

Arctic National Wildlife Refuge
Final Comprehensive Conservation Plan and
Environment Impact Statement
State of Alaska Comments

The State of Alaska reviewed the final revised Arctic National Wildlife Refuge (Arctic Refuge) Comprehensive Conservation Plan (CCP) and Environmental Impact Statement (EIS). The following comments represent the consolidated views of State agencies responsible for management, development, and protection of State resources.

We would like to recognize a few significant changes or corrections made in the final CCP that the State advocated for during the planning process, including the removal of inaccurate claims that the refuge is part of a wilderness study area mandated by Sections 1001 and 1004 of the Alaska National Interest Lands Conservation Act (ANILCA); establishment of consistent terminology to distinguish between wilderness values associated with non-designated wilderness and wilderness character as defined under the Wilderness Act, which only applies to designated Wilderness; the removal of a potentially burdensome permit requirement for temporary facilities related to the take of fish and wildlife as allowed under ANILCA; and the removal of an unnecessary interim cap on commercial recreational guides operating on the Kongakut River.

However, in spite of our consistent efforts to bring other significant ANILCA-related issues to the Service's attention during the planning process, numerous relevant and significant provisions in ANILCA are not even listed in the section describing the applicability of ANILCA to the establishment of the refuge (Section 1.4). The CCP instead greatly expounds on the Range purpose – breaking a simple statement into three separate purposes – and notably fails to include direction for assessing the oil and gas resources of the coastal plain in ANILCA Section 1002, a provision that only applies to the Arctic Refuge. Discussion of the relevance of Section 1002 and other provisions not listed to this planning effort are discussed in more detail in the following comments.

Range Purposes

The Arctic National Wildlife Range was expanded and re-designated as the Arctic Refuge under Section 303(2) of ANILCA. ANILCA established new purposes and included a variety of provisions that apply to federally managed lands in Alaska (including designated Wilderness and Wild and Scenic Rivers).

In addition to the purposes established for the Arctic Refuge in ANILCA, the CCP identifies and interprets the purpose of the original Range as identified in Public Land Order (PLO) 2214, which simply was to “...*preserve unique wildlife, wilderness, and recreational values.*” As noted in the CCP, the PLO also authorized hunting and trapping, allowances that were continued under ANILCA. The CCP now recognizes the sideboards placed on the original Range purposes by ANILCA Section 305, which states that administrative actions in effect the day before the passage of ANILCA remain in effect only to the extent that they are consistent with ANILCA and the Alaska Native Claims Settlement Act. The final CCP also clarifies that to the extent the

original Range purpose applies, it only applies to lands located within the original Range, and not the entire Arctic Refuge, as indicated in the draft CCP. However, the CCP continues to assert the original Range purposes, as administratively defined in this CCP, are consistent with ANILCA and ANCSA on the basis of ANILCA Section 101(b), which describes the overarching conservation purposes of the statute. This is entirely misleading as, pursuant to ANILCA Section 305, the original Range purposes only apply to the extent they are consistent with these two statutes *in their entirety*. The plan needs to clearly recognize that the Range purposes identified in the CCP do not replace or supersede the Arctic Refuge purposes identified in ANILCA Section 303, or any other provision in ANILCA and ANCSA, which apply to the entire Arctic Refuge including the original Range. Nor should the administratively-defined Range purposes be relied upon to influence management decisions or restrict uses and activities allowed under ANILCA.

Wilderness and Wild and Scenic River Reviews

Wilderness Review

The State reiterates its strong opposition to the Service conducting a new Wilderness review for the Arctic Refuge, which is contrary to several provisions in ANILCA, including Sections 1317, 1002 and 1326(b).

