



THE STATE  
of **ALASKA**  
GOVERNOR BILL WALKER

**ANILCA Implementation Program**  
OFFICE OF PROJECT MANAGEMENT AND PERMITTING

550 W. 7<sup>th</sup> Avenue, Suite 1430  
Anchorage, AK 99501  
Main: 907.269.7529  
Fax: 907.269.5673

July 20, 2015

U.S. Fish and Wildlife Service  
Public Comments Processing  
Attn: FWS-R7-NWRS-2014-003  
MS: BPHC  
5275 Leesburg Pike  
Falls Church, VA 22041-3803

To whom it may concern:

The State of Alaska reviewed the Federal Register Notice (Notice) of proposed refuge-specific regulations affecting public use in the Kenai National Wildlife Refuge. This letter represents the consolidated views of State agencies.

We recognize the challenges faced by the U.S. Fish and Wildlife Service (Service) in managing one of the most visited refuges in Alaska. State staff participated in the development of the Kenai Refuge Comprehensive Conservation Plan (CCP) and the management plan for the Skilak Wildlife Recreation Area (SWRA), and while not all of our concerns were addressed to our full satisfaction during the planning processes, we value the opportunity to participate in refuge planning efforts, which have the potential to greatly impact important public and commercial uses occurring on the Refuge and adjacent state lands and waters. We also appreciate the Service's willingness to subsequently reevaluate some issues and develop solutions that both conserve resources and provide valuable recreational opportunities in support of refuge purposes, which include *"to provide, in a manner compatible with these purposes, opportunities for fish and wildlife-oriented recreation."*

We support the regulatory changes which align refuge and state regulations governing in-water uses within the Kenai River Special Management Area (KRSMA), such as boat motor sizes and seasonal motor use. This consistency benefits public understanding and reduces enforcement issues in the field. Likewise, we support those changes to the regulations governing aircraft access, restoring opportunities for outdoor recreation, particularly hunting. These changes were the result of cooperative efforts by both Service and state staff, and we support the end result, which will provide valued outdoor recreational opportunities with minimal effects to resources and other uses.

Our overarching concern with the proposed regulation package is the limited, or in many cases, absence of justification provided in the Notice. While we understand certain decisions in the CCP and the SWRA Management Plan serve as the basis for many of the proposed public use restrictions, others are new and have not been previously vetted through a planning or other public process (e.g., Middle Kenai River camping closures, Kenai and Russian Rivers discharge of firearms closure, take of brown bears over bait). Providing justification to support proposed restrictions gives the public essential context for providing meaningful comments.

Further, in accordance with the Alaska National Interest Conservation Act (ANILCA) implementing regulations at 50 CFR 36.42(b) and 43 CFR 36.11(h), justification is required when closing or restricting ANILCA protected public use and access.<sup>1</sup> Congress was keenly aware of the effects of designating an unprecedented number of conservation system units (CSUs) on the social and economic needs of Alaska and its people. The law, which has long been heralded as the “Great Compromise,” included many provisions which were crafted by Congress to accommodate the unique circumstances in the state. Shortly after its passage, Department of Interior agency regulations were promulgated to implement the many provisions in the law that only applied to CSUs in Alaska. The implementing regulations, including ample discussion in the preambles, clearly recognized the intent of “reasonable regulation” included reaching out to affected users to provide meaningful opportunities to comment on proposed management decisions. Processes were established and decision criteria included, specifically to ensure that uses and methods of access allowed under ANILCA would not be arbitrarily limited by land managers.

Proposing closures and restrictions without providing reasoned justification can result in regulations that are unnecessary, ineffective, or have unintended consequences on the public, including rural residents, whose way-of-life is dependent upon use of and access to Alaska’s rich resources. To avoid imposing unnecessary public use restrictions and ensure the public is afforded a truly meaningful opportunity to comment, we request the Service reconsider moving forward with proposed regulations that have not been adequately justified in a prior public process and/or in this Notice. Additional examples and related concerns are provided in more detail below.

