We also request the Service protect aufeis areas as these indicate upwelling in the gravel and are often potential or existing fish spawning sites. Finally, as the Service further evaluates the Dolly Varden population in McCarthy Creek and critical sites are determined, it may be possible to extend the travel season with minimal impacts on the Dolly Varden populations.

Page-Specific Comments

Page 18, Summary Impacts Table, Impairment of Park Resources, and Page 19, 3.1.2, Ecological Overview.
Statements in the Summary Impacts Table on page 18 conflict with the Ecological Overview (3.1.2) on page 19. The Ecological Overview states: *"The ecosystem patterns of the McCarthy Creek valley are representative of the patterns of the greater Chitina Valley."* Yet under Alternative B, (page 18) the McCarthy Creek Dolly Varden is referred to as a *"unique Dolly Varden population."* If McCarthy Creek is representative of other systems in the Chitina River drainage, there may be other anadromous populations of Dolly Varden in the Chitina drainage.

In fact, the Alaska Department of Fish and Game (ADF&G) has observed and documented resident populations of Dolly Varden in several Chitina River systems. These include the Tebay River drainage (Hanagita and Tebay rivers), Lakina River drainage (Long Lake Creek), and the Kuskulana River drainage (Strelna Creek). Large Dolly Varden (>400 mm; possibly anadromous) have been caught in the Chitina Subdistrict (Copper River mainstem) by personal use and subsistence users, and by sport anglers (sport harvests in excess of 2,000 fish prior to 1991, and over 1,000 since 1991) in the Klutina and Tonsina drainages (Copper River tributaries upstream of the Chitina River drainage). In light of these findings, it is unlikely this is the only anadromous Dolly Varden population in the Chitina River drainage. The Service captured only one large specimen; thus it is possible the Dolly Varden was a stray from another system.

Page 25, Watershed and Aquatic Habitat, 2nd full paragraph.
"These pools provide important overwinter habitat." Since these pools have not been sampled during the winter, it is more appropriate to state: *"These pools **may** provide important overwinter habitat."* (Emphasis added)

Page 26, Aquatic populations, last paragraph.
Though the Service assumes the large Dolly Varden is anadromous because of size, this has not been verified by tagging studies or other means.

Page 27, Aquatic populations, 1st full paragraph.
Based on ADF&G research on Dolly Varden in other parts of the state, it is unlikely that 90 mm specimens are age 0, particularly due to the glacial influence of McCarthy Creek. In a Tiekel River (a glacial Copper River drainage) study, age 1 fish were 80 – 140 mm, age 2 fish were 90 – 180 mm, age 3 were 100 – 190, and age 4 were 150 – 200. Length at ages for the Tiekel River is comparable to sampling results from northwest Alaska. Data in both areas demonstrate that as the fish get older, growth slows, and the most accurate method of determining age is by biological structures, as opposed to length. Since sampling was conducted in October, age 0 fish were likely those 70 mm or less.

Pages 27, Aquatic populations, last paragraph and Page 28, 1st paragraph.
The first of these paragraphs is redundant compared to the second longer paragraph.

Page 28, Aquatic populations, last paragraph.
The lack of nominations in the McCarthy quadrangle based on Dolly Varden populations is not necessarily indicative of scarcity. Generally, nominations for anadromous streams are based on the presence of salmon and/or steelhead. Once nominated, the protection afforded to anadromous streams protects all species in the stream. Dolly Varden are present in many streams in the Upper Copper River drainage. Dolly Varden are not an important subsistence, commercial, or sport fish species; and as a result, limited study has been directed towards this species and few nominations for streams specific to anadromous Dolly Varden have occurred.

Page 29, Aquatic Populations, 1st full paragraph.
Previous mining activity may have exterminated the Dolly Varden population in McCarthy Creek, and the population re-established by pioneering Dolly Varden from another system. Salmonids are known to stray and pioneer new streams. An example is the Gulkana River, in which Dolly Varden are not present and have not been captured during extensive sampling of that system. However, anglers have captured several specimens through the ice on the lower river. ADF&G information shows that Dolly Varden migrate through the Copper River during the winter months when flows are lower and movement between systems is facilitated. The data also indicate that Dolly Varden overwinter in the larger tributaries due to limited overwintering sites in the smaller spawning streams (thus the need for winter sampling to determine winter use of McCarthy Creek).

Page 29, Wildlife, 2nd Paragraph.
The second sentence in the paragraph states: *"Wildlife management in the preserve is a cooperative effort among the National Park Service and the Alaska Department of Fish and Game."* While we support intent to cooperate, we request the EA clarify the distinct management authorities and responsibilities outlined in the Master Memorandum of Understanding (MMOU) between the Service and ADF&G which states: The Service *recognizes the Department as the agency with primary responsibility to manage fish and resident wildlife within the State of Alaska.* In addition, the Service *agrees to manage fish and wildlife habitat on Service lands so as to ensure conservation of fish and wildlife populations and their habitats in their natural diversity.*

Page 31, Wildlife, 9th bullet.
We request the bullet be revised to remove reference to "*habituated to humans.*" Current studies indicate that some forms of wildlife habituation to humans may actually increase awareness of human presence and reduce human-wildlife conflicts. We agree, however, with other statements on the page that wildlife conditioned to human foods is a major cause of bear-human conflicts.

Page 45, Effects to Aquatic Habitat and Fish, 4.3.1.2, 1st paragraph.
"Park management has tended towards increasing protection for fish and fish habitat by eliminating nearly all fish stocking . . .." The implication that the Service is responsible for managing stocking programs is incorrect. Instead, the State is cooperating with the Service's request that all fish stocking be discontinued in lakes on park lands. The remaining three stocked lakes within park boundaries are on state land or inholdings.

Page 46, Direct and Indirect Impacts, last paragraph, 1st sentence.
Sampling during a two-day period (October 8-9, 2003) is not of sufficient duration to conclude that anadromous Dolly Varden, if indeed they are anadromous, are rare in McCarthy Creek. Peak spawning of Dolly Varden may have occurred prior or after the sampling period; and, as a result, few large fish would be available for capture.

Page 48, Conclusion (4.3.2.3), 5th sentence, reference to unique.
As other migrating (anadromous) populations of Dolly Varden occur elsewhere in the Copper River drainage and there are streams with similar characteristics in the Chitina drainage, it is unlikely that the McCarthy Creek population is unique.

Thank you for the opportunity to comment. If you have any questions, please contact me at 907-269-7476.

Sincerely,

Don Perrin
Project Coordinator