



September 30, 2009

VIA ON-LINE PORTAL, FIRST CLASS MAIL, AND E-MAIL
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Big Cypress National Preserve
Addition General Management Plan
National Park Service
Denver Service Center – Planning
P.O. Box 25287
Denver, CO 80225-0287

Mr. Pedro Ramos
Superintendent
Big Cypress National Preserve
33100 Tamiami Trail East
Ochopee, FL 34141-1000

Re: Comments of Safari Club International and Safari Club International Foundation
on the Big Cypress National Preserve, Draft EIS/Management Plan for the
Addition Lands to Include Wilderness and ORVs

Dear Superintendent Ramos and BCNP Planning Team:

Safari Club International and Safari Club International Foundation (collectively “SCI”) appreciate the opportunity to comment on the Draft General Management Plan/Wilderness Study/Off-Road Vehicle Management Plan/Environmental Impact Statement (“Draft GMP/EIS”) for Big Cypress National Preserve (“BCNP”). SCI commented on the General Management Plan (“GMP”) in January 2006, the expansion of the scope of the GMP in July 2006, and the Revised Preliminary Alternatives for the Addition Lands to Include Wilderness and ORVs in June 2007. SCI and SCI’s members have long been active in hunting and other issues related to BCNP. Consistent with our earlier position and as explained further below, SCI cannot support the preferred alternative because it designates too few ORV trails and proposes far too much land for Wilderness designation. In addition, by not creating an additional alternative that does not include any proposed Wilderness, as suggested by SCI, the NPS failed to ensure consideration of a full range of alternatives.

Safari Club International and Safari Club International Foundation

Safari Club International, a nonprofit IRC § 501(c)(4) corporation, has approximately 53,000 members worldwide and 1,800 members in Florida, including many who hunt and recreate in BCNP and, in doing so, contribute to the sustainable use of the wildlife in the area. Its missions include the conservation of wildlife, protection of the hunter, and education of the public concerning hunting and its use as a conservation tool. Safari Club International Foundation is a nonprofit IRC § 501(c)(3) corporation. Its missions include the conservation of wildlife, education of the public concerning hunting and its use as a

conservation tool, and humanitarian services. More specifically, the conservation mission of SCIF is: (a) to support the conservation of the various species and populations of game animals and other wildlife and the habitats on which they depend; and (b) to demonstrate the importance of hunting as a conservation and management tool in the development, funding and operation of wildlife conservation programs.

The Draft GMP/EIS Should Have Included a No-Wilderness Alternative

The Draft GMP/EIS does not consider an adequate range of alternatives. A particularly crucial alternative missing from consideration is one that SCI suggested in June 2007, one that establishes an ORV plan and management zones that reflect expansive historical use and does *not* include any proposed Wilderness (*i.e.*, lands formally designated under the Wilderness Act). The no-action alternative does not cover this scenario; it simply continues the status quo, which, while it does not include any Wilderness, also does not include any ORV use or hunting. SCI supports an additional alternative that would avoid Wilderness designation and allow ORV use and hunting because it would recognize (1) the importance of ORV use in the Addition Lands, including for hunting; and (2) that Wilderness designation is unwarranted and unnecessary, and would interfere with the NPS's statutory duty to allow traditional recreational and cultural activities, such as hunting and fishing, in the Addition Lands. While SCI does not support any of the alternatives fully, it is convinced that Alternative B is the best of the four proposed in the Draft GMP/EIS.

In adding the approximately 147,000 acres, "Addition Lands," to the existing BCNP in 1988, Congress intended that these lands would continue to be open to ORV use, hunting, fishing, and other recreational activities. Congress mandated that the NPS allow these activities in the Addition Lands, as it must do in the rest of the BCNP, unless certain overriding reasons exist (*e.g.*, public safety, protection of plants or wildlife). *See* 16 U.S.C. § 698j. These traditional recreational activities are also traditional cultural activities in this area. Despite this Congressional mandate, the Addition Lands are currently closed to both hunting and ORV use, and apparently will remain so until the NPS completes the GMP and Wilderness study. SCI continues to support the expeditious completion of the Wilderness report so that the NPS can remove the pendency of the report as a barrier (albeit an unjustified barrier) to allowing ORV use and hunting in the Addition Lands.

