

# STATE OF ALASKA

## ANILCA IMPLEMENTATION PROGRAM Office of Project Management and Permitting

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December 15, 2008

Kenton Moos, Refuge Manager  
U.S. Fish & Wildlife Service  
P.O. Box 287  
Galena, AK 99741

Dear Mr. Moos:

The State of Alaska reviewed the Draft Revised Comprehensive Conservation Plan (CCP) and Environmental Assessment (EA) for the Koyukuk/Northern Unit Innoko/Nowitna National Wildlife Refuges. This letter represents the consolidated views of the State's resource agencies. We appreciate the overall level of coordination that occurred during this planning process. As a result, our comments on the Draft Revised CCP primarily request inclusion of additional information or clarification in the final plan or decision notice.

### **Subsistence Use of Off-Road Vehicles**

We support the objective (Objective 7, page 2-8) to monitor and assess the use of off-road vehicles on the refuge. We request the historic review and subsequent development of threshold levels be done in cooperation with the State. State agencies also have an interest in the habitat values of state lands within the refuge, as well as maintaining traditional access for subsistence purposes per Section 811 of the Alaska National Interest Lands Conservation Act (ANILCA).

### **Compatibility Conditions**

We appreciate the intent of the introductory statement in the "*Stipulations Necessary to Ensure Compatibility*" section of certain Compatibility Determinations (CDs) to clarify that some of the conditions listed are "typical" and not all are necessary for compatibility. However, further clarification would help the public and government agencies understand that individual conditions may be modified or removed based on a specific proposal under certain circumstances. In some situations, the result may involve adding, deleting, or modifying specific conditions; or perhaps creating a whole new compatibility determination for the specific proposed activity. These options are not apparent in the current introductory language (noted below). We are concerned that certain conditions, while identified generally as "typical," may discourage the public from attempting to seek approval.

*A special use permit with stipulations is required for most [name activity] on the Refuge. The permit includes details of the specific project. Below are typical special use permit*

*stipulations, some of which are necessary for compatibility. Site-specific special use conditions related to maintenance of defensible space will be incorporated into permits on a case-by-case basis. Other project-specific stipulations may be included in individual permits.*

Below are two examples that illustrate this concern:

- Page D-40, Helicopter Landings, 6<sup>th</sup> Bullet: This condition, which prohibits the “*herding, harassment, hazing or driving wildlife*” would potentially prevent the State from conducting standard collaring operations or other types of close aerial observations that cannot generally be done without being out of compliance. While we are pleased the Description of Use includes “*State of Alaska wildlife capture work, and fish or wildlife surveys*” (See page D-38), it is not clear that such conditions could be removed for these types of approved activities.
- Page D-53, Reburial of Archaeological Human Remains, 6<sup>th</sup> bullet: This condition prohibits the use of helicopters for this activity. As a result of recent discussions, we understand that should the Refuge receive a proposal that involved the use of helicopters, it could not be approved under this compatibility determination; however, the request could be considered under a separate, customized compatibility determination.

We therefore request clarification of available options. An unrelated clarification relative to “*maintenance of defensible space*” is also included. If for some reason the suggested language (below) is problematic, we request an opportunity to work with the Service to suitably clarify the intent.

*A special use permit with stipulations is required for [name activity]. The permit includes details of the specific project. Below are typical special use permit stipulations, some of which are necessary for compatibility. Site-specific special use conditions related to maintenance of defensible space for fire management purposes will be incorporated into permits on a case-by-case basis. ~~Other p~~Project-specific stipulations ~~may be~~ included in individual permits may vary from those listed below. In some circumstances, the proposed removal or modification of a stipulation may require a new compatibility determination.*

## **Page Specific Comments**

**Summary Table, Page 12, Off-Road Vehicles:** Alternative B indicates “*Not allowed, with very few exceptions.*” If a summary of the final plan is released to the public, we recommend referencing Section 2.4.13.2 in the plan, which identifies the potential exceptions.

**Page 2-59, Table 2-1, Off-Road Vehicles:** The section references under Wilderness, Wild Rivers and Minimal Management are not consistent with those referenced in the General Management Guidelines. Since this is the public access section of the table, the appropriate reference is *Off-Road Vehicles, Section 2.4.13.2*.

**Page 2-73, Section 2.9.2, Minimal Management:** It is unclear why the description of minimal management includes a comparison to resource and wilderness values found in designated Wilderness. Linking minimal management to designated Wilderness in this manner is potentially

misleading. Noting the description of minimal management on page 2-14 does not include such a comparison or reference, we request the first sentence be revised as follows:

*Lands in this category would be managed to maintain the condition of those areas that have high fish and wildlife and wilderness values. Public uses...*

**Page 3-1, Section 3.1.1, first paragraph:** We recommend adding the Alaska Statehood Act (PL-85-508) as an additional Act of Congress influencing land ownership within Koyukuk, Northern Unit Innoko, and Nowitna Refuges. To state that only two acts of Congress, the Alaska Native Claims Settlement Act (ANCSA) and ANILCA, determined land ownership patterns of the Refuges is inaccurate. ANCSA, ANILCA, the Alaska Statehood Act, equal footing, public trust doctrine, federal law, and the Alaska Constitution determined land ownership and management responsibilities for the beds of navigable and other State waters in the Refuges.

