

Wilderness Watch
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National Park Service
Comment Docket at NPS Planning
Sent via: <http://parkplanning.nps.gov/commentForm.cfm?documentID=38242>

Subject: Draft Directors Order 41 – Wilderness Stewardship

Dear National Park Service Staff,

The following are comments from Wilderness Watch on the draft revision to Director's Order Number 41 – Wilderness Stewardship. Wilderness Watch is a national wilderness conservation organization focused on protecting areas designated as Wilderness within the National Wilderness Preservation System. Our organization has had long involvement with wilderness stewardship issues in the NPS.

Overall Comments

The draft DO claims to simplify and clarify NPS internal guidance. But, in some cases, the draft weakens protections afforded by current NPS guidance (e.g. road corridors), and in others, goes beyond what is legally permissible (e.g. fixed anchors) under the 1964 Wilderness Act. This draft requires more thoughtful review. We believe the NPS should conduct such an in-depth and thoughtful review on the many significant policy changes that the draft DO proposes.

Specific Issues

5.3 -- Recommended Wilderness

Wilderness Watch believes there may be a conflict between Management Policies section 6.2.3 - Recommended Wilderness and the draft DO 5.3. "Recommended wilderness" is that area of a park that has been recommended by the Secretary to the President and transmitted to Congress. The draft DO states that the "The NPS Wilderness Stewardship Division and appropriate park superintendent will track the status of the recommendation as it progresses through the offices of the Assistant Secretary and Secretary." Actually the draft DO seems to be speaking of "proposed wilderness," which is materially different from "recommended Wilderness." "Recommended wilderness," as defined in Management Policies, is that which has been recommended to Congress. At that point, the recommendation has left the Secretary's Office.

5.6 -- Wilderness Boundaries

The draft DO adopts a standard for wilderness boundaries that would overrule the current standard found in RM-41, Appendix G (page 71) on road corridor widths. The current NPS standard prescribes, in the absence of specific congressional guidance for a

wilderness, a corridor width of 30 feet from centerline of a dirt road, and 100 feet from centerline of a paved road. The draft DO drops the 30-foot guidance and applies the 100-foot guidance to all roads – dirt or paved. This is a substantive change and one that weakens the current standard. Wilderness Watch opposes this change.

6.3 -- Wilderness Planning

The draft DO substitutes the term “Wilderness Stewardship Plan” for the term “wilderness management plan” found in Management Policies at 6.3.4.2. Wilderness Watch generally supports the use of the term “stewardship” rather than “management” with regard to Wilderness as better reflective of the role and attitude that the NPS must take with respect to Wilderness in its care. But the Management Policies still use the “management” term, which may cause confusion.

6.5 -- Scientific Activities

The draft DO is far too lax about scientific activities in NPS Wilderness. Some NPS Wildernesses, such as Everglades, are over-run with research projects that are almost always automatically approved, last for years, and can have serious and negative impacts on wilderness character. They are allowed to degrade Wilderness because they are “science.” The DO must contain some guidelines for limiting and even prohibiting scientific activities in Wilderness. Guidelines to add include questions such as: Can this research be conducted outside of NPS Wilderness? Does this research lead to the protection of the area’s wilderness character? What are the impacts of this research on wilderness character? The prime directive of the Wilderness Act is the preservation of wilderness character, not allowing any and all scientific activities to occur in Wilderness. Scientific activities that affect wilderness character in any way are not allowed unless they are the minimum necessary for the preservation of the area as Wilderness.

6.7 -- Fire Management

The addition of the first paragraph to the draft DO on fire management makes clearer that fires from natural ignitions are part of the natural process that are the heart and substance of Wilderness, and not simply another management tool. We support this recognition of fire’s natural role in the NPS Wilderness environment.

Yet human-ignited prescribed fire is an example of the trammeling of Wilderness by humans. The choices of when, where, and how to ignite fire in Wilderness means that humans, not the Wilderness, have imposed their will on the Wilderness landscape. The language of the draft DO allows far too much discretion to NPS managers to trammel the Wilderness in violation of the Wilderness Act. This problem must be addressed and corrected.