The NPS Must Analyze Wilderness Suitability Based on Pre-Closure Conditions

The NPS appears to have failed to analyze the suitability of this area for a recommendation of Wilderness designation based on the human activities and general conditions that predated the ORV and hunting closure that the agency instituted following the establishment of the Addition Lands in 1988. Instead, the NPS appears to have continued to look at use and conditions *at present*. *See* Draft GMP/EIS at 191-92 (noting in some areas past human use, but claiming traces are nearly gone); Appendix B, page 398 ("NPS staff reviewed current data for the Addition and obtained additional data

through field visits.”). The Draft GMP/EIS contains no evidence that the NPS considered pre-1988 conditions. The NPS cannot use its own interference with the area’s uses and conditions to artificially manipulate the variables the agency assesses for Wilderness suitability and to establish an ORV plan. But this is what the NPS appears to have done. For example, the Draft GMP/EIS notes that hunting and ORV use have never been legal in the Addition Lands. *Id.* at 192. This is true only because as soon as Congress established the Addition Lands, the NPS prohibited those activities pending completion of a wilderness study. Those activities occurred legally before establishment of the Addition Lands and the legislation specifically contemplated they would continue after a routine review for Wilderness suitability occurred.

Similarly, for analyzing one of the specific factors defining Wilderness—whether the area is protected and managed to preserve its natural conditions, *see* 16 U.S.C. § 1131(c)—the NPS cannot view the closure (which is contrary to the Addition Lands establishing act) as a management scheme designed to preserve natural conditions. In other words, the closure cannot become the status quo on which the NPS bases the Wilderness suitability analysis. Congress intended that the creation of BCNP and the Addition Lands would not curtail traditional hunting and recreational activities. As it moves forward in this planning process, the NPS must honor that commitment.

SCI again expressly requests that the NPS demonstrate to the public that it analyzed Wilderness suitability as described above, that is, based on conditions in 1988, before the lands were closed to ORV use and hunting. ***If the NPS refuses to do this type of analysis, SCI requests that the NPS specifically explain why.*** SCI also requests that the NPS put this analysis and supporting documentation into the administrative record of the development of this General Management Plan.

Wilderness Designation Would Interfere with Wildlife Management and Recreational Activities

A NPS decision to recommend any areas for official “Wilderness” designation by Congress under the Wilderness Act would be very harmful to wildlife management and recreational activities.

A Wilderness designation can interfere with the placement of permanent structures or even equipment necessary for wildlife study or management activities. For example, SCI has been involved with disputes and litigation involving the placement of water catchment structures for bighorn sheep conservation located (at least in part) in Wilderness areas in Kofa National Wildlife Refuge in Arizona. The U.S. Fish and Wildlife Service and the Arizona Department of Fish and Game deemed these unobtrusive devices necessary for wildlife management and conservation. Despite the FWS’s compliance with minimum tool and minimum analysis requirements, wilderness proponents filed a litigation challenge to the installation of the water developments. In addition, these groups later demanded the removal of cameras affixed at the water

development sites for the purpose of wildlife research.¹ The Kofa NWR example demonstrates how even legitimate efforts to conserve and research wildlife become significantly more problematic when the area inhabited by the subject wildlife is designated as wilderness. SCI strongly recommends that the NPS consider all the potential ramifications of a wilderness examination before finalizing any such decision. Obviously water catchment structures are not a necessity in BCNP, but other wildlife conservation and/or research efforts might be necessary in BCNP and could encounter significant resistance if they require any kind of mechanized device or equipment.

