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Route To:

Subject: *An Analysis of Motorized Surface Transportation Access to NFS Lands For Subsistence and Other Purposes*

To: *Forest Plan Revision ID Team*

*Motorized access on the Chugach National Forest is a key issue in the Forest Plan Revision. During our collaborative process the public have raised several questions about the use of motorized equipment on National Forest System (NFS) lands. The Alaska National Interest Lands Conservation Act (ANILCA) has been cited as allowing motorized access for conducting traditional activities. Five primary questions have arisen during the revision process regarding motorized surface transportation. The first is whether our prescriptions can restrict motorized surface transportation used for the purposes of providing access for the taking of subsistence resources. The second is whether the use of motorized access into Conservation System Units (CSU's) is guaranteed for all prescriptions. The third, is can motorized access to mining claims, private in-holdings, and adjacent lands be restricted. The fourth is whether temporary motorized access for aquaculture purposes in Wilderness and Wilderness Study Areas be guaranteed and finally, is motorized access for the purposes of establishing temporary campsites for the taking of fish and wildlife contained within ANILCA?*

*This issue of motorized access is a key public value and is being addressed in our management prescriptions. As you know, the management prescriptions were developed through active involvement with people representing a range of interests from having all roadless areas accessible only by non-motorized means to having all areas accessible to some form of motorized access. Several groups have questioned whether all the management prescriptions developed meet the intent of ANILCA for motorized access for conducting traditional activities.*

*This memo outlines the sections of Alaska National Interests Lands Conservation Act (ANILCA) that pertain to access on NFS lands, regional policy regarding that access, and provides you with planning guidance regarding how to address motorized surface transportation access in the plan revision.*

*How the current management prescriptions address motorized access activities in relation to these five questions is explained below and is summarized in Table 1 on page 8.*

*There are five major sections of ANILCA that address motorized access questions on Federal Public lands. These are the sections where the issues have arisen whether the draft prescriptions are consistent with the intent of ANILCA. The sections or issues dealing with motorized surface transportation access can be summarized as:*

1. *Motorized access for subsistence purposes (Section 811);*



2. *Motorized access in support of traditional activities within CSU's*<sup>1</sup> [Section 1110 (a)];
3. *Motorized access to in-holdings, adjacent private land, and motorized access to mining claims within CSU's* [Section 1110 (b)] *and motorized access to in-holdings and adjacent private and other non-federally owned land* [Sections 1323 (a) and (b)];
4. *Motorized access for fish enhancement in Wilderness and Wilderness Study Areas* [Section 1315 (b)];
5. *Motorized equipment in support of temporary campsites and facilities for the taking of fish and wildlife* [Sections 1316 (a)].

### **Issue 1**

*Title VIII, Section 811 of Alaska National Interest Lands Conservation Act (ANILCA) is the section of ANILCA that directs the obligation for protecting the means of motorized access to National Forest lands traditionally employed for subsistence purposes. Title VIII, Section 811 of ANILCA states:*

*"SEC 811. (a) The Secretary shall ensure that rural residents engaged in subsistence uses shall have reasonable access to subsistence resources on the public lands.*

*(b) Notwithstanding any other provision of this Act or other law the Secretary shall permit on the public lands appropriate use for subsistence purposes of snowmobiles, motorboats, and other means of surface transportation traditionally employed for such purposes by local residents, subject to reasonable regulation."*

*This section guarantees rural residents' reasonable access, including motorized means of surface transportation, to all public lands on the Chugach National Forest for subsistence. Note that the guarantee is for rural residents, and does not apply to non-rural residents. During alternative development, the Interdisciplinary Team (IDT) is directed to examine whether reasonable motorized access for traditional subsistence purposes is being restricted. The IDT will need to involve local rural residents to minimize the potential restriction to resources in all alternatives, as well as, later during the formal ANILCA 810 evaluation process.*

*It is possible to administratively close some areas to motorized use, but alternatives will have to meet some rigorous criteria. The closure would have to be related to the appropriate use requirement in Sec. 811. (b). For example, an area may have great importance for quiet resources and it might not be used for subsistence purposes, so to protect quiet resources it may be appropriate to propose a restriction on motorized transportation methods in the area. Another example is that if subsistence users hunt in the area, and if motorized transportation*

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<sup>1</sup> SEC. 102. As used in this Act (except that in titles IX and XIV the following terms shall have the same meaning as they have in the Alaska Native Claims Settlement Act, and the Alaska Statehood Act) -

(4) The term "conservation system unit" means any unit in Alaska of the National Park System, National Wildlife Refuge System, National Wild and Scenic Rivers Systems, National Trails System, National Wilderness Preservation System, or a National Forest Monument including existing units, units established, designated, or expanded by or under the provisions of this Act, additions to such units, and any such unit established, designated, or expanded hereafter.

