

# ENJOYING KATMAI

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## ABSTRACT

*Katmai National Park has been part of the national park system since 1918, just two years after Congress created the National Park Service. Located about 300 miles southwest of Anchorage, Katmai's attractions have evolved from the aftermath of an epic volcanic eruption to world-class fishing to the place to go to see brown bears catch salmon. These attractions have yet to attract the hordes of people who visit other national parks, and Katmai remains one of the least visited of the 59 national parks. The Park Service is responsible for managing Katmai consistent with the Organic Act's dual goals of enjoyment and conservation. In practice, Katmai experiences much more conservation than enjoyment. The proposals to increase visitation to Katmai have failed because of a consensus that not all national parks are alike even though the law governing them is nearly the same. Katmai's history of benign neglect by Congress and the courts demonstrates that the Park Service is capable of managing remote national parks in a manner that achieves the law's goals while serving the public's desires.*

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## INTRODUCTION

Nearly 275 million people visited America's national parks in 2013.<sup>1</sup> Their most popular destinations were Great Smoky Mountains National Park (9.4 million visitors), Grand Canyon National Park (4.6 million visitors), and Yosemite National Park (3.7 million visitors).<sup>2</sup> By comparison, fewer than 29,000 of them visited Katmai National Park and Preserve,<sup>3</sup> even though Katmai's first explorer insisted that Yellowstone was "decidedly inferior to the Katmai District as a wonderland."<sup>4</sup>

Katmai is located along the Alaska Peninsula about 300 miles southwest of Anchorage. It became a national monument in 1918 and a national park in 1980.<sup>5</sup> It is best known for the largest volcanic eruption in North American history, as the destination for world-class salmon fishing, and as the ideal location to observe brown bears.<sup>6</sup> Yet Katmai remains one of the least visited national parks, ranking 53rd in visitation among the 59 national parks in 2013.<sup>7</sup>

The paucity of visitors is surprising given that the National Park Service (NPS) is obliged to facilitate the enjoyment of Katmai and the other 400 units of the national park system. In 1916, Congress enacted the Organic Act, which continues to govern the management of national parks 98 years later.<sup>8</sup> The heart of the Organic Act is its mandate that the National Park Service facilitates the enjoyment and preservation of the

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1. See *Annual Summary Report*, NAT'L PARK SERV., [https://irma.nps.gov/Stats/SSRSReports/National%20Reports/Annual%20Summary%20Report%20\(1904%20-%20Last%20Calendar%20Year\)](https://irma.nps.gov/Stats/SSRSReports/National%20Reports/Annual%20Summary%20Report%20(1904%20-%20Last%20Calendar%20Year)) (last visited Feb. 23, 2016).

2. See *id.* The most visited units in the national park system were the Blue Ridge Parkway (with 15.2 million visitors) and the Golden Gate National Recreation Area (with 129 million visitors). Only 134 intrepid individuals visited the Aniakchak National Monument & Preserve, located further west on the Alaskan Peninsula from Katmai.

3. See *Annual Park Ranking Report for Recreation Visitors in: 2013*, NAT'L PARK SERV., [https://irma.nps.gov/Stats/SSRSReports/National%20Reports/Annual%20Park%20Ranking%20Report%20\(1979%20-%20Last%20Calendar%20Year\)](https://irma.nps.gov/Stats/SSRSReports/National%20Reports/Annual%20Park%20Ranking%20Report%20(1979%20-%20Last%20Calendar%20Year)) (last visited Feb. 23, 2016) (use drop-down menu in left corner and select "2013"). References in this Article to Katmai National Park will include the Preserve unless indicated otherwise.

4. JOHN M. KAUFFMANN, *KATMAI NATIONAL MONUMENT, ALASKA: A HISTORY OF ITS ESTABLISHMENT AND REVISION OF ITS BOUNDARIES* 4 (1954) (quoting a Letter from Griggs to Grosvenor (May 23, 1918)).

5. *Katmai National Park and Preserve, Aniakchak National Monument and Preserve, Alagnak Wild River, Long-Range Interpretive Plan*, NAT'L PARK SERV., U.S. DEP'T OF THE INTERIOR 3, <http://www.nps.gov/hfc/pdf/ip/KATM%20LRIP%20Final.pdf>.

6. *Id.* at 8.

7. See *Annual Park Ranking Report*, *supra* note 3.

8. See 54 U.S.C.A. § 100101 (West 2014) (formerly 16 U.S.C. § 1 (2012)).

lands that it manages.<sup>9</sup>

Katmai National Park illustrates a pattern of broad NPS discretion, conservation constraints imposed by other federal environmental statutes, and infrequent specific congressional action to authorize special provisions for enjoyment of the park and other activities. Katmai has been immune from judicial oversight. The NPS has managed Katmai since 1918 without ever being second-guessed in a reported court case. The NPS has often cited federal environmental statutes such as the Wilderness Act, the Endangered Species Act, and the NEPA as guiding the management decisions at the park in favor of environmental conservation.<sup>10</sup> And occasionally Congress has engaged in informal oversight of the NPS's management of Katmai to encourage greater opportunities to enjoy the area or to authorize commercial activities even though they would otherwise be prohibited by the Organic Act and other environmental statutes.

Left alone, the NPS has endeavored to promote both the enjoyment and the conservation of Katmai. Conservation has been easier because of the general absence of threats to the park's landscape and wildlife, but enjoyment has been trickier. A trip to Katmai typically involves multiple airplane flights, and the facilities within the park are limited.

This is as it should be. The law's hands-off treatment of Katmai enables the NPS to respond to changing understandings of the area's importance. Management decisions evolved as the opportunities to see the effects of the volcanic eruption, then to enjoy world-class fishing, and then most recently to see brown bears, drew visitors to Katmai. The number of visitors to Katmai remains modest, but that number has increased dramatically during the past half-century. The NPS built facilities that provide access to the bears, fishing, and volcano, but the agency has also resisted more ambitious development plans to build additional lodging, roads, or airstrips in the park.

Part I of this Article describes the history of the Katmai area that culminated in the congressional establishment of Katmai National Park and Preserve in 1980. Part II examines the legal, management, and logistical challenges to achieving the Organic Act's twin goals of enjoyment and conservation. It first discusses the efforts to make Katmai

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9. *See id.* (providing that the purpose of the national parks "is to conserve the scenery, natural and historic objects, and wild life in the System units and to provide for the enjoyment of the scenery, natural and historic objects, and wild life in such manner and by such means as will leave them unimpaired for the enjoyment of future generations").

10. *See generally* John Copeland Nagle, *How National Park Law Really Works*, 86 U. COLO. L. REV. 861 (2015) (explaining the different sources of law governing the management of national parks).

more accessible to visitors, followed by an account of the facilities and proposed facilities for visitors to the park, and concludes with an explanation of how the NPS ensures the conservation of Katmai's resources.

## I. THE ESTABLISHMENT OF KATMAI NATIONAL PARK

Katmai is located on the Alaska Peninsula, which stretches southwest from Anchorage toward the Aleutian Islands. It is bounded by the Gulf of Alaska to the east, Bristol Bay to the north, and the rest of the Alaska Peninsula to the northeast and the southwest. The landscape changes from the rugged coastline to towering mountains to abundant lakes, rivers, and wetlands. Naknek Lake—the largest freshwater lake located wholly within a national park—is situated at the western edge of the park.<sup>11</sup>

Katmai is home to an extraordinary number of salmon, trout, and other fish. About four million sockeye return each summer to the Naknek River system, and one million of the fish reach their spawning grounds.<sup>12</sup> Those fish attract Katmai's 2,000 brown bears, the largest concentration of anywhere in the world. Many of those bears congregate along the Brooks River, which feeds into Lake Brooks just south of Naknek Lake. The area is also home to moose, caribou, red fox, wolves, lynx, wolverine, bald eagles, and countless other wildlife.<sup>13</sup>

Historically, Katmai has rich cultural and historic significance. The remnants of homes and villages range from those left by native Alaskans over the last several thousand years to those of early twentieth century Russian, European, and American trappers, miners, and clammers. The native settlement of Katmai along the coast "was once the central transit point for travel and traffic."<sup>14</sup> Russian fur traders then arrived in the second half of the eighteenth century and "virtually enslaved the Eskimos along the Shelikof Strait."<sup>15</sup> King Salmon, the closet town to Katmai (about nine miles west of the national park and the site of the

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11. For a detailed map of Katmai National Park, see *Katmai National Park & Preserve, Alaska*, NAT'L PARK SERV., <http://www.nps.gov/katm/index.htm> (last visited Feb. 23, 2016) (click "View Park Map" on left-hand side).

12. See ANDROMEDA ROMANO-LAX, *KATMAI NATIONAL PARK AND PRESERVE 6* (2012).

13. *About Katmai National Park*, KATMAILAND: KATMAI NAT'L PARK, <http://www.katmailand.com/katmai-national-park> (last visited Mar. 7, 2016).

14. JOHN A. HUSSEY, *EMBATTLED KATMAI: A HISTORY OF KATMAI NATIONAL MONUMENT 274* (1971) (quoting IVAN PETROFF, *POPULATION, INDUSTRIES, AND RESOURCES OF ALASKA* (1884)).

15. *Id.* at xiv.

park's headquarters), hosted an Air Force base during World War II.<sup>16</sup>

Katmai itself erupted onto the world stage in June 1912. Novarupta, one of several active volcanoes in the area, exploded for the greatest volcanic event of the twentieth century (and the second greatest of recorded history). The eruption spewed thirteen cubic kilometers of magma and lasted for sixty hours. Ten miles from Novarupta, the caldera at Mount Katmai collapsed, thereby confusing a generation of volcanologists who wrongly concluded that it was Mount Katmai that had erupted. "The ashfall was global, an aerosol-dust veil was reported as far as the Mediterranean, and worldwide temperature depression was measurable."<sup>17</sup>

News of the eruption was slow to reach the outside world. The only congressional response to the eruption was the appropriation of \$50,000 for the relief of its victims.<sup>18</sup> Additionally, Robert Griggs, a botany professor at Ohio State, led four National Geographic Society expeditions to Katmai between 1915 and 1919.<sup>19</sup> "Exploration," Griggs explained, "undertaken primarily for the scientific study of the effects of the ashfall, led to the discovery of one of the great marvels of the natural world, a place unseen and unsuspected by white man and native alike until entered by a National Geographic Society Expedition."<sup>20</sup> He discovered the Valley of Ten Thousand Smokes, where steam burst through thousands of vents in the 100 to 700 foot deep ash flow that the eruption deposited over forty square miles.

Thanks to Griggs' expeditions, the National Geographic Society soon championed Katmai's addition to the new national park system, which Congress had established in 1916. Griggs wrote NPS Director Stephen Mather at the end of 1917 asking how to form a national monument proposal.<sup>21</sup> Alaska's congressional delegate agreed that "we

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16. AFSC *Historical Corner: King Salmon Base (Naknek River)*, NOAA FISHERIES, ALASKA FISHERIES SCIENCE CENTER, <http://www.afsc.noaa.gov/history/facilities/kingsalmon.htm> (last visited Mar. 3, 2016). With the downsizing of that base, King Salmon is now the permanent home for about 100 people, though that number swells in the summer with the arrival of tourists and workers in the salmon fisheries.

