

# STATE OF ALASKA

**SARAH PALIN, Governor**

## **ANILCA IMPLEMENTATION PROGRAM**

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May 21, 2007

Ted Heuer  
Refuge Manager  
Yukon Flats National Wildlife Refuge  
101 12<sup>th</sup> Avenue, Room 264  
Fairbanks, AK 99701

Dear Mr. Heuer:

The State of Alaska reviewed the Compatibility Determinations (CD) for the Yukon Flats National Wildlife Refuge. The following comments represent the consolidated views of the State's resource agencies.

We appreciate the Refuge's overall clear and concise approach to evaluating compatibility for the ten uses under review. We also appreciate the changes made in response to our informal suggestions provided in January. Most of our formal comments are requests for clarifications relative to potential substantive issues. If we previously discussed an issue, we have attempted to further clarify our intent in this letter. If necessary, we are available for further clarification and discussion.

### **General**

#### *Stipulations Necessary to Ensure Compatibility:*

We request clarifications to selected reoccurring stipulations bulleted below.

- "Use of off road vehicles (except snowmachines) is prohibited except in designated areas." [Cabins, Commercial Guiding and Outfitting and Tent Platforms CDs]

The regulation at 50 CFR 36.2 specifically excludes snowmachines from the definition of ORVs. Including "except snowmachines" in this stipulation inaccurately implies snowmachines are ORVs. We request the phrase in parentheses be removed and if necessary, snowmachine use be addressed by separate stipulation(s).

- "The permittee will take no action that interferes with subsistence activities..." [Cabins, Commercial Guiding and Outfitting, and Tent Platforms CDs]

As written, this stipulation provides no allowance for accidental incidents or instances where a permit holder is not aware they are interfering with subsistence uses. For clarification and improved enforcement, we suggest inserting “intentionally” before “interferes.” See bullet on page 6 of the Cabin CD where intent is similarly addressed relative to interference with refuge visitors.

- “The permittee or his/her primary users shall notify the refuge manager during refuge working hours in person or by telephone before beginning and upon completing activities allowed by this permit.” [Commercial Guiding and Outfitting, and Tent Platforms CDs]

Permittees would likely appreciate more specific timeframes in which notification is expected to occur.

For purposes of providing complete information, we appreciate the inclusion of general permit stipulations under “Stipulations Necessary to Ensure Compatibility” when permits are required. We are concerned, however, that some of the individual permit stipulations may not, in fact, be “necessary to ensure compatibility,” although such a relationship is implied by their inclusion under this heading. We recognize, however, that attempting to segregate permit stipulations based on their relationship to compatibility would be impractical and undesirable. We therefore request inclusion of a boilerplate introductory sentence each time general permit stipulations are included under this heading, such as:

“A special use permit with stipulations is required for this use. The following are typical stipulations, some of which are necessary for compatibility”

### CDs

#### **Cabins**

*Supporting Uses:* Most of the listed supporting uses would be considered recreational activities, therefore, it is potentially confusing to identify them as “non-recreational.” For clarification, we suggest re-wording the first sentence as follows:

“The following ~~non-recreational~~ activities may occur in support of or in conjunction with the non-recreational use of cabins:...”

*Description of Use:* To clarify that proposals for commercial cabins and recreational use of “public” cabins per 50 CFR 36.33 (e) and (f) (as opposed to cabins used for private recreational use, not allowed per 50 CFR 36.33 (b)(4)), would need a separate CD, we suggest the following revision to the last sentence in the second paragraph:

“Separate compatibility determinations for cabin construction proposals that differ significantly from the physical attributes described above or other ~~activities that may be associated with cabin use~~ commercial use or use associated with government-owned public cabins (such as camping, motorized transportation,

natural resource collection, non-motorized transportation and scientific research ~~subsistence and trapping~~) will be prepared by the refuge manager.”