*is a normal method to access the area, then it may not be reasonable to restrict the means of traditional access to the area.*

*To respond to a full range of interests expressed by the public, restrictions to access (currently through allocating some management units to the Primitive or Natural Processes prescription) might be proposed in one or more alternatives. This must be done in light of the 'reasonable regulation' referred to in Sec. 811. (b)., which states that "the Secretary shall permit on the public lands appropriate use for subsistence purposes of snowmobiles, motorboats, and other means of surface transportation traditionally employed for such purposes by local residents, subject to reasonable regulation." After the alternatives are constructed a determination will need to be made to whether there would be a restriction in subsistence uses or on the means of surface transportation traditionally used for subsistence purposes. What this section primarily requires is that an analysis will be completed that addresses the following subsistence use and needs related issues. That is, will there be as reduction or restriction in subsistence uses due to the following:*

- *Changes in the availability of fish and wildlife resources caused by alteration of wildlife use patterns, such as alteration of migration routes;*
- *Changes in subsistence use due to less subsistence resources available to subsistence users due to adverse impacts on habitat;*
- *Increased competition for available resources due to increased access and subsequent competition from non subsistence hunters*
- *Reduction in the access to the resource; including restriction in the forms of access; and a*
- *Reduction due to long-term cumulative impacts to the habitat.*

*If there is a reduction then we will need to determine whether there are other lands available for meeting the needs of the non-motorized interests that are not important to subsistence uses, consider other alternatives that do not restrict subsistence uses, and consider all other methods to meet the needs of non-motorized interests?*

*If it is determined through a formal finding that a significant restriction to subsistence uses exists then: (1) determine whether the significant restriction of subsistence uses is necessary and consistent with sound management principles for the utilization of the public lands on the Chugach; (2) does the proposed restriction on motorized subsistence access involve the minimal amount of public lands necessary to meet the interest of having a reasonable amount of areas free of motorized transportation; and (3) have reasonable steps been proposed to minimize or mitigate adverse impacts upon subsistence uses and resources resulting from such alternatives.*

*If the above steps are followed and still a significant possibility of a significant restriction to subsistence uses could occur from implementation of the proposed action, then the Section 810 Subsistence and Land Use Decisions process needs to be completed. This will determine whether reasonable restriction on motorized use would significantly restrict subsistence uses, either in the taking or in means of access to the resources. If so, we would need to notify the appropriate state and federal agencies and subsistence related committees and hold a hearing(s). We also will have to determine that the decision to restrict subsistence uses is*

*necessary to meet sound land management objectives, occupies the minimum amount of land needed, and we have included all possible mitigation measures needed to minimize impacts to subsistence users. This process is detailed within Title VIII, Section 810. (a) through (e):*

*"SEC. 810. (a) In determining whether to withdraw, reserve, lease, or otherwise permit the use, occupancy, or disposition of public lands under any provision of law authorizing such actions, the head of the Federal agency having primary jurisdiction over such lands or his designee shall evaluate the effect of such use, occupancy, or disposition on subsistence uses and needs, the availability of other lands for the purposes sought to be achieved, and other alternatives which would reduce or eliminate the use, occupancy, or disposition of public lands needed for subsistence purposes. No such withdrawal, reservation, lease, permit, or other use, occupancy or disposition of such lands which would significantly restrict subsistence uses shall be effected until the head of such Federal agency -*

*(1) gives notice to the appropriate State agency and the appropriate local committees and regional councils established pursuant to section 805;*

*(2) gives notice of, and holds, a hearing in the vicinity of the area involved; and*

*(3) determines that (A) such a significant restriction of subsistence uses is necessary, consistent with sound management principles for the utilization of the public lands, (B) the proposed activity will involve the minimal amount of public lands necessary to accomplish the purposes of such use, occupancy, or other disposition, and (C) reasonable steps will be taken to minimize adverse impacts upon subsistence uses and resources resulting from such actions.*

*(b) If the Secretary is required to prepare an environmental impact statement pursuant to section 102(2)(C) of the National Environmental Policy Act, he shall provide the notice and hearing and include the findings required by subsection (a) as part of such environmental impact statement.*

*(c) Nothing herein shall be construed to prohibit or impair the ability of the State or any Native Corporation to make land selections and receive land conveyances pursuant to the Alaska Statehood Act or the Alaska Native Claims Settlement Act.*