17. WES HILDRETH & JUDY FIERSTEIN, U.S. GEOLOGICAL SURVEY, THE NOVARUPTA-KATMAI ERUPTION OF 1912—LARGEST ERUPTION OF THE TWENTIETH CENTURY: CENTENNIAL PERSPECTIVES 4 (2012); WALTER R. BORNEMAN, ALASKA: SAGA OF A BOLD LAND 246-52 (2003) (describing the eruption in the chapter entitled "The Day the Sky Turned Black"). Only the 1815 eruption of Tambora in Indonesia was larger. See HILDRETH & FIERSTEIN, *supra*.

18. See 48 CONG. REC. 84 (1912) (describing S.J. Res. 116).

19. Griggs wrote three popular articles for the *National Geographic* magazine about his adventures, culminating in a book in 1922.

20. ROBERT F. GRIGGS, THE VALLEY OF TEN THOUSAND SMOKES 1 (1922).

21. See KAUFFMANN, *supra* note 4, at 1.

could gain some useful publicity to this great natural phenomenon of the North by creating a national park there.”<sup>22</sup> Griggs wrote National Geographic Society president Gilbert Grosvenor in May 1918, explaining that Yellowstone was “decidedly inferior to the Katmai District as a wonderland.”<sup>23</sup> Horace Albright, Mather’s assistant and later the NPS director himself, explained how he “hatched a plan for Katmai” for which “Grosvenor merits ninety-nine percent of the success.”<sup>24</sup> Grosvenor proposed a new Katmai National Park, but Albright preferred a national monument because the president can establish them unilaterally pursuant to the Antiquities Act of 1906.<sup>25</sup> Congressional approval of a national park was thought to be difficult because of the simultaneous fight over the creation of Mount McKinley (now Denali) National Park.<sup>26</sup> Albright related that “[w]e didn’t take it up with anyone. Nobody cared much about it. We just did it.”<sup>27</sup> Ultimately, President Woodrow Wilson dutifully issued the proclamation making Katmai a national monument in September 1918.<sup>28</sup>

The proclamation cited the effects of the 1912 eruption and the National Geographic Society explorations, and it asserted that “[t]his wonderland may become of popular scenic, as well as scientific, interest for generations to come, inasmuch as all its phenomena exist upon a scale of great magnitude, arousing emotions of wonder at the inspiring spectacles, thus affording inspiration to patriotism and to the study of nature.”<sup>29</sup> Subsequent presidents expanded the national monument’s borders four times: in 1931, when President Herbert Hoover doubled its size “for the protection of the brown bear, moose, and other wild animals”<sup>30</sup>; in 1936 and 1942, when President Franklin Roosevelt

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22. *Id.* at 2 (quoting Letter from Sulzer to Griggs (Feb. 13, 1918)).

23. *Id.* at 4 (quoting Letter from Griggs to Grosvenor (May 23, 1918)).

24. HORACE M. ALBRIGHT & MARIAN ALBRIGHT SCHENCK, *CREATING THE NATIONAL PARK SERVICE: THE MISSING YEARS* 299 (1999). In addition to Katmai, Grosvenor also sponsored the exploration that led to the establishment of Carlsbad Caverns as a national monument in 1924 (and which became a national park in 1930). ROBERT SHANKLAND, *STEVE MATHER OF THE NATIONAL PARKS* 92 (1951).

25. *See* 54 U.S.C.A. § 320301 (West 2014) (formerly 16 U.S.C. §§ 431–433 (2012)) (providing authority for the president to unilaterally establish a national monument).

26. *See* DAYTON DUNCAN & KEN BURNS, *THE NATIONAL PARKS: AMERICA’S BEST IDEA* 169 (2009) (describing issues in creating Denali National Park).

27. ALBRIGHT & SCHENCK, *supra* note 24, at 301.

28. Proclamation No. 1487, 40 Stat. 1855 (Sept. 24, 1918).

29. 1918 proclamation; Proclamation No. 2564, 56 Stat. 1972 (Aug. 4, 1972). Albright described President Wilson as “totally uninterested in conservation, national parks, or anything that pertained to the great outdoors.” ALBRIGHT & SCHENCK, *supra* note 24, at 301.

30. Proclamation No. 1950, 47 Stat. 2453 (Apr. 24, 1931).

extended the monument to include off-shore islands<sup>31</sup>; in 1969, when President Lyndon Johnson added the entirety of Naknek Lake<sup>32</sup>; and in 1979, when President Jimmy Carter added the “spawning grounds for the red salmon” so that “the drama of the red salmon run, a phenomenon of great scientific interest, may be perpetuated.”<sup>33</sup>

Katmai drew little attention during its first decades as a national monument. The early laissez faire management attitude can be summed up by the 1916 congressional debate concerning the creation of a national park encompassing the volcanos of Hawaii. After Colorado Senator John Shafroth extolled the volcanos as “very rare curiosities,”<sup>34</sup> Oregon Senator Henry Lane objected to any appropriations for the newly-created national park because “it should not cost anything to maintain a volcano.”<sup>35</sup> A similar attitude prevailed at Katmai. A NPS official testified to Congress in 1952 that “[t]he Government has never spent a penny on its development.”<sup>36</sup> The NPS managed the national monument from the headquarters of Mount McKinley National Park, several hundred miles away by air. It was not until 1940 that the first NPS manager flew over Katmai.<sup>37</sup> Under these circumstances, it is not surprising that “visits by the casual tourist were out of the question.”<sup>38</sup>

Alaska’s territorial governor had prophesied in 1918 that “there is no possibility of the Katmai National Monument ever becoming a favorite place for tourist travel.”<sup>39</sup> Horace Albright, the acting NPS director, responded that the monument could “be modified later if this

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31. Proclamation No. 2564, 56 Stat. 1972 (Aug. 4, 1942); Proclamation No. 2177, 49 Stat. 3523 (June 15, 1936).

32. Proclamation No. 3890, 83 Stat. 926 (Jan. 20, 1969).

33. Proclamation No. 2177, 49 Stat. 3523 (June 15, 1936); Proclamation No. 1950, 47 Stat. 2453 (Apr. 24, 1931).

34. 53 CONG. REC. 9253 (1916) (statement of Sen. John F. Shafroth).

35. *Id.* (statement of Sen. Harry Lane). Senator Shafroth responded to Senator Lane that some funding was necessary because “you have got to have some supervision of the park.” *Id.* (statement of Sen. John F. Shafroth).

36. *Hearing on H.R. 4794 Before the Subcomm. on Public Lands of the H. Comm. On Interior and Insular Affairs* 82d Cong. 3 (1952) (statement of R.F. Lee, Assistant Director of the Nat’l Parks Serv.).

37. See FRANK B. NORRIS, *TOURISM IN KATMAI COUNTRY: A HISTORY OF CONCESSIONS ACTIVITY IN KATMAI NATIONAL PARK AND PRESERVE* ch. 1 (1992), [http://www.nps.gov/parkhistory/online\\_books/katm/index.htm](http://www.nps.gov/parkhistory/online_books/katm/index.htm). See also ROMANO-LAX, *supra* note 12, at 12 (observing that “the monument was not visited on foot by a single park service employee between 1918 and 1940.”).

38. See HUSSEY, *supra* note 14, at 421. In fact, the monument was closed to the public in the absence of any NPS staff to protect it. See NORRIS, *supra* note 37, at ch. 1.

39. KAUFFMANN, *supra* note 4, at 6 (quoting a letter from Thomas Riggs to Stephen T. Mather (Nov. 19, 1918)).

is necessary in the interests of the commercial development of Alaska.”<sup>40</sup> Proposals for the commercial development of Katmai began soon after World War II. There was already a clamming industry operating along the monument’s coast, but clamming was not seen as threatening the monument’s values in any way. The salmon industry sought approval to trap beavers whose dams allegedly interfered with spawning salmon, but that proposal died once it was realized that beaver dams did not in fact obstruct migrating salmon.<sup>41</sup>

After World War II, several entrepreneurs looked to Katmai’s abundant ash and pumicite as a ready answer to satisfy the sudden demand for building materials in Anchorage. Congress soon enacted legislation authorizing limited mining operations within the monument.<sup>42</sup> The Park Service acquiesced in the law because although it preferred “normally to avoid an operation of this kind anywhere in the National Park System,” it explained that

in this case there is considerable demand for the building material which is scarce and critical in Alaska, and as it happens the removal of the pumicite will not permanently mar the scenic qualities because the pumicite is readily available on the beach, can be taken on a barge, and the rains, snow, ice, and other weathering obliterates almost overnight the effect of the removal.<sup>43</sup>

Any threat to Katmai disappeared once it was discovered that the ash did not actually work as a building material.<sup>44</sup>

Proposals to eliminate the national monument emerged as commercial interests began to covet Katmai. As early as 1920, Alaska’s territorial governor insisted that “Katmai Monument serves no purpose and should be abolished.”<sup>45</sup> Efforts to abolish the national monument and return the area to the federal public domain began in the 1940s.<sup>46</sup> In 1946, the Alaska territorial legislature entertained a memorial requesting

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40. *Id.* at 7.

41. Victor H. Cahalane, *Katmai – A Wilderness To Be Guarded*, NAT’L PARKS MAG. 10, 11 (Jan.–Mar. 1958).

42. See Act of Apr. 15, 1954, Pub. L. No. 332, 68 Stat. 53 (authorizing “the removal of deposits of siliceous volcanic ash, commonly known as pumicite, from such areas as [the Secretary of Interior] may designate along the shores of Selikof Strait in Katmai National Monument, Alaska”).

43. See *Hearing on H.R. 4794*, *supra* note 36 (statement of R.F. Lee, Assistant Director of the Nat’l parks Serv.).

44. Cahalane, *supra* note 41, at 10–11.

45. ALASKA TRAVEL PUBLICATIONS INC., *EXPLORING KATMAI NATIONAL MONUMENT AND THE VALLEY OF TEN THOUSAND SMOKES* 71 (1974) (quoting Alaska Governor Thomas J. Riggs, Jr.).

46. KAUFFMANN, *supra* note 4, at 2,837.

Congress to abolish Katmai National Monument because of the restrictions on hunting, trapping, mining, and canning, and because the monument had purportedly become a breeding place for wolves and coyotes.<sup>47</sup> Katmai, the memorial's supporters claimed, "was only a barren place, devoid of all interest to tourists."<sup>48</sup> A territorial congressional delegate quoted an Alaskan resident who insisted that the Katmai area "would be of greater value to the residents of this district as a trapping ground than as a National Monument."<sup>49</sup> In response, the NPS concluded that Katmai should remain a national monument, but more should be done to make it accessible to tourists.<sup>50</sup>

Robert Griggs was the first advocate to suggest that Katmai should be a national park. A 1958 article written by a former Katmai biologist and an internal 1967 NPS document echoed the national park proposal.<sup>51</sup> And the NPS prepared a master plan for a potential Katmai National Park in 1973 and an environmental impact statement for such a park in 1974.<sup>52</sup> But Katmai's fate was entangled with the broader debate about the disposition of Alaskan lands. Alaska did not become a state until January 1959. Its "very low population, enormously high percentage of federal lands, and lack of any provisions made over the years . . . for resolving Alaska Native land ownership claims" explained the long wait for statehood even more than the area's geographic separation from the lower 48 states.<sup>53</sup> Congress enacted the Alaska Statehood Act in 1958, promising that over one hundred million acres—or 28 percent of the state—would be given to the new state government, but precisely which land would be handed over to the state and the status of native land claims were left unresolved.<sup>54</sup> Twelve years passed before Congress

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47. HUSSEY, *supra* note 14, at 426.

48. *Id.*

49. KAUFFMANN, *supra* note 4, at 29 (quoting Letter from E.L. Bartlett to Secretary of the Interior Chapman (Feb. 1, 1950)).