We therefore request the first sentence be revised as follows:

~~Two~~ *Three acts of Congress, the Alaska Statehood Act, the Alaska Native Claims Settlement Act of 1971 (ANCSA), and the Alaska National Interest Lands Conservation Act of 1980 (ANILCA), determined the current land ownership patterns of the Refuges.*

**Page 3-3, Table 3-4, footnote “a”:** Although it is presumed that the State of Alaska received title to the beds of rivers of 198 feet or more in width and lakes of 50-acres or more, the State of Alaska received title to the beds of all navigable waters at statehood, including rivers less than 198 feet in width and lakes smaller than 50-acres that meet navigability criteria. Navigability, for purposes of establishing land title ownership (as defined by federal case law criteria), determines who owns the submerged lands beneath water bodies on the Koyukuk, Northern Unit Innoko, and Nowitna National Wildlife Refuges. If navigable, the State owns the submerged lands. If non-navigable the adjacent upland owner owns the submerged lands. Ownership of the majority of submerged lands within the boundaries of the Koyukuk, Northern Unit Innoko, and Nowitna National Wildlife Refuge is unresolved. To clarify that navigability status is not limited by the criteria established for the acreage calculations used in these tables, we request the following changes:

*Acreage figures do not include submerged beds of meanderable water bodies (rivers of 198 feet or more in width and lakes of 50 acres or more). Ownership of the submerged lands beneath these water bodies depends on the navigability status and is yet to be determined for many of the water bodies. No ownership of the land beneath these water bodies is implied in this table.*

**Page 3-56, 3.3.3.4. Concerns Regarding Fish, Wildlife and their Habitats.**

**Alteration of Wild Salmon Stocks Caused by Artificial Enhancement:** We understand there is some concern regarding the variability in abundance among some stocks of salmon in the Yukon Drainage; however, variation is normal in wild salmon stocks. While a limited mitigation program exists to supplement Chinook salmon production lost to the Whitehorse Dam in Canada, there are no enhancement programs presently contemplated elsewhere in the Yukon. While not contemplated at this time, we appreciate that enhancement remains an available management tool. Should enhancement programs be proposed and evaluated, the Alaska Department of Fish and Game (ADF&G) has highly developed processes to ensure the genetic viability and maintenance

of all affected fish stocks. We therefore request insertion of the following sentence before the last sentence in the paragraph:

*However, rigorous policies and guidelines of the Alaska Department of Fish and Game (ADF&G) help mitigate concerns about the potential for inadequate escapement, loss of genetic diversity, or an unsustainable harvest.*

We also request the following cross reference at the end of the discussion: (See page 2-2, 2.1.1, Objective 2.).

In addition, the term “*artificial*” is not defined in Service policy or regulation, whereas “*enhancement*” is defined. The two terms also appear duplicative so it is potentially confusing to combine them in this context. We therefore request deleting “*artificial*” in both the heading and body of this discussion.

**Page 3-72, Section 3.4.3, Huslia, fourth paragraph, first sentence:** We request that trapping not be specifically characterized as a subsistence activity. Trapping is conducted for a variety of reasons, including for personal use for food and clothing, for the creation of crafts for sale and for the direct sale of the fur. In addition, the State categorizes and manages trapping as a distinct type of regulated take. We therefore request the following revision to the first sentence:

*Trapping is a major subsistence activity in Huslia. Trapping is a major activity that supports the subsistence lifestyle of the residents of Huslia, providing furbearers for clothing, crafts, and sale, as well as food.*

**Page 3-72, Galena, third paragraph, first sentence:** For the same reasons as noted above, we request that the reference to trapping be changed from a “*very active subsistence activity*” to “*a common activity that supports the subsistence lifestyle of the residents of Galena.*”

**Page 3-77, Section 3.4.6, first paragraph, fifth sentence:** Since the Service intends to produce a report that determines whether off-road vehicles were traditionally used for subsistence access on the refuge (Goal 7, Objective 7), we request the following revision to this sentence:

*There is currently no known local use of three or four-wheelers or other off-road vehicles for access to subsistence resources on the Refuge.*

## **Compatibility Determinations**

**Page D-2, Refuge Purposes, (all CD’s), Nowitna River Wild and Scenic River Designation:** While ANILCA designated the Nowitna as a Wild and Scenic River, it did not identify specific attributes as indicated in the CDs. We recommend the following revision:

*While not a refuge purpose, ANILCA designated the Nowitna River as a Wild and Scenic River within the refuge boundary. The Nowitna River is managed as a wild river because of its natural, free flowing condition, water quality, wildlife, geology, and primitive setting.*