*(d) After compliance with the procedural requirements of this section and other applicable law, the head of the appropriate Federal agency may manage or dispose of public lands under his primary jurisdiction for any of those uses or purposes authorized by this Act or other law."*

*This Sec. 810 Analysis process will need to be done for both the Draft EIS and Forest Plan and the Final EIS and Forest Plan if a significant possibility of a significant restriction to subsistence use opportunities is determined. Currently, the Draft Primitive, Natural Processes, and Research Natural Areas prescriptions are the only prescriptions that might create such a restriction on motorized access for traditional subsistence access activities. Alternatives that allocate these prescriptions to areas of significant subsistence harvest will require an 810 analysis as outlined above.*

*In summary, the IDT must be very conservative on how subsistence restricting prescriptions that do not maintain reasonable access by traditional methods for subsistence purposes, particularly over broad landscapes, are applied.*

## *Issue 2*

*Excluding Title VIII, other sections of ANILCA specifically deal with traditional motorized activity requirements and guarantees in Conservation System Units. On the Chugach this applies to the Wilderness Study Area, and the Resurrection Pass National Recreation Trail and the Williwaw Nature Trail, or any future recommended or designated Conservation System Unit. ANILCA Title XI specifies that motorized means of surface transportation (snowmobiles, airplanes, and motorboats) for traditional activities shall be permitted in Conservation System Units [Section 1110(a)]. This maintenance of ANILCA motorized access in Conservation System Units will be provided for in all the prescriptions that would create*

*formal CSU's, i.e., Wilderness Study Area, Recommended Wilderness, and the Wild, Recreational, and Scenic River prescriptions. The one geographic area where potential conflict with this sub-section may occur is within the Resurrection Pass National Recreation Trail. Since this area has received extensive public comment, the IDT should consider a range of strategies to meet the varying user groups interests. For this trail, alternatives that restrict access to snowmobile, airplane, or motorboat access, such as ones that contain the Natural Process or Primitive Prescriptions, may require a hearing(s) similar to those previously described under Section 810 process. Also, a determination that the restriction is needed to protect resource values of the area will be required.*

*The statutory requirements for maintaining certain forms of access to Conservation System Units, which on the Chugach includes the Wilderness Study Area and the National Recreation Trail is contained in Section 1110 (a) of ANILCA:*

*"SEC. 1110. (a) Notwithstanding any other provision of this Act or other law, the Secretary shall permit, on conservation system units national recreation areas, and national conservation areas, and those public lands designated as wilderness study, the use of snowmachines (during periods of adequate snow cover, or frozen river conditions in the case of wild and scenic rivers), motorboats, airplanes, and non-motorized surface transportation methods for traditional activities (where such activities are permitted by this Act or other law) and for travel to and from villages and homesites. Such use shall be subject to reasonable regulations by the Secretary to protect the natural and other values of the conservation system units, national recreation areas, and national conservation areas, and shall not be prohibited unless, after notice and hearing in the vicinity of the affected unit or area, the Secretary finds that such use would be detrimental to the resource values of the unit or area. Nothing in this section shall be construed as prohibiting the use of other methods of transportation for such travel and activities on conservation system lands where such use is permitted by this Act or other law."*

### **Issue 3**

*ANILCA access [Sections 1110 (b) and 1323 (a) and (b)] to private lands and non-Federal lands in or adjacent to National Forest lands are to be maintained in all prescriptions. Access to valid mining claims will also maintained within all of the prescriptions that do not propose to withdraw the area from mineral entry. Also, maintenance of access to State and private in-holdings, valid existing claims, and subsurface rights is also dominant.*

*The IDT has already developed a principle statement specifically related to this issue. It states "Access to non-Forest Service lands (inholdings), valid mining claims, lease holdings, etc. will be provided. Access does not automatically mean a road. The method of access shall be consistent with management area direction and emphasis." The IDT has met with all of the major landholders within the Chugach and has obtained their access needs. During alternative development, these access corridors will be very important in allocating prescriptions on the ground. This will be helpful in fulfilling the requirements of Title XI and Title XIII of ANILCA, which states:*

*"SEC. 1110 (b) Notwithstanding any other provisions of this Act or other law, in any case in which State owned or privately owned land, including subsurface rights of such owners underlying public lands, or a valid mining claim or other valid occupancy is within or is effectively surrounded by one or more conservation system units, national recreation areas, national conservation areas, or those public lands designated as wilderness study, the State or private owner or occupier shall be given by the Secretary such rights as may be necessary to assure adequate and feasible access for economic and other purposes to the concerned land by such State or private owner or occupier and their successors in interest. Such*