50. *Katmai Country*, 16 ALASKA GEOGRAPHIC 1, 46 (1989).

51. See Cahalane, *supra* note 41, at 15 (writing that "the most effective way to safeguard this wilderness area of volcanoes would be to make it a national park. In every respect—in expansiveness, magnificent scenery, geological phenomena, an original assemblage of animals and plants, and its unimpaired quality—Katmai deserves the higher status."); *Master Plan Brief for Katmai National Monument*, NPS 8 (n.d.) (on file with author) (stating the objective "[t]o redesignate the Monument to National Park status at the earliest propitious time").

52. See U.S. DEP'T OF THE INTERIOR, ALASKA PLANNING GROUP, PROPOSED KATMAI NATIONAL PARK, ALASKA: FINAL ENVIRONMENTAL STATEMENT (1974); U.S. DEP'T OF THE INTERIOR, ALASKA PLANNING GROUP, KATMAI NATIONAL PARK, ALASKA: MASTER PLAN (1973).

53. BORNEMAN, *supra* note 17, at 395.

54. Alaska Statehood Act, Pub. L. 85-508, 72 Stat. 339, 340 § 6(b) (1958); BORNEMAN, *supra* note 17, at 403.

approved the Alaska Native Claims Settlement Act (ANCSA), which provided forty million acres and nearly one billion dollars for twelve regional corporations established for native Alaskans throughout the state.<sup>55</sup> Meanwhile, state officials and development interests battled environmentalists and federal officials in Washington to resolve the status of the bulk of the federal lands in the state. Finally, in December 1980, a lame duck Congress approved the Alaska National Interest Lands Conservation Act (ANILCA).<sup>56</sup>

ANILCA afforded federal protection to 105 million acres of land, provided for the transfer of other land to the state and to native corporations, and directed studies with respect to the status of additional lands.<sup>57</sup> The statute created ten new national park units and expanded three others, established nine wildlife refuges and expanded seven others, designated twenty-six wild and scenic rivers, and produced various new conservation areas and national monuments.<sup>58</sup> Katmai was one of three national park units to be expanded. ANILCA section 202 renamed the area as “Katmai National Park” and increased its size by 1,037,000 acres of land.<sup>59</sup> The Act also designated another 380,000 acres as Katmai National Preserve where, unlike the National Park, hunting is permitted.<sup>60</sup> It further designated a sixty-seven mile stretch of the Alagnak River on the west side of Katmai National Park &

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55. 43 U.S.C. §§ 1603(b), 1605(a), 1611 (2012). *See also* Chickaloon-Moose Creek Native Ass’n, Inc. v. Norton, 360 F.3d 972 (9th Cir. 2004) (limiting the selection of lands comprising the native Alaskans’ acreage entitlements under ANCSA); BORNEMAN, *supra* note 17, at 470.

56. Alaska Nat’l Interest Lands Conservation Act, 16 U.S.C. §§ 3101-3233 (1980); BORNEMAN, *supra* note 17, at 502-10 (describing the enactment of ANILCA); RODERICK FRAZIER NASH, WILDERNESS IN THE AMERICAN MIND 296-315; *Congress Clears Alaska Lands Legislation*, 1980 CONG. Q. ALMANAC 575 (1980). After the November 1980 election produced a Republican President and Senate majority, but before those officials took office in January 1981, “environmental leaders in the House reluctantly decided that they would have to accept outright the less restrictive Senate provisions, in order to get any bill at all.” *Id.* at 584. *See generally* John Copeland Nagle, *Lame Duck Logic*, 46 U.C. DAVIS L. REV. 1177 (2012) (explaining problems attendant with lame-duck legislation); John Copeland Nagle, *A Twentieth Amendment Parable*, 72 N.Y.U. L. REV. 470 (1997).

57. *See* 16 U.S.C. § 3101(d) (2012) (explaining that the statute extended “protection for the national interest in the scenic, natural, cultural and environmental values on the public lands in Alaska, and at the same time provide[d] adequate opportunity for satisfaction of the economic and social needs of the State of Alaska and its people”); *Sturgeon v. Masica*, 768 F.3d 1066 (9th Cir. 2014) (summarizing the purposes of ANILCA).

58. *See Congress Clears Alaska Lands Legislation*, *supra* note 56, at 576-77.

59. ANILCA, Pub. L. No. 96-487, 94 Stat. 2371, § 202 (2000) (current version at 16 U.S.C. § 410hh-1 (2012)).

60. *See id.* §§ 202-203 (current version at 16 U.S.C. §§ 410hh-1-410hh-2 (2012)).

Preserve pursuant to the Wild & Scenic Rivers Act.<sup>61</sup>

Additionally, ANILCA established the Katmai Wilderness Area, which now encompasses 3,384,358 acres. Section 707 of ANILCA states that “except as otherwise expressly provided for in this Act, wilderness designated by this Act shall be administered in accordance with applicable provisions of the Wilderness Act governing areas designated by that Act as wilderness.”<sup>62</sup> But ANILCA allows numerous activities that would otherwise be prohibited in a wilderness area: subsistence activities, mineral assessment, access to inholdings, sport hunting and fishing, and motorized access for traditional activities.<sup>63</sup> The extent of such activities and the extent to which they can be regulated are still contested. It is undisputed, though, that numerous other activities that are generally permitted in national parks are not permitted in Katmai’s wilderness areas, such as road building and the construction of commercial lodging facilities.

The new Katmai National Park and Preserve remained subject to the Organic Act and other general national park legislation, just like when it was a national monument. ANILCA further directs the NPS to manage Katmai

for the following purposes, among others: To protect habitats for, and populations of, fish and wildlife including, but not limited to, high concentrations of brown/grizzly bears and their denning areas; to maintain unimpaired the water habitat for significant salmon populations; and to protect scenic, geological, cultural and recreational features.<sup>64</sup>

More generally, ANILCA allows “the taking of fish and wildlife for sport purposes and subsistence uses, and trapping” within national preserves.<sup>65</sup> These provisions emphasized the conservation purposes of the national park, while acknowledging that enjoyment for scenic and

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61. *Id.* § 601(25) (current version at 16 U.S.C. § 1274 (2012)).

62. *Id.* § 707 (current version at 16 U.S.C. §1131). *See also id.* § 101(a) (current version at 16 U.S.C. § 3101 (2012)) (stating that one of the purposes of ANILCA is to preserve wilderness values); *id.* § 102(13) (current version at 16 U.S.C. § 3102(13) (2012)) (providing that ANILCA’s definition of “wilderness” is the same as the Wilderness Act’s).

63. *See id.* § 811 (current version at 16 U.S.C. § 3121 (2012)) (subsistence activities); *id.* § 1010 (current version at 16 U.S.C. § 3150 (2012)) (mineral assessment); *id.* § 1109 (current version at 16 U.S.C. § 3169 (2012)) (existing rights of access); *id.* § 1110(a) (current version at 16 U.S.C. § 3170(a) (2012)) (access for traditional activities); *id.* § 1110(b) (current version at 16 U.S.C. § 3170(b) (2012)) (access to inholdings); *id.* § 1313 (current version at 16 U.S.C. § 3201 (2012)) (hunting and fishing).

64. *Id.* § 202 (current version at 16 U.S.C. § 410hh-1 (2012)).

65. *Id.* § 1313 (current version at 16 U.S.C. § 3201 (2012)).

recreational purposes was appropriate as well.

Other laws inform the NPS's responsibilities regarding Katmai in addition to ANILCA. The ESA prohibits any federal actions that would jeopardize the survival of a listed species and any actions that would "harm" a species, which includes some kinds of habitat modification. Katmai is home to one endangered species—the Steller sea lion—and two threatened species—the northern sea otter and Steller's eider—listed under the Endangered Species Act.<sup>66</sup> Similarly, section 404 of the Clean Water Act prohibits the filling in of wetlands without a permit,<sup>67</sup> a provision that is especially relevant to Katmai given the many wetlands within the national park. The Wild & Scenic Rivers Act directs the NPS to ensure that it does not do anything that would impair the value of the Alagnak River.<sup>68</sup> Also, the federal Coastal Zone Management Act requires the NPS to demonstrate the consistency of any of its management actions with the State of Alaska's coastal zone management plan.<sup>69</sup>

These statutory authorities inform the Foundation Statement that the NPS prepared for Katmai in 2009. That statement explains that the purpose of Katmai "is to protect, study, and interpret active volcanism surrounding the Valley of Ten Thousand Smokes, extensive coastal resources, habitats supporting a high concentration of salmon and brown bears, and an ongoing story of humans integrated with a dynamic subarctic ecosystem."<sup>70</sup> The statement identifies eight aspects

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66. See 50 C.F.R. § 17.11(i) (2016). Kittlitz's murrelet and the yellow-billed loon are candidates for listing. *Endangered, Threatened, Proposed, Candidate, and Delisted Species in Alaska*, U.S. FISH & WILDLIFE SERVICE 1–2 (May 13, 2014), [http://www.fws.gov/alaska/fisheries/endangered/pdf/consultation\\_guide/4\\_species\\_list.pdf](http://www.fws.gov/alaska/fisheries/endangered/pdf/consultation_guide/4_species_list.pdf). See also Candidate Species Report, U.S. FISH & WILDLIFE SERVICE, [http://ecos.fws.gov/tess\\_public/pub/candidateSpecies.jsp](http://ecos.fws.gov/tess_public/pub/candidateSpecies.jsp) (last visited Apr. 6, 2016). The U.S. Fish & Wildlife Service recently proposed to list wolverines as threatened in the contiguous United States, but not in Alaska. See *Endangered and Threatened Wildlife and Plants; Threatened Status for the Distinct Population Segment of the North American Wolverine Occurring in the Contiguous United States; Establishment of a Nonessential Experimental Population of the North American Wolverine in Colorado, Wyoming, and New Mexico; Proposed Rules*, 78 Fed. Reg. 7869, 7864 (Feb. 4, 2013) (to be codified at 50 C.F.R. pt. 17) (observing that "[t]he number of wolverines in Alaska is unknown, but they appear to exist at naturally low densities in suitable habitats throughout the state. We have no information to indicate that wolverine populations have been reduced in numbers or geographic range in Alaska.>").

67. Federal Water Pollution Control Act (Clean Water Act) § 404, 33 U.S.C. § 1344 (2012).

68. The Wild & Scenic Rivers Act § 3(a)(25), 16 U.S.C. 1274(a)(25) (2012).

69. Coastal Zone Management Act of 1972 § 307(c), 16 U.S.C. § 1456(c) (2012).

70. NAT'L PARK SERV., KATMAI NATIONAL PARK AND PRESERVE: FOUNDATION STATEMENT 4, (2009).

of Katmai's significance: the site of the 1912 volcanic eruption, the population of brown bears, "one of the largest salmon runs in the world," "vast multi-lake watersheds," the opportunity to study large landscape processes, 9,000 years of human history, 3.7 million acres of remote wilderness, and the wild and scenic Alagnak River.<sup>71</sup> The statement also describes Katmai's "primary interpretive theme" as providing "extraordinary bear viewing opportunities, affording the visitor a glimpse into the natural drama and dynamic interplay found in an unspoiled ecosystem."<sup>72</sup> The significance of Katmai is that it "offers 3.7 million acres of remote, yet accessible, wilderness-based recreational opportunities."<sup>73</sup>

## II. THE ENJOYMENT OF KATMAI NATIONAL PARK

Katmai offers a spectacular range of experiences for visitors. Eighty-four percent of the visitors in the summer of 2006 came to see brown bears.<sup>74</sup> Once in the park, visitors can engage in a number of other activities, including fishing, photography, exploring the Valley of Ten Thousand Smokes, hiking, and flightseeing.<sup>75</sup> Visitors to Katmai spend about \$50 million annually in Alaska, including over \$10 million in Katmai itself.<sup>76</sup>

Despite these attractions, Alaska Senator Ernest Gruening lamented in a 1963 *National Geographic* article that Katmai is "one of the least-seen units in the National Park System. Only about 900 persons have visited it in the last two years."<sup>77</sup> There have always been relatively few visitors to Katmai ever since it became a national monument. Only a few tourists "dribbled in" before the second World War: a party of forty in 1923, and

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71. *Id.*

72. *Id.* at 8.