6.9 -- Cultural Resources

This section of the draft DO allows the retention of historic structures in NPS Wilderness. Far too often, the NPS allows wilderness character to degrade by maintaining or replacing historic structures in Wilderness. The federal courts have directly ruled on this issue in litigation brought by Wilderness Watch to prevent the NPS from helicoptering in pre-fabricated trail shelters to replace deteriorating historic structures in the Olympic

Wilderness. Currently the NPS wants to helicopter in supplies, power tools, and a generator to re-build the long-abandoned and nonfunctional Heavens Peak Lookout in recommended Wilderness in Glacier National Park. After this significant degradation of wilderness character, the lookout will still be nonfunctional.

The 2006 Management Policies at 6.3.8 state that “the laws pertaining to historic preservation also remain applicable within wilderness but must generally be administered to preserve the area’s wilderness character.” Case law is also clear, the National Historic Preservation Act doesn’t trump the Wilderness Act and, in fact, the Wilderness Act is paramount because the NHPA does not require active preservation of any site. The NPS must learn to professionally document historic structures as required, but then either remove them to locations outside of Wilderness or allow them to weather and deteriorate naturally. The language of the draft DO must be clarified to reflect the restrictions of the 2006 Management Policies, case law in the federal courts, and the Wilderness Act.

6.11 -- Naming of Geographic Features

Wilderness Watch supports the language against the naming of geographic features in NPS Wilderness. The naming of geographic features constitutes a trammeling of Wilderness. The four exceptions to this policy that are listed in 6.11 go too far and should be eliminated.

7.2 -- Climbing

The draft DO encourages clean climbing, but falls short of requiring it. Previously, Director’s Order 41 did not mention that climbers could place fixed or permanent anchors in Wilderness. The draft DO authorizes the “occasional placement” in wilderness “of a fixed anchor...” This language makes the draft DO much weaker than the current DO in this regard. This kind of authorization is well beyond the scope of a Director’s Order.

Use of fixed anchors in wilderness is a subject of intense and long-standing controversy. Wilderness Watch believes that a fixed climbing anchor, permanently installed in wilderness, is inconsistent with the Wilderness Act as a permanent installation and structure prohibited by Section 4(c) of the Wilderness Act. The DO must prohibit park visitors from placing permanent installations or structures in Wilderness in order to comply with the Wilderness Act.

If the DO authorizes fixed anchors in Wilderness, that has implications not just for the Wilderness in the parks but for all four wilderness-managing agencies. The other agencies have wrestled with this difficult question. In 2000, for example, the Secretary of Agriculture appointed a negotiated rule-making team to propose language on this precise issue for Forest Service rulemaking in an issue brought forward by Wilderness Watch. At least the Forest Service realized that this was the stuff of public rulemaking under the Administrative Procedures Act (APA). In contrast, the draft DO would make a momentous interpretation, buried deep in NPS Tier 3 guidance.

This single addition to the DO alone will require that the NPS conduct a full scale Environmental Impact Statement (EIS) on the DO. The fixed anchor decision, buried on

page 12 of the draft, is an agency action affecting the 45 million acres of park Wilderness and establishes precedent throughout the National Wilderness Preservation System.

The DO does not present any rationale whatsoever before making a perfunctory statement indicating that the NPS has decided that fixed anchors do not violate the Act. The NPS cannot simply adopt such a rule without adhering to processes that gives full review to its import and impact. This single addition to the DO will make the DO subject to challenge under the APA as well as NEPA.

7.3 -- Commercial Services

The draft DO allows commercial filming in Wilderness if it is “determined to be necessary and proper for providing educational information about wilderness uses, resources, or values, or necessary for other wilderness purposes.” This is far more lax than the Wilderness Act allows.

The Wilderness Act, Sec. 4 (d) (5) (as amended), prohibits commercial services within Wilderness except “for activities which are proper for realizing the recreational or other wilderness purposes of the areas.” The language in the DO on commercial filming must be tightened up to reflect the very narrow exception for commercial uses found in the Wilderness Act.

Thank you for the opportunity to comment on the draft revision to Director’s Order Number 41. Please keep Wilderness Watch informed of further action on this revision.

Sincerely,

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