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Leslie Grey, Kodiak Airport EIS Project Manager
US Department of Transportation
Federal Aviation Administration
Alaska Region Airports Division
222 West 7th Avenue #14
Anchorage, AK 99513

Dear Ms. Grey:

The State of Alaska reviewed the ANILCA Section 810 Evaluation (Evaluation) for the Kodiak Airport Improvements Environmental Impact Statement (EIS). The following comments are provided to assist the FAA in developing the final Section 810(a)(3) determination and represent the consolidated views of the State's resource agencies.

The current Evaluation appears to partially fulfill the Section 810 process described in ANILCA Sections 810(a)(1-3) and 810(b). The FAA determined that all alternatives except Runway 18/36 Alternative 7 may significantly restrict subsistence uses. For illustrative purposes, the following excerpts and discussion focus on Runway 07/25 Alternative 2, which is identified in the DEIS as one of two runway preferred alternatives:

Runway 07/25 RSA Alternative 2 may significantly restrict abundance and availability of subsistence resources for harvest on public lands. Significant effects to subsistence resources primarily result from placement of fill onto freshwater-influenced marine habitat. Over the long term, this may result in reductions in abundance and availability of salmon for harvest. (p. 26, emphasis added)

However, when combined with many of the RSA action alternatives (Runway 07/25 RSA Alternatives 2 and 3 and Runway 18/36 RSA Alternatives 2 through 6), the impact to subsistence resources or availability of subsistence resources for harvest is high enough to trigger the significance threshold under the Kunaknana decision (large reductions in abundance or major redistribution/availability of subsistence resources). (p. 41, emphasis added)

We anticipate that after considering public comments and hearing testimony, the final EIS will include a Section 810(a)(3) determination, which addresses the following:

- (A) such a significant restriction of subsistence uses is necessary, consistent with sound management principles for the utilization of public lands,
- (B) the proposed activity will involve the minimal amount of public lands necessary to accomplish the purposes of such use, occupancy, or other disposition, and
- (C) reasonable steps will be taken to minimize adverse impacts upon subsistence uses and resources resulting from such actions.

Mitigation

FAA's finding that the project may significantly restrict subsistence use is based on the potential for "*a long-term measurable decline in salmonid abundance and availability*" (p. 26). We note that local projects intended to mitigate the proposed runway expansions' effects to salmon resources could be considered reasonable steps "*to minimize adverse impacts upon subsistence uses and resources resulting from such actions*" under Section 810(a)(3)(C). While mitigation is not required under ANILCA, compensatory mitigation will be required to meet Clean Water Act Section 404 requirements. Therefore, we encourage FAA to consider the value local compensatory mitigation projects may have in simultaneously meeting the requirements of Section 810(a)(3)(C). Since the duration of project impacts is unforeseeable, long-term or permanent mitigation should be considered along with short-term mitigation.

Currently, the proposed mitigation method is In-Lieu Fee Mitigation, which would not necessarily be used for projects in the Kodiak area. Mitigation applied outside the local area would not help FAA meet Section 810(a)(3)(C). We recommend that Permittee-Responsible Mitigation be considered as the primary compensatory mitigation method because it provides the opportunity for local mitigation to benefit salmon resources. Permittee-Responsible Mitigation may be used to replace culverts owned by the Alaska Department of Transportation and Public Facilities (ADOT&PF) in the landscape area that currently do not provide fish passage. The culverts would be replaced with structures that are approved by the Alaska Department of Fish and Game (ADF&G) and would be designed and installed to provide unrestricted fish passage. ADF&G culvert surveys that have been conducted within the right-of-way of ADOT&PF roads located in the landscape area have identified six culverts on the Saltery Cove Road, four culverts on the Chiniak Highway and one culvert on the Anton Larson Bay Road that currently do not meet fish passage criteria.

We recommend considering land acquisitions to provide additional access along Chiniak Bay or the Kodiak road system to fish resources. We also recommend that mitigation be directed toward projects that will be administered by ADF&G, including:

- An enhancement project in the landscape area to maintain sockeye salmon production.
- Operate adult salmon enumeration weir in the Buskin River for ten years (2 sockeye salmon life cycles) to evaluate short term and long term effects to the river's salmon runs.
- Conduct a five-year migratory study on sockeye salmon smolt outmigrating from the Buskin River to the ocean by inserting a miniature transmitter into sockeye salmon smolt at the Buskin Lake outlet. Smolt collected at the lake outlet will be tracked traveling down the Buskin River and out into the saltwater to monitor their migration route in the project area. If the feasibility study is successful, tag smolt for five years before, during and after the safety improvements are made.

Alternative 2 evaluation and findings for competition

The Evaluation states, “...given the amount of open water available within Chiniak Bay for harvest, this alternative is not expected to have significant short and long term impacts on subsistence users’ ability of access subsistence resources or significantly change the level of competition for subsistence resources” (p. 25). However, Section 4.11-10 of the Draft Environmental Impact Statement states, “*The Buskin River sockeye fishery occurs in the nearshore marine waters adjacent to the river mouth.*”

Because the primary subsistence harvest of fish is sockeye salmon and the majority of harvest by boat is conducted adjacent to the Buskin River mouth, the statement regarding available open water in Chiniak Bay is questionable. Increased competition for sockeye harvest by subsistence users in the vicinity of the Buskin River mouth may have significant short and long term impacts on subsistence uses.