*rights shall be subject to reasonable regulations issued by the Secretary to protect the natural and other values of such lands.*

*SEC. 1323. (a) Notwithstanding any other provision of law, and subject to such terms and conditions as the Secretary of Agriculture may prescribe, the Secretary shall provide such access to nonfederally owned land within the boundaries of the National Forest System as the Secretary deems adequate to secure to the owner the reasonable use and enjoyment thereof: Provided, That such owner comply with rules and regulations applicable to ingress and egress to or from the National Forest System."*

*(b) Notwithstanding any other provision of law, and subject to such terms and conditions as the Secretary of the Interior may prescribe, the Secretary shall provide such access to nonfederally owned land surrounded by public lands managed by the Secretary under the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701-82) as the Secretary deems adequate to secure to the owner the reasonable use and enjoyment thereof: Provided, That such owner comply with rules and regulations applicable to access across public lands."*

*Regional policy regarding ingress and egress has been developed as a supplement to Forest Service Manual 2730. The supplement states that ingress and egress is guaranteed to provide the owner of in-holdings or adjacent land reasonable use of their land. The access mode should be reasonable for the planned land use, and should be compatible with adjacent Land management so far as possible*

*"Forest Service manual direction FSM 2734.6 states 2734.6 - Statutory Rights of Ingress and Egress. Section 1323 (a) of the Alaska National Interest Lands Conservation Act (FSM 2701.1) authorizes the Secretary of Agriculture to provide, subject to reasonable rules and regulations, such access to non-Federal lands within the boundaries of the National Forest System land as deemed adequate to secure the owner reasonable use and enjoyment of his land. The exercise of a right of reasonable access does not include the right to construct facilities, clear, or perform ground disturbing activities. With an authorization issued under an appropriate authority. Use of existing Government roads or facilities also requires an appropriate authorization. The access to which the landowner is entitled, need not be on the most direct, economical, or convenient route for the landowner. Adequate access may not be road access in all cases, and alternative modes of access may be considered. The appropriate mode or type of access selected should be one that is both reasonable for the planned use of the private land and, insofar as possible, compatible with the land management plans for the National Forest System lands."*

#### **Issue 4**

*Sub-section 1315 (b) of ANILCA provides for temporary motorized means of access. The main thrust allows reasonable motorized access for the purposes of fish management and enhancement activities within Wilderness and Wilderness Study areas. Section 1315 (b) states that:*

*"SEC. 1315 (b) AQUACULTURE. - In accordance with the goal of restoring and maintaining fish production in the State of Alaska to optimum sustained yield levels and in a manner which adequately assures protection, preservation, enhancement, and rehabilitation of the wilderness resource, the Secretary of Agriculture may permit fishery research, management, enhancement, and rehabilitation activities within national forest wilderness and national forest wilderness study areas designated by this Act. Subject to reasonable regulations permanent improvements and facilities such as fishways, fish weirs, fish ladders, fish hatcheries, spawning channels, stream clearance, egg planting, and other accepted means of maintaining, enhancing, and rehabilitating fish stocks may be permitted by the Secretary to achieve this objective. Any fish hatchery, fishpass or other aquaculture facility authorized for any such area shall be constructed, managed, and operated in a manner that minimizes adverse impacts on the wilderness character of the area. Developments for any such activities shall involve those facilities essential to these operations and shall be constructed in such rustic manner as to blend into the natural character of the area. Reasonable access solely for the purposes of this subsection, including temporary use of motorized equipment, shall be permitted in furtherance of research, management,*

*rehabilitation and enhancement activities subject to reasonable regulations as the Secretary deems desirable."*

*This subsection applies only to prescriptions that apply to the Wilderness Study Area or Recommended Wilderness. Within these draft prescriptions motorized access is allowed to conduct fishery research, management, enhancement, and rehabilitation activities for the purposes of maintaining, enhancing, and rehabilitating fish stocks.*

## **Issue 5**

*Finally, Section 1316 of ANILCA speaks to existing uses and future establishment of temporary campsites related to the taking of fish and wildlife. Questions have arisen whether ANILCA authorizes motorized access for the purpose of using existing or future temporary camps for the taking of fish and wildlife on Chugach National Forest lands. All draft Chugach National Forest prescriptions permit the use of these temporary camps. The Chugach has developed Forest-wide standards and guidelines (contained within Chapter 2) which authorize the Special Use permitting (Non-Recreation) for the camps for taking of fish and wildlife on all Chugach National Forest lands. They also establish the minimum standards of construction for these camps to be consistent with the protection of the area. ANILCA Section 1316 (a) states:*

