

# STATE OF ALASKA

**SARAH PALIN, Governor**

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

550 W. 7<sup>TH</sup> AVENUE, SUITE 705  
ANCHORAGE, ALASKA 99501  
PH: (907) 269-7477 / FAX: (907) 334-2509  
[sally.gibert@alaska.gov](mailto:sally.gibert@alaska.gov)

March 26, 2008

Bud Rice  
National Park Service  
240 West 5th Avenue  
Anchorage, Alaska 99501

Dear Mr. Rice:

The State of Alaska received the March 2008 Environmental Assessment (EA) entitled *Temporary Access Permit to Cross Bering Land Bridge National Preserve for the Shishmaref Relocation Reconnaissance Study*. The purpose of the EA is to evaluate the authorization of temporary access across the Preserve to gather site-specific information on regional subsurface ground conditions. The following consolidated state agency comments cover Alaska National Interest Lands Conservation Act (ANILCA)-related issues and other state interests, excluding coastal zone management, which will be addressed, as applicable, by the Alaska Department of Natural Resources, Division of Coastal and Ocean Management. We appreciate the National Park Service's (Service) cooperation in working with the Alaska Department of Transportation and Public Facilities to facilitate the gathering of the requested information.

### **General Comments**

The State of Alaska appreciates the Service's support of this project and encourages its authorization. In the final decision document, we suggest providing a bit more context about how this project relates to the longer-term effort to evaluate the options for relocation of the village of Shishmaref. It would also be helpful to clarify that this is the beginning of a potential application for a transportation and utility system under the ANILCA Section 1102-1106, as specified in 43 CFR Part 36.3. Some of this information was provided in the accompanying press release, but not in the EA itself. Also, for the record, the State's Office of Habitat Management and Permitting has already issued a Fish Habitat Permit for this project.

### **Disposal of Human Waste**

Page 6, last paragraph of Alternative 2: Please specify in the decision notice that the separation distance between human waste and water bodies must be measured from the *ordinary high water mark* (OHWM). According to Alaska Department of Environmental Conservation regulation at 18 AAC 72.020, human waste must be disposed of at least 100 feet away from the OHWM of streams, rivers, or lakes. This distinction is important because a separation of 200 feet from *surface water* may, in some instances, still not meet the required 100 foot setback from OHWM.

## ANILCA 810 Analysis

We agree with the finding that the proposed action would not result in a restriction of subsistence uses. The discussion does not, however, recognize state management of the harvest of fish and wildlife, including for subsistence purposes. For future reference in subsequent ANILCA 810 Analyses, we request such recognition. The fact that the Federal Subsistence Board has the ability to supersede state regulations on federal lands and waters does not mean that state regulations no longer apply, as the current silence about state management implies. In fact, in most instances statewide, state regulations have not been superseded by federal subsistence regulations. For the purposes of this EA, for example, the second sentence of the first paragraph under Affected Environment on page 25 would be more accurate if stated as follows:

*Section 203 and Title VIII of ANILCA allows for harvest of fish and wildlife in Bering Land Bridge National Preserve as regulated by the State of Alaska, except as superseded by Federal subsistence regulations and Park-specific regulations.*

We would appreciate such clarification in an errata sheet accompanying the decision notice; however, we are more concerned with incorporating accurate information into future EAs since we realize this clarification does not alter the 810 conclusions or the outcome of the EA.

**Page 24;** II. Evaluation Process; second paragraph. If an errata sheet is included with the decision notice on this EA, please note that the second major quote about the purposes of the Bering Land Bridge National Preserve is from Section 201(2) of ANILCA, not 202(2).

**Page 27;** Restriction of Access: The first sentence says: “All rights of access for subsistence harvest on National Park Service lands are granted by Section 811 of ANILCA.” [emphasis added] Since this language appears in several recent EAs (Anaktuvuk Pass Wind Generator, Remote Weather Stations in several park units), we again offer a comment for future reference. If this language is used again, we request deleting the word “All” because other entities have the authority to impose limits; e.g., the Alaska Board of Game might seasonally restrict motorized use for hunting big game.

**Page 27;** Restriction of Access; last sentence; and

**Page 28;** Increase in Competition; last sentence: ANILCA provides the opportunity for a consumptive subsistence priority “when it is necessary to restrict taking in order to assure the continued viability of a fish or wildlife population or the continuation of subsistence uses of such population” (see ANILCA Section 802(2)). Neither of the two referenced sentences, especially the one on page 28, accurately reflect 802(2), therefore we recommend the errata sheet include the following correction:

*The superintendent may **enact** closures and/or restrictions on take if necessary to protect subsistence **uses** or to assure the continued viability of a particular fish or wildlife **population**.*

In conclusion, we request the opportunity to work with the Service on fine-tuning the Subsistence 810 Analyses for future EAs since it appears that some of the language seems to be boilerplate that would benefit by minor revisions and clarifications. Thank you for your consideration of these comments. If you have any questions, please call me at 907-269-7477.

Sincerely,

A handwritten signature in black ink, appearing to read "Sally Gibert". The signature is written in a cursive style with a prominent loop at the end.

Sally Gibert  
ANILCA Program Coordinator