



File Code: 1570/2720-2

Date: September 12, 2006

Mr. James Boyce and Mr. Bert Stromquist
Baranof Expeditions, LLC
P.O. Box 3107
Sitka, AK 99835

Dear Mr. James Boyce and Mr. Bert Stromquist:

This is my decision on the appeal you filed under 36 CFR 251 (No. 06-10-00-0011) regarding the number of Priority Use black bear hunts in your 2006 special use authorization (SIT365). You requested a second level review of the Sitka District Ranger's March 20, 2006, decision related to the number of hunts authorized. Specifically, you appealed the methodology for the determination of black bear hunts and the final allocation of hunts to your business.

Background

On March 20, 2006, the Sitka District Ranger signed the special use authorization for your business, Baranof Expeditions, LLC. The permit authorized various activities on National Forest System lands, including eight priority use black bear hunts within portions of Game Management Unit 3 (GMU-3) and three temporary use black bear hunts, for a total of 11 black bear hunts. On May 8, 2006, you appealed her decision. The Deputy Forest Supervisor affirmed the District Ranger's decision on August 10, 2006. In accordance with 36 CFR 251.78(c), you filed a second level appeal with the Regional Forester on August 25, 2006.

It should be noted that as the majority of the activities conducted by Baranof Expeditions occur on the Sitka Ranger District, your special use authorization was signed by the Sitka District Ranger. However, the black bear hunts under review occur on the Petersburg Ranger District, so the Petersburg District Ranger was responsible for determining the number of hunts and the type of use that would be authorized by your permit. The Petersburg District Ranger prepared the Responsive Statement addressing the issues raised in your appeal.

Decision

I have completely reviewed the appeal record forwarded by the Deputy Forest Supervisor, including your Notice of Appeal dated May 8, 2006; the District Ranger's Responsive Statement dated May 25, 2006; your reply dated June 23, 2006; and the Deputy Forest Supervisor's decision at the first level of appeal (enclosed). I have also reviewed other relevant law, regulations, and policies.



Based on my review of the record, I concur with the discussion of issues presented in the Deputy Forest Supervisor's decision letter and will not reiterate those discussions here. I uphold her decision to affirm the District Ranger's decision in full. The actions and decisions of the District Ranger and the Deputy Forest Supervisor are consistent with the requirements of applicable laws, regulations, and policies. The exercise of discretion related to this decision was fully within their authority.

The Deputy Forest Supervisor identified a concern regarding the authorization of additional black bear hunts in GMU-3 as part of her review of the appeal documents. As discussed in her decision, she will issue a letter to the Petersburg District Ranger instructing her to prepare an assessment of the management situation in GMU-3 to determine whether a competitive interest exists for additional hunt allocations. The District Ranger has committed to completing this assessment this winter, and if the assessment indicates that a competitive interest exists, any additional black bear hunts that become available will be allocated through the prospectus process as specified in Forest Service Manual 2712.

My decision constitutes the final administrative determination of the Department of Agriculture on your appeal [36 CFR 251.87(e)(3)]. It is not subject to further review by the Chief of the Forest Service.

Sincerely,

/s/ Paul K. Brewster
PAUL K. BREWSTER
Appeal Reviewing Officer

Enclosures

cc: Olleke E Rappe-Daniels
Carol A Goularte
Patricia A Grantham
Dennis Rogers
Winnie Blesh
Neil Hagadorn



File Code: 1570-1/2720-2

Date: August 10, 2006

Mr. James Boyce, Mr. Bert Stromquist
PO BOX 3107
Sitka, AK 99835

**Certified Mail – Return Receipt
Requested:**
(7006 0100 0002 5050 2554)

Dear Mr. Boyce and Mr. Stromquist,

On May 8, 2006, I received your appeal (No. 06-10-05-0006 A251); regarding the number of Priority Use black bear hunts in your 2006 special use authorization (SIT365). Your letter specifically appealed the methodology for the determination of black bear hunts and the final allocation of hunts to your business.