*"SEC. 1316 (a) On all public lands where the taking of fish and wildlife is permitted in accordance with the provisions of this Act or other applicable State and Federal law the Secretary shall permit subject to reasonable regulation to insure compatibility, the continuance of existing uses, and the future establishment, and use, of temporary campsites, tent platforms, shelters, and other temporary facilities and equipment directly and necessarily related to such activities. Such facilities and equipment shall be constructed, used, and maintained in a manner consistent with the protection of the area in which they are located. All new facilities shall be constructed of materials which blend with, and are compatible with, the immediately surrounding landscape. Upon termination of such activities and uses (but not upon regular or seasonal cessation), such structures or facilities shall, upon written request, be removed from the area by the permittee.*

*(b) Notwithstanding the foregoing provisions, the Secretary may determine, after adequate notice, that the establishment and use of such new facilities or equipment would constitute a significant expansion of existing facilities or uses which would be detrimental to the purposes for which the affected conservation system unit was established, including the wilderness character of any wilderness area within such unit, and may thereupon deny such proposed use or establishment."*

*But beyond the permitting of camps, there is a question whether motorized transportation access is necessary for the current existing use or future establishment of this use. Since ANILCA remains silent on motorized access in Section 1316, the Region has not interpreted this to mean motorized access is authorized on all National Forest lands. To reflect the issue of motorized access, you will develop prescriptions and alternatives that may provide a variety of motorized and non-motorized access opportunities for the use and future establishment of temporary camps. Currently, you have developed Primitive, Natural Processes, Backcountry, and Research Natural Areas, Developed Recreation, and Developed Recreation Complex prescriptions that may restrict the use of motorized access for the establishment of temporary camps. It is my interpretation that motorized access in support of temporary camps for the taking of fish and wildlife is not specified in ANILCA subsection 1316, and thus the six prescriptions which restrict motorized access are not inconsistent with ANILCA. Note that*

*this is a different question than motorized access for subsistence purposes, which was discussed under Issue number 1.*

**DAVE R. GIBBONS**  
*Forest Supervisor*

*Attachment*

*Author: res, szemke, 09/13/1999 02:34pm*  
*Concur: plan, cfrey, 09/13/1999 03:09pm*  
*Concur: fs, ascott, 09/13/1999 03:56pm*  
*Concur: fs, dgibbons, 09/15/1999 10:10am*

**Table 1**

<i>Number</i>	<i>Category</i>	<i>Prescription Name</i>	<i>Motorized Access for Subsistence</i>	<i>Traditional Motorized Access in CSU's</i>	<i>Motorized Access to In-holdings</i>	<i>Motorized Access to Mining Claims</i>
111	1	Primitive	O	NA	C	C
121	1	Wilderness Study Area	Y	Y	C	C
131	1	Recommended Wilderness	Y	Y	C	C
132	1	Wild River	C	Y	O	O
141	1	Research Natural Areas	O	Y	O	O
142	1	Natural Processes	O	NA	O	O
211	2	Backcountry	Y	NA	C	C
212	2	Backcountry Motorized	Y	NA	C	C
213	3	ANILCA 501b - 2 Lands (Fish and Wildlife)	Y	NA	Y	Y
221	2	EVOS Acquired Lands	C	NA	C	Y
231	2	Scenic River	Y	Y	Y	Y
241	2	Municipal Watershed	Y	NA	Y	O
242	2	Brown Bear Core Area	C	NA	Y	Y
244	2	Fish and Wildlife Conservation Area	C	NA	Y	Y
312	3	Wildlife, Fish, and Recreation	Y	NA	Y	Y
313	3	Backcountry Groups	Y	NA	C	C
314	3	Forest Restoration	Y	NA	NA	Y
321	3	501 (b) - 3	Y	NA	NA	Y
331	3	Recreational River	Y	Y	Y	Y
341	3	Developed Recreation Complex-Reduced Noise	Y	NA	Y	Y

411	4	Resource Development	Y	NA	Y	Y
441	4	Developed Recreation Complex	Y	NA	Y	Y
521	5	Minerals (Site Specific)	C	NA	Y	Y
542	5	Transportation / Utility Corridor / Communication Sites	C	NA	C	C

*Y = Activity is permitted consistent with the management intent*

*C = Activity is allowed conditioned by specific standards and guidelines found in the management prescription*

*N = Activity is not permitted in the management area*

*O = Needs congressional action to apply*

*NA = Does not apply to the management area*