In addition, a Wilderness designation would essentially end any possibility of ORV use in those areas. Without ORVs, hunting, fishing and other traditional recreational activities are impossible in many if not most areas of the Addition Lands. For example, without the access provided by ORVs, hunters would not be able to reach most areas in the Addition Lands or carry out any hunted animals. This would both discourage hunting altogether and concentrate hunting in the few areas accessible without ORVs (possibly to the detriment of those areas). Thus, to facilitate and maximize recreational uses, including hunting, the NPS must not recommend the designation as Wilderness any areas in the Addition Lands.

The preferred alternative, which contains a large amount of proposed Wilderness, is problematic even though the designated ORV routes themselves appear to be excluded from the areas proposed for Wilderness. While this might allow hunters (or other backcountry recreationists) to use ORVs to access areas and then walk to the hunting spot, it does not necessarily remove the threat of Wilderness designation to these activities. Anti-use groups could seek a ban on ORV use by arguing that the simple operation of the ORVs on lands adjacent to the Wilderness area (*i.e.*, on the non-Wilderness ORV trails) interferes with the solitude and peacefulness of the Wilderness area. In addition, the existence of these ORV trails, and of major highways through the Addition Lands, argues strongly against the “Wilderness” suitability of this area. At the very least, the “buffer” between the designated trail and the proposed Wilderness in whatever alternative the NPS ultimately chooses should be much greater.

The Mandate to Study Wilderness Does Not Suggest Wilderness is Appropriate

The fact that Congress required the NPS to *consider* within five years of 1988 whether any areas within the Addition Lands were suitable for Wilderness designation does not suggest that Congress believed that any such designation was appropriate. This directive is consistent with a general directive in the 1964 Wilderness Act to review, within 10 years of 1964, all roadless areas of five thousand contiguous acres or more in the National Parks system for Wilderness suitability. *See* 16 U.S.C. § 1132(c). The NPS should not in any way presume, just because Congress directed it to undertake the same

¹ The case was decided in favor of the government but is on appeal before the Ninth Circuit Court of Appeals.

review in the subsequently created Addition Lands, that any areas within the Addition Lands are suitable for Wilderness designation. Instead, when Congress directed the NPS to review the suitability of areas within BCNP and the Addition Lands for Wilderness designation in 1974 and 1988, it was merely following legislative practice at the time.

The following passage from a hearing on the legislation leading to the original creation of BCNP confirms that the Wilderness review language was simply legislative practice at the time and further demonstrates that the expectation was that this unit would *not* contain designated Wilderness. The discussion is between Senator McClure and Mr. Reed, the Assistant Secretary of the Department of the Interior at the time.

Senator McClure: Just two questions. One is the fact that you are asking questions which I think are very pertinent to the very fact that this is a unique designation, there is none other like it, so far as I know.

Mr. Reed: Correct, Sir.

Senator McClure: If it is absolutely unique, what is the management philosophy? It is not a park, not a recreation area, not a national seashore. It is completely new breed of cat?

Mr. Reed: It is a new breed of cat, sir.

Senator McClure: The question comes to the management philosophy. There is also involved in this bill the standard provision for wilderness review?

Mr. Reed: That is true. *That is probably in all of our legislation. This area is not like a park in which a great deal will remain in wilderness or wilderness type of use. This is not going to be that type of use at all. This is going to be used and used hard, I think.*

Senator McClure: If a wilderness designation should be added, it, in all likelihood, would preclude the use of any motorized vehicles, either land or water?

Mr. Reed: Yes, sir.

Big Cypress National Preserve. Hearings before the Subcommittee on Parks and Recreation of the Committee on Interior and Insular Affairs United States of America, 93rd Cong., 2nd Sess., p. 83 (March 21 - 22, 1974) (emphasis added).

