



THE STATE
of **ALASKA**
GOVERNOR MIKE DUNLEAVY

ANILCA Implementation Program

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January 13, 2023

Jimmy Fox
Refuge Manager
Yukon Flats National Wildlife Refuge
101 12th Avenue, Room 264
Fairbanks, AK 99701

Dear Mr. Fox:

Thank you for the opportunity to review the nine Compatibility Determinations (CD) for the Yukon Flats National Wildlife Refuge. The attached comments represent the consolidated views of the State of Alaska's (State) resource agencies, including the Alaska Departments of Natural Resources (DNR) and Fish and Game (ADF&G).

We appreciate the Refuge's overall clear and concise approach to evaluating compatibility for these uses under review. We also appreciate the collaborative discussions this past fall and the related changes made in response to our informal suggestions. These collaborative meetings resulted in stronger CDs that consider special management provisions implemented in Alaska through the Alaska National Interest Lands Conservation Act (ANILCA). We consider recognition of these legislative provisions as critical in refuge specific documents as new staff may look to inapplicable national standards to render determinations which would threaten the continuation of current uses and preclude legitimate uses guaranteed under ANILCA. These management provisions also aid the State in conducting fish and wildlife management on refuge lands as well as in ensuring continued opportunities for hunting, fishing, trapping, and outdoor recreational pursuits.

We provide the following comments on the November 28, 2022 versions of the CDs. Edits to existing text are included in underlined text for added language and as strikethrough for deleted language throughout our comments. If a CD is not addressed in our comments below, we had no new suggestions to add.

State Management Authorities CD

As we discussed in earlier meetings, the State requests clarification in this CD that State fish and wildlife management activities are considered refuge management activities (see USFWS Policies 603 FW1 (2006) and 603 FW 2 (2000)); since this CD is being completed to clarify the inherent compatibility of these management activities with refuge purposes. The data from the State fish and wildlife studies benefits the refuge by informing refuge management activities.

We request the following footnote clarification be added to the section titled “Why is this use being proposed or reevaluated?” as follows:

State of Alaska management activities are a common use on the Refuge. This evaluation is being conducted to ensure compliance with Service policy 603 FW 2 and ANILCA.¹

¹ In conjunction with 603 FW 1 as applicable. See language referencing “refuge management activities” in Section 1.2B.

Other (fixed wing aircraft, snowmobiles, motorized boats) CD

The State appreciates the clarification in this CD that snowmobiles and snowmachines are interchangeable terms in the definition of snowmobiles.

We recommend including non-motorized boating as a method of access covered by this CD. Non-motorized boating is also an existing use on the refuge that does not materially interfere with or detract from the purposes of a refuge or the National Wildlife Refuge System mission. Recognizing this in the CD would ensure it continues as an authorized activity.

We suggest the following edit to clarify our previously submitted language regarding airboats:

This compatibility determination does not cover hovercrafts or air-thrust boats on Public Lands¹ ~~on non-navigable waters~~, which the Service considers to be off-road vehicles (50 CFR 36.2). Hovercraft and airboat use is not allowed on Alaska national wildlife refuges lands or waters ~~in Alaska~~ (43 CFR 36.11(g)), with limited exceptions, none of which apply to the Refuge. These restrictions do not apply to state-owned lands and waters, including navigable waters within Yukon Flats National Wildlife Refuge.

Other (cabins and tent platforms) CD

The State understands there are currently no public use cabins within YUFL. ANILCA and Service implementing regulations at 50 CFR 36.33 provide for public use cabins on refuges in Alaska and ensure that cabins are available as needed for the protection of public health and safety (ANILCA Section 1315(d)). The CD references USFWS cabin regulations with respect to subsistence and trapping cabins but does not reference public use cabins. We request the inclusion of public use cabins in the CD as a compatible use on the refuge. This will allow the Refuge discretion to identify certain existing cabins for other public uses. In the future, the refuge may find that identifying a cabin for public use will reduce habitat degradation at popular locations and improve visitor safety.