The Sitka District Ranger submitted her Responsive Statement to me on June 6, 2006, also sent a copy to you. You provided a response to the Responsive Statement on June 23, 2006. The appeal record was then closed on June 24, 2006.

Background

On March 14, 2006, a special use authorization was signed by Jim Boyce for Baranof Expeditions, LLC. On March 20, 2006 the special use authorization (SIT365) was signed by Sitka District Ranger, Carol Goularte. Various activities on National Forest System lands were authorized in this permit including eight priority use black bear hunts within portions of GMU-3 and three temporary use black bear hunts, amounting to a total of 11 black bear hunts. On May 8, 2006, you appealed your special use authorization.

Clarification for the Responsive Statement

Generally, where activities are proposed on two or more Ranger Districts, special use authorizations are issued from the district where the majority of the activity occurs. In the case of Baranof Expeditions, LLC, the majority of your use occurs on the Sitka Ranger District so the Sitka District Ranger, Carol Goularte, is considered the authorizing officer and signed your special use authorization. Since the black bear hunts under review would occur on the Petersburg Ranger District, Petersburg District Ranger, Patricia Grantham, has the responsibility of determining the number of hunts and type of use that would be authorized by your permit (Forest Service Manual 2704.23).

Appeal Issues

Issue 1 – Only eight priority use hunts were authorized for Baranof Expeditions, LLC. The methodology that has been historically used to determine the number of hunts (average of the two highest years over the last five years) would have allowed them eleven hunts.



As noted in the Responsive Statement, Forest Service Handbook (FSH) 2709.11 chapter 41.53h states that priority use may be based on the average of the highest two years of actual use during **the previous permit term** (emphasis added). Also, assignment of priority use shall be at the discretion of the authorized officer. The term for the permit held by Baranof Expeditions, LLC for the 2005 operating season was one year. The District Ranger has the discretion to calculate priority use. There are no mandatory requirements beyond the consideration of at least two years of successful performance.

After evaluating several allocation alternatives, the Petersburg District Ranger chose to allocate priority use based on consideration of eligibility for the highest amount of priority use that was earned from 2002 to 2005 operating seasons. One alternative did consider calculating priority use based on the two highest years of actual use for the last five years. However, a more conservative approach to the allocation was chosen (Responsive Statement, Page 2).

The permit for Baranof Expeditions, LLC states that upon the expiration of a previous permit, the decision whether to issue a new permit to the holder is at the sole discretion of the Forest Service. The permit also states that the authorized officer may prescribe new terms and conditions when a new permit is issued (Authorization ID: SIT365, Subsection I, D. –Renewal).

Upon review of the appeal record, it appears the Petersburg District Ranger adequately considered a reasonable range of alternatives to determine the allocation of black bear hunts within GMU-03 and exercised discretion in using a conservative approach in the allocation of priority use.

Issue 2 – The methodology used to determine the number of hunts is faulty because it does not appear to account for unused hunt allocations. Hunts were cancelled as a result of the Sept. 11, 2001 terrorist attacks, poor weather prevented some hunts from occurring, and some hunts were not booked due to emergency closures. How were these events factored in when hunt authorizations were determined?

Baranof Expeditions, LLC was authorized eight priority use and three temporary use black bear hunts for the 2006 operating season for a total of eleven black bear hunts. This is the same number of hunts that have been authorized to Baranof Expeditions, LLC since 2002.

As explained, priority use is based on an average of the actual use during the previous permit term (FSM 2709.11, chapter 41.53h). Unused hunts do not contribute to the record of actual use that is considered in a priority use calculation.

On page 3 of your comments to the responsive statement you state that when conducting hunts for clients who hold a State tag for hunting both a brown and black bear, about half of the time clients opt to focus on brown bear hunting and do not elect to hunt for black bear. The allocation of eight priority use black bear hunts to Baranof Expeditions, LLC reflects this consideration.

In your comments to the responsive statement, you questioned whether the Petersburg District Ranger adequately considered unused hunts that may have been part of a multiple-species hunt

requested by a client. The responsive statement does state that the allocation of black bear hunts was primarily based on the number of hunts conducted (Responsive Statement, page 7).

