



WILDERNESS WATCH

Keeping Wilderness Wild

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September 26, 2023

Denice Swanke, Superintendent
Isle Royale National Park
800 East Lakeshore Drive
Houghton, MI 49931

Dear Superintendent Swanke,

The following comments on Isle Royale Draft EIS and Wilderness Stewardship Plan come from Wilderness Watch, a national wilderness conservation organization focused on the protection and proper stewardship of all units of the National Wilderness Preservation System. Wilderness Watch has also served for the past number of years on the Isle Royale Non-Tribal Section 106 Consultation committee.

Our specific comments follow:

1. Alternative C. Alternative C seems to be the alternative that best protects the Isle Royale Wilderness's wild character. It needs to be strengthened, however, by including the recommendations below.

2. Structures in Wilderness. The 1964 Wilderness Act prohibits buildings, structures, and installations in designated Wilderness. This prohibition includes buildings, structures, and installations that may have historical significance.

Historic structures and buildings in the designated Wilderness portions of Isle Royale should not be maintained or stabilized unless they are necessary for the administration of the area as Wilderness. For the most part, buildings, structures, and installations should be dismantled, allowed to deteriorate in place, or relocated to areas outside of Wilderness where they may be better curated and preserved. These alternatives would best follow the directives of the 1964 Wilderness Act. The Draft EIS and Plan envision removal or moldering for only about a quarter of the structures in designated or potential Wilderness, and that number should be significantly increased.

There are four federal court cases that best define the proper relationship between historic structures and Wilderness:

- a. *Wilderness Watch v. Mainella*, 375 F.3d 1085 (11th Cir. 2004).
- b. *Olympic Park Assocs. v. Mainella*, No. C0-5732FDB, 2005 WL 1871114 (W.D. Wash. Aug 1, 2005).
- c. *High Sierra Hikers Ass'n v. U.S. Forest Serv.*, 436 F.Supp.2d 1117 (E.D. Cal. 2006).
- d. *Wilderness Watch v. Iwamoto*, 853 F.Supp.2d 1063 (W.D. Wash. 2012).

The last case, dealing with the Green Mountain Lookout in the Glacier Peak Wilderness in Washington, provides some key findings on historic structures in Wilderness:

- There is no conflict between the Wilderness Act and the NHPA: “The court...agrees that the NHPA does not compel particular preservation-oriented outcomes. Accordingly, the Court rejects the notion that the Forest Service had any affirmative obligation to preserve the Green Mountain lookout pursuant to...NHPA that must be balanced against its obligations under the Wilderness Act. In fact, there is no conflict between the Wilderness Act and the NHPA here since neither action nor inaction toward the Green Mountain lookout would have placed the Forest Service in violation of the NHPA, for the very reason that the NHPA itself does not compel any particular outcome....”

- The Wilderness Act’s more restrictive provisions control over the more general provisions of other statutes like the NHPA: “Furthermore, the Wilderness Act specifically establishes the preeminence of its requirements over other laws that may affect wilderness areas,” and “the [agency’s] principal responsibility is to the preservation of the wilderness, as wilderness.”

- Human structures degrade wilderness character: “The Court is satisfied that encountering such a structure in the wilderness area has harmed the interests of Plaintiff’s members and is harmful generally to the interests of those seeking to experience the primeval character, solitude, and natural conditions associated with wilderness.”

- The Wilderness Act prohibits structure rehabilitation and reconstruction absent its narrow exception: “[T]he Wilderness Act set out prohibitions on structures or installations and the use of motorized equipment and landing of aircraft. These prohibitions may be bypassed only ‘as necessary to meet minimum requirements for the administration of the area.’”

- The agency must consider and adopt measures that will meet historic preservation requirements while not offending the Wilderness Act: “Clearly, there are less extreme measures that could have been adopted, such as relocation of the lookout outside of the wilderness area, which would have had less impact on the ‘wilderness character’ of the area but still furthered the goal of historical preservation.” As another example, “in 2005, the Forest Service chose to allow a lookout in the Norse Creek Wilderness to deteriorate but sought to preserve its historic value by setting up an exhibit at a popular non-wilderness trailhead that accesses the wilderness area.”

3. Potential Wilderness. Wilderness Watch supports the conversion of as many as possible of the remaining 93 acres of Potential Wilderness to designated Wilderness, but only if the National Park Service plans to manage those acres as Wilderness.

The National Park Service should not re-classify any of the Potential Wilderness areas as designated Wilderness if the agency plans to maintain any structures within them that are not necessary for the administration of the Isle Royale Wilderness as Wilderness. Doing so would violate the 1964 Wilderness Act.

Congress provided clear direction to the National Park Service on this point. Congress designated 231 acres of Potential Wilderness in 1976, in the same law that designated most of Isle Royale as Wilderness. Regarding Potential Wilderness at Isle Royale, the 1976 designation law stated:

SEC. 3. All lands which represent potential wilderness additions, upon publication in the Federal Register of a notice by the Secretary of the Interior that all uses thereon prohibited by the Wilderness Act have ceased, shall thereby be designated wilderness.