- Suggested change under “What is the use?”

The seasonal use, occupation, maintenance, or reconstruction of existing single-dwelling structures (cabins) for Federally-qualified subsistence uses or for trapping and other public uses in accordance with regulations at 50 CFR § 36 implementing the Alaska National Interest Lands Conservation Act (ANILCA) sections 304, 1303, and 1316 as well as for existing or future tent platforms for non-subsistence uses or for Federally-qualified subsistence uses on Yukon Flats National Wildlife

¹ [P]ublic land” under ANILCA means (almost all) “lands, waters, and interests therein” the “title to which is in the United States.”

Refuge (Refuge). This compatibility determination does not evaluate the compatibility of new cabins.

- The CD states: “Specific means of access will be authorized in each special use permit.” To meet the Congressional intent in ANILCA Sec. 1110(a) for guaranteed access provisions, we request ANILCA-allowed access methods be excluded from the requirement for authorization in a special use permit. If there is a requirement for a special use permit to gain access to a refuge using an ANILCA-guaranteed access method this would be a closure and require adherence to DOI Special Access closure regulations at 43 CFR 36.11.

Research and Surveys CD

There are various sections of ANILCA that advocate for cooperative agreements such as Section 304(f)(1) and (2) which identify a variety of cooperative agreement possibilities and Section 306 which recommends the Secretary and State work cooperatively to study barren-ground caribou. We request the following revisions to provide additional clarification.

- In the Description of Use Section, please revise the following:

“The scope of this compatibility determination includes independent research and surveys conducted by all agencies or entities other than the Service and the State of Alaska.”
- In the Justification Section, please revise the following:

“... The CCP (page 127) states “The Service will encourage other researchers to study the Refuge and will participate in cooperative studies with other organizations, such as ADF&G. Cooperative agreements with ADF&G and with native organizations, authorized by” ~~Section 809 of~~ various sections of ANILCA may be ~~particularly~~ useful, including “for subsistence research.”

Hunting CD

References to the former Venetie Reservation should be corrected to “lands owned by the Native Village of Venetie Tribal Government.”

Trapping CD

Under the Description of Use Section, subheading “What is the use?”, the CD states:

The use of trapping to harvest pelts, hides, and other animal parts for non-subsistence, non-research, and non-commercial purposes is under review in this compatibility determination and addresses the full spectrum of uses normally associated with the trapping of furbearers.

- Please clarify the term “non-commercial.” Other Alaskan refuges (Kenai) have indicated that trapping is not considered a commercial use unless one or more persons are hired to engage in portions of the activity, and wages are paid as part of the activity.

Under the “Justification” Section, we recommend revising the following sentence in the CD to ensure trapping is not identified as a recreational activity:

“... rather ANILCA Section 101(b) intended to preserve recreational opportunities. Further, trapping is a method of wildlife take that has deep historical connections to Alaska public lands as an existing use [traditional activity] allowed under ANILCA Section 1316.”

In recognition of the cooperative relationship between our two agencies, ADF&G requests USFWS discuss collaboration opportunities on any formal monitoring efforts regarding trapping activities within the Refuge.

References to the former Venetie Reservation should be corrected to “lands owned by the Native Village of Venetie Tribal Government.”

Wildlife Observation and Photos CD

Under the Section “Description of Use, Is this an existing use?”, please include the following revision in the first sentence to recognize wildlife observation and photography as traditional activities occurring in Alaska when ANILCA passed:

Wildlife observation and photography are priority public uses of the Refuge System, as well as traditional activities under ANILCA.

Conclusion

We appreciate the Service sharing these CDs for review and commentary. We are available for further clarification and discussion once you have had a chance to review our feedback. Please contact me at catherine.heroy@alaska.gov to coordinate follow up discussions.

Sincerely,



Catherine Heroy
State ANILCA Program Coordinator

cc: Shane Walker, Branch Chief of Conservation Planning & Policy