While the Service indicates that the Wilderness review was not conducted pursuant to Section 1317 of ANILCA as justification for not violating ANILCA, the Service is disregarding the time constraints associated with Congress' allowance for the Service to conduct a *one-time* Wilderness review following the passage of ANILCA. That review was to be completed, with any resulting recommendations forwarded to Congress, within seven years. That time limitation has long passed, and with an express prohibition against conducting new reviews for the purpose of establishing conservation system units (CSU) without congressional approval in ANILCA Section 1326(b)¹ (designated Wilderness is defined under ANILCA as a CSU), the Service is in fact violating ANILCA by conducting a new Wilderness review for the Arctic Refuge. The time limitation in Section 1317(b) can be contrasted with continuing authority for BLM in ANILCA Section 1320 to review and "*from time to time*" recommend wilderness.²

Additionally, including the coastal plain in the Wilderness review further violates congressional direction and intent in ANILCA Section 1002, which required the Service to:

"...provide for a comprehensive and continuing inventory and assessment of fish and wildlife resources of the coastal plain; an analysis of the impacts of oil and gas exploration, development and production; and to authorize exploratory activity within the coastal plain in a manner that avoids significant adverse effects on the fish and wildlife and other resources."

¹ ANILCA Section 1326(b) No further studies of Federal lands in the State of Alaska for the single purpose of considering the establishment of a conservation system unit, national recreation area, national conservation area, or for related or similar purposes shall be conducted unless authorized by this Act or further Act of Congress.

² ANILCA authority in 1320 does not allow BLM to manage recommended lands to the non-impairment standard while waiting for Congress to act.

In compliance with Section 1002(h), the Service prepared a legislative EIS, which established a range of alternatives consistent with the National Environmental Policy Act (NEPA), including an alternative that recommended Congress designate the coastal plain as Wilderness. However, the Secretary of Interior's recommendation, which was published in April 1987 and included in the 1988 Arctic Refuge CCP in Appendix L, was for Congress to authorize full leasing of the entire 1002 coastal plain for oil and gas production. While Congress has not acted on that recommendation, it remains the only legally authorized recommendation to Congress. The fact that the Secretary of Interior's recommendation is not referenced anywhere in the revised CCP gives clear indication that the Service is ignoring both the 1987 recommendation and Congress' clear intent to retain for itself the final decision on the coastal plain.

Ironically, the Service relies on the alleged finality of Congressional direction in ANILCA Section 1002 to justify not including an oil and gas alternative in its NEPA analysis for the CCP, as well as its inability to approve the State's exploration plan (Response 136805.019);³ however, it does not similarly recognize the finality associated with ANILCA Sections 1317 or 1326(b) when it conducted the Wilderness review absent further authorization from Congress.

The Service instead claims it is following planning direction in ANILCA Section 304(g)(2) to "*identify and describe*" the special values of the Arctic Refuge, including Wilderness and Wild and Scenic River values. No other CCP conducted to date for other Alaska Refuges has asserted that ANILCA 304(g)(2) required the Service to conduct a Wilderness review or consider recommending Congress designate wilderness. The Service offers varying explanations in response to the State's assertion that it is violating ANILCA by conducting the Wilderness review; however, the most consistent theme is that while the plan clearly states the purpose of the review,⁴ the review has been incorporated into a management plan and therefore, the management plan – *not the review* – was not conducted for the "single" purpose of establishing a conservation system unit. This implies that ANILCA Section 1326(b) is a prohibition on management plans, instead of reviews, which is inaccurate. ANILCA Section 1326(b) is an express prohibition on conducting new Wilderness reviews "*unless authorized in **this Act or further Act of Congress***" (emphasis added).

The Service's additional claim that it is simply following its own agency policy (1/28/10 Director Sam Hamilton Memorandum) in conducting this review is therefore not relevant. Policy does not preempt statute and the Refuge Improvement Act includes a significant savings clause, which ensures statutory direction in ANILCA prevails.⁵

Further, the 2010 Hamilton memorandum reversed a publically-vetted wilderness policy that did not require wilderness reviews be conducted in Alaska, without providing an opportunity for public comment, as required in Service policy "Preparation and Issuance of Director's Orders" (012 FW 1.11, emphasis added).

³ State of Alaska ANILCA Section 1002(e) Exploration Plan and Special Use Permit Application and Supporting Materials, July, 9, 2013.

