

STATE OF ALASKA

OFFICE OF THE GOVERNOR

OFFICE OF MANAGEMENT AND BUDGET
DIVISION OF GOVERNMENTAL COORDINATION

BILL SHEFFIELD, GOVERNOR

STATE CSU COORDINATOR
2600 DENALI STREET, SUITE 700
ANCHORAGE, ALASKA 99503-2798
PHONE: (907) 274-1581

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Mr. Robert Gilmore
Regional Director
U.S. Fish and Wildlife Service
1011 E. Tudor Road
Anchorage, AK 99503

Dear Mr. ^{Bob}Gilmore:

The State has completed its review of the Final Alaska Peninsula National Wildlife Refuge Comprehensive Conservation Plan (CCP), Environmental Impact Statement, and Wilderness Review. We are pleased to see that most of our concerns raised in our comments of December 3, 1984 on the draft plan have been addressed in the final plan. However, we do have a few continuing concerns in addition to some general comments that apply to all national wildlife refuge CCPs. For example, many of the concerns expressed below regarding RS 2477 rights-of-way, 17(b) easements, tide and submerged lands, navigability and water rights are the same as those we have conveyed regarding previous National Wildlife Refuge plans.

17(b) Easements, Non-Exclusive Use Easements and Native Allotments

The issues outlined below affect more than just this refuge. They affect all planning areas under the jurisdiction of the Department of the Interior.

The Comprehensive Conservation Plan for Alaska Peninsula does not address the management of 17(b) easements. The plan does not include a list of 17(b) easements or a discussion about what restrictions, if any the U.S. Fish and Wildlife Service (FWS) intends for 17(b) easements. The FWS is required by law to have this information available and to give proper notice before any modifications are made to the specified uses of the original reservation. The CCPs should therefore include a list of 17(b) easements and specifically state the types of uses currently allowed and any proposals for modifications to these uses. Also, separate maps should be made available to assist the public in finding the easements in the field. Attached is a list and maps of 17(b) easements within the refuge.

The plan should also indicate FWS policy on the use of non-exclusive use easements. The use of non-exclusive use easements is established in the Regional Solicitor's Opinion dated December 22, 1983 (attached). Non-exclusive use easements may be reserved by BLM across Native allotments when trails or areas of prior established public use overlap an allotment application.

In addition to the lack of policy direction on these two issues, the CCP does not specifically address how conflicts will be resolved in areas where high public use coincides with private inholdings. Ideally, FWS should list these areas and identify which of them potentially conflict with public use. The plan should then state how such conflicts will be addressed. For example, the plan should state how public use areas will be protected or if the public use cannot be protected, how it will be redirected away from private land. The potential use of non-exclusive use easements should be included in this discussion.

Furthermore, the final plan should outline in greater detail how and when a land protection plan will be developed and list the issues the plan will address. A few of the topics that should be included are management of 17(b) easements, RS 2477 rights-of-way, tide and submerged lands, navigable waters, non-exclusive use easements, and Native allotments.

The State realizes that it may not be feasible to address the details of specific easements and allotments as a part of the Alaska Peninsula CCP ROD and that FWS intends to address these issues later during the development of a land protection plan. However, we feel that the ROD should, at a minimum, acknowledge that 17(b) easements and Native allotments are significant management concerns and give more specific interim policy guidance for how these issues will be addressed than is currently included in the plan.

In future FWS plans that we review, we will make specific recommendations regarding all of our concerns noted above at the draft stage. At this time, though, we are only recommending the following general language for incorporation in the Alaska Peninsula CCP ROD which acknowledges our concerns:

The Alaska Peninsula National Wildlife Refuge Comprehensive Conservation Plan does not provide policy guidance for the management of 17(b) easements, the use of non-exclusive use easements, or the resolution of potential conflicts with public use values. The FWS will develop policies to address these management concerns prior to developing a land protection plan or

taking other specific actions affecting the use of 17(b) easements or areas where high public use overlaps with private inholdings. The State of Alaska and other interested parties will be involved in the development of these policies.

