



WILDERNESS WATCH

Keeping Wilderness Wild

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District 10 Regional Forester
USDA Forest Service
c/o Jennifer Berger
P.O. Box 21628
Juneau, AK 99802-1628

March 8, 2024

RE: FSH Amendments relating to permit terms and conditions for “ANILCA Cabins”

Dear Regional Forester:

Wilderness Watch (WW) is providing these comments on the proposed changes to the Forest Service Handbook as it applies to the so-called “ANILCA cabins” on national forests in Alaska. Wilderness Watch is an organization whose focus is the proper stewardship of the lands and waters within the National Wilderness Preservation System. Our work defending Wilderness is nationwide. We request that the USFS notify us with any actions or decisions made under this policy proposal. Please mail a copy of notice to our address in the letterhead and email notice to kbilodeau@wildernesswatch.org and gnickas@wildernesswatch.org.

Wilderness Watch has repeatedly asked USFS Region 10 for notification on actions that could impact Wilderness. We are frustrated that the USFS has once again neglected to do so. We were not aware of this comment period until yesterday. We were notified of this proposal by a member of the public, who resides in Alaska and who *also* wasn't aware of this comment period until yesterday. This suggests your policy proposal could have been better advertised. This has impacted our comments, and has likely impacted the public's ability to comment as well. For this reason, if the USFS desires to proceed with this policy change, we request an extension, with better notice, so both our organization and the public has time to review. Alternatively, if the USFS desires to proceed, the agency might hold another comment period under the National Environmental Policy Act with more specificity on the explicit language to be added to the Forest Service Handbook (FSH).

Wilderness Watch opposes the US Forest Service's (USFS's) proposed policy change because it appears to exceed the authority Congress has delegated to the USFS via the Alaska National Interest Lands Conservation Act (ANILCA). The way in which the USFS has proposed to change ANILCA-cabin permits substantially departs from the existing program, and the USFS

has not adequately explained or justified this reversal. Additionally, the policy impacts Wilderness, so the USFS should review this under the National Environmental Policy Act.

The proposal to change the special-use permits for ANILCA cabins appears to violate ANILCA. An agency cannot violate a statute, and an agency also cannot exceed the authority that Congress delegated to it by statute. This proposal to change permitting for privately owned cabins appears to do both.

Section 1303 (Pub. L. 96-487) of ANILCA's administrative provisions apply to cabins on federal lands generally. ANILCA provided that, generally, the Secretary could renew leases or permits for cabins if those leases or permits already existed when ANILCA was passed on December 2, 1980. 16 U.S.C. §3193(d). For the category of cabins that were not operating under a valid lease or permit as of December 2, 1980, ANILCA provided for the USFS to issue a special kind of permit, a 1303(b) permit. 16 U.S.C. §3193(b). The USFS could issue these permits to previously unpermitted cabins only under certain conditions: the permit applicant could demonstrate possessory interest or right of occupancy, submit a sketch of existing cabin or structure and a map showing its geographic location, agree to vacate the cabin or structure "upon nonrenewal or revocation of the permit," and acknowledge in the application that the applicant had no interest in the real property upon which the cabin was located. 16 U.S.C. §3193(b)(2). ANILCA provides that these permits are renewable every five years, but is explicit they are non-transferable. *Id.* While the Secretary could elect to end permits earlier, the longest ANILCA ever intended for these section (b) permits were for the life of the original claimant, ending with "the death of the last immediate family member of the claimant residing in the cabin or structure." *Id.* at §3193(c). ANILCA never meant this permit system to exist in perpetuity, nor did it allow transferring the permit to a new owner, which the new policy appears to do.

The current USFS policy complies with ANILCA. As the USFS stated in its 1987 "Dear Alaskan" letter, which created the policy for section 1303(b) cabins, "ANILCA allows for the issuance of permits for certain cabins built before December 2, 1980, that is currently not under permit...Permits are renewable 5-year permits, nontransferable and valid only until the death of the last immediate member of the claimant family residing in the cabin on December 2, 1980, or unless revoked earlier due to a demonstrated detriment to the public interest and use of the area." The letter (and current policy) specified that "Qualifying applicants may apply for one cabin permit. Applicants are limited to one per family." FSH 2709.11 Chapter 40, Exhibit 2.

The origin of the special-use permit matters, and the proposed policy is very vague on this. The Policy Revision Crosswalk posted with these materials seem to conflate cabins with existing permits on the date ANILCA passed (§1303(d)) with cabins that did not have permits on the date ANILCA passed (§1303(b)). If the USFS generated the special use permit from 16 U.S.C. §3193(b) because there wasn't a permit in existence before December 2, 1980, then the proposed policy seems unlawful. Congress's intent through ANILCA, as executed by the current USFS policy, was to limit occupancy up to one generation after the original claimant, within the same family. The USFS hasn't proposed explicit language to supersede the current policy language. Based on the vague description of the policy change and reference removing the "Dear Alaskan" letter from the FSH, however, it appears the agency plans to expand section 1303(b) permits (16 U.S.C. §3193(b)) so a permit may be transferred and survive in perpetuity. Expanding permits in

this manner would violate ANILCA because the law only provided for nontransferable permits with an explicit provision on when each permit would terminate. ANILCA only gave the USFS authority this limited ability for permits under this section, expanding those limitations would exceed that authority.

The current policy still may be unlawful for ANILCA cabins that had special-use permits before December 2, 1980 (the section 1303(d) permit, codified under 16 U.S.C. §3193(d)). The USFS's current policy has limited the transfers for 1303(d) cabins, and ANILCA still requires that leases do not significantly impair the purposes for which the conservation area was established. By removing these restrictions, the proposed policy could expand the permit system. For both 1303(b) and 1303(d) cabins, the USFS has not offered an adequate explanation or justification for this substantial change in policy.

Finally, extending the permit system for ANILCA cabins should have undergone some kind of NEPA analysis. The limited information that USFS provided suggests allowing cabins to exist where they were previously expected to be phased out, which will increase their footprint. The agency must at least review current impacts and consider potential impacts of this proposal through scoping and a NEPA review.

It's not clear to us why the Forest Service is proposing these changes to the FSH. There is scant information provided to explain the rationale, except that the current permittees want it. It's not unusual for permittees—ranchers, miners, cabin owners—to want conditions more favorable to them, but that isn't sufficient reason for changes to be granted. How do these changes benefit the public's interest in the national forest or Wilderness? The answer isn't found in the information provided.

In summary, we urge you to not adopt these ANILCA-cabin policy changes until the concerns we've raised are adequately addressed. As is, we believe the proposal may violate both ANILCA and NEPA.

Sincerely,

/s/Katie Bilodeau

Katie Bilodeau

Legislative Director and Policy Analyst