### **Cabins and Tent Platforms**

*Stipulations Necessary to Ensure Compatibility:* “The use of off-road vehicles (except snow machines) is prohibited” may not be appropriate relative to subsistence cabin use. Section 811 of ANILCA states:

“...the Secretary shall permit on the public lands appropriate use for subsistence purposes of snowmobiles, motorboats, and other means of surface transportation traditionally employed for such purposes by local residents, subject to reasonable regulation.”

Other means of surface transportation may include ORVs. To our knowledge, the Refuge has not made a formal determination relative to traditional subsistence use of ORVs, nor is there a regulation that restricts subsistence use of ORVs on the refuge. To rectify this source of confusion, we recommend adding the following to the introductory statement on stipulations: “Not all stipulations apply to all user groups.” See also Subsistence CD comment (*Anticipated Impacts #1*).

### **Trapping**

*Use:* Trapping in Alaska is simply considered a use and is not differentiated between user groups (subsistence, commercial, recreation, etc.). Furs are often legally sold, utilized for garments, bartered or made into crafts for sale without a commercial authorization, thus it is not possible to simply define it as one use or another. We recommend addressing all trapping use in one general CD and include a reference to it in the Subsistence CD. Addressing different forms of trapping in separate CDs incorrectly implies the use is managed in different ways.

*Supporting Uses:* If “concession use” refers to guiding, it seems inappropriate to include in supporting uses of trapping.

### **Motorized Transportation**

The second to last paragraph references 43 CFR 36.11 “with limited exceptions” without explanation. The regulation would allow ORVs on designated trails or areas and by special permit. We request the CD include the regulatory distinction and clarify that there are no designated ORV trails or areas on the refuge.

### **Subsistence Activities**

*Use:* see previous comment regarding *Use* for Trapping CD.

*Use:* Subsistence collection of house logs is not addressed in this CD or the Cabins CD. Assuming the use occurs on the refuge, we recommend it be included in one or both CDs.

*Supporting Uses:* There are additional supporting uses that seem appropriate in the context of this CD (e.g., hiking and cross country skiing).

*Anticipated Impacts of the Use:* To distinguish between gravel bars and large water bodies under state jurisdiction, we suggest the following revision to the fourth sentence in the second paragraph:

“Aircraft landings on the refuge by subsistence users are relatively few and occur primarily on existing gravel bars and large water bodies within refuge boundaries.”

We have three separate comments regarding the following statement in the second paragraph:

“There is the possibility of the illegal use of off-road vehicles (other than snowmachines), and subsequent damage to habitat as well as the likely increase in subsistence harvest.

1. Reference to illegal use of snowmachines – See Cabins and Tent Platform CD comment regarding Section 811 of ANILCA and use of ORVs. To our knowledge, the Refuge has not developed regulations that restrict subsistence use of ORVs on the refuge. It is therefore unclear how the use could be considered illegal or enforced as an illegal use. We have discussed this topic with the regional office for other refuges and recommend using a regional approach to address the use in the upcoming CCP revision. In the interim, we recommend clarifying the intent of Section 811 of ANILCA in the CD.
2. 50 CFR 36.2 specifically excludes snowmachines from the definition of ORVs. Similar to our above comment regarding the first permit condition; we request the phrase in parentheses be removed as it could cause unnecessary confusion.
3. The sentence asserts ORV access would “likely increase subsistence harvest.” This phrase implies that targeted populations may suffer from over harvest. Harvest of wildlife and fish are well managed and regulated by the State of Alaska. Method of access, regulations and harvest details are adjusted as necessary by either or both the Federal Subsistence Board and the respective Boards of Fisheries or Game to conserve wildlife populations. It is therefore inappropriate to include an increase in subsistence harvest as an impact.

#### **SOA Management Activities**

*Supporting Uses:* 43 CFR 36.11 allows ORV use on designated trails and areas and by special use permit. Similar to helicopter use, please add “ORV use (case by case determination)” as a supporting use.

Mr. Ted Heuer  
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Thank you for this opportunity to comment. Please contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'S. Magee', written in a cursive style.

Susan E. Magee  
ANILCA Project Coordinator

cc: Sally Gibert, ANILCA Program Coordinator