73. *Id.* at 14.

74. MARGARET A. LITTLEJOHN & STEVEN J. HOLLENHORST, KATMAI NATIONAL PARK AND PRESERVE VISITOR STUDY SUMMER 2006 PARK STUDIES UNIT VISITOR SERVICES PROJECT REPORT 182 (2007).

75. See NAT'L PARK SERV., BROOKS RIVER VISITOR ACCESS DRAFT ENVIRONMENTAL IMPACT STATEMENT: KATMAI NATIONAL PARK AND PRESERVE 100 (2013) ("Although Brooks Camp is now known primarily for viewing bears, it was originally established to accommodate sport fishing, which is still an important recreational use in the area."); *Katmai Country*, 16 ALASKA GEOGRAPHIC 1, 57 (1989) ("Recreation in Katmai can be summed up in three words: volcanoes, bears and fish.").

76. GINNY FAY & NEAL CHRISTENSEN, KATMAI NATIONAL PARK AND PRESERVE ECONOMIC SIGNIFICANCE ANALYSIS AND MODEL DOCUMENTATION 2 (2010).

77. Ernest Gruening, *Lonely Wonders of Katmai*, 123 NAT'L GEO. 800, 803 (1963).

another seventeen in 1924.<sup>78</sup> The number increased after World War II, rising from 134 in 1950, to 510 in 1956, and then to 1,083 in 1959.<sup>79</sup> NPS director Conrad Wirth admitted in 1956 that “travel to Katmai is not great at this time,” but he added that “[t]he same could be said about Yellowstone in 1872 when the pioneers went in there the first time and created the idea of a national park.”<sup>80</sup> In 1963, a member of Congress complained that the federal government’s preservation of Katmai even though it had only attracted 900 visitors during the previous two years demonstrated that the federal government cared more about wildlife and fish than human beings.<sup>81</sup> That 900-visitor figure may have been a bit of an exaggeration, however, for the NPS reported in 1967 that “around 700 persons per year” came to Katmai.<sup>82</sup> Visitation has increased to nearly 30,000 people annually, but only five of the fifty-nine national parks had fewer visitors in 2013.<sup>83</sup>

The most frequent deterrent to visiting Katmai has been its inaccessibility.<sup>84</sup> Senator Gruening hoped to change that, writing to NPS Director Conrad Wirth in 1963 that “[t]he greatest problem with Katmai ever since 1912 has been its inaccessibility. . . . It would seem to me that the Park Service . . . would be keenly desirous of making the splendors of its Katmai Monument available to as many people as possible.”<sup>85</sup> Six years later, Gruening remarked that he had “said many times that visitor facilities would make the exploration of the vast and beautiful monument area possible and would enable many thousands of Americans to view and love the incredible grandeur of the area.”<sup>86</sup> These two issues highlighted by Senator Gruening – access and facilities – have

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78. NORRIS, *supra* note 37, at ch. 1.

79. *Id.* at 3 (providing visitor statistics for Brooks Camp).

80. *Hearing on H.R. 250, To Permit Mining Within Katmai National Monument, Subcomm. on Territorial & Insular Affairs of the H. Interior & Insular Affairs Comm.* 84th Cong. 6–7 (1956) (testimony of Nat’l Park Serv. Director, Conrad Wirth).

81. *See* 109 CONG. REC. 13375 (1963) (statement of Rep. McDowell).

82. Master Plan Brief for Katmai National Monument (1967).

83. The 2013 visitation totals for those least visited national parks were 11,012 at Gates of the Arctic National Park & Preserve, 13,000 at Lake Clark National Park & Preserve, 16,274 at Isle Royale National Park, 16,875 at Kobuk Valley National Park, and 21,623 at North Cascades National Park. *See Annual Park Ranking Report, supra* note 3.

84. *See, e.g.,* NORRIS, *supra* note 37, at ch. 1 (referring to “the general inaccessibility of the Katmai country”); Thomas Colby, *Katmai’s First Tourists*, ALASKA MAG., Apr. 1972, at 26 (describing Katmai as “little known and remote”); Gruening, *supra* note 77, at 804 (noting that “Katmai long discouraged visitors by its inaccessibility”); Cahalane, *supra* note 41, at 10 (asserting that “distance, ruggedness, and climate have played a major role in keeping this area wild”).

85. Letter from Sen. Ernest Gruening to Conrad L. Wirth, NAT’L PARK SERV., Director, Feb. 26, 1962 (DOC033).

86. 114 CONG. REC. 21971 (1968) (statement of Sen. Ernest Gruening).

shaped much of the debate about fulfilling the Organic Act's promise of the enjoyment of Katmai.

## A. Access to Katmai

### 1. Airplanes

Nearly everyone who visits Katmai from outside of its nearby communities arrives by plane.<sup>87</sup> That has been true ever since the national monument was established in 1918. In 1929, the Anchorage Air Transport flew from Anchorage to Katmai for eight hours of sightseeing at the Valley of Ten Thousand Smokes, which was still smoking.<sup>88</sup> Tourism to Katmai did not really begin until Ray Peterson began flying fishermen into the newly-established Brooks Camp in 1950. Today, seaplanes are the only means of flying into the park because there is no landing strip within the park's boundaries. Most visitors fly to Katmai just for the day, either to Brooks Camp or to sites along the coast where they can observe brown bears. Visitors who stay overnight at Brooks Camp or elsewhere in the park usually fly to those destinations, too.

Historically, this reliance on airplanes for access to Katmai has generated criticism both from those who would like to increase air access and those who would like to decrease it. Roy Peterson advocated the construction of an airstrip within Katmai "because winds made it difficult, and sometimes impossible, to land float planes on Naknek Lake."<sup>89</sup> Conrad Wirth, the NPS director at the time, responded that further study would be necessary, and that Brooks Camp might not be the ideal location for such an airstrip if one were to be built.<sup>90</sup> The airstrip idea was revived during Katmai's Mission 66 planning, with one document stating that "[a]n airstrip for wheel planes will be provided at a suitable location compatible with air current, topography, and landscape considerations near Brooks River Camp."<sup>91</sup> But an article in *National Parks Magazine* protested "the scar and intrusion of this modern facility on the wilderness."<sup>92</sup> The airstrip idea seems to have died and it has not been revived since then.

NPS management policy disfavors airstrips or airports within

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87. As explained below, the few local residents of nearby King Salmon can drive (or snowmobile) along a World War II dirt access road to the western edge of the national park, where the road ends.

88. NORRIS, *supra* note 37, at ch. 8, 1.

89. *Id.* at ch. 3.

90. *See id.*

91. NAT'L PARK SERV., MISSION 66 FOR KATMAI NAT'L MONUMENT 6 (1957).

92. Cahalane, *supra* note 41, at 14.

national parks.<sup>93</sup> Only one national park contains an airport—Grand Teton National Park—and that airport predated the expansion of the park and was recently subject to an unsuccessful campaign to persuade the NPS not to renew its lease.<sup>94</sup> The environmental issues identified in the Environmental Impact Statement for the continued operation of the Jackson Hole airport—including visual impairment and harm to wildlife—would undoubtedly trigger the application of numerous environmental regulations if such an airport were ever proposed again in Katmai. Even the existing float plane trips to the Brooks River camp still generate some controversy. As early as 1958, environmental advocates advised that “[i]n terms of economy, wilderness preservation, human safety and (in many respects) visitor enjoyment, it seems desirable to abandon aircraft as the accepted means of transportation into the monument.”<sup>95</sup> Restricting air access to Katmai was proposed again during the 1996 debate regarding the Brooks Camp long-term plan. That suggestion has failed as well, and the status quo of allowing float planes to land on Brooks River, but not building an airstrip, appears likely to prevail.

## 2. Boats

Several conservation groups have advocated the substitution of boat access for seaplanes as the primary means of transporting people to the park. Beginning in the late 1950s, several interested parties advanced a variety of proposals to construct boat harbors both along the Katmai coast and within the park on Naknek Lake.<sup>96</sup> One plan would have taken visitors from the west end of Naknek Lake (which was connected by the World War II era road to King Salmon) to Brooks Camp. Such trips along “Naknek Lake would be comfortable, pleasant and scenic.”<sup>97</sup> Alternately, the renowned conservationist Sigurd Olsen advised that a cruise visit to the coast of Katmai could become “one of the outstanding experiences of an Alaskan vacation.”<sup>98</sup> Olson imagined that “[a] chalet

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93. NAT’L PARK SERV., MGMT. POLICIES 2006 110 (2006).

94. See generally NAT’L PARK SERV., JACKSON HOLE AIRPORT AGREEMENT EXTENSION FINAL ENVTL. IMPACT STATEMENT, GRAND TETON NATIONAL PARK, WYOMING 6 (2010) (explaining why the NPS has determined the lease must be renewed).

95. Cahalane, *supra* note 41, at 14 (italics omitted).

96. See *infra* at text accompanying notes 181–85.

97. Cahalane, *supra* note 41, at 14.

98. SIGURD F. OLSON, SUGGESTIONS FOR A MASTER PLAN: KATMAI NATIONAL MONUMENT 4 (1963). See also *id.* at 4 (describing “the possibility of boat transportation from King Salmon to the Bay of Islands at the far end of Naknek Lake as well as to Brooks Camp at the outlet of the Brooks River on Iliuk arm of

built at Kukak Bay or Geographic Harbor could be a port of call and stopping place for those making the trip up the coast from Prince Rupert, Vancouver, or Seattle to Juneau, Sitka and Glacier Bay, then on to Cordova, Valdez, and Seward, Anchorage and the interior.”<sup>99</sup> The NPS’s 1973 master plan for Katmai revived the idea of tour boats traveling through Naknek Lake “to development sites, selected backcountry camps, and docks located around the lake system.”<sup>100</sup> But the NPS never pursued such expanded boat access because of its expense, logistics, and the absence of a deep-water port on Nakhek Lake.<sup>101</sup> Any boat access plans would now be subject to additional environmental regulations, including consistency with the State of Alaska’s coastal zone management plan.<sup>102</sup>

### 3. Cars

The majority of people travel to most national parks by road. Of the fifty-nine national parks, seven are located on islands that are unconnected to the national network of roads.<sup>103</sup> Five of the remaining fifty-two national parks—all in Alaska—cannot be reached by road. There are only roads to three of Alaska’s eight national parks.<sup>104</sup> Katmai is not one of them.

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the same lake” as “far more important and desirable” than building a road into Katmai); NORRIS, *supra* note 37, at ch. 3 (describing plans for “a 22-foot cabin cruiser for deep-sea fishing on Naknek Lake in search of mysterious giant fish described by natives”); *id.* ch. 4 (noting that “the implementation of commercial boat access into the monument” was “[k]ey to the master plan process of the early 1970s”); U.S. DEP’T OF THE INTERIOR, ALASKA PLANNING GROUP, KATMAI NATIONAL PARK, ALASKA: MASTER PLAN 32–33 (1973) (proposing additional docks for boats and float planes).