P.L. 94-567

Congress provided further direction in its House Report:

“There are approximately 20 existing trailside shelters, however, which are included in areas of potential wilderness addition, and these areas shall become wilderness when the shelters are no longer needed. Other potential wilderness additions bearing more substantial development or retention of private rights will likewise convert to wilderness status when the non-conforming uses or rights are terminated.”

H. Rpt. 94-1427

Furthermore, House Report 94-1427 referred to the House Report from the previous Congress that dealt solely with Isle Royale. Regarding Potential Wilderness, that report wrote:

Potential Wilderness Addition

A number of areas which essentially possess wilderness character, yet retain some small facility or activity which is non-conforming and conflicting with immediate designation as wilderness, are classified as Potential Wilderness Additions. It is the intent of this classification that these non-conforming uses are eventually phased out and eliminated, the areas will become designated wilderness upon the Secretary's so certifying by publication of notice to that effect in the Federal Register.

In some instances where the non-conforming use is a public trail shelter, no acreage is provided, but as these shelters are eliminated, the area upon which they stand will likewise become wilderness by the same certification by the Secretary. It was the Committee's intention that, while no new construction could be undertaken at these locations, and these facilities would eventually be eliminated, the National Park Service would be granted the option of maintaining the existing shelters in these locations for some time into the future, as visitor needs may so dictate.”

H. Rpt. 93-1636

It is clear that Congress directed that both physical structures as well as retention of private rights (such as life leases) need to end before an area of Potential Wilderness can be converted to designated Wilderness.

4. Fire – Wilderness Watch supports allowing naturally-ignited fire to play its ecological role in the Isle Royale Wilderness as much as possible. We also oppose the use of prescribed fire, since that represents a trammeling action and an imposition of human desires on the wilderness landscape.

We also support the eventual elimination of the existing fire towers in Wilderness. We understand that the existing fire towers, such as Mount Ojibway and Ishpeming Fire Towers, are used now for communication uses. But with ever-improving communication technology, it may soon not be necessary to retain these towers within the Isle Royale Wilderness for communications purposes. We encourage the National Park Service to continue to explore new communications technologies so that these towers can be removed from Wilderness.

5. Wildlife. While the Isle Royale Wilderness is well-noted for its populations of wolves and moose, it seems that other wildlife species get short shrift. The Wilderness Stewardship Plan must address the entire range of wildlife issues in the Isle Royale Wilderness. What is the status of other wildlife species in the Isle Royale Wilderness? What are the human recreational impacts on wildlife? What role do human activities play in the poor loon nest success rates? What are the impacts of human visitors on wolves? What are the impacts of the researchers and volunteers on secure habitats needed by wolves and other wildlife? What are the impacts on wolves, moose, or other wildlife by repeated contacts by researchers? All these and other questions should be addressed.

6. Visitor Management. We support group size limits for the Isle Royale Wilderness in order to protect solitude and the wild character of the area. It appears that that maximum group size limit is 10. The Boundary Waters Canoe Area Wilderness in Minnesota maintains a maximum group size of 9, and we suggest that Isle Royale adopt that as well for the Isle Royale Wilderness. We think that the proposed maximum day use group size of 20 for Hidden Lake, Lookout Louise, McCargoe Cove, and the Minong Mine is way too high, and should be reduced. We support the wilderness permit system as well.

7. Eliminate Commercial Use. Wilderness Watch supports the ending of commercial uses in the Isle Royale Wilderness. The 1964 Wilderness Act prohibits such commercial use within designated Wilderness, with only a very narrow exception:

Except as specifically provided for in this Act, and subject to private rights, there shall be no commercial enterprise and no permanent road within any wilderness area designated by this Act...

Wilderness Act, sec. 4(c)

The narrow exception to that prohibition states:

Commercial services may be performed within the wilderness areas designated by this Act to the extent necessary for activities which are proper for realizing the recreational or other wilderness purposes of the areas.

Wilderness Act, sec. 4(d)(5)

This is an extremely narrow exception to the prohibition on commercial services, and nearly all commercial services cannot meet this exception. The EIS and Plan should analyze all commercial services conducted within the Isle Royale Wilderness and justify any proposed exceptions to the prohibition on commercial services.

8. Winter Use. The Draft EIS and Plan suggest the possibility of opening Isle Royale in the winter. We oppose that move. The Wilderness and its wildlife need a respite from the relatively heavy human presence on Isle Royale during the spring, summer, and fall. Please keep Isle Royale closed in the winter.

Please keep Wilderness Watch informed of next steps in this process.

Sincerely,

A handwritten signature in cursive script that reads "Kevin Proescholdt".

Kevin Proescholdt
Conservation Director