

# STATE OF ALASKA

**SARAH PALIN, Governor**

## **ANILCA IMPLEMENTATION PROGRAM Office of Project Management and Permitting**

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February 15, 2008

Mr. Gary Wheeler, Refuge Manager  
Kodiak National Wildlife Refuge  
US Fish and Wildlife Service  
1390 Buskin River Road  
Kodiak, AK 99615

Dear Mr. Wheeler:

The State of Alaska appreciates the opportunity to provide you with these scoping comments for the revision of the Commercial Fishing Management Plan (Plan) for the Kodiak National Wildlife Refuge. We have looked forward to working in cooperation with the Refuge on a revision of this Plan for some time, particularly given the response in the 2007 Record of Decision (ROD) for the Kodiak Refuge Comprehensive Conservation Plan that deferred commercial fishing issues to this revision process.

We request the Refuge use this Plan to develop clear policies and guidelines for both permit holders and Refuge staff that provide a consistent, stable understanding of the use and management of commercial fishing support facilities. Lack of consistency under previous refuge managers sometimes led to misunderstandings between Refuge staff and permit holders. Also, while the Plan referenced is a "Commercial Fishing Management Plan" we welcome your intention to rename the revision to more closely reflect the actual activities it regulates – commercial fishing support facilities – not management of commercial fishing. This is a small matter but one that will reduce confusion by the public concerning the respective management responsibilities of the State of Alaska and the Refuge.

We note that there are some differences in the text of the Management Plan Commercial Fishery Activities dated August 27, 1987, handed out at the January 2008 public meeting in Kodiak, and the original copy of the Plan in our files. They appear to be mostly editorial but care should be taken to ensure that no substantive changes in the text or intent of the 1987 Plan are unintentionally carried forward without public scrutiny. To avoid any such inadvertent problems, it may be advisable to only use the original version of the Plan.

In the original 1987 Plan, the Refuge determined that in order to ensure that commercial fisheries support facilities were compatible with Refuge purposes it was necessary to limit the number of facilities to that present in 1979 and to strictly limit the size of the facilities needed in support the fishery. As you are aware, the State then, and now, believes that the Refuge has been overly

restrictive in its interpretation of the Alaska National Interest Lands Conservation Act (ANILCA) section 304(d) regarding activities permitted in support of commercial fishing. Section 304(d) provides the following:

*The Secretary shall permit within units of the National Wildlife Refuge System designated, established, or enlarged by this Act, the exercise of valid commercial fishing rights or privileges obtained pursuant to existing law and the use of Federal lands, subject to reasonable regulation, for campsites, cabins, motorized vehicles, and aircraft landings directly incident to the exercise of such rights or privileges: Provided that nothing in this section shall require the Secretary to permit the exercise of rights or privileges or uses of the federal lands directly incident to such exercise, which he determines, after conducting a public hearing in the affected locality, to be inconsistent with the purposes of a unit of the National Wildlife Refuge System as described in this section and to be a significant expansion of commercial fishing activities within such units beyond the level of such activities during 1979.*

Section 304(d) is an example of how Congress intended refuges in Alaska to be managed differently than in the contiguous 48 states. By determining that support for commercial fishing was a permitted use of refuges in Alaska, Congress was giving direction to the Service that they should manage lands in Alaska to assure the continuation of unique uses not found elsewhere in the refuge system.

We understand that in 1987 the Refuge may have been warranted in taking the steps it did to stringently regulate facilities, particularly given the outlook concerning bears, perhaps the most visible refuge resource and a significant purpose in the original creation of the refuge. By that time, the Alaska Native Claims Settlement Act had removed significant acreage from the Refuge and raised the potential for development by private land owners. Hunting effort for deer was dramatically increasing along with the potential for negative human-bear interactions. The Terror Lake Hydroelectric project was coming on line with potential development impacts to habitat. All of these factors raised alarm concerning the future of bears on Kodiak. Implementing a highly-regulated system for facilities on the Refuge was something that the Refuge could do to ensure the future of bears on the island in the face of these other challenges.

However, since 1987 a number of factors have reduced the potential for detrimental impacts to bears. Large amounts of the land turned over to Native corporations were purchased and returned to Refuge control. Deer populations have declined, reducing hunting effort and reducing the potential for negative hunter-bear interactions. Terror Lake did not incur the impacts that were thought possible. Overall, bear populations on the Refuge (and the Kodiak Archipelago for that matter) have increased and their regulated harvest has been incrementally increased in response. With 20 years of additional studies and observations of bears on Kodiak, as well as a better understanding of the adaptable nature of bears, a more flexible approach to the regulation of commercial fishing support facilities is both possible and justified. A more flexible approach would take into account the cyclical nature of fisheries since commercial fisheries (and the fishery resources they depend on) are not static in abundance of fish, location of effort, or market needs. Adjustments in the management of the facilities used in their support are a necessary element in the continued viability of the fisheries.