99. OLSON, *supra* note 98, at 4.

100. U.S. DEP’T OF THE INTERIOR, ALASKA PLANNING GROUP, *supra* note 98.

101. See NORRIS, *supra* note 37, at 73 (“NPS officials at the time predicted, in fact, that tour boat would replace aircraft within the next few years. But the logistics and expense of setting up a marine operation militated against its implementation, and without the creation of a deep-water port on the north edge of Naknek Lake, formidable physical factors prevented start-up of such a service.”).

102. See Coastal Zone Management Act of 1972 § 307, 16 U.S.C. § 1456 (2012) (creating additional coordination and cooperation environmental regulations).

103. Four of those national parks are on islands where one can drive to the park once one reaches the island: American Samoa, Haleakala, Hawaii Volcanoes, and Virgin Islands. There are no roads on the Channel Islands (off the coast of southern California), Dry Tortugas (off the Florida Keys), or Isle Royale (in Lake Superior).

104. Drivers can reach Denali, Kenai Fjords, and Wrangell/St. Elias National Parks; there are no roads to Gates of the Arctic, Glacier Bay, Katmai, Lake Clark, and Noatak National Parks.

The framers of the Organic Act saw the lack of access to the national parks as the greatest impediment to greater visitation.<sup>105</sup> “These parks belonging to the people should be made so accessible that all who wish to do so may behold their beauties and wonders,” proclaimed one railroad official.<sup>106</sup> President Taft gave a speech in which he advised that “[i]f we are going to have national parks, we ought to make them available to the people, and we ought to build the roads, as expensive as they may be, in order that those parks may become what they are intended to be when Congress creates them.”<sup>107</sup> In his original report recommending a national park agency, Secretary of the Interior Ballinger reported that “the road and trail problems for public travel and convenience to enable tourists to obtain the benefits of the scenic beauties are primary.”<sup>108</sup> Stephen Mather noted the increasing number of motorists who were visiting national parks.<sup>109</sup> Another Department of

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105. U.S. DEP’T OF THE INTERIOR, PROCEEDINGS OF THE NATIONAL PARK CONFERENCE HELD AT THE YELLOWSTONE NATIONAL PARK, SEPTEMBER 11 & 12, 1911 9 (1912) [hereinafter 1911 National Park Conference] (statement of Secretary of the Interior Walter L. Fisher).

106. *Id.* (statement of O.W. Lehmer, Superintendent & Traffic Manager, Yosemite Valley Railroad). *See also* U.S. DEP’T OF THE INTERIOR, PROCEEDINGS OF THE NATIONAL PARK CONFERENCE HELD AT THE YOSEMITE NATIONAL PARK, OCTOBER 14, 15 & 16, 1912 48 (1913) (statement of J.J. Byrne, Assistant Passenger Traffic Manager, Santa Fe Railway) (asserting that “one of the greatest drawbacks that has held . . . Yosemite from attaining the prominence in the world of travel to which it is entitled is the difficulty of getting in and out”); *id.* at 130 (statement of Col. W.W. Forsyth, Acting Superintendent, Yosemite National Park) (contending that “when the Government sets aside a park for that purpose, it takes on itself the obligation of making that park accessible for all the people”); 1911 National Park Conference, *supra* note 105, at 13 (statement of A.G. Wells, General Manager Coast Lines, Atchison, Topeka & Santa Fe Railway System) (stating that “[t]hese great wonders of nature, wisely set aside by the Government for the benefit of the people, would be altogether inaccessible but for transportation”).

107. *See National Park Service: Hearing on H.R. 104 Before the House Public Lands Comm.*, 63d Cong. 6 (1914) [hereinafter 1914 NPS Hearing] (excerpting President Taft’s speech). *See also* William Howard Taft, *Message Concerning the Work of the Interior Department and Other Matters*, Feb. 2, 1912, 16 COMP. MESSAGES & PAPERS PRES. 7719, 7724 (1913) (stating that the national park agency should make “recommendations as to the best method of improving their accessibility and usefulness”). At 300 pounds, Taft confronted special obstacles to enjoying the national parks. *See* 1914 NPS Hearing, *supra*, at 6 (President Taft recalling that he could not journey down Bright Angel Trail into the Grand Canyon “because they were afraid the mules could not carry me,” which convinced Taft that “something needs to be done in respect to those parks if we are all to enjoy them”).

108. REPORT OF THE SECRETARY OF THE INTERIOR FOR THE FISCAL YEAR ENDED JUNE 30, 1910 59 (1911).

109. *See National Park Service: Hearing on H.R. 434 and H.R. 8668 Before the House Public Lands Comm.*, 64th Cong. 52 (1916) [hereinafter 1916 NPS Hearing]

the Interior official testified that “the largest part of the money” for Yosemite National Park went “into the maintenance and construction of roads.”<sup>110</sup> In 1915, Yellowstone became one of the last national parks to open up to automobiles, a development that was “much appreciated by the traveling public.”<sup>111</sup> By contrast, a railroad official noted that “[n]obody wants to travel by wagon any more. It takes too long.”<sup>112</sup>

The new NPS responded to the public demand by building roads to the national parks. “The automobile,” explains Robert Keiter, “opened the parks to a new type of visitor, one who could not afford luxurious railroad travel but instead came seeking adventure.”<sup>113</sup> The NPS built 1,298 miles of roads during the tenure of Stephen Mather. The Civilian Conservation Corps built another 2,186 miles during the 1930s, followed by 1,200 miles as part of the NPS’s Mission 66 program leading to the centennial of the national parks in 1966.<sup>114</sup> But roads were always controversial in national parks. Wilderness advocates insisted that cars were inconsistent with the desired “natural” experience in national parks.<sup>115</sup> After World War II, so many people hopped in their cars and headed to national parks that the director of NPS worried that the parks “were in danger of being ‘loved to death.’”<sup>116</sup>

Even so, Congress has usually allowed the NPS to decide when roads are desirable in national parks. Occasionally, though, Congress specifically prescribes whether roads are required or prohibited within a national park. For example, the legislation which established Grand

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(testimony of Stephen Mather) (remarking that “[t]he motorist magazines have been full of accounts of the parks, and they have brought the parks nearer the motorists”). See also Robin W. Winks, *The National Park Service Act of 1916: “A Contradictory Mandate”?*, 74 DEN. U. L. REV. 575, 583 (1997) (observing that “[a]utomobilists wished to see roads to and within the parks upgraded so that visitors could tour the parks in greater comfort”).

110. 1914 NPS Hearing, *supra* note 107, at 6 (statement of Adolph C. Miller, Assistant to the Secretary of the Interior).

111. 1916 NPS Hearing, *supra* note 109, at 42 (quotations omitted). See also ALBRIGHT & SCHENCK, *supra* note 24, at 127 (recalling that national park supporters “recognized that the introduction of automobiles would vastly increase visitation to the parks and their use. However, we also knew the Congress would count tourist visitation to decide how much money our bureau would get to operate the park system”).

112. 1916 NPS Hearing, *supra* note 109, at 68 (testimony of P.S. Eustis, General Passenger Agent of the Burlington Railroad).

113. ROBERT B. KEITER, *TO CONSERVE UNIMPAIRED: THE EVOLUTION OF THE NATIONAL PARK IDEA* 46 (2013).

114. *Id.* at 46–48.

115. See generally PAUL S. SUTTER, *DRIVEN WILD: HOW THE FIGHT AGAINST AUTOMOBILES LAUNCHED THE MODERN WILDERNESS MOVEMENT* (2002).

116. See DUNCAN & BURNS, *supra* note 26, at 334 (quoting Wirth).

Teton National Park in 1929 prohibited the construction of any roads.<sup>117</sup> Similarly, the law creating North Cascades National Park prohibited the construction of a road “from the North Cross State Highway to the Stehekin Road” or a road that would provide “permanent vehicular access between May Creek and Hozomeen along the east side of Ross Lake.”<sup>118</sup> By contrast, the act establishing Canyonlands National Park contains a provision instructing the Secretary of the Interior to locate a road or roads “to provide suitable facilities access to the Park and services required in the operation and administration of the park.”<sup>119</sup> Additionally, the law establishing Assateague Island National Seashore specifies that a road shall be constructed along its length.<sup>120</sup> Congress has never specified whether or not there should be roads to or through Katmai, so the NPS has had to resolve the competing arguments regarding roads depending on the era in which they were made.

There does not appear to have ever been a serious proposal to build a road from Katmai to Anchorage (and then to the rest of the Alaska highway system, which ultimately would lead to the rest of the continental United States). Such a road would travel nearly 300 miles across mountains, rivers and lakes, and countless other natural features. Besides Katmai, a road to Anchorage would go around or through Lake Clark National Park and other protected lands. The expense, engineering challenges, environmental issues, and general lack of demand have dissuaded any serious suggestion of building such a road.

Instead, car proponents have envisioned a road that connects King Salmon (and other Bristol Bay communities) to the coast, where a ferry system could transport cars to and from the Alaskan highway system at Homer. As early as 1922, Robert Griggs anticipated that one day there would be such a road to Katmai. For the “tourist,” Griggs wrote that

the construction of an automobile road, fifty or sixty miles long, would permit the whole district to be traversed in a single day. . . . The Katmai district is nearer to civilization and more accessible in every way than was the Yellowstone at the time of its discovery. . . . Who can doubt that before long the Katmai National Monument will be made readily accessible to all who desire to seek it?<sup>121</sup>

Griggs continued: “Only 50 or 60 miles of road would be required, not only to penetrate the Valley of Ten Thousand Smokes, but to connect

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117. WILLIAM C. EVERHART, *THE NATIONAL PARK SERVICE* 26 (1972).

118. Act of Oct. 2, 1968, Pub. L. No. 90-544, § 402(e), 82 Stat. 926 (1968).

119. Act of Sept. 12, 1964, Pub. L. No. 88-590, § 4(a), 78 Stat. 934 (1964).

120. EVERHART, *supra* note 117, at 82.

121. ROBERT F. GRIGGS, *THE VALLEY OF TEN THOUSAND SMOKES* 329 (1922).

with the head of Naknek Lake and Bering Sea as well.”<sup>122</sup> He admitted that “[s]ome novel engineering problems might, to be sure, arise from the desirability of keeping such a road as clear of drifting ash and snow as possible. But these could undoubtedly be overcome with a little study.” Shortly thereafter, the Alaska Road Commission responded to Griggs’s suggestions by proposing the thirty-mile road, and Governor Scott Bone recommended its construction in his annual reports for 1922 and 1923. He soon learned, however, that because the proposed route traversed a large area of fresh ash deposits (a material which, witnesses noted, had the consistency of either snow or ground coffee) it was too unstable to support road traffic. Governor Bone also learned that the budget for all of the country’s national monuments was only \$12,500. The Department of the Interior noted, therefore, that it was “not in a position under present circumstances to lay out any sort of development program for Katmai.”<sup>123</sup> The road was never seriously considered again, although governors’ reports for years afterwards bemoaned the monument’s lack of access.<sup>124</sup>

The most serious proposal contemplated a road from King Salmon across Katmai to the coast, where ferries could transport vehicles to the highway system at Homer or Anchorage. In 1955, the NPS official in charge of Katmai described a territorial (Alaska would not become a state until four years later) plan to build such a road through Katmai. “Looking at it from the viewpoint of the tourists travelling by automobile,” he advised, “it does not appear that this would bring very many tourists into the Katmai area. The 80-mile ferry trip from Homer to Illianna Bay would discourage many, for this stretch of water across Cook Inlet can get very rough.”<sup>125</sup> In 1969, the Alaska state highway department conducted a study of a proposed “highway across the Alaska Peninsula from Cook Inlet to King Salmon . . . as a means of alleviating the depressed economic conditions of the Bristol Bay area and of promoting development of resources in this area.”<sup>126</sup> The Alaska state House of Representatives passed a resolution adding that

the construction of a road from the outlet of Naknek Lake to the site of the proposed road beginning at Brooks Lake would immeasurably increase the accessibility of all parts of Mt.

