

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 13

RIN 1024-AC19

National Park System Units in Alaska

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The National Park Service (NPS) proposes regulations to implement section 1307 of the Alaska National Interest Lands Conservation Act (ANILCA). This action is necessary to establish procedures for administering the statutory rights and preferences established by section 1307 for certain persons to conduct revenue-producing visitor services in certain units of the National Park System located in the State of Alaska. Particularly, this rulemaking will provide guidance in the solicitation, award and renewal of Alaska visitor service authorizations.

DATES: Written comments will be accepted through June 26, 1995.

ADDRESSES: Comments should be addressed to: Regional Director, Alaska Region, National Park Service, 2525 Gambell Street, Room 107, Docket 1307, Anchorage, AK 99503-2892.

FOR FURTHER INFORMATION CONTACT: Chief of Concessions Management, Alaska Region, National Park Service, 2525 Gambell Street, Room 107, Anchorage, Alaska 99503-2892. Phone: (907) 257-2475.

SUPPLEMENTARY INFORMATION:**Background**

ANILCA (16 U.S.C. 3101 *et seq.*) was signed into law on December 2, 1980. Its broad purpose is to provide for the disposition and use of a variety of federally-owned lands in Alaska. Section 1307 of ANILCA (16 U.S.C. 3197) contains two provisions concerning persons and entities who are to be given special rights and preferences with respect to providing "visitor services" in certain lands under the administration of the Secretary of the Interior as part of the National Park System. The term "visitor service" is defined in section 1307 as "any service made available for a fee or charge to persons who visit a conservation system unit, including such services as providing food, accommodations, transportation, tours and guides excepting the guiding of sport hunting and fishing." Subsection (a) of section 1307 states as follows:

Notwithstanding any other provision of law, the Secretary [of the Interior], under such terms and conditions as he determines are reasonable, shall permit any persons who, on or before January 1, 1979, were engaged in adequately providing any type of visitor service [as defined in subsection (c)] within any area established as or added to a conservation system unit to continue providing such type of service and similar types of visitor services within such area if such service or services are consistent with the purposes for which such unit is established or expanded (16 U.S.C. 3197).

Subsection (b) of section 1307 states as follows:

Notwithstanding provisions of law other than those contained in subsection (a), in selecting persons to provide (and in the contracting of) any type of visitor service for any conservation system unit, except sport fishing and hunting guiding activities, the Secretary [of the Interior]—

(1) shall give preference to the Native corporation which the Secretary determines is most directly affected by the establishment or expansion of such unit by or under the provisions of this Act;

(2) shall give preference to persons whom he determines, by rule, are local residents * * * (16 U.S.C. 3197).

Subsection (b) also provides to Cook Inlet Region, Incorporated (CIRI), in cooperation with village corporations within the Cook Inlet Region when appropriate, the right of first refusal to provide new visitor services within that portion of Lake Clark National Park and Preserve that is located within the Cook Inlet Region.

The NPS was created by Congress in 1916 to manage the growing number of park areas. The purposes of the NPS as stated in the NPS Organic Act of August 25, 1916, are "to conserve the scenery and the natural and historic objects and the wild life therein, and to provide for the enjoyment of the same in such a manner and by such means as will leave them unimpaired for the enjoyment of future generations" (16 U.S.C. 1). Additionally, Congress has declared that the National Park System should be, "preserved and managed for the benefit and inspiration of all the people of the United States" (16 U.S.C. 1a-1). The National Park Service seeks both to preserve and to provide for the public enjoyment of significant aspects of the Nation's natural and cultural heritage.

To provide park visitors necessary and appropriate facilities and services to enjoy park areas, Congress established a concessions program in the National Park Service through the Concessions Policy Act of 1965 (79 Stat. 969; 16 U.S.C. 20). Regulations implementing the Concessions Policy Act are found in 36 CFR part 51.

The Concessions Policy Act authorizes the Secretary of the Interior

or designee to enter into concessions contracts or issue permits to qualified concessioners. The NPS may provide "necessary and appropriate" visitor facilities and services for the public through these contracts and permits. These services include a wide variety of commercial visitor services from backcountry guiding to hotel operations. All are provided by private corporations, partnerships, individuals, or other entities under contract with the National Park Service. All exist for the purpose of providing park visitors with the services and accommodations that are necessary and appropriate for their full enjoyment of America's national parks. The determination of what is necessary and appropriate is done through the National Park Service planning process. Needs vary with the purposes of the various park areas and their individual circumstances at the time of contracting. As applicable, the Concessions Policy Act grants a preference in renewal of concession authorizations to those concessioners who have performed contractual obligations to the satisfaction of the Secretary. These proposed regulations describe the relationship of the Concessions Policy Act's preference to the preferences to continue providing visitor services provided by section 1307 of ANILCA.

Section-by-Section Analysis*Section 13.80 Applicability and Scope*

Section 13.80 explains in which park areas these regulations are applicable, and the extent to which they apply to existing and future operators.

Section 13.81 Definitions

Section 13.81 provides a number of definitions for terms used in the regulations. "Historical operators" and "preferred operators" are new terms which are explained in detail below. The term "persons" as used in these regulations is defined in 36 CFR § 1.4.

Section 13.82 Visitor Services Existing on or Before January 1, 1979 (Historical Operators)

These provisions implement subsection (a) of section 1307 and permits persons who were adequately providing visitor services in applicable areas in Alaska prior to January 1, 1979, to continue to do so under reasonable terms and conditions. Such persons are referred to as "historical operators."

Section 13.82 makes clear that the existence of a right to continue to provide visitor services under subsection 1307(a) is not an unlimited right. The right is subordinate to the