In response to how the 2001 season was considered in the calculations for priority use, there is a specific note below Table 1 in the responsive statement that states, “2001 was omitted from this calculation (for Alternative 2), as the use that year was not consistently measured in hunts.”

Issue 3 – Baranof Expeditions, LLC. lost three priority use hunts, all on the south end of Kuiu Island. The bear harvest concerns on Kuiu Island are mainly on the north end of the island and other steps have been taken to address those concerns.

The Baranof Expeditions, LLC number of priority black bear hunts has been reduced to eight total black bear hunts for the 2006 operating season. This is a reduction of three priority use hunts from the 11 authorized for the 2005 operating season.

The changes for black bear hunts adopted by the Alaska Board of Game in the 2001 season affected all of Kuiu Island (Responsive Statement, Attachment 2). Although ADF&G and the Forest Service recognize the greatest number of black bear harvests occur on the island’s north end, the harvest limit applies to the entire island. The Petersburg District Ranger was within her authority to limit hunts on the south end to reduce the potential cumulative impacts of total hunts on the island given the uncertainty regarding black bear populations and social encounter capacities.

Issue 4 – The methodology to determine the number of hunts permitted in 2002 did not provide consistent results for all operators. How were the permitted hunts in 2002 calculated?

On page 4 of the Responsive Statement, the Petersburg District Ranger states, “The number of authorized hunts for 2002 was based primarily on the number of hunts actually used in 2000.” It appears that there was also some discussion with the permit holders to voluntarily reduce the number of black bear hunts from what was authorized in the 2001 operating season in response to actions taken by the Board of Game in 2001 to cap the number of non-resident hunts allowed on Kuiu Island (Responsive Statement, page 5, paragraph 5).

In your comments to the Responsive Statement, you introduce some new questions/issues regarding how black bear hunts were calculated for the 2000 and 2001 seasons. Since these questions were not presented in your original appeal during the 45-day appeal filing period they will not be reviewed as part of my decision.

Decision

I have reviewed your notice of appeal as well as the information provided by the Sitka District Ranger in her Responsive Statement. Based on that review I find the method for the allocation of black bear hunts to Baranof Expeditions, LLC. to be consistent with direction provided in Forest Service Manual 2709.11, Chapter 41.53h. I am affirming the Sitka District Ranger in the

authorization of eight priority use black bear hunts and three temporary use black bear hunts to Baranof Expeditions, LLC. for the 2006 operating season.

However, in the review of the documents as a part of this appeal, I do have a concern for the authorization of the additional black bear hunts in GMU-03. It appears that there was inadequate opportunity for participation by the appellant or other affected parties to determine whether competitive interest existed for additional hunt allocations for the 2006 operating season. The Petersburg District Ranger has already expressed a commitment to examine the management situation in GMU-3 this winter. I support that commitment and will be issuing a separate letter to the Petersburg District Ranger to prepare an assessment of competitive interest for black bear hunting prior to the allocation of more black bear hunts in GMU-3. If the assessment indicates that competitive interest exists, any additional black bear hunts, hunts returned to the district as a result of a sale or loss of business, or hunts returned to the district for reallocation because of sustained non-use by a permit holder will be allocated through a prospectus as specified in FSM 2712.

Pursuant to 36 CFR 251.87(c), written decisions by a District Ranger or Monument Ranger are subject, on request, to a second level of review by the Regional Forester.

Regional Forester
Alaska Region, Region 10
USDA Forest Service
P.O. Box 21628
Juneau, AK 99801

The appeal must be filed in accordance with 36 CFR 251.90 (Content of Notice of Appeal). Upon receipt of your request, the Regional Forester will promptly request the first level appeal file from this office. The second level review will be conducted on the existing record, and no additional information will be added to the file. If you have questions regarding your appeal or the appeal process, please contact Dennis Rogers, Appeals Coordinator, at 747-4327 or drogers02@fs.fed.us.

Sincerely,

OLLEKE E. RAPPE-DANIELS
Deputy Forest Supervisor

cc: Carol A Goularte
Patricia A Grantham