### **Skilak Wildlife Recreation Area**

We remain disappointed with the continued divide between the State and the Service regarding the intent and biological impact of state hunting regulations on wildlife viewing opportunities in the SWRA. We believe that carefully managed hunting and trapping opportunities can be part of the Refuge System’s “big six” compatible priority public uses in the SWRA. According to the Federal Register Notice dated November 4, 2013, which first implemented the hunting and trapping closure for the Skilak SWRA, the underlying concern is that the Service fears expanded hunting and trapping opportunities will reduce wildlife or make wildlife more wary, resulting in fewer wildlife viewing opportunities. However, the limitations associated with viewing wildlife are more a result of terrain, vegetation, time of day during which wildlife are active, and lack of infrastructure, than hunting. The accessibility of the SWRA is a draw for all users and this closure unnecessarily limits already limited road-accessible opportunities on the Refuge.

Further, while the proposed rule does not reference intensive management as an additional underlying concern, we are aware that the Service has previously stated that the state regulations

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<sup>1</sup> 50 CFR 36(b) *Criteria*: In determining whether to close and area or restrict an activity otherwise allowed, the Refuge Manager **shall be guided by factors such as** public health and safety, resource protection, protection of cultural or scientific values, subsistence uses, endangered or threatened species conservation, and other management considerations necessary to ensure that the activity or area is being managed in a manner compatible with the purposes for which the Alaska National Wildlife Refuge area was established. (Emphasis added); and 36 CFR 36.11(h) *Closure procedures*. (1) The appropriate Federal agency may close an area on a temporary or permanent basis to use of aircraft, snowmachines, motorboats or nonmotorized surface transportation **only upon a finding by the agency that such use would be detrimental to the resource values** of the area. (Emphasis added)

in question are intended to meet the objectives of an intensive management program. We are concerned that this closure will be compounded in the future by the separate proposed wildlife rule, which is currently under development for the entire Alaska Region, further reducing road-accessible wildlife dependent recreational opportunities, particularly hunting.

The Service's Wildlife Dependent Recreation Policy (605 FW 1) provides that when there are conflicts between users, the refuge is to use a variety of management tools (use limits, zoning, dispersed or restricted use and other means) to minimize or reduce conflicts. The intent is to make the "big six" compatible public uses compatible not only within each refuge, but with each other, and not at the exclusion of individual uses. As is done here, the Service is favoring one wildlife dependent recreational use (wildlife viewing) over another (hunting) when both are compatible uses that can be effectively managed to avoid user conflicts. Over the past several years we have made numerous requests for data which demonstrates that there are or would likely be user conflicts in the SWRA or that state regulated hunting conducted on a sustained yield basis is incompatible with other priority public uses. To date, including with this Notice, no data has been provided to support this continued closure. We are concerned that the Service is making a long term policy decision on the basis that when competing interests between wildlife viewers and hunters are present, the Service will select one use over the other without seeking to apply management tools to ensure compatibility, which is inconsistent with Service policy at 605 FW 1.

While maintaining our position that hunting and wildlife viewing can be managed effectively to avoid user conflicts, we continue to encourage the Service to increase efforts to improve wildlife viewing opportunities within the SWRA to meet the area's management objectives. While the Service has provided additional developed camping areas, the SWRA would benefit from more developed infrastructure, such as well located and designed trails and viewing platforms, which would enhance wildlife viewing opportunities. The lack of infrastructure, coupled with lost hunting opportunities, has contributed to frustrations expressed by the public over the years regarding available priority recreational opportunities in the SWRA. We also recommend the Service evaluate the potential for new wildlife viewing areas and additional educational and interpretive opportunities to take advantage of the recent landscape changes within the SWRA resulting from the Card Street Fire.

### **Kenai River Public Use Issues**

During the lengthy CCP revision process, the State and others expressed concern over the Service's response to perceived crowding on the Kenai River with non-guided public use restrictions. In response to public comments on the plan, the Service stated that the preferred alternative would not be "self-implementing," and that additional cooperative work and public process would be needed to develop management that was acceptable to users (Appendix D, Comment 17 response). We continue to support this approach, and request the Service forgo the proposed camping closure for the Middle Kenai River, which was not evaluated in the CCP, until a more responsive and cooperative process (e.g. Limits of Acceptable Change (LAC)) is implemented. We also support applying this same approach to determining appropriate camping sites for designation in the Upper Kenai River and the new proposed river corridor firearm restrictions, which was also not previously evaluated in the CCP. An LAC process would clearly identify the associated problem (which is not identified in the proposed rule), provide additional outreach to the public, and involve stakeholders in considering less restrictive measures to address the identified problem(s). Moving directly to closures could unnecessarily preclude related priority public uses, such as hunting, fishing, and other wildlife dependent recreational activities.