In addition to including the above paragraph, we request that the ROD outline the process for development of the land protection plan that we understand will be prepared as a follow-up to the CCP. We request that the description of this plan include mention of the issues identified above.

Tide and Submerged Lands

The plan should acknowledge that the State has title to all tide and submerged lands. We suggest that the following paragraph be included in the ROD to address this concern:

All tide and submerged lands in the refuge which vested in the State of Alaska Statehood Act are under the ownership and jurisdiction of the State of Alaska. The FWS may submit proposals for the management of these lands to the appropriate State agencies.

Once specific applications or management proposals have been made, such requests will be considered by the State.

Oil and Gas Exploration

Certain exploration activities (such as seismic work) may need to occur on refuge lands which are adjacent to State or private lands in order to assess the oil and gas resources on non-refuge lands. Oil and gas exploration should be allowed on the refuge where adjacent landowners indicate a need to explore on refuge lands to fully assess the potential of off-refuge oil and gas resources. We recognize that such exploration on refuge lands will be required to be conducted in a manner compatible with refuge purposes.

Waterfowl Populations

We provided corrections for the erroneous waterfowl population numbers listed on Page 39, Paragraph 4 of the draft CCP. These numbers remain unchanged in the final CCP, occurring on Page 67, Paragraph 2. The difference between estimates of 100,000 and 71,000 for emperor geese and estimates of 40,000 versus 14,000 for cackling Canada geese are significant. The FWS response to the State corrections was to note that these are estimations. Because the CCP may be a public information document cited for decades, we believe these are significant errors which should be corrected in any future distribution of the plan.

Navigable Waters and the Watercolumn

We request that the following replace the paragraphs on page 147 concerning navigable waters:

At the time of Statehood, the State received ownership of the beds of navigable waters to the "ordinary high water mark". At present the _____ (name of waterways) have been determined navigable. Navigability determinations have not been made on other rivers within the NWR. The FWS will seek cooperative agreements with the Department of Natural Resources concerning the management of submerged lands under navigable waters. FWS will make requests for the use of these lands to the appropriate State agencies.

The ROD should also address the management of the watercolumns in the refuge. These watercolumns remain subject to management authority by the State, although the State may choose to cooperatively manage such areas with the FWS on a case-by-case basis.

Future Resource Management Studies

The State's letter of December 3, 1984 included the following comment (regarding Page 92, Resource Management Directions):

"According to the Memorandum of Understanding between FWS and ADF&G signed in 1982 and outlined here, ' . . . the ADF&G has the primary responsibility for managing resident fish and wildlife resources on the Refuge and Service has primary responsibility for managing habitats.' More specifically, the plan states 'The Service will concentrate its resources on enhancing fish and wildlife habitats by managing access, recreation, vegetation, fire and economic activities on refuge lands. The Service will also carry out studies and basic research relating primarily to habitat management and the impacts of management activities and public uses on refuge resources.' However, under this section the plan lists 10 FWS priorities, none of which relate specifically to the study of vegetation, habitat inventory, range carrying capacities, or other habitat specific research. We recognize that the refuge staff can provide valuable assistance to ADF&G in conducting game surveys and in cooperating in the management of resident game species, though we are concerned about avoiding duplication of effort. We request that the list of FWS priorities be revised to be consistent with the primary responsibilities as stated in the Memorandum of Understanding."

The FWS apparently intended to resolve this issue by adding "with ADF&G" to most items on the list. Intent to avoid duplication through data gathering either in conjunction with or to augment ADF&G surveys is appreciated. However, FWS failed to address the primary concern -- none of these issues relate to FWS primary habitat responsibilities, such as study of vegetation, habitat inventory, and range carrying capacities.

The final CCP states on page 140 "... the Service has primary responsibility for managing habitats." Page 46 states "The vegetation of the Bristol Bay/Alaska Peninsula region remains one of the least understood in the state." And page 71 implies there may be a future management problem with range carrying capacity as caribou numbers increase. We believe the issues listed on page 142, which prioritize supplementing ADF&G population information, should be preceded by priorities to initiate habitat research and inventory. If FWS takes this initiative and ADF&G continues population inventory and management, a more comprehensive ecological data base will be available to the potential benefit of the wildlife and fisheries populations.

