

letters

To the editor:

John Dalle-Molle's letter in the Summer, 1984 issue of *Park Science* raised several questions concerning the provisions of 36 CFR 2.5, *Research Specimens*, and the rationale behind the recent revision that resulted in stricter standards being applied to the issuance of collecting permits in units of the National Park System. I hope this response will provide your readers a better understanding of the background of the revision of NPS General regulations which took place and clarify the intent of this regulation in particular.

One of the primary objectives established at the beginning of the recent revision of 36 CFR Parts 1, 2, and 3 was, through the regulatory process, to reaffirm the Service's traditional dedication to the protection of park resources. After almost four years in the making, the final product reflects this goal in several ways, the most significant being the elimination of management categories as a consideration in the level of protection afforded resources and the restriction that activities in derogation of park values occur only if authorized by a park's enabling legislation. These two changes are based on provisions of 16 U.S.C. 1a-1 enacted in 1970 and 1978 that emphasize that the various units of the National Park System should be preserved and managed as a system, consistent with the purposes expressed in the NPS Organic Act, and that their protection, management and administration shall not be exercised in derogation of their values and purposes except as specifically provided by Congress. The CFR revisions resulted in these standards being applied not just to situations involving the obvious consumptive use of resources (hunting, trapping, grazing, mining, commercial fishing) which have traditionally been considered contrary to NPS policy; but also to other activities that now have as a prerequisite a determination by the superintendent that they will not adversely affect park resources or be in derogation of park values (termination of closures, issuance of permits, gathering of natural products, issuance of certain collecting permits, removal of downed aircraft).

The current regulations provide superintendents a great deal of discretionary authority through the designation process. However, that authority is limited and cannot be used to relax restrictions imposed by a General Regulation unless specifically provided for by that individual regulation, and cannot be exercised to authorize activities in derogation of park values. When Mr. Dalle-Molle referred to the facts that the regulations impose stricter standards of resource protection and that greater managerial accountability is being required for the protection of resources, he is correct. This strong position, fully supported by the Director, is a direct result of the Congressional mandate expressed in the 1978 amendment to the NPS Organic Act previously mentioned.

Several of the questions Mr. Dalle-Molle raised pertaining specifically to 36 CFR 2.5 have been raised by others. The first point to be emphasized is that none of the restrictions imposed by this section applies to activities conducted by the NPS or its agents pursuant to an approved resource management plan (see 36 CFR 1.2(e)). 36 CFR 2.5 applies only to research proposed by non-NPS individuals or institutions.

Section 2.5(f) prohibits the issuance of a collecting permits for wildlife or fish or plants in park areas

whose enabling legislation specifically prohibits the killing of wildlife. The inclusion of fish and plants in this restriction is not only an exercise of discretionary authority to extend a consistent level of protection to all biota, but also reflects the legislation of the 17 park areas affected by this paragraph. Sixteen of these laws, although not all identical, are very similar and patterned after the 1894 amendment to Yellowstone's enabling legislation. All basically prohibit the killing, wounding or capturing of wild animals; provide for the preservation of timber, mineral deposits, natural curiosities and wonderful objects; and require protection of animals, birds and fish. Some contain language relating more specifically to the protection of plants and the prevention of animals from being frightened or driven from the park. Denali National Park's legislation differs, but prohibits the killing of wildlife and provides for the preservation of animals, birds, fish, natural curiosities and scenic beauties. In prohibiting all collecting permits for fish, wildlife, and plants in these park areas, the NPS has taken the position that those values were recognized by Congress as being so significant, that non-essential research involving the killing or taking of such biota should not occur and essential research should be conducted or supervised by the Service.

Although section 2.5(a) does extend the requirement for a permit to the collection of rocks and minerals, that requirement was not repeated in paragraphs (d), (e) and (f). Mr. Dalle-Molle has identified an apparent inconsistency in those paragraphs that may result in different standards of protection being afforded certain park resources. We will definitely review that regulatory language and applicable legislation this fall to see if a revision is appropriate.

Section 2.5 is intended both to set consistent Service-wide standards for reviewing non-NPS proposals to conduct research in park areas and to serve as a guide and tool for managers to use in rejecting invalid or otherwise undesirable proposals. Section 2.5(f) should not be viewed as an obstacle by managers in the 17 park areas (Yellowstone, Sequoia, Yosemite, Mt. Rainier, Crater Lake, Mesa Verde, Denali, Glacier, Rocky Mountain, Hawaii Volcanoes, Lassen Volcanic, Shenandoah, Great Smoky Mountains, Mammoth Cave, Isle Royale, Olympic and Haleakala National Parks) affected by that paragraph. Non-NPS research proposals which they consider legitimate and that meet the objectives of NPS resource management plans may still be carried out through a contract, agreement or other administrative mechanism that makes the researcher an agent. Such an arrangement also gives the manager an appropriate degree of control over research techniques and methodology, if so desired, and qualifies the research as an administrative activity of the Service. Such action satisfies the requirement of section 1.2(e) and exempts the research from provisions of the regulations in Parts 2 through 7.

I encourage those of your readers who have not done so recently, to read 16 U.S.C. 1a-1 and become familiar with the legislation that generated this overall effort by the Service to achieve a more consistent approach to the protection of park resources and values. For those who wish to learn more about the intent and rationale behind the revision of the General Regulations, I suggest reading the preambles to the proposed and final rules published in the Federal Register of March 17, 1982 (47 FR 11598), June 30, 1983 (48 FR 30252), December 27, 1983 (48 FR 56971), and April 30, 1984 (49 FR 18442).

Stanley T. Albright
Associate Director, Park Operations