Because of the dramatic changes since the 1987 Plan was written, we request the bear section be revised to reflect these changes. We request the section describe current knowledge about the potential impacts of commercial fishing support facilities on bears and make recommendations on how to eliminate or minimize these impacts. The Plan should take advantage of an opportunity to make these facilities on Refuge lands models for how to co-exist with bears – something others living in proximity to bears on private and state lands can look to as an example. ADF&G would welcome the opportunity to work with the Refuge on this portion of the revision.

Foremost on our list of issues, we request that the Plan revision develop criteria to implement Congressional intent in ANILCA Section 304(d) in limiting the fishery to, “...a significant expansion of commercial fishing activities within such units beyond the level of such activities during 1979.” The interpretation of this section affects several components of facilities management: the total number of facilities permitted, the actual “footprint” of facilities on the Refuge, and the duration of occupation. Historically, the Refuge has interpreted that the actual number of facilities (temporary and permanent) must be limited to the number found in 1979, with no possibility of expansion, in order to remain compatible with the purposes of the refuge. In simple terms, the number of permits issued by the Refuge needs careful consideration. For example, the number of permits issued by the Refuge was 26 in 1979, 34 in 1986 and recent figures presented at the January 2008 public meeting in Kodiak reported a total of 24 permits issued in 2007. Given this information, the Plan should provide for an increase in the number of permits, in addition to determining what a significant increase above 1979 levels might be.

The operation of set net sites or sites in support of beach seining operations for commercial fishing often necessitate the use of refuge uplands for support facilities. As fisheries change over the years, the location of the fisheries and, hence, location of upland support sites may need to change. Participation in the fisheries itself is under limited entry, thus the fishery itself is not expanding. However, if fishery location or abundance changes, fishermen with permitted upland sites may occasionally need to use different locations with temporary support facilities. We have previously directed fishermen to the refuge office to request permission to erect tent platforms on a temporary basis during shifts in the fishery. Some fishermen are able to travel to and from their existing sites, but weather and distance preclude this from being a feasible option for others.

It is our understanding that, based on the 1987 Plan, Kodiak refuge staff has rejected requests for temporary use permits needed to support changes in location of the commercial fishery. We are concerned about the impact this continued prohibition will have on the viability of the commercial fishing industry in the Kodiak area. This also interferes with the Alaska Department of Fish and Game’s commercial fisheries management by preventing units of fishing gear to move throughout the area, inhibiting harvest of fish when and where most desirable. If fishermen cannot obtain the permits necessary from the Refuge to erect facilities needed to fish in an area they cannot participate in the fishery.

The size of facilities (the foot print) is also of concern since permit holders may be unnecessarily limited in their ability to participate in the fishery. In particular, permit holders are interested in the ability to construct small buildings to house ice-making machines needed to cool and

preserve fish. Small sheds to house ice makers would improve the quality of fish and also reduce associated noise and increase scenic values by removing ice-making machines from open view. We do not believe that Congress intended for these fisheries to remain technologically stagnant and not take advantage of new developments that could improve products (and lessen certain impacts).

Changes in fishery management and market demand call for corresponding changes in the seasonal duration of permits necessary. Permits issued by the Refuge currently allow occupation of facilities from May 15 through September 15, while the commercial fishery now extends from June 1 to October 31 in some districts. Additional time is necessary and appropriate for permit holders to fully participate in the commercial fishery.

Permit holders also need to be able to inhabit their facilities during the winter months to conduct repair or other maintenance projects that may not be feasible during other times of the year. Current Refuge policy does not allow permit holders to so.

We are also interested in discussion concerning the subsistence use of these facilities outside of the period of time permitted for commercial uses. Public comments have indicated that local area residents may have used these cabins prior to the development of the 1987 Plan for subsistence purposes, a use that is not currently allowed by refuge policy. A review of historic subsistence uses of these facilities is warranted to ensure that subsistence opportunities are being adequately provided.

We recognize that the Service has resource concerns to consider in permitting commercial fishing support facilities on Refuge lands. ANILCA authorized certain uses of refuges, including commercial fishing support activities, and these activities need not be inconsistent with the purposes of the Refuge. The Service has numerous options for reasonable limitations attached to individual special use permits and, with input from the State and stakeholders and using the best information available, we believe new or temporary support facilities can be constructed and used to minimize impacts to habitat, wildlife and other resources. We look forward to working with the Refuge in the revision of this Plan.

Thank you for your consideration of these comments. If you have any specific questions about these comments, please contact Brad Palach at the Alaska Department of Fish and Game, at 907-267-2145.

Sincerely,

A handwritten signature in black ink, appearing to read "Sally Gibert". The signature is written in a cursive, flowing style.

Sally Gibert  
ANILCA Program Coordinator