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122. *Id.* at 327.

123. NORRIS, *supra* note 37, at 2.

124. *Id.*

125. Memorandum from Grant H. Pearson, Superintendent, Mount McKinley to Regional Director, Region Four (Dec. 22, 1955).

126. STATE OF ALASKA DEP’T OF HIGHWAYS, PLANNING & RESEARCH DIV. & U.S. DEP’T OF TRANSP., FED. HIGHWAY ADMIN., BUREAU OF PUBLIC ROADS, ALASKA PENINSULA CROSSING SOCIO-ECON. STUDY 1 (1969).

Katmai National Monument, to the mutual benefit of the people living in the Bristol Bay area and the people enjoying the Monument.<sup>127</sup>

Environmentalists were horrified. The Mountaineering Club of Alaska objected that building a highway “through the Katmai National Monument would unnecessarily destroy the wildlife habitat, scenic beauty, and the wilderness character of the area, and would further be inconsistent with the presently-pending wilderness proposal and the truly national interest such an area possesses for the United States as a whole.”<sup>128</sup> Similarly, NPS Director Conrad Wirth wrote to Senator Gruening that such a proposal

would doubtless be strongly opposed by all conservation groups, and we would feel obliged to welcome such opposition. We must make it very clear, however, regardless of the reactions of such groups, that we take the position that the proposals in the resolutions conform in no respect with the basic purposes for which the Monument was acquired and established. We look upon a road crossing through such rugged and forbidding terrain as fantastic. Engineeringly, it would prove impractical and it would be economically unreasonable. The adoption of such a road as a means of park access and interpretation would entail wholesale destruction and loss of park values for which a satisfactory justification

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127. H.J. Res. 38, 2d Leg., 2d Sess. (Alaska 1969). *See also* H.J. Res. 49, 2d Leg., 2d Sess. (Alaska 1969) (available in Katmai archives folder 13) (“The establishment of a ferry terminal at Kukak Bay and the construction of a road from Kukak Bay through the Mt. Katmai National Monument to the city of King Salmon would greatly increase the number of people using and enjoying the natural wonders in Mt. Katmai National Monument”); S.J. Res. 37, (Alaska 1968) (available in Katmai archives folder 13) (finding that “years of study by the Alaska Department of Highways and other agencies indicate that by far the most feasible and least expensive route across the Alaska Peninsula lies within Katmai National Monument” and that “most of the additional road necessary would traverse lava flats and lunar type landscape largely devoid of wildlife, clear waters and forest cover normally associated with wilderness”); H. Con. Res. 13, 2d Leg., 1st Sess. (Alaska 1961) (available in Katmai archives folder 13) (finding that “the Mount Katmai National Monument is located on the Alaska Peninsula and a road in this area would open its vast wonders and beauty to the ever-increasing surge of tourists attracted to Alaska”); Bristol Bay Borough, Public Hearing, Naknek, Alaska, Feb. 28, 1972, at 13 (available in Katmai archives folder 14) (statement of Larry Van Campen, Bristol Bay Borough Manager) (insisting that “one of the big problems we have . . . [is] a beautiful wilderness to see, only we can’t see it”).

128. Mountaineering Club of Alaska Resolution, Feb. 17, 1971 (available in Katmai archives folder 12).

could not be devised.<sup>129</sup>

The NPS also objected to the possibility that the proposed road would interfere with the plan to designate wilderness areas within Katmai. The Wilderness Act, enacted just a few years earlier in 1964, empowered Congress to designate public lands as wilderness where no vehicles, commercial enterprises, or other incompatible activities are allowed.<sup>130</sup> The environmental impact statement for the wilderness designation extolled the benefits of wilderness while noting that a road was incompatible with wilderness, both legally and environmentally.<sup>131</sup> Others balanced the interests differently. The State of Alaska recommended that a transportation corridor across Katmai from Geographic Harbor to King Salmon should be excluded from the wilderness area.<sup>132</sup> The Greater Anchorage Area Borough agreed that “transportation from the Anchorage community to Katmai National Monument should be provided and included in the plan so that the area will be more accessible to the general public.”<sup>133</sup> Otherwise, the Borough feared, “access to and from the area which will make it, for all practical purposes, completely unavailable to all but a very select few.”<sup>134</sup> Alaska Airlines insisted that “[m]ore development is needed to create more accessibility to park areas—not less—so that the wilderness can be orderly developed for its greatest potential as a wilderness area.”<sup>135</sup> The NPS rebuffed these suggestions by observing that the state had abandoned its highway proposal and by indicating that access to Katmai was beyond the scope of the wilderness proposal.<sup>136</sup> When the road plan died, the state legislature passed a resolution blaming the NPS’s opposition for precluding “the best choice of road and harbor location.”<sup>137</sup> Jay Hammond, then one of Alaska’s two senators in

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129. Letter from Conrad L. Wirth to Sen. Ernest Gruening, (Mar. 19, 1962) (DOC033).

130. 16 U.S.C. §§ 1131–36; John Copeland Nagle, *Wilderness Exceptions*, 44 ENVTL. L. 373 (2014) (describing the Act’s prohibitions, the exceptions to those prohibitions, and the special rules that apply to wilderness areas in Alaska).

131. See generally DEP’T OF THE INTERIOR, FINAL ENVIRONMENTAL IMPACT STATEMENT: PROPOSED KATMAI WILDERNESS, KATMAI NATIONAL MONUMENT, ALASKA (1974).

132. *Id.* at 64.

133. *Id.* at 67.

134. *Id.*

135. *Id.* at 70.

136. *Id.* at 64, 67, 70.

137. S.J. Res. 103, 6th Leg., 2d Sess. (Alaska 1970) (available in Katmai archives folder 13). See also Bristol Bay Borough, Public Hearing, Naknek, Alaska, Feb. 28, 1972, at 4 (available in Katmai archives folder 14) (statement of Larry Van Campen, Bristol Bay Borough Manager, quoting Letter from Sen. Jay Hammond) (complaining about “the illogic of some environmental extremists

Congress, cast the blame on “the illogic of some environmental extremists.”<sup>138</sup>

By this point, however, one road had been built to the park, and another had been built within the park. The establishment of Naknek Army Air Field at King Salmon during World War II brought numerous military personnel to the area.<sup>139</sup> To accommodate their recreational needs, the military built a dirt road across the ten miles from King Salmon to the western edge of Naknek Lake. There are no park facilities there, but it remains a popular route for local residents to access the lake and thus the park. Indeed, the NPS has estimated that eighty percent of the park’s visitors reach Katmai across that road.<sup>140</sup> But the road stops near the entrance to the park, forcing visitors to venture into Katmai’s interior on foot. The NPS 1973 master plan for a potential Katmai National Park proposed to upgrade that road. The plan asserted that “a new, judiciously placed all-weather road leading from King Salmon to a key location on or near the west boundary of the park . . . is considered essential, and comprises the first requirement for reliable access into the park.”<sup>141</sup> The plan advocated a shuttle bus service that would transport visitors to proposed “visitor accommodations at the hub of activities at the Naknek Peninsula.”<sup>142</sup> This improved road and shuttle service, however, never materialized. Moreover, the number of cars that are used to reach Katmai that way is limited by the absence of a road connecting the area to the Alaska highway system, and by the need to ship any vehicles into King Salmon.<sup>143</sup>

Once Brooks Camp opened in 1950, demand grew for a road to take visitors from Brooks Camp to the Valley of Ten Thousand Smokes, about twenty-five miles away. Senator Gruening explained in 1961:

[V]isitors to Katmai cannot reach this valley either on a motor

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who oppose the Katmai route”).

138. See Bristol Bay Borough, Public Hearing, Naknek, Alaska, Feb. 28, 1972, at 4 (available in Katmai archives folder 14) (statement of Larry Van Campen, Bristol Bay Borough Manager, quoting Letter from Sen. Jay Hammond).

139. See James Brown, Jr., *King Salmon Airport (King Salmon AFS, AK) History* (Oct. 24, 1995), [http://www.radomes.org/museum/parsehtml.php?html=KingSalmonAFSAKhistory.html&type=doc\\_html](http://www.radomes.org/museum/parsehtml.php?html=KingSalmonAFSAKhistory.html&type=doc_html). The Air Force operated the base after World War II until it closed in 1994. See *id.*

140. U.S. DEP’T OF THE INTERIOR, NAT’L PARK SERV., DENVER SERVICE CENTER, ROAD SYSTEM EVALUATION: KATMAI NATIONAL PARK AND PRESERVE, ALASKA 9 (Nov. 1994).

141. U.S. DEP’T OF THE INTERIOR, ALASKA PLANNING GROUP, *supra* note 98, at 32.

142. *Id.* at 33.

143. *Id.* at 6.

vehicle or boat, and unless they are prepared to camp out for weeks and carry their own subsistence, cannot walk into these areas. They are, in effect, inaccessible to the park public. Visitors to Katmai—which is being ably developed, in the matter of accommodations, by one of Alaska’s local airlines—must get their satisfaction and recreation from fishing, which is indeed, excellent, but leaves totally unutilized and unenjoyed the original values for which this mammoth monument was set aside.<sup>144</sup>

By contrast, one year later Representative John Dingell complained that “[r]ight in the middle of one of the greatest of all wildernesses in the system—Katmai National Monument—a road suddenly appears in the master plan. The public wasn’t asked. The public was told. This would make the wilderness more accessible, and so on, the case went—in a recitation of most of the usual arguments for getting rid of wilderness.”<sup>145</sup> Victor Cahalane, a former NPS employee “who perhaps spent more time and traveled more extensively” throughout Katmai than anyone else in the agency, suggested that the ten-mile trip “is not too great for normal, able-bodied persons to walk in a day over a good trail.”<sup>146</sup> Cahalane also worried that the proposed “simple road . . . would develop inevitably into a ‘finished’ highway.”<sup>147</sup> The Sierra Club and other environmentalists agreed with Representative Dingell that the road would be a “travesty.”<sup>148</sup>

But Senator Gruening persisted. In his own words, he took “the matter up with Conrad L. Wirth, Director of the National Park Service, urging that such a trail be built. Happily, my pleas had registered . . .”<sup>149</sup> Ray Petersen, the founder of Brooks Camp and the original air tours to Katmai, had a more colorful recollection of the decision. According to Peterson, once Senator Gruening learned of the Sierra Club’s opposition, Gruening invited Wirth and Peterson to his

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144. 107 CONG. REC. 18,388 (1961) (statement of Sen. Gruening).

145. 108 CONG. REC. 3728 (1962) (statement of Rep. Dingell).

