

Traditional Activities and ANILCA Special Access for Snowmachines

BACKGROUND -- Snowmobile use in, and near, the former Mount McKinley National Park (Old Park) area of Denali National Park and Preserve has been increasing since the early 1990s. This increased use has occurred simultaneously with an increase in snowmobile sales and use throughout Alaska. In addition, the character and pattern of use has also changed. Snowmobile manufacturers are producing more reliable, higher performance vehicles that can access steep terrain and travel greater distances. As a result, snowmobiling has changed from a utilitarian form of access for the traditional activities discussed in ANILCA, such as hunting, to a new and popular recreational activity in and of itself.

National Park Service (NPS) regulations closed the Old Park to snowmobile use prior to ANILCA (1970 – 1980). After ANILCA, the Old Park was closed by Superintendent's Order (compendium). However, in response to criticism that the compendium closure was not legally sufficient, NPS gave public notice, held public hearings and published a Statement of Finding on February 3, 1999, to comply with the requirements of ANILCA section 1110(a) and 43 CFR § 36.11(h). In the Statement of Finding, NPS determined that snowmobile use for traditional activities would be detrimental to the resource values of the two million acre Old Park portion of Denali National Park and Preserve. NPS also determined that it was necessary and appropriate to close most of that area to the use of snowmobiles for traditional activities. The closure does not affect the four million acre park additions and preserve area of Denali.

LAWS & REGULATIONS -- ANILCA section 1110(a) (and 43 CFR § 36.11) govern the use of snowmachines (snowmobiles) on public lands in Alaska for **traditional activities** and for travel to and from villages and homesites. Snowmobile use **for these purposes** is permitted (during periods of adequate snow cover), subject to reasonable regulations to protect the natural and other values of the unit or area. The legislative history of ANILCA includes four examples of traditional activities: **subsistence and sport hunting, fishing, and berry picking**. To be considered a traditional activity the activity must have generally occurred before the area's designation.

In 1986, the Department of the Interior promulgated 43 CFR § 36.11 to implement section 1110(a). Responding to comments suggesting that “traditional activities” should be defined, the Department stated:

Because these regulations apply to a number of areas under the administrative jurisdiction of three agencies, it has been decided that it would be unwise, and perhaps impossible to develop a definition that would be appropriate for all areas under all circumstances. Exactly what “traditional activities” are must be decided on a case-by-case basis. Once the agencies have had the opportunity to review this question for each area under their administration, it may be possible to specifically define “traditional activities” for each area.

NEW DENALI REGULATIONS – NPS proposes the following **comprehensive definition** for “traditional activity” for Denali NP & P **only**. However, since the term is used in the statute for all conservation system units, DOI solicitors have expressed concern that this proposed definition could be viewed as a template for other areas and agencies

Traditional activity – An activity that generally occurred in a unit or a geographically defined area of a unit, prior to designation of the unit, which was typically associated with that region as an integral part of a utilitarian Alaska lifestyle or cultural pattern (i.e., an inherited or established way of living, preserved or evolved from the past, and handed down through successive generations by word of mouth, practice, or example).

The definition is deliberately general. This allows Denali to choose which particular activities are considered to be traditional activities in a sub-unit like the Old Park portion of Denali. **Therefore, any other agency would be free to evaluate and choose what particular activities they consider to be traditional activities for a unit or area.**

THE OLD PARK IS UNIQUE -- The Old Park has historically been "off-limits" to such traditional Alaska activities as sport and subsistence hunting. Other subsistence activities have never been authorized; no winter fishing or berry picking has taken place, nor has travel to and from villages or homesites. Therefore, NPS believes that no discernible traditional activities supported by snowmobiles have occurred in the Old Park before its designation. NPS believes that because the Old Park was established 83 years ago, in combination with its legislative history and the evolution of its management policies, it is different than its ANILCA additions and other conservation system units (except perhaps “old” Glacier Bay and Katmai). For the Old Park, NPS believes it is necessary to closely adhere to the examples of traditional activities provided by Congress in the legislative history of ANILCA.