⁴ The purpose of a wilderness review is to identify and recommend to Congress lands and waters....that merit inclusion as part of the National Wilderness Preservation System. (Wilderness Review, page H-2)

⁵ ... If any conflict arises between any provision of this Act and any provision of ANILCA, then the provision in ANILCA shall prevail. (Refuge Improvement Act)

For some Orders, you should ask for public comment by publishing a notice of availability of the draft in the Federal Register....If the Order meets one of the following four criteria, seek public comment:

- A. You can reasonably anticipate that it will lead to an annual effect of \$100 million or more or adversely affect in a material way the economy or a sector of the economy.*
- B. Raises highly controversial issues related to interagency concerns or important Administration priorities.*
- C. Establishes initial interpretations of statutory or regulatory requirements, or changes in interpretation of policy.*
- D. Is about innovative or complex scientific or technical issues.*

Clearly the Service has not followed its own agency policy in affording the public and the State an opportunity to provide input on the significant effects of this policy change. To be consistent with ANILCA and Service policy 012 FW 1.11, the 2010 Hamilton memorandum needs to be rescinded.

Wild and Scenic River Review

The State reiterates its strong objection to the Wild and Scenic River review conducted for the Arctic Refuge, which is contrary to ANILCA Section 1326(b).

The Service applies the same contrived justification for conducting the Wild and Scenic River reviews as described for Wilderness reviews – that the planning requirements in ANILCA 304(g) require the Service to revise their management plans, therefore the management plan – *not the review* – is not being conducted for the single purpose of establishing a new conservation system unit (CSU) and therefore, does not violate ANILCA Section 1326(b). No other CCP conducted to date for other Alaska Refuges has asserted that ANILCA 304(g)(2) required the Service to conduct a Wild and Scenic River review or consider recommending Congress designate Wild and Scenic Rivers. The CCP also indicates that the Service is acting under authority in Section 5(d) of the Wild and Scenic Rivers Act.⁶

As noted in our comments on wilderness reviews, ANILCA Section 304(g) only requires the service to “*identify and describe*” special values of the refuge. There is no direction in ANILCA to conduct reviews “*The purpose of which is to inventory and study the rivers and water bodies within the boundary of the Refuge to determine whether they merit inclusion in the National Wild and Scenic Rivers System*” (Appendix I, page I-1). Therefore, the Wild and Scenic review violates the express prohibition on conducting further studies in Alaska for the single purpose of

⁶ In all planning for the use and development of water and related land resources, consideration shall be given by all federal agencies involved to potential national wild, scenic and recreational river areas, and all river basin and project plan reports submitted to the Congress shall consider and discuss any such potential. The Secretary of the Interior and the Secretary of Agriculture shall make specific studies and investigations to determine which additional wild, scenic and recreational river areas within the United States shall be evaluated in planning reports by all federal agencies as potential alternative uses of the water and related land resources involved. (Section 5(d)(1) of the Wild and Scenic Rivers Act)

establishing new CSUs without authorization from Congress in ANILCA Section 1326(b) (Wild and Scenic Rivers are defined in ANILCA as CSUs). ANILCA is the later and more specific statute; therefore, it prevails over direction to study rivers in the Wild and Scenic Rivers Act.

ANILCA designated twenty-six Wild and Scenic Rivers across the state, including three within the Arctic Refuge, and directed the study of 12 additional rivers in Alaska for potential designation. ANILCA also more than doubled the Wilderness preservation system overnight (approximately 8 million acres of designated Wilderness is within the Arctic Refuge). Congress included very clear intent language in ANILCA Section 101(d), which states that ANILCA achieved a balance between the national conservation interests and the State's economic and social needs; therefore, "*the need for future legislation designating new conservation system units, new national conservation areas, or new national recreation areas, has been obviated thereby.*" The Service's internal and unilateral wilderness policy change for Alaska and the complete disregard for the above referenced cornerstone provisions in ANILCA serve to disrupt the very balance Congress had achieved in 1980. As a result, these actions, including implementation of the CCP, could significantly harm the State of Alaska's economic and social interests.