146. Cahalane, *supra* note 41, at 15.

147. *Id.*

148. Memorandum from David Brower to Board of Directors, Sierra Club (Jan. 5, 1962) (Bancroft Library archives). Whether the project involved a “road” or a “trail” divided the partisans as well. *Compare id.* (“I understand that instead of calling this a road it has euphemistically been labeled a trail”) with Memorandum from E.T. Scoyen, Associate Director to Regional Director, Region Four (Aug. 17, 1961) (“Personally, I do not think it is too important just how we designate this proposed project, but I don’t think that we should refer to it as a Jeep Trail because this term has entirely too much propaganda value for those extremists who are sure to object to any such project. . . .”).

149. Gruening, *supra* note 77, at 827.

office. Once there, “[t]he old Senator grabbed [Wirth] by the scruff, and figuratively speaking turned him over his knee and paddled his hind end and says ‘you don’t treat a constituent like this.’”<sup>150</sup> Thanks to such informal congressional oversight, the NPS built a road from Brooks Camp to the Valley of Ten Thousand Smokes. The road opened in 1963, one year before Congress enacted the Wilderness Act. Senator Gruening, who supported that act, nonetheless had worried that “if some future Secretary of the Interior 10 years hence saw fit to blanket this whole area into wilderness, reasonable access to tourists and visitors to the volcanic phenomena for which the park was created would be permanently denied.”<sup>151</sup>

The subsequent designation of more than three million acres in Katmai as wilderness would seem to confirm Gruening’s fears. Any new road to or within Katmai would require congressional action to exempt the road from the strictures of the Wilderness Act. Congress has taken such action recently with respect to the Izembek Wilderness Area further west along the Alaskan Peninsula from Katmai. In 2009, Congress authorized the Secretary of the Interior to exchange lands within the Izembek National Wildlife Refuge for lands owned by the State of Alaska and the King Cove Corporation for the purpose of constructing a single lane gravel road between the communities of King Cove and Cold Bay, Alaska.<sup>152</sup> The provision in the 2009 Omnibus Act replaces the dictates of the Wilderness Act and other statutes and instead asks the Secretary of the Interior to decide only whether the road is in “the public interest.”

Sally Jewell inherited the Izembek dispute when she took office as Secretary of the Interior in April 2013. She visited King’s Cove in September, and then she issued her decision to reject the road two days before Christmas.<sup>153</sup> “Nothing is more contradictory with, or destructive

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150. Interview of Ray Petersen, Sr. by Bill Hanable (Nov. 23, 1988) (Katmai archives). The saga is described in NPS, CULTURAL LANDSCAPE INVENTORY, VALLEY OF TEN THOUSAND SMOKE ROAD, KATMAI NATIONAL PARK & PRESERVE 27 (2013).

151. 107 CONG. REC. 18,388 (1961) (statement of Sen. Gruening). Gruening added this qualification: “Unless . . . it could be possible to mobilize one House of Congress to reject such action.” *Id.* Gruening was responding to an earlier version of the Wilderness Act that would have allowed the Secretary of the Interior to designate wilderness areas subject to a one-house legislative veto. The Wilderness Act as passed in 1964 allows only Congress to designate wilderness areas, thus avoiding giving Congress a veto power that it could not constitutionally use. *See INS v. Chadha*, 462 U.S. 919 (1983) (holding that legislative veto provisions violate Article I, section 7 of the Constitution).

152. Omnibus Public Land Management Act of 2009, Pub. L. No. 111-11, Title VI, Subtitle E.

153. U.S. DEP’T OF THE INTERIOR, Record of Decision, Izembek National

to, the concept of Wilderness than construction of a road," Jewell proclaimed.<sup>154</sup> She concluded "that construction of a road through the Izembek National Wildlife Refuge would lead to significant degradation of irreplaceable ecological resources that would not be offset by the protection of other lands to be received under an exchange."<sup>155</sup> Roads and wildlife often coexist in wildlife, Jewell noted, but "uses of the habitat of the Izembek Refuge by the large number of species that are dependent on the isthmus would be irreversibly and irretrievably changed by the presence of the road."<sup>156</sup> Jewell observed that wilderness is "the most protective statutory designation of public lands, which is reserved for pristine areas where natural processes prevail with few signs of human presence."<sup>157</sup> She explained that the road "will lead to increased human access and activity, including likely unauthorized off-road access, which will strain Refuge management resources."<sup>158</sup> She also "conclude[d] that other viable, and at times preferable, methods of transport remain and could be improved to meet community needs."<sup>159</sup>

Alaska's congressional delegates blasted the decision. Senator Lisa Murkowski was "angered and deeply disappointed by Jewell's decision to continue to put the lives of the people of King Cove in danger, simply for the convenience of a few bureaucrats and the alleged peace of the birds in the refuge, despite the fact that many thousands of birds are killed by hunters annually."<sup>160</sup> She contended that it was "emblematic of what's going on with the [Obama] administration view of Alaska. They don't think we can take care of our communities, our families and the land that we have."<sup>161</sup> And she added that she regretted her vote to confirm Jewell as Secretary of the Interior earlier in the year.<sup>162</sup> Representative Don Young opined that "[t]his shameful and cowardly decision by Secretary Jewell, just two days before Christmas, to place

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Wildlife Refuge Land Exchange/Road Corridor Final Environmental Impact Statement (Dec. 23, 2013).

154. *Id.* at 9.

155. *Id.* at 3.

156. *Id.* at 4.

157. *Id.* at 9.

158. *Id.* at 7.

159. *Id.* at 3.

160. Amanda Peterka, *Jewell Rejects Road Through Alaska Wildlife Refuge*, E&E NEWS PM (Dec. 23, 2013) (quoting Sen. Murkowski).

161. Elwood Brehmer, *Alaskans Blast Jewell Decision To Deny King Cove Road*, ALASKA J. OF COMMERCE (Dec. 2013) (quoting Sen. Murkowski).

162. *See id.* Additionally, Senator Murkowski faulted the report prepared by Kevin Washburn, whom Murkowski described "as a leading legal scholar on Native trust responsibility" whose "heart clearly is in the right place" but whose "report falls woefully short of his duty to the Aleut people."<sup>160</sup> CONG. REC. S218 (daily ed. Jan. 9, 2014) (statement of Sen. Murkowski).

eelgrass and waterfowl above human life is exactly what I would have expected from the Grinch, but not from an Administration that preaches access to quality healthcare for all.”<sup>163</sup> And Alaska’s Democratic Senator Mark Begich faulted “Washington bureaucrats [who] have determined that the environmental impact of a single-lane road somehow outweighs the health of Alaskans.”<sup>164</sup>

A road that connects Katmai to Anchorage, or even another road within Katmai, could expect similar opposition. Sigurd Olson worried in 1963 that “[a] major highway coming into the monument or an air strip for land-based planes would swiftly destroy it. . . . If Katmai retains its present atmosphere, it will become far more famous and desirable than if it were opened to automobile traffic with its attendant impact.”<sup>165</sup> Katmai’s wilderness designation would block most routes unless Congress acts, which is unlikely. The preservation of wildlife habitat, wetlands, and historic sites could impose legal obstacles to a new road as well. Such concerns remain hypothetical, for there are no current plans to build any new roads to or in Katmai, leaving prospective tourists to rely only on the existing air service.

#### 4. Remote Access

Technology has provided a means of enjoying Katmai without actually visiting there. In 2012, the NPS installed a “bear cam” that streams live video of the brown bears pursuing salmon at Brooks Falls.<sup>166</sup> The purpose of the bear cam is to “allow people who may never have the opportunity to visit [Katmai] to view bears interacting at the falls.”<sup>167</sup> As NPS Director Jonathan Jarvis explained to Congress, the

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163. Manuel Quiñones, *Road Decision ‘Largest Pile of Horse Manure’ – Rep. Young*, GREENWIRE (Dec. 24, 2013). Senator Murkowski also complained about the timing of Jewell’s decision. See 160 CONG. REC. S218 (daily ed. Jan. 9, 2014) (statement of Sen. Murkowski) (lamenting that Jewell “announced this devastating news only hours before Christmas Eve—a heartless decision delivered at a heartless time”).

164. Press Release, Sen. Mark Begich, Press Release (Dec. 23, 2013), <http://www.begich.senate.gov/public/index.cfm/2013/12/begichcritical-of-interior-decision-on-king-cove>.

165. OLSON, *supra* note 98, at 3. Olson, however, celebrated the road to the Valley of Ten Thousand Smokes as making it “possible to view the scene of spectacle that was directly responsible for setting aside of the monument.” *Id.*

166. *Bears: Brooks Falls - Katmai National Park, Alaska*, EXPLORE, <http://explore.org/live-cams/player/brown-bear-salmon-cam-brooks-falls> (last visited Feb. 24, 2016).

167. NPS, KATMAI NATIONAL PARK AND PRESERVE, ALASKA, BROOKS RIVER AREA COMMUNICATIONS UPGRADE AND BEAR VIEWING WEB CAMERA INSTALLATION ENVIRONMENTAL ASSESSMENT 34 (2008). During its NEPA study, the NPS found that the bear cam could “have a negative, minor, long-term impact on the visual

bear cam enables people around the world to “watch dozens of bears munching on salmon. It’s better than reality TV. I’m telling you.”<sup>168</sup> The bear cam is one means of allowing people who don’t “have the luxury of owning a floatplane” to enjoy “some very huge parks that are very inaccessible.”<sup>169</sup> Or, as one news story put it, the bear cams “provide access to a national park that is difficult to reach and expensive for most tourists.”<sup>170</sup> The bears starring in the live video have gained a worldwide audience that follows their every move, much like a reality television show. When a bear died during the summer of 2014, “[c]ommenters from around the world expressed sorrow, shared cherished moments and thanked the deceased bear for the opportunity to watch her grow.”<sup>171</sup> Five more remote cameras now supplement the original bear cam to provide live video from other parts of the park, including areas that are inaccessible to all but the most intrepid visitors.<sup>172</sup> The extent to which such virtual experiences can compare to live visits to Katmai is uncertain,<sup>173</sup> but the sight of the bears and other Katmai highlights on camera is certainly better than no experience at all.

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resources of the Brooks River and Dumpling Mountain areas of [Katmai because] the web camera and communications equipment may be visible to park staff and visitors at each of the project areas. To minimize adverse impacts to visual resources, the web camera and communications equipment would be positioned and installed to match the surrounding structures and natural landscapes as much as possible.” *Id.* at 35.

168. *Supplemental Funding Options to Support the National Park Service: Hearing Before the Senate Energy & Natural Resources Comm.*, 113th Cong. 25 (2013) (testimony of NPS Director Jonathan Jarvis).

169. *Id.*

170. Mark Thiessen, *Alaska Brown Bear Webcam: Live Feed Shows The Elusive Animals In Brook Falls and Katmai National Park*, HUFF POST GREEN (July 24, 2012), [http://www.huffingtonpost.com/2012/07/24/alaska-brown-bear-webcam-katmai-national-park\\_n\\_1697271.html](http://www.huffingtonpost.com/2012/07/24/alaska-brown-bear-webcam-katmai-national-park_n_1697271.html).

171. Megan Edge, *After Katmai Grizzly Dies, Brooks Camp Webcam Viewers Mourn*, ALASKA DISPATCH NEWS (July 10, 2014), <http://www.adn.com/article/20140710/after-katmai-grizzly-dies-brooks-camp-webcam-viewers-mourn>.

172. See NPS, KATMAI NP, *Webcams*, <http://www.nps.gov/katm/photosmultimedia/webcams.htm> (last visited Mar. 7, 2016) (providing links to cameras at Dumpling Mountain, the lower Brooks River, Naknek River, the riffles along the Brooks River, and the Brooks River, as well as the original Brooks Falls camera).