Clearly stated findings

While the current Evaluation provides detailed, separate analyses of effects to abundance, availability, access interference, and competition for each alternative, it lacks a concise statement of the overall determination for each alternative and for the project as a whole in regards to whether the proposed action significantly restricts subsistence uses. The inclusion of three or four separate determinations under each “Findings” heading confuses the reader as to FAA’s overall finding for each alternative and for the cumulative case. We recommend the Evaluation in final EIS plainly state the findings required by Section 810.

FAA definition of “significant restriction of subsistence uses”

We do not dispute FAA’s findings, nor do we argue that FAA’s definition of “significant restriction of subsistence uses” has resulted in a different finding than we would expect under other definitions. However, in terms of precedent, we are concerned by FAA’s development of a unique definition of terms related to “significant restriction of subsistence uses” and the lack of explanation for the definition’s criteria. The FAA definition is as follows:

This description (from Kunaknana v. Clark) of significant restrictions is used as the baseline for establishing impact evaluation criteria and significance thresholds for the EIS. The Kunaknana v. Watt [sic] opinion does not provide a definition or interpretation of what constitutes a “large reduction,” “major redistribution,” “substantial interference,” or “major increase.” For the purpose of the EIS and this evaluation, and taking into consideration the nature of subsistence use and local environmental conditions in the Kodiak area, the FAA has defined these terms as follows:

- *Large reductions in abundance: Noticeable and recognizable declines in subsistence resource populations in a given area and reduced subsistence resource harvests as a result of project actions. This includes reduced per capita harvest of subsistence resources.*
- *Major reductions in availability (i.e., redistribution of resources): Noticeable and recognizable declines in subsistence resource distributions across the landscape and reduced subsistence resource harvests as a result of project actions. This includes reduced per capita harvest of subsistence resources.*

- *Substantial interference with harvestable access: Loss of access to active subsistence harvesting locations that would cause 25 percent or more of local subsistence users to find alternate harvesting locations. (p. 4)*

FAA cites the Alaska Land Use Council’s definition and then also references the U.S. District Court Decision of Record in *Kunaknana v. Watt* as the foundation for the FAA definition. For clarity, we note that the case referred to by FAA as *Kunaknana v. Watt* is actually *Kunaknana v. Clark* No. A83-337 Civil; the plaintiff’s name changed before the final judgment.

In *Kunaknana*, the court did not clarify or provide a definition for “*significant restriction of subsistence uses.*” Rather, the court upheld the Bureau of Land Management’s (BLM) definition as reasonable in terms of the statute and BLM’s application of the definition to the *Kunaknana* case. Also, we note that FAA’s block quotation of the *Kunaknana* definition on pages 2 and 4 of the Evaluation is not a direct quote from the court decision, but a paraphrase of the court decision’s summary of the BLM definition. The BLM definition has been upheld in court decisions over the past thirty years, whereas the FAA has not explained the rationale behind its new criteria. For example, the FAA criteria include, “*Noticeable and recognizable declines in subsistence resource populations in a given area and reduced subsistence resource harvests as a result of the project actions,*” but does not define “given area.” Similarly, in the absence of justification, 25 percent appears to be an arbitrary limit for defining substantial interference with harvestable access. For these reasons, in the final Evaluation we recommend replacing the *Kunaknana* block quotation and FAA’s definition with the vetted BLM definition:

To determine if a significant restriction of subsistence uses and needs may result from any one of the alternatives, including their cumulative effects, the following three factors in particular are considered:

- *The reduction in the availability of subsistence resources caused by a decline in the population or amount of harvestable resources;*
- *Reductions in the availability of resources used for subsistence purposes caused by alteration of their normal locations and distribution patterns; and*
- *Limitations on access to subsistence resources, including from increased competition for the resources.*

A significant restriction to subsistence may occur in at least two instances: 1) when an action substantially reduces populations or their availability to subsistence users, and 2) when an action substantially limits access by subsistence users to resources.

Page-specific comments

Page 41, Evaluation and Findings for Cumulative Effects Analysis, Findings.

The second and third sentences of this important finding appear contradictory:

The combined effect of all past, present, and future actions does not produce impacts to subsistence that are expected to result in large reductions in abundance or harvest. (Emphasis added)

*However, when combined with many of the RSA action alternatives (Runway 07/25 RSA Alternatives 2 and 3 and Runway 18/36 RSA Alternatives 2 through 6), the impact to subsistence resources or availability of subsistence resources for harvest is **high enough to trigger the significance threshold under the Kunaknana decision (large reductions in abundance or major redistribution/availability of subsistence resources)**. (Emphasis added)*

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

Sincerely,



Susan Magee
ANILCA Program Coordinator