## **Regulation-specific comments**

### **Section 36.39(i)(1) Aircraft**

Section 36.39(i)(1)(i)(B). We support the additional allowance for aircraft access by hunters who have certain limited-entry drawing permits to an unnamed lake (i.e. Goat Lake) in sections 28 and 29, T. 2. N., R. 4 W., Seward Meridian. Prior to its closure by the Refuge in 1986, Goat Lake was used as the primary access point to hunt mountain goats and black bear in this area. Allowing aircraft access for hunting permit holders would have minimal impact on the resource while restoring a valued hunting opportunity.

### **Section 36.39(i)(1) Aircraft and 36.39(i)(2) Motorboats**

Section 36.39(i)(1)(iii) and (iv), and Section 36.39(i)(2)(ii). We support the shortened timeframe (end date changed from Sept. 30 to Sept. 10) during which aircraft and motorboats are prohibited due to the presence of nesting trumpeter swans; the September 10 end date will better accommodate some motorized access during the moose hunting season, while minimizing potential impacts to trumpeter swans.

The revision to this regulation, which allows wheeled planes to land within designated portions of Chickaloon Flats, is an improvement. The current regulation has been difficult to comply with and over the years has resulted in unnecessary enforcement issues. For regulatory purposes, we recommend that the Service provide GPS coordinates for the east and west boundary of the northern shoreline within the designated area. This will give the public a more reliable method to identify the area boundaries in the field.

As previously discussed with the Service, the 2009 Record of Decision (ROD) for the revised CCP, committed the Service to reviewing trumpeter swan brood data in relation to back country access. While the Service has indicated that it does not expect that additional analysis will result in significant increased access, we appreciate the expressed intent to follow through on the commitment in the ROD, which was a significant compromise leading to the completion of the CCP. The Service has data that extends back 50 years; an analysis of recent survey data will likely reveal that the refuge could support some additional increased access as the Pacific Coast Population of trumpeter swans has steadily increased over the past thirty years, continues to increase, and has far surpassed the nesting pair target of 30 set in 1985. While the relaxed restrictions proposed for motorized access are an improvement, we request that within the next five years the Service initiate its commitment to work with the State to re-evaluate the need for the existing aircraft and motorboat restrictions. As currently structured, the regulation results in steadily decreasing access as the trumpeter swan population increases. This runs counter to the original intent of the regulation, which was to restrict access to assist in recovery of the population.

### **Section 36.39(i)(2) Motorboats**

Section 36.39(i)(2)(i)(E). We support the inclusion of this regulation, which is consistent with the State's Skilak Lake motorboat operation regulation that allows only 4-stroke or direct fuel injection motors.

Section 36.39(i)(2)(i)(F). We note the "no wake" restriction for certain lakes has been broadened to also prohibit operation of motors greater than 10 horsepower. The Notice does not explain the

basis for this change, nor was it evaluated in the CCP. We request the Service reconsider the need for this proposed requirement. While the “no wake” restriction could be adhered to by boaters with larger motors, the horsepower-based restriction will exclude boaters who do not own a 10-horsepower or less motor.

### **Section 36.39(i)(3) Off-road vehicles**

Section 36.39(i)(3)(i). We request that for those lakes where highway vehicles or snowmachines are allowed for ice fishing access, off-road vehicles (ORVs) also be allowed for ice fishing during periods of adequate snow/ice cover. ORVs weigh considerably less than highway vehicles, and as a result ORVs can be safer than highway vehicles when ice depth is inconsistent.

### **Section 36.39(i)(4) Snowmobiles**

Section 36.39(i)(4)(i). We support the increased allowable snowmachine width to 48 inches from 46 inches for improved consistency with common snowmachine widths. (Section 36.39(i)(4)(i)). Section 36.39(i)(4)(ii). It is unclear why snowmachines are not allowed on Watson Lake for ice fishing when they are allowed on all other lakes where highway vehicles are allowed for the same purpose. For the same reasons cited above (36.39 (i)(3)(i)) for ORVs, we request the use of snowmobiles for the purpose of ice fishing also be allowed during periods of adequate snow/ice cover on all lakes that allow use of highway vehicles, including Watson Lake.