**Page D-7, Commercial Big Game Hunting Guide Services, Description of Use, second to last paragraph:** We understand ORV use is not allowed under the 2004 Prospectus for Big-Game Guide Services on the Refuge. Because 43 CFR 36.11(g) includes the option to issue permits for ORV use, we request the following clarification:

*The 2004 Prospectus prohibits the use of off-road vehicles by bog-game hunting guides and their clients on Koyukuk/Nowitna Refuge.*

**Page D-12, Commercial Big Game Hunting Guide Service:** Regarding the term “high quality” in the CD for Commercial Big Game Hunting Guide Services, we understand this is a reference to a separate prospectus document that is not subject to public review in this planning document. However, neither the regulation at 50 CFR 36.41(e)(4), (which authorizes the prospectus process) nor the policy 605 FW 1.6, refer to a “high quality” experience, but instead direct the Service to evaluate the success of programs based on visitor experience (“quality”). For the record, we are concerned when this terminology is used to set a subjectively high bar for management without accompanying definition or standards. In a separate venue, we will be contacting the Division of Visitor Services and Communications to discuss this issue.

**Page D-18, Commercial Fish Guiding Services, 5th bulleted stipulation:** According to the Alaska Department of Environmental Conservation (DEC) regulation at 18 AAC 72.020, human waste must be disposed of at least 100 feet away *from the ordinary high water mark* (OHWM) of streams, rivers, or lakes. This distinction is important because a separation of 150 feet from surface water may, in some instances, still not meet the required 100 foot setback from the OHWM. We request wording this stipulation consistent with the applicable DEC regulation.

**Page D-19, Commercial Fish Guiding Services, Refuge Specific Special Conditions, 4<sup>th</sup> stipulation:** We appreciate that this stipulation specifies “intentional” in reference to actions that interfere with subsistence activities or access. We request the stipulation be worded the same in all CDs where included (see below).

Commercial Transporter Services, D-32  
Commercial Big-Game Hunting Guide Services, page D-11  
Commercial Recreational Guide Services, page D-27  
Helicopter Landing, page D-41  
Subsistence Cabins and Trapping Cabins, page D-83

It would also be useful for the public to know where maps of the refuge are available. (e.g., the refuge office in Galena, regional headquarters in Fairbanks, on the internet, or elsewhere). We recommend including that information in the stipulation.

**D-41, Helicopter Landings CD, Refuge-Specific Special Conditions, 1<sup>st</sup> bullet:** We request this stipulation be removed from the CD primarily because direction related to operation of in-flight aircraft falls under the authority of the Federal Aviation Administration. Secondly, while we appreciate the intent is to reduce disturbances to wildlife, for all practical purposes it is very difficult under some circumstances (e.g. sighting at short distances) to avoid unintentionally disturbing wildlife and studies have generally shown that many unintentional disturbances are usually short lived and have few long term effects. At a minimum, we recommend changing “*Ensure that...*” in the first sentence to “*Encourage...*” In addition, this stipulation may actually result in increased disturbances if changes to a flight path or altitude cause an aircraft to stay

within sight and sound of wildlife longer or resulting adjustments to rotor “pitch” increase or otherwise alter noise levels. We request the Service instead continue to rely on flight advisories currently in effect (and noted on FAA Flight Charts) for transiting refuges as well as existing federal and state regulations that prohibit the intentional harassment of wildlife.

**Page D-58, Recreational Hunting, Justification, first sentence:** We request this sentence be revised to more accurately portray the intent of the Koyukuk Controlled Use Area.

*All lands within the Koyukuk /Nowitna Refuges, except private inholdings, are open to general public access, except in the Koyukuk Controlled Use Area, where use of aircraft in the support of moose hunting is not allowed.*

**Page D-63, Recreational Fishing, Anticipated Impacts of the Use, first paragraph:** We request the following revision of this paragraph to more accurately reflect the status of salmon fisheries within the area:

*Salmon stocks have displayed the normal variation of abundance expected in wild salmon, with some years having reduced returns and others displaying high productivity. In response to the variation of abundance, State and federal fishery management may be adjusted to allow increased or reduced harvest, as appropriate. Currently, there are no indications that recreational fishing (for resident and anadromous fish) is not sustainable.*

**Page D-68, Scientific Research, and Description of Use, last paragraph, 2<sup>nd</sup> sentence:** We request the following revision to clarify that the listed modes of access are authorized under ANILCA 1110(a):

*Potential means of access include those authorized under ANILCA 1110(a), such as fixed-wing aircraft, motorboats, snowmachines (during adequate snow cover) and nonmotorized surface transportation such as canoeing, hiking, snowshoeing, and cross-country skiing.*

Thank you for this opportunity comment. Please contact me at (907) 269-7529 if you have any questions.

Sincerely,



Susan E. Magee  
ANILCA Project Coordinator

cc: Sally Gibert, ANILCA Program Coordinator