

**OFFICE OF THE GOVERNOR**

OFFICE OF MANAGEMENT AND BUDGET  
DIVISION OF GOVERNMENTAL COORDINATION

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May 5, 1986

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

Dear Mr. <sup>B. E.</sup> Gilmore:

The State of Alaska has reviewed the proposed regulations for public use and access on the Kenai National Wildlife Refuge. This letter is submitted on behalf of state agencies and represents a consolidation of state concerns and comments.

I would like to take this opportunity to thank you for acknowledging our notice and public participation concerns expressed in our April 18, 1986 letter to you. Also, I would like to thank your staff for meeting with us and discussing the proposed regulations.

Public Participation

As a follow-up to the April 18 letter, the state proposed that the following suggested guidelines be used by the Fish & Wildlife Service (FWS) to ensure adequate public involvement in the review of future comprehensive conservation plans (CCP) implementation regulations.

- 1) The FWS should keep a current list of persons involved in review of each of the CCPs.
- 2) Copies of the proposed rulemaking should be mailed out to the above referenced mailing list.
- 3) The proposed regulations should be accompanied by background material indicating the origin of the proposed rule (e.g. if they existed prior to the Alaska National Interest Lands Conservation Act (ANILCA); if they are new; whether they were referenced in the adopted CCP, etc.) For regulations implementing a CCP, it would be helpful to provide explanatory material which references specific provisions or

page numbers in the final CCP which provide a basis for the proposals.

- 4) Notice of public hearings regarding the proposed rulemaking should also be sent out to the mailing list. We also suggest that the public notice be written so that the public has a clear understanding of the general nature of the proposed action (e.g. an introduction to the Kenai regulations public notice could be prefaced by bold face type such as "The FWS is proposing to implement regulations that would close areas of the Russian River to fishing, restrict aircraft access to the Refuge, etc.").

### The Regulations

We request the following changes in the proposed regulations. Most of these changes, supporting data, and justifications have been discussed between the FWS and state agencies. We understand that we will have additional opportunities to discuss FWS supporting data and to clarify the reasons for our requested changes if the FWS disagrees with them.

1. PROPOSED REGULATION: "Subpart E -- Refuge-Specific Regulations, § 36.69 Public Use -- (a) General. Public use of Alaska national wildlife refuges is permitted subject to all other parts of 50 CFR Part 36, those sections of 50 CFR Subchapter C not supplemented by Part 36, and the following refuge-specific requirements. In all cases where a permit is required, the permittee must abide by the conditions under which the permit was issued."

REQUESTED CHANGE: We request the last quoted sentence above be amended to clarify that the permits are subject to application and appeal procedures contained in the new Subpart F -- Permits and Public Participation.

2. PROPOSED REGULATION: "(i) Kenai National Wildlife Refuge. -- (1) Aircraft. (i) The operation of aircraft on the Kenai National Wildlife Refuge, except in an emergency, is permitted only as authorized in designated areas as described below. These areas are also depicted on a map available from the refuge manager."

REQUESTED CHANGE: (i) The landing and operation[s] of aircraft on the Kenai National Wildlife Refuge, except in an emergency, is permitted only as authorized on lakes and in designated areas as described below. These areas are also depicted on a map available from the Refuge Manager.

JUSTIFICATION: This revises the proposed regulation to be consistent with the pre-ANILCA regulation.

3. PROPOSED REGULATIONS: "(A) Within the Canoe Lakes, Andy Simons, and Mystery Creek units of the Kenai Wilderness, only the following lakes are designated for airplane

operations:" [list not quoted], and "(B) Airplanes may operate on all lakes outside the Kenai Wilderness except those lakes with recreational developments, including but not limited to, campgrounds, campsites, and public hiking trails connected to road waysides. The non-wilderness lakes closed to aircraft operations are as follows:" [list not quoted].

REQUESTED CHANGES: In (A) after "the following lakes", insert "and areas." In the first sentence of (B) after "operate on all lakes", insert "and designated areas."

JUSTIFICATION: Without these changes, all traditional wheelplane landing areas, airstrips (except Indian Creek), and traditional creek and river landing areas are closed. According to the FWS staff, this was an oversight. All traditional landing areas including glacier terminus, rivers, creeks, airstrips, etc. that have previously been identified by the state and permitted by the FWS will be designated open.