### **Section 36.39(i)(5) Hunting and trapping**

Section 36.39(i)(5)(i). While we support the proposed regulation for the discharge of firearms where it matches the regulations for the KRSMA, we do not support an expansion of the prohibition for the entire length of the Kenai River adjacent to refuge lands and from the Russian River to the Russian River Falls. The Russian River area is already closed to hunting by state regulations during June and July. We are not opposed to closing areas to the discharge of firearms when necessary; however, the Notice does not explain why discharging firearms for waterfowl and small game hunting does not pose a safety hazard when the use of firearms to take big game apparently does. By omission, it appears the Service may be using public safety as justification to preclude a particular form of hunting. The effects of this closure were also not evaluated in the CCP; therefore, additional justification is needed; including metrics related to public safety concerns and an assessment of lost or displaced hunting opportunity. We also request, consistent with the Master Memorandum of Understanding between the Alaska Department of Fish and Game (ADF&G) and the Service, that proposals affecting the take of wildlife on Service lands be submitted to the Alaska Board of Game for consideration. This does not preclude the Service from subsequently utilizing the federal process in the future, but the state process can be more flexible, including use of management tools that are not available to the Service under the federal system.

We also request the Service take into consideration that within KRSMA, the discharge of any firearm is prohibited within one-half mile of a developed facility or dwelling; however, a person may discharge a shotgun using steel shot at a distance of no less than one-quarter mile from a developed facility. Unlike the proposed regulation, the KRSMA prohibition is contingent on the location of developed facilities or dwellings and does not apply to the entire length of the Kenai and Russian rivers.

We also request the Service consider less restrictive regulations for the discharge of firearms around buildings such as public use cabins in remote areas outside of KRSMA. For example, the

remote Doroshin Bay Cabin is only accessible via boat, snowmachine, or float plane, and firearm discharge closer to the cabin does not pose a safety concern.

Section 36.39(i)(5)(ii). We object to the proposed regulation, which prohibits the harvest of brown bears over bait currently authorized under state regulation. As justification for the proposed closure, the Notice indicates it is simply “*clarify[ing] an existing refuge-specific regulation,*” which requires a special use permit for black bear baiting; the implication being that “*all other hunting over bait is in effect prohibited on the Refuge.*” The Notice neglects to inform the public that baiting is allowed on all refuges in Alaska in accordance with state regulations (50 CFR 32.2 (h)), and does not clarify that at the time the existing Kenai Refuge regulation was promulgated, state regulations only authorized black bear baiting. As such, the existing regulation addressed the only authorized use at that time. It does not appear that the brown bear baiting issue meets the criteria for denying a proposed use without determining compatibility (603 FW 2.10(D)), and if the use is indeed compatible, the Service has not documented its reasons for refusing to permit it (603 FW 2.15); therefore, the Service must complete a compatibility determination and provide justification specific to the harvest of brown bears at bait stations. Relying on the existing regulation as justification to prohibit this newly authorized use is inconsistent with Refuge law, regulation, and policy. We also request the Service take into consideration the 2007 compatibility determination for black bear baiting, which acknowledges the controversial nature of the practice but also recognizes that decisions need to be based on biological and resource related concerns where there is strong scientific evidence, not social preferences.

The Service is also neglecting its obligation to provide information required during the decision making process pursuant to 605 FW 1.8(D)(1), which states “*We will evaluate the impacts of the decisions using the NEPA process and give appropriate notification to the public.*” Absent is any description of the current condition, possible effects of the state season, or the expected future condition of the proposed action. In accordance with Service policy, the proposed permanent closure to a state authorized hunting opportunity requires further analysis and justification specific to the prohibited use.

In April 2014, under similar circumstances, the harvest of brown bears over bait in GMU 25 was deliberated (and subsequently approved) by the Federal Subsistence Board. During deliberations, Alaska Regional Director, Geoff Haskett, focused his concerns on recognized principles of fish and wildlife conservation, a lack of information regarding population estimates in the particular unit, and alterations in hunter success that could lead to potential overharvest. In applying these concerns to the Kenai Peninsula and the Kenai Refuge, we know that baiting for bears (brown and black) can be conducted under recognized principles of sustained yield management, that recent population estimates for brown bears on the Kenai Peninsula exist, and a stringent regulatory process requiring the reporting of harvests specifically minimizes the potential for overharvest, especially of females.