National Environmental Policy Act

The Service stated from the beginning of this planning process that it would not consider oil and gas development as an alternative in the CCP/EIS because Congress had reserved for itself the decision on oil and gas production in the 1002 Area.⁷ However, at the same time, the Service clearly stated its intent to consider new Wilderness and Wild and Scenic River recommendations, even though Congress has also reserved for itself the final decision on designating Wilderness and Wild and Scenic Rivers, and ANILCA Section 1326(b) requires authorization from Congress to conduct reviews to consider the establishment of new CSUs. (The above comments address the Service's flawed interpretation of ANILCA 1326(b)).

Similar flawed logic was relied upon to deny the State's application to conduct 3-d seismic exploration of the coastal plain, even though there is nothing in ANILCA Section 1002 that prevents the Service from authorizing exploratory activity to obtain additional relevant information on the oil and gas resources within the coastal plain. Yet, in response to the State's comments (136805.021), the Service states that "*Congress made no provisions for any further reports or for any additional exploratory activities.*"

In spite of the State's comments, which emphasized the importance of oil and gas resources within the Arctic Refuge to the state's economy, the final CCP/EIS includes no analysis of the effects of designating the coastal plain (or other areas recommended in the CCP) as Wilderness to the State's or the North Slope Borough's economy. Even though the Service's recommendations, if acted on by Congress, would permanently foreclose oil and gas leasing and production in the coastal plain, the effects analysis ignores the fact that rural communities maintain a subsistence lifestyle in a mixed subsistence cash-income economy (5.11 Environmental Justice, page 5-121) and only contemplates impacts to the local economy and commercial uses that are allowable in designated Wilderness, such as recreation guides and

⁷ Notice of Intent 75 FR 17763, 17764

transporters (Section 5.5.3, page 5-86). The current analysis acknowledges that “*Inupiat tribal leaders, ASRC, KIC, and some members of the Native community*” view Wilderness recommendations as having negative effect “*because it would impact future economic development opportunities such as oil and gas development in the 1002 Area.*” However, instead of analyzing the actual effects of a loss of economic benefit associated with oil and gas development to rural communities, the CCP simply contrasts that registered concern with the Gwich’in Nation’s perspective, which supports Wilderness designation. (Section 5-11 Environmental Justice Page 5-132). NEPA requires a discussion of “*all of these effects on the human environment*” (40 CFR 1508.14). The Environmental Justice Executive Order 12898 also requires federal agencies to analyze the effect of federal actions on the environment, including human health, economic, and social effects on minority communities, low-income communities, and Indian tribes when such an analysis is required by NEPA. Failing to discuss how Wilderness designation completely precludes potentially significant socio-economic benefits to both the local and state economies from oil and gas production is a failure to adequately consider effects to the human environment.

Curiously, in response to the State’s comments on the effects analysis in the draft CCP/EIS (136805.021), the Service states that “*Wilderness designation of the coastal plain could have major, long-term, regional or greater, and negative effect on economic development by restricting potential for oil and gas exploration, leasing and development in the 1002 Area.*” However, we were unable to find either that statement or a related analysis in the final CCP/EIS. NEPA requires a thorough and objective analysis to inform a federal agency’s decision making (40 CFR 1502.16). When evaluating a reasonably foreseeable significant adverse effect on the human environment, the federal agency must also make it clear that such information is lacking (40 CFR 1502.22). It is essential to provide Congress with sufficient information to inform the decision on permanent Wilderness and Wild and Scenic River designations. To do anything less is inconsistent with NEPA. Having recognized the significant negative impacts as noted above and then ignore them is unjustifiable.

The discussions in Sections 5.12, 5.13, and 5.14 on the Irreversible and Irrecoverable Commitment of Resources, the Relationship Between Local Short-Term Uses and the Maintenance and Enhancement of Long-Term Productivity, and the Unavoidable Adverse Effects, as required by NEPA, are similarly limited in scope and content. Section 5.12 states that since oil and gas development is not currently allowed in the Arctic Refuge, designation of the coastal plain as Wilderness would cause no change in status with regard to the opportunity to extract the resource. It further states the oil and gas resources would remain available, if needed in the future. Section 5.13 similarly states that Congress can essentially change its mind – it can designate the 1002 Area as Wilderness and preclude future oil and gas development and it can open the coastal plain to oil and gas development. There is no discussion of the *likelihood* associated with reversing a decision once made by Congress, especially given the Service’s claims of overwhelming public support for designation. Given the decision for the 1002 Area has been on Congress’ plate since before ANILCA passed in 1980, without that consideration the analysis is wholly inadequate. Section 5.14 takes a different approach by only referring to Wilderness and Wild and Scenic River “recommendations” as causing no unavoidable adverse effects. To adequately evaluate the actual effects, the Service must consider the effects of Congress acting on the recommendations to designate Wilderness and Wild and Scenic Rivers.