The Legislative History Does Not Support a Wilderness Designation

Nothing in the legislative history indicates that Congress had any expectation that a study of Wilderness suitability would lead to a recommendation of a Wilderness designation. The two main reports on the original establishing act and the Addition Lands establishing act contain little or nothing on the purpose of the Wilderness Act study. *See* S. Rep. No. 1128, 93rd Cong., 2nd Sess., 1974, 1974 U.S.C.C.A.N. 5568, 1974 WL 11567; S. Rep. No. 45, 100th Cong., 1st Sess. 1987, 1988 U.S.C.C.A.N. 404, 1987 WL 61564. Other materials indicate that the primary expectation was for the continued use of BCNP for traditional activities, including ORV use and hunting. For example, a 1979 letter from Senator Chiles and other members of the Florida Congressional delegation to the superintendent of BCNP (Attachment 1 to SCI's June 2007 comments) stated that:

[t]he legislative history surrounding the establishment of the Big Cypress National Preserve in 1974 clearly points to Congressional concern that the variety of public uses traditionally associated with Big Cypress be allowed to continue, and it is important that we review the proposed regulations for the Preserve in the context of our commitment to multiple-use management objectives for Big Cypress.

These words continue to apply today. Wilderness designation would curtail or severely limit these traditional uses and activities associated with BCNP and the Addition Lands.

A Wilderness Designation is Not Appropriate for the Addition Lands

Other conditions also argue against Wilderness designation. The Addition Lands are an area subject to heavy historical and current use by man. SCI understands that the following human activities or conditions, and others, have occurred or are occurring in the Addition Lands: timbering, railroad tracks, extensive ORV trails and use, inholdings, hunting, hunting cabins (including at least one from the 1920s) and trailers, boy scout camping, cattle grazing, military and other types of roads, heavy equipment use, oil exploration, farming, and customary and traditional use by Miccosukee and Seminole Indians. Governmental maps detailing miles and miles of secondary roads and trails, numerous camps/campsites, drop points, helispots, and other manmade features further demonstrate the "imprint" of humans in the Addition Lands. These maps can be found at ftp://ftp.nifc.gov/Incident_Specific_Data/SOUTHERN/Florida/07_BICY_Complex/GIS_and_Maps/MAP_PRODUCTS/20070604/ and were Attachments 2-5 to SCI's June 2007 comments. In sum, human influences and the "imprint of man's work" are prevalent in the Addition Lands. *See* 16 U.S.C. § 1131(c).

Instead of promoting opportunities for solitude and primitive recreational activities, Wilderness designation would impair them in the Addition Lands, as most areas where these activities could be found or enjoyed would be inaccessible without ORV use.


Mr. Pedro Ramos, Superintendent
BCNP Planning Team
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When the NPS conducts an appropriate analysis and recognizes the extensive ORV use, hunting, and other recreational activities that took place prior to the closure (and other human imprints), it should see that the Addition Lands are not suitable for a Wilderness designation. In light of this, the NPS must include an alternative that does not propose any Wilderness. Such an alternative would be most like the current Alternative B, stripped of proposed Wilderness and including more ORV trails and less primitive zones.

The NPS should not rely on unnecessary and inflexible Wilderness designation, but should manage the Addition Lands through proper regulation of ORV use. SCI supports an ORV management plan that recognizes the importance of ORV use in the Addition Lands. Without ORV use and access, recreational users will be unable to enjoy many recreational activities, including hunting and others mandated by the Federal legislation that created the BCNP and Addition Lands. If appropriate, those areas not susceptible to ORV use and not historically accessed by ORVs (*i.e.*, not accessed prior to the 1988 closure) can remain that way. SCI will leave to others with greater on-the-ground experience in the Addition Lands to comment on the sufficiency of the proposed ORV trail system and management zones. SCI will, however, say that the system should be sufficient to allow access to hunting and recreational activities and reflect use as of 1988, not 2009.

SCI appreciates the opportunity to comment on this important issue. We look forward to working with the NPS and other interested parties on the GMP for the Addition Lands. If we can provide any further information, please contact Doug Burdin, 202-543-8733 or dburdin@safariclub.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Lawrence P. Rudolph". The signature is fluid and cursive, with the first name being the most prominent.

Lawrence Rudolph
President,
Safari Club International
Safari Club International Foundation