Kenai Refuge managers have recognized that baiting can contribute to sustainable harvests of bears (Rob Barto, Kenai Refuge Law Enforcement Officer, Peninsula Clarion, 4-23-2010). While the article refers to black bears, the concept is applicable to both brown and black bears in that baiting, “*...allows a hunter to observe the bear prior to harvesting, which should reduce the likelihood of sows with cubs as well as juvenile bears being harvested. Youth hunters are given the opportunity to observe bears and learn subtle identification difference between boars and sows. Baiting allows for clean kill shots in an area relatively free of branches and trees.*”

A key interest in the management of brown bears on the Kenai Peninsula is to ensure a limited harvest of female bears. Since the take of brown bears at bait stations was permitted in the spring of 2014, 58 brown bears have been taken at bait stations, with only 7 females being harvested, a relatively low proportion of the harvest.

Given the sustainable management practices under which the brown bear hunt is conducted, an understanding of the brown bear population and the implementation of reporting requirements intended to avoid overharvest, it would appear that Director Haskett's concerns have been addressed. We do understand that there are remaining differences between the Service and ADF&G regarding the specifics of brown bear harvests on the Kenai Peninsula and encourage the Service to continue working with ADF&G and the Board of Game to address remaining concerns.

Section 36.39(i)(5)(iv). We recommend the regulation also indicate that maps are available electronically as well as being available at Refuge Headquarters.

### **Section 36.39(i)(7) Fishing**

Section 36.39(i)(7)(i). We request the following date changes to provide consistency with state regulations.

*We prohibit fishing from ~~June 1 through August 15~~ **June 11 through August 20** during the hours of the Russian River Ferry operation along the south bank of the Kenai River from a point 100 feet upstream to a point 100 feet downstream of the ferry dock.*

Due to the infrastructure present near the ferry dock, for clarity we request referencing both signed markers and distances to communicate the closure (e.g., "Upstream from an ADF&G marker about 600 yd downstream of the falls").

We are interested in how the Service intends to regulate the handicapped-only fishing area within the Ferry Closed Area. This area provides a valuable opportunity for handicapped anglers to fish but it is not provided for in regulation under either state or federal systems. Discussions with the Alaska Board of Fisheries may be necessary to consider alternatives to maintain this use.

### **Section 36.39(i)(8) Public use cabin and camping area management**

Section 36.39(i)(8)(xi). We recognize that the proposed Upper Kenai River camping restriction stems from a decision in the 2010 CCP and we support the Service's decision to designate sites within the river corridor where dispersed camping can still occur. However, while the proposed rule implies otherwise, the proposed Middle Kenai River camping closure was not proposed or analyzed in the 2010 CCP.

The 2010 Kenai River Recreation Study by Whittaker and Shelby concludes that river camping is a significant and valued visitor use of the Kenai River (i.e. "26% of driftboat anglers and 38% of scenic rafters camp on their trips", page 34). Currently there are 14-16 regularly used and identified campsites on the Upper Kenai River and an additional 18-20 on the Middle Kenai River between Skilak Lake and the Kenai Keys Subdivision. Our understanding is that the Service intends to designate only 3 to 4 campsites over the 12.5 miles of river affected by the closure, which will result in a nearly 90% loss of campsites and significant reduction in the associated recreational opportunity currently available to the public. We are concerned about not only the loss of these existing campsites along the Kenai River, but the resulting displacement of

user groups, particularly users camping incidental to fishing. The 100-yard camping setback would render camping along certain stretches of the Middle Kenai River infeasible or undesirable due to surrounding terrain (e.g., wetlands, bluffs, broken terrain, river bends) and vegetation. Additionally, along significant stretches of the Middle Kenai River, only a narrow riparian strip of vegetation remains intact following the recent Funny River and Card Street fires. The existing campsites are within this area. Banning camping within 100 yards of the river in these areas would leave only burned areas within hazardous standing dead timber available to dispersed camping.

