

STATE OF ALASKA

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July 19, 2002

David Allen
Regional Director
U.S. Fish and Wildlife Service
1110 East Tudor Road
Anchorage, AK 99503

RE: Compatibility Determinations for state management activities

Dear Mr. Allen:

As you know, the revised comprehensive conservation plans (CCPs) under development for refuges in Alaska indicate that a compatibility determination for state management activities will be necessary before these activities can take place. U.S. Fish and Wildlife Service planning staff are attempting to address this need via compatibility determination(s) appended to each of the final CCPs. State agencies have significant problems with this approach, as outlined in this and past correspondence. In particular, *state fish and wildlife management activities are a state authority recognized by the Refuge Improvement Act and the Alaska National Interest Lands Conservation Act (ANILCA). State management activities overlay refuge management; they are not "refuge uses" and therefore are not subject to a compatibility determination.*

Most recently, this subject has been discussed in the context of the revised draft Alaska Peninsula/Becharof refuge CCP; although the concerns apply to all refuges. Refuge planners initially requested the Alaska Department of Fish and Game (ADF&G) to individually list all fish and wildlife management and research tools, techniques, and activities to append to the CCP compatibility determination. We objected, not only because of our reading of the above statutes, but also because techniques and technologies are constantly evolving so a static list would be quickly out of date. In response, Service personnel suggested that we might get by with an amendment to the Master Memorandum of Understanding (MMOU) between the Service and ADF&G that lists general techniques and management activities, for inclusion in the compatibility determination. This request was confirmed in a meeting with refuge planning staff on May 14, 2002. For the reasons stated above, we disagree with this requirement as well. Further, we are unaware of any other states that are similarly required to have compatibility determinations for their fish and wildlife management purposes.

When state activities, e.g., construction of facilities, are subject to other federal laws, the existing MMOU appropriately addresses consultation and cooperation. We understand and respect the need for, and value of, regular communication and consultation between state and federal management agencies with overlapping mandates and interests. Other state and federal agencies, for example, conduct fire management activities pursuant to the Alaska Interagency Fire Management Plan without a compatibility determination. Similarly, the Alaska Department of Natural Resources is willing to consider agreement(s) addressing activities such as volcano monitoring. The Final Compatibility Policy and Regulations give deference to states that have such agreements regarding the state's activities on refuges.

Dialogue on this issue began in earnest when the Service's Final Compatibility Policy and Regulations were published October 18, 2000. Alaska joined with other states in objecting to many components of the draft policy on November 16, 2000. On April 23, 2001, the International Association of Fish and Wildlife Agencies, on behalf of all 50 states' fish and wildlife management agencies, wrote Secretary Norton specifically objecting to the requirement of a compatibility determination for state fish and wildlife management activities. On April 24, 2001, Representatives Hansen and Young (sponsor of the Refuge Improvement Act) requested that the policy be similarly revised. On January 30, 2001, we received your response to our national comments, but the letter did not substantively address applicability of compatibility determinations.

Before the first Alaska refuge CCP goes to the public in draft form, we again request that the compatibility determination for state management activities be dropped in favor of the cooperative government-to-government approach as embodied in the existing MMOU. We look forward to your consideration of these concerns.

Sincerely,

/ss/

Sally Gibert
State CSU Coordinator

cc: Steve Williams, Director, U.S. Fish and Wildlife Service
David Smith, Deputy Assistant Secretary, U.S. Fish and Wildlife Service
John Katz, Governor's Office, Wash. D.C.
Patrick Galvin, Director, Division of Governmental Coordination
Frank Rue, Commissioner, Department of Fish and Game
Pat Pourchot, Commissioner, Department of Natural Resources
Joseph Perkins, Commissioner, Department of Transportation and Public Facilities
Michele Brown, Commissioner, Department of Environmental Conservation