In summary, we request that FWS insert in the Record of Decision a commitment to prioritize habitat management to supersede and augment the list on page 142, which primarily commits FWS to supplement existing ADF&G efforts.

RS 2477 Rights-of-Way

We request that the following language on RS 2477 rights-of-way replace the existing language on page 140 of the final plan:

The Alaska Peninsula National Wildlife Refuge is subject to valid existing rights, including rights-of-way established under RS 2477 (43 U.S.C. 932). The State may identify and assert additional RS 2477 rights-of-way within the refuge.

The State has the authority to manage public rights-of-way and may do so cooperatively with the underlying fee landowner. The landowner may petition the State to disclaim an interest in or vacate any RS 2477 right-of-way and/or may enter into a cooperative management agreement with the State.

Maintaining Population Levels

We request a clarification of the statement of intent on page 143 to maintain wildlife populations at about present levels, allowing for natural fluctuations contained. While present populations appear healthy, they are not necessarily

at optimum levels. For example, State hunting regulations in effect on the Refuge for moose hunting are designed to allow population growth. As consumptive and nonconsumptive uses change, it may be desirable to manage for larger or smaller numbers of certain species. Specific management plans should allow flexibility to manage for population levels other than those existing at the time the CCP is written. Although convenient as a broad planning statement, the concept of maintaining population levels at their present level should not bind the managers if a future situation dictates a management change to a different population level.

Water Rights

The following language should replace the section on page 147 under the heading "Water Rights".

The water resources of the Alaska Peninsula NWR will be managed to maintain the primary purposes for which the refuge was established. The primary purposes of the refuge are _____ as cited in the legislation establishing this refuge (reference to legislation). Specific water resource requirements for the primary purposes of the refuge will be identified and the minimum amount of water reasonably necessary to maintain these purposes will be quantified in cooperation with the State of Alaska. Once federal reserved water rights have been quantified, the USFWS will file this information with the State in accordance with State law. Water for secondary purposes and all other uses within the refuge will be applied for under AS 46.15.

Other Comments

Pages 91 and 107, Tables 11 and 15 - The State's December 3, 1984 comments noted that both these tables (labeled Tables 9 and 13 in the draft CCP) display outdated information. In the case of Table 13, we additionally requested the correct original source be cited. The FWS response indicated that time and money precluded the corrections of these tables, but footnotes would be added explaining the availability of more recent information and correcting the source citation. We find that the corresponding Tables 11 and 15 in the final CCP have neither the corrected information nor the footnotes concerning availability of more recent data. Also, ADF&G has again not been identified as the original and correct source.

Page 134, Cooperative Management, second paragraph, last sentence - The Bristol Bay Regional Management Plan, as revised by the Department of the Interior, does not prohibit or call for prohibition of surface entry for oil and gas in Ugashik Lakes. It merely indicates a recommendation to the State on this issue. However, State statutes (AS 38.05.140(f)) already established this prohibition and the State's approved Bristol Bay Area Plan is consistent with this statute. This corrected information should be noted in the ROD.

Page 138, first paragraph, last sentence - The relinquishments in the Port Moller/Balboa Bay area are not of 11(a)(3) selected lands, rather this comment refers to the selections described on the last paragraph of page 137. The State has not relinquished any of these contested 11(a)(3) selections.

Alaska Coastal Management Program

We appreciate the more detailed discussion of the requirements of the Alaska Coastal Management Act (ACMP) and the federal Coastal Management Act of 1972. We also reiterate our conclusive finding that the plan is consistent with the ACMP.

Thank you for the opportunity to comment on the proposed final CCP for the Alaska Peninsula National Wildlife Refuge. We look forward to a Record of Decision that adequately addresses these concerns. If we can be of any assistance in clarifying our comments, please feel free to call.

Sincerely,



Sally Gilbert
State CSU Coordinator

Attachment

cc: Ric Davidge, DOI
S. Leaphart, CACFA
J. Leask, AFN
Ron McCoy, ALUC

State CSU Contacts