Fish and Wildlife Management

The CCP jeopardizes the Service's and the State's longstanding cooperative relationship for managing fish and wildlife resources on the Arctic Refuge, particularly when viewed in conjunction with the Service's proposed regulatory changes⁸ and Service direction for management of proposed wilderness. The CCP lays the groundwork for the Service to potentially eliminate the State's ability to manage wildlife on the Arctic Refuge altogether.

The CCP's goals, objectives, management policies, and guidelines apply to all action alternatives and place the Arctic Refuge into three management categories: wilderness, wild rivers, and minimal management. However, the management direction for these three categories is essentially the same and is based on managing the entire Arctic Refuge on the extreme end of the Biological Integrity, Diversity, and Environmental Health (BIDEH) spectrum as described in the Refuge Vision Statement and Refuge Goals section. According to the Service's Wilderness Stewardship Policy (610 FW 5.18), recommended wilderness in Alaska will not be managed as designated wilderness (i.e., according to the terms of the Wilderness Act) until and unless Congress designates it. Yet the CCP does exactly that by lacking differentiation between management categories. Further, by managing only for the far end of the BIDEH spectrum, the CCP significantly deviates from the mutually agreed upon regional management guidelines, which the State worked with the Service to develop for application to all Alaska Refuges (see page 2-33, 2.2).

The CCP relegates wildlife management to an emergency-only basis, and provides Arctic Refuge staff with full discretion to determine if a situation is an emergency (e.g., whether subsistence resources are jeopardized, effects to endangered species, etc.), without providing any metrics or criteria for determining emergencies or what constitutes a population in jeopardy. The CCP implements three specific major changes to the status quo regarding fish and wildlife management:

- Emergency only management of fish, wildlife, or habitat (this could negatively affect populations and subsistence resources).
- Revised decision criteria that prevent potential use of predator management or control efforts to provide for human use, including food security.
- Management for natural diversity/wilderness characteristics across the entire refuge, potentially complicating or eliminating the approval for routine State management activities.

Though the Service states the CCP will have minimal effects on State fish and wildlife management, the CCP establishes a very high bar for justifying management actions and access. The emphasis on the Service's interpretation of natural diversity and BIDEH is especially problematic for State management activities when viewed in conjunction with the Service's proposed regulatory changes currently under consideration. The CCP, despite its emergency management provision, has the potential to greatly limit the State's ability to manage wildlife populations on the sustained yield basis through management activities. Yet the Service seeks to

⁸ http://www.fws.gov/alaska/nwr/ak_nwr_pr.htm

further limit State management through the proposed regulatory changes by superseding State hunting regulations for predator species. This proposed regulatory change has no exceptions, emergency or otherwise, therefore it seems that, in practice, the CCP's emergency management provision may only be implemented for activities involving prey species. We are concerned about future management implications for species whose populations can fluctuate widely in response to predator/prey ratios and the annual effects of weather events. The compatibility determinations in the CCP, which recognize and allow the take of fish and wildlife under State regulations, will be overridden by the Service's proposed rulemaking. The relationship between the CCP and these other authorities and existing processes need to be carefully considered in cooperation with the State.