The Service has not identified areas of resource damage or whether its cause is due to camping. The cause and effect should be documented, as should any known user conflicts. Many of the popular camping sites are also used by day users (both un-guided and guided), and are often located near popular fishing spots; therefore, the resource damage and evidence of human use cannot be fully attributed to camping. A camping closure, as proposed, will not address current conditions at sites where day use is a major factor (i.e., human waste disposal would remain an issue). While the 100-yard camping setback would locate campers' human waste further from the river, human waste from day users would likely remain a problem within the entire area.

In lieu of a closure, we request the Service implement a monitoring system similar to that proposed in the 2010 CCP for the Swanson River and Swan Lakes canoe routes, for campsites on the Middle Kenai River. In addition, the Service should also analyze the impacts associated with the existing riverside campsites in comparison to potential impacts from new user-created campsites 100 yards or more from the river (e.g., more and longer user-created trails, unattended boats and gear, reduced visibility of campsites to wildlife, potential impacts to the likelihood of negative bear encounters, transfer of use from resilient gravel bars or already impacted upland sites to more sensitive upland soils and vegetation).

The Management Policies and Guidelines in the 2010 CCP indicate that the Service will consider least restrictive measures, including education, limits to commercial use, and seasonal restrictions, prior to proposing a public use closure under 50 CFR 36 (see Appendix J Section 1.3.12). In this instance the Service is proposing a regulatory closure as a first step. We do not object to closures when necessary, but the Service has not analyzed the potential impacts of the proposed Middle River camping closure, nor provided the public with enough information to provide informed comments. Before taking action to close an area that receives significant public and commercial use, the Service should first identify the number and location of all existing and proposed designated campsites, and consider all available management options to address identified resource issues (e.g., waste alleviation and gelling bag use, camping time limits, campsite hardening, seasonal restrictions, etc.).

### **Section 36.39(i)(9) Other uses and activities**

Section 36.39(i)(9)(i) Must I register to canoe on the refuge? The 2010 CCP indicates that the maximum group size on the Canoe Routes is 15 people, without a special use permit. We request the regulation mirror the decision in the CCP, which would allow the Refuge Manager the discretion to issue a special use permit for groups larger than 15 people.

Section 36.39(i)(9)(iii) May I use non-motorized wheeled vehicles on the refuge? We request the Service consider opening certain refuge trails to bicycle and game cart use. The current restrictions on non-motorized transportation are not commensurate with resource impacts. For example, the Service currently allows horses in most areas, except Fuller Lake trails and the SWRA, but does not allow bicycles or one-wheel game carts except on roads designated for



vehicle access. Similarly, trails are open to snowmachines but are closed to bicycles. Improvements in fat tire mountain bike technology would allow for winter use of bicycles on trails that area currently open to snowmachine use with negligible resource impacts.

Section 36.39(i)(9)(v) Are pets allowed on the refuge? The regulation has been modified to require pets be on a leash no longer than 6 feet. Previously, the leash length was 9 feet. We request the Service provide rationale for the change.

Section 36.39(i)(9)(viii) May I pick berries and other edible plants on the refuge? We appreciate the Service's desire to allow these uses by the public as a tangible, educational, and appropriate use of the refuge that is compatible with the Refuge purposes and System mission. However, amending 50 CFR 36 to allow these uses appears to be unnecessary. Commercial harvest of natural resources, such as berries, is already prohibited on Alaska refuges, while recreational activities in Alaska are authorized as long as they are compatible with refuge purposes, according to both the Refuge Improvement Act and 50 CFR 36.31. In August of 1994, the Kenai Refuge issued a positive compatibility determination for the personal collection of natural resources, including berry picking. Other refuges, such as Kanuti, Innoko, Izembek, Togiak, Koyukuk/Nowitna, and Kodiak, have also issued positive compatibility determinations for this use (and, in some cases, inclusion in the CCP). We recommend the Kenai Refuge similarly approve this use with a compatibility finding as opposed to regulation, which would maintain a statewide consistency for authorizing compatible public use.

In addition, the decision in the 2010 CCP does not include a limitation on the number of shed antlers that can be collected in a day. We request the Service provide justification for adding this requirement. We also recommend considering whether requirements such as this may be better suited as a stipulation in a compatibility determination, which provides the Service with more flexibility than regulations to address specific resource concerns, which may fluctuate over time.

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