173. See JOAN M. RATZ & SHANNON J. CONK, *USE OF WILDLIFE WEBCAMS – LITERATURE REVIEW AND ANNOTATED BIBLIOGRAPHY* 6 (2010), <http://pubs.usgs.gov/of/2010/1306/pdf/OF10-1306.pdf> (finding that “there is a general lack of research and publication regarding the use of webcams in general, and specifically regarding the use of webcams for virtual tourism of wild areas”).

## B. Facilities within Katmai

There were no facilities within Katmai until the early 1950s. NPS authorized the first concessioner to operate in Katmai in 1950. Ray Petersen explained that “the Katmai region is one of the greatest attractions the North has to offer. We feel it is our economic duty to share it with the rest of the world.”<sup>174</sup> Peterson had been flying local cannery officials to the Brooks River area since 1942, and in 1950 the NPS approved his proposal to operate two camps in the national monument. The main facilities consisted of Brooks Camp, located on the north side of the mouth of the Brooks River, on the western side of Katmai. The original camp consisted of framed tents that could provide lodging and dining for up to thirty people. The camp expanded and became the heart of activity within Katmai for both tourists and the NPS managers. Most people access the camp by float planes flying the short twenty minute journey to King Salmon, or flying from other destinations further away from the park. The establishment of Brooks Camp attracted 134 visitors in 1950, 510 in 1956, and 1,083 in 1959.<sup>175</sup> The camp is open to visitors from early June through mid-September and receives approximately 12,000 to 14,000 visitors per year.<sup>176</sup>

Brooks Lodge and other concessioner and NPS buildings are located on the north side of Brooks River. The primary bear viewing platform is located on the south side of the river. A floating bridge enables visitors and staff to travel from one area to the other. Brown bears visit the Brooks River during July to feed on the migrating salmon, and then they return to the area in September when spawned and spawned out salmon concentrate in the river. “Typically, 40-70 sub-adults and adults are present along with 25-30 cubs.”<sup>177</sup> The bears are the prime attraction for nearly all of the tourists who travel to Katmai. But “Brooks Camp could hardly have been located in worse place for conflict with bear movements and access to the river’s fish. Increased visitation has only exacerbated this conflict.”<sup>178</sup>

The NPS, therefore, plans to move most of the Brooks Camp

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174. NORRIS, *supra* note 37, at 20 (quoting Peterson). *See also id.* at 65–80 (describing the three phases of concessions development at Katmai from the 1950s through the 1980s).

175. *Id.* at 37.

176. NAT’L PARK SERV., *supra* note 75, at 101–02.

177. NPS, KATMAI NATIONAL PARK AND PRESERVE, ALASKA, BROOKS RIVER AREA UTILITIES REPLACEMENT AND HOUSING RELOCATION ENVIRONMENTAL ASSESSMENT 30 (2009).

178. U.S. DEP’T OF THE INTERIOR, NPS, DENVER SERVICE CENTER, ROAD SYSTEM EVALUATION: KATMAI NATIONAL PARK AND PRESERVE, ALASKA 3 (1994).

facilities to the south side of the river to avoid conflicts between people and bears.<sup>179</sup> In response to the EIS for that plan, though, several conservation organizations proposed that Brooks Camp be closed altogether, to be replaced by a new visitor complex on the Naknek Lake on the western edge of the park.<sup>180</sup> Boat service would then transport interested visitors to the bear platforms along the Brooks River and to the bus that would take them to the Valley of Ten Thousand Smokes. But the NPS dismissed that plan because “[d]evelopment on a large scale in this low, marshy, shoreline area along Naknek Lake has inherent major environmental concerns.”<sup>181</sup> The NPS’s own plan to move most of the facilities to the south side of the river has stalled, though, in the absence of sufficient funding.

Very few facilities exist within Katmai outside of Brooks Camp. In 1963, Sigurd Olson envisioned that “[a] chalet built at Kukak Bay or Geographic Harbor could be a port of call and stopping place for those making the trip up the coast from Prince Rupert, Vancouver, or Seattle to Juneau, Sitka and Glacier Bay, then on to Cordova, Valdez, and Seward, Anchorage and the interior.”<sup>182</sup> The NPS’s master plan for the proposed Katmai National Park suggested that “[t]he park’s major overnight use facility will include lodge-type accommodations in the West End developed area [at either] King Salmon, the morainal ridge at the West End of Naknek Lake, and the northwestern shore of Naknek Lake at least as far east as the Naknek Peninsula.”<sup>183</sup> None of those facilities were ever built. Instead, two small fishing lodges—Kulik Lodge and Grosvenor Lodge—are the only accommodations within the national park outside of Brooks Camp.<sup>184</sup>

The most recent push for a change in Katmai’s facilities occurred in 1996 in conjunction with the NPS’s preparation of a development concept plan for the Brooks River area. A family that owns native

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179. NPS, BROOKS RIVER AREA DEVELOPMENT CONCEPT PLAN, KATMAI NATIONAL PARK & PRESERVE, ALASKA (1996). See also NPS, FINAL DEVELOPMENT CONCEPT PLAN ENVIRONMENTAL IMPACT STATEMENT, BROOKS RIVER AREA, KATMAI NATIONAL PARK AND PRESERVE ALASKA (confirming the NPS’s plan to move Brooks Camp to the south side of the Brooks River).

180. NPS, FINAL DEVELOPMENT CONCEPT PLAN ENVIRONMENTAL IMPACT STATEMENT, *supra* note 179 at 259–63, 269–75, 276–82.

181. *Id.* at 110.

182. OLSON, *supra* note 98, at 4.

183. U.S. DEP’T OF THE INTERIOR, ALASKA PLANNING GROUP, *supra* note 98, at 28–29.

184. See *Kulik Lodge*, KATMAILAND: KATMAI NATIONAL PARK, <http://katmailand.com/lodging/kulik.html> (last visited Mar. 7, 2016); *Grosvenor Lodge*, KATMAILAND: KATMAI NATIONAL PARK, <http://katmailand.com/lodging/grosvenor.html> (last visited Mar. 7, 2016).

Alaskan land rights along the western shore of Naknek Lake proposed to replace the facilities at Brooks Camp with visitor facilities on their land along the lake.<sup>185</sup> The proposal envisioned a “Gateway Lodge” and associated facilities along Naknek Lake, which could be reached by a road from King Salmon, and from whence visitors could proceed by boat to the Brooks River area.<sup>186</sup> Such a lodge would provide “an excellent view” of the landscape, according to its proponents.<sup>187</sup> The NPS rejected the idea though, because it was not “reasonably close to the prime resource area of Brooks River” and it did not have “a scenic setting.”<sup>188</sup> Alternatively, several environmental organizations suggested the replacement of Brooks Camp with visitor facilities outside the national park in King Salmon.<sup>189</sup> The move toward a gateway community to the national park, they argued, was consistent with NPS policy and would reduce the number of encounters between people and brown bears. That proposal failed to gain NPS support as well.

Meanwhile, the NPS has engaged in a variety of activities to improve Brooks Camp and elsewhere in Katmai, each of which required an environmental assessment pursuant to NEPA. Those activities include the removal of contaminated sand along the beach,<sup>190</sup> the relocation of utilities,<sup>191</sup> and the restoration of a historic patrol cabin along the beach.<sup>192</sup> The latest challenge confronted by the NPS at Brooks Camp is to replace the floating bridge with a permanent structure which also facilitates visitor access but does not interfere with the remote and scenic qualities of the area.<sup>193</sup> In each instance, the NEPA process guided

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185. See NPS, FINAL DEVELOPMENT CONCEPT PLAN ENVIRONMENTAL IMPACT STATEMENT, *supra* note 179, at 259 (reprinting the “Gateway Proposal” from the “Gateway Family Heritage Group”). See also Erik Hillstrom, *Years Ago in the Bristol Bay Times-Dutch Harbor Fisherman*, ARCTIC SOUNDER (July 8, 1999) [http://www.thearcticsounder.com/article/1427years\\_ago\\_in\\_the\\_bristol\\_bay\\_times-dutch](http://www.thearcticsounder.com/article/1427years_ago_in_the_bristol_bay_times-dutch) (reporting that the Gateway Family Heritage Group owns “a 250-acre Native allotment land base at Lake Camp on the west shore of Naknek Lake”).

186. NPS, FINAL DEVELOPMENT CONCEPT PLAN ENVIRONMENTAL IMPACT STATEMENT, *supra* note 179, at 259.

187. *Id.* at 260.

188. *Id.* at 259.

189. See *id.* at 267, 272–82 (explaining various concerns towards Brooks Camp’s environmental impacts).

190. See generally NPS, NAKNEK LAKE SAND REMOVAL, KATMAI NATIONAL PARK AND PRESERVE, ALASKA (2007).

191. See generally NPS, BROOKS RIVER AREA UTILITIES REPLACEMENT AND HOUSING RELOCATION ENVIRONMENTAL ASSESSMENT (2009).

192. See generally NPS, SWIKSHAK PATROL CABIN REPLACEMENT ENVIRONMENTAL ASSESSMENT (2010).

193. NPS, FINAL DEVELOPMENT CONCEPT PLAN ENVIRONMENTAL IMPACT STATEMENT, *supra* note 179, at 179–81.

the NPS toward the environmentally preferable alternative.

### CONCLUSION

The NPS has sought to fulfill its dual legal mandate of promoting both conservation and enjoyment ever since President Wilson established the Katmai National Monument in 1918. Part of that job is easy. Human actions will never be as destructive to the landscape as the 1912 eruption of Mount Novarupta. But we could transform the landscape for better or worse, and we have certainly been interested in manipulating the native wildlife. Once we wanted to get rid of the bears (and the beaver) in order to preserve the salmon,<sup>194</sup> but now the bears are Katmai's greatest attraction. The NPS has managed to resist such sweeping changes to the area, though the very discretion that the law affords the agency gives it little protection from what it perceives as outside meddling. Senator Gruening grabbed the collar of the NPS Director in order to get the road that he wanted. The NPS's Katmai archives also contain a memorandum from Justice William O. Douglas to wilderness advocates warning about the appointment of a special assistant to the Chief of the Forest Service. "Watch this man closely," advised Justice Douglas. "He is dedicated to asphalt trails and roads into every forest and recreational area in the U.S."<sup>195</sup> Just as Senator Gruening did not rely on the formal legislative process to work his will at Katmai, Justice Douglas sought to influence the NPS even in the absence of any cases or controversies before the Court.

Yet the paradox of Katmai remains. Why is such an amazing national park among the least visited? Float planes and remote cameras have increased the number of people who get to see—in person or virtually—Katmai's splendors, but the number of visitors is still quite small. The challenge remaining for those crafting the laws and management policies for Katmai is to enable additional enjoyment while conserving the features that make Katmai worth visiting.

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194. See Cahalane, *supra* note 41, at 11.

195. Memorandum from William O. Douglas to David R. Brower, Anthony Wayne Smith & Howard E. Zahniser (Nov. 5, 1962). Apart from the questionable judicial ethics issues raised by Justice Douglas's communication, it is not clear that the supposedly objectionable official was in fact so objectionable. See ALBERT ARNST, WE CLIMBED THE HIGHEST MOUNTAINS (1985), <http://www.iamwho.com/osbornes/latest/weclimbed.pdf> (book written on the subject of Douglas's memorandum describing efforts to facilitate fire detection in Oregon national forests).