The CCP does not acknowledge its potential effects, or the potential cumulative effects to the State's traditional role as wildlife manager, and does not acknowledge that the populations on the Arctic Refuge have been successfully managed under State hunting regulations for sustained yield purposes for decades. For example, while the Service asserts that routine State fish and wildlife management will cause minimal effects to Arctic Refuge resources, we have serious concerns that implementation of the CCP may reduce or eliminate the ability for the State to set harvest seasons, bag limits and methods for predator species if the Service determines they are intended to, or may have the potential to alter or manipulate the natural diversity of species populations or habitats. We anticipate that this management direction will be applied to prey species as well, either initiated by the Service through new internal interpretation, absent consultation with the State, such as was used to implement the revised Alaska policy to conduct wilderness reviews, or forced upon the Service through litigation. In either case, we are concerned that according to the Service's rationale, actions by the State that seek to maintain wildlife population objectives through management tools such as targeted bull:cow ratios of ungulates, antler size harvest restrictions for moose, or changed seasons for predators, may be determined inconsistent with Arctic Refuge management intent and/or BIDEH, and prohibited. The degree to which the CCP will affect monitoring and survey work will be left to the interpretation of subjective values and goals by Arctic Refuge staff. Already the Service's Alaska-specific policy unnecessarily requires a Minimum Requirements Analysis for all management activities in Wilderness, regardless of whether the work involves activities prohibited by the Wilderness Act.

Significantly, the CCP lacks the cooperative relationship intended by the National Wildlife Refuge System Improvement Act. The Service seems to rely on language from the Master Memorandum of Understanding (MMOU)⁹ with regard to the State's agreement to manage for natural species diversity on refuges as part of their rationale as to why the CCP would have a minimal effect on State management activities. Yet the Service has reinterpreted, without consultation with the State, the idea of natural species diversity in this CCP to an entirely different meaning than what was agreed upon in the MMOU.

The CCP's blanket decision to not provide visitor use facilities, such as cabins, interpretive sites, campgrounds, floatplane tie-ups or signs, reduces the ability of visitors to utilize the Arctic Refuge for fish and wildlife dependent activities. We also anticipate the Service will seek to

⁹ Memorandum of Understanding Between the Alaska Department of Fish and Game, Juneau, Alaska and The U.S Fish and Wildlife Service Department of Interior, Anchorage, Alaska. (3/13/82)

impose visitor capacity limits and/or access limitations through the upcoming Visitor Use Management/ Wilderness Stewardship Plan to implement the wilderness philosophy embedded in the CCP's Vision and Goals, despite the lack of demonstrated impacts to Arctic Refuge resources.

Arctic Refuge Management Policies and Guidelines

Over the past decade, the State and Service cooperatively developed the “Regional Management Policies and Guidelines” (regional guidance) to streamline the CCP planning process, facilitate decision making during the life of the CCP, and perhaps more importantly, illustrate how national direction is modified in the Alaska context. The original and continuing purpose of the regional guidance is to provide the essential context and legal framework for all Alaska refuges under current laws, regulations, and policy. This Alaska-specific context is especially important to the Arctic Refuge because the vast majority of commenters and refuge advocates have little, if any, understanding of ANILCA and its applicable management tools.

Throughout the planning process, the State consistently expressed concerns about abandoning the regional approach to the management policies and guidelines. Memorandum NWRS712-253: Rationale for changes made to sections of the management policies and guidelines for the Arctic Refuge Comprehensive Conservation Plan (memorandum) articulates for the Arctic CCP administrative record, justification for changes made to the regional guidance. However, the memorandum exhibits the same flawed, circular rationale that misses our point entirely. The State therefore reiterates its objection to the modifications, which unilaterally and categorically exclude consideration of certain uses and activities, including fish and wildlife management tools, provided for under current law, regulation, and policy.

The State recognizes the regional guidance does not commit or obligate the Service to any particular management action. Refuge-specific intent can and should be reflected, with proper justification, to illustrate how and why adjustments are made. This model has served well for other refuges, and the CCP indicates it will be restored in future refuge planning. However, the justification for the Arctic approach inappropriately relies on subjective, discretionary values to sweep ANILCA under the rug.

While the State recognizes discretion of the Arctic Refuge to identify values, we strongly object to intentionally limiting uses and management tools allowed under existing law and policy to avoid “misleading” the public on what the Arctic Refuge considers “viable possibilities” (Memorandum, page 2, third paragraph). To the contrary, this approach makes it impossible for the public to discern between what is allowed by law and policy, and what the Arctic Refuge is (arbitrarily) limiting. The Arctic Refuge has used this new Arctic Refuge-specific guidance to arbitrarily limit uses in all three management categories (wilderness, wild rivers, and minimal management) to the far end of the BIDEH and public use spectrum. The few differences in management between categories are minor: brushing of landing strips, commercial cabins, geophysical exploration, commercial fishery support facilities, and commercial timber/firewood.

The purpose of the CCP is to identify overarching wildlife, public use, or management needs for the refuge (Part 602 FW 3). Existing law and policy provide for a variety of decision points and

criteria, including NEPA compliance and Arctic Refuge compatibility determinations to determine whether specific proposed activities can be allowed. These decision points, which are rooted in federal law, are the appropriate processes for documenting management decisions about proposed uses and activities. The Arctic Refuge's changes to the regional guidance are therefore not only pre-decisional, but further imply the Arctic Refuge must be managed to a more restrictive standard than existing federal law.

For example, ANILCA and Service implementing regulations at 50 CFR 36.33 provide for public use cabins on refuges in Alaska, including new cabins in designated Wilderness, as needed for protection of public health and safety (ANILCA Section 1315(d)). Regulations at 50 CFR 36.33(d)(1)¹⁰ provide ample sideboards for determining whether a cabin can be permitted on an individual refuge, including determining compatibility with refuge purposes. However, while the cabin section in the CCP references the cabin regulations with respect to existing cabins and new cabins for traditional uses, with regard to public use cabins it states “*Consistent with the Refuge’s vision, goals and objectives, public use cabins will not be allowed in Wilderness, Wild River, and Minimal Management areas of the Refuge.*” (Emphasis added.) The CCP must clearly disclose that ANILCA gives the Refuge discretion to allow public use cabins, *even in designated Wilderness*. As written, the CCP implies the Arctic Refuge’s vision, goals and objectives can override federal law. Furthermore, since a CCP is a primary source of information for refuge management, this approach also limits the usefulness of the CCP as a source document for management guidance.

The memorandum’s assurance that management tools and allowed uses purposely limited in the CCP can be overridden by the Arctic Refuge in the event of an emergency is also misleading. If a management situation arises that requires tools that have been excluded from both the plan and the definition of emergency, the Arctic Refuge’s only recourse to address the situation will be to reconsider the Arctic Refuge purposes, goals, objectives and special values that are the very basis for not allowing uses and management tools to begin with; thereby creating a closed loop decision process. Eliminating uses and tools from consideration – even if seldom or never used – is not only impractical, but legally questionable as it imposes additional hurdles to implement what are otherwise legal management options, subject to requirements and procedures spelled out in law, regulation, and policy.

Unique Purposes and Special Values

¹⁰ 50 CFR 36.33(d)(1) A nontransferable, five year special use permit shall only be issued upon a determination that the proposed construction, use and maintenance of the cabin is compatible with refuge purposes and that the cabin use is either directly related to refuge administration or is needed for continuation of an ongoing activity or use otherwise allowed within the refuge where the applicant lacks a reasonable off-refuge site. In addition, these activities must have historically been supported by the construction and use of cabins in the geographic area. In general, new cabin permits will be given only to local residents to pursue a legitimate subsistence activity. In determining whether to permit the construction, use, and occupancy of cabins or other structures, the refuge manager shall be guided by factors such as other public uses, public health and safety, environmental and resource protection, research activities, protection of historic or scientific values, subsistence uses, endangered or threatened species conservation and other management considerations necessary to ensure that the activities authorized pursuant to a permit are compatible with the purposes for which the refuge was established.

The memorandum contends that the primary basis for the changes to the regional guidance is the Arctic Refuge's unique purposes and special values, yet the purposes of all ANILCA-established refuges are nearly identical, as are the special values identified in Alaska Refuge CCPs. The Arctic Refuge identifies three special values – wilderness characteristics, ecological values, and wildlife values – as justification for the significant modifications that apply only to the Arctic Refuge. Specifically the memorandum claims these three special values are “... *the basis of the Service's position that the Arctic Refuge serves a distinctive function within the National Wildlife Refuge System, as a benchmark for wilderness and for perpetuation of biological integrity, diversity, and environmental health.*” There is no legal guidance that elevates the position of the Arctic Refuge or requires it to be managed for a higher degree of natural diversity over other units in the system. Furthermore, Congressional allowances in ANILCA for cabins, fishery facilities, and other structures and activities remain legally valid, regardless of what the Arctic Refuge administratively identifies as its special values.

The memorandum also claims the Range purposes “*to preserve unique wildlife, wilderness and recreational values*” are a factor in its justification for the changes; however, the Arctic Range encompassed only a portion of the Arctic Refuge designated under ANILCA. Extrapolating special values from the Range purposes and extending them to the entire Arctic Refuge is not legally defensible. While this technical error was corrected in the final CCP, management direction for the remainder of the Arctic Refuge remains unchanged. The memorandum's additional assertion that the Arctic Range purposes are consistent with the ANILCA purposes misrepresents the letter and intent of ANILCA Section 305, which expressly limits the applicability of the Range's establishing order in the event it conflicts with ANILCA and the Alaska Native Claims Settlement Act *in their entirety*.

The only truly unique direction for the Arctic Refuge is found in Title X of ANILCA, specifically Section 1002, which required the Department of Interior to assess the Arctic Refuge's potential for oil and gas development in the 1002 Area. Those initial assessments supported the 1987 Secretarial recommendation for oil and gas development, which, as already noted, continues to get little or no recognition in the final revised CCP or the memorandum.

Elevating the Arctic Refuge above all other refuges in this manner implies the Arctic Refuge is not beholden to the same laws, policies, and regulations as the rest of the refuge system. We therefore request the Service reinstate the “Regional Management Policies and Guidelines” to facilitate an understanding of all management tools available to the Arctic Refuge, the State, and the public under existing laws, regulations, and policy, and to better illustrate how administrative discretion influences refuge management during the life of the CCP.

Access Study

As noted in our comments on the Draft CCP/EIS, we support this study and appreciate the recognition that it is essential to begin interviewing and recording elders who have first-hand knowledge of methods of access used by local rural residents before and after the passage of ANILCA. Such information is necessary to recognize and rightfully allow methods of subsistence access “traditionally employed” pursuant to ANILCA Section 811. These living residents are a diminishing source of valuable historic information. We request priority for this

study be appropriately moved up to start immediately so that the opportunity to gather this valuable information is not lost. The successful collaborative effort between the State and the Service to conduct an access study for the Selawik Refuge can be used as a model.

Public Use and Access

We remain generally concerned about the lack of planning and support for public use, access, and recreation facilities in the Arctic Refuge Plan, and its deviation from current uses allowed in other Alaska refuges and the potential negative impact to visitor safety and experience. For example, constructed hiking trails may be allowed to prevent resource damage, but no signage, interpretive sites, or campgrounds will be allowed. Boat launches and docks for float planes that can improve access while also reducing degradation to lakeshores and river banks will be prohibited. Public use cabins, which can also reduce habitat degradation at popular locations and improve visitor safety, will be prohibited, (while administrative cabins will be allowed). Minor brush cutting or rock removal by hand is allowed for maintenance at existing aircraft landing areas, but no new cleared landing areas will be allowed in Wilderness (though they would be permitted in Wild River corridors and in Minimal Management areas).

The overarching direction in the CCP is to facilitate an extreme wilderness experience by prohibiting facility improvements that are generally allowed in most Alaska refuges, regardless of whether or not the area is designated Wilderness. Minor facility improvements that are designed to mitigate impacts to wilderness character can significantly contribute to visitor safety and experience. Allowances for minor clearing of aircraft landing areas can assist in dispersing public use and adaptation to changes in resource abundance or movement, reduce crowding and over use of a limited number of landing areas. Prohibitions such as these will unnecessarily limit the Arctic Refuge's options to address management issues and will likely lead to unnecessary public use restrictions in future step-down management planning efforts.