For example, the proposed regulations under (i)(A) permit landing on Dinglestadt Glacier terminus lake. Traditional wheelplane landings in the vicinity are unintentionally precluded by the proposed regulation; we request this item be revised to read: Dinglestadt Glacier terminus landing area and lake. We can offer further simple corrections based on previous identifications of traditional landing areas in the State's 1984 Resource Management Recommendations and consultations with area staff.

4. PROPOSED REGULATION: Under (i)(B), "All lakes are closed to aircraft except that airplanes may land on Bottenintin Lake, which is open year-around and on Hidden Lake, which is open only for sport ice fishing."

REQUESTED CHANGE: After "year-around and on Hidden Lake," revise remainder of sentence to read "Swanson Lake, Gene Lake, and Pepper Lake which are designated aircraft landing areas in season for the purpose of sport ice fishing only."

JUSTIFICATION: All four lakes were open to aircraft in the pre-ANILCA regulations and should remain open.

5. PROPOSED REGULATION: "(ii) Notwithstanding any other provision of these regulations, operation of aircraft is prohibited between May 1 and September 30, inclusive, on any lake where nesting trumpeter swans and/or their broods are present."

REQUESTED CHANGE: Change "September 30" to September 1" or "September 10."

JUSTIFICATION: We supported the closure through September 1 proposed in the recently completed CCP for Kenai Refuge.

The further extension through September 30 does not significantly protect swans, according to available FWS and ADF&G data. The FWS should also be advised that state hunting regulations already prohibit use of aircraft in support of moose hunting on the refuge until after September 10. Moose hunting is the primary use of the refuge after September 1.

6. PROPOSED REGULATION: "(v) Airplanes may operate only within designated areas on the Chickaloon Flats, as depicted on a map available from the Refuge Manager."

COMMENT: We request that the drafting of this map include consultation with the ADF&G so that all traditional landing areas in the Chickaloon Flats area are identified.

7. AIRCRAFT GENERAL: For consistency with other regulations, we suggest that you consider closing the Kenai River within the refuge to the use of aircraft during the same period that it is closed to motorized boats (currently proposed in the regulations as March 15 through May 1, inclusive).

8. PROPOSED REGULATION: "(2) Motorboats. Motorboats are authorized on all waters of the refuge except under the following conditions and within the following areas:" and "(ii) That section of the Kenai River from the outlet of Skilak Lake downstream for three miles, is closed to motorboat use between March 15 and May 1, inclusive. However, any boat having a motor attached may drift or row through this section provided the motor is not operating."

REQUESTED CHANGE: Change the date of closure to read March 15 to June 14, inclusive.

JUSTIFICATION: This change would conform to the new Alaska Department of Natural Resources Regulation 11 AAC 20.865 which becomes effective May 1, 1986. If we use the same dates, enforcement would be less confusing to the public.

9. PROPOSED REGULATION: "(2) Motorboats. (vi) Notwithstanding any other provision of these regulations, operation of a motorboat is prohibited between May 1 and September 30, inclusive, on any lake where nesting trumpeter swans and/or their broods are present."

REQUESTED CHANGE: Change "September 30" to "September 1" or "September 10."

JUSTIFICATION: Same as 5.

10. PROPOSED REGULATION: "(iv) Motors in excess of 10 horsepower are not authorized on the Moose, Swanson, Funny, Chickaloon, Killey, and Fox Rivers."

REQUESTED CHANGE: Add a sentence clarifying that this restriction does not apply to marine waters or the tidal influence area of the Chickaloon River.

JUSTIFICATION: Larger horsepower craft are used to access the Chickaloon Flats and intertidal area of the Chickaloon River. For example, craft are driven from Anchorage to the Flats for waterfowl hunting. We presume that this restriction was an oversight and not intended to apply to the Chickaloon Flats and lower river areas.

11. PROPOSED REGULATION: "(3) Off-road vehicles."

REQUESTED CHANGE: Prohibition of off-road vehicles should be modified to exclude the ANILCA extensions.

JUSTIFICATION: The ANILCA Section 811 provides for the use of motorized vehicles in support of subsistence uses where traditional, i.e. pre-ANILCA use areas.

12. PROPOSED REGULATION: "(vii) Snowmobiles may not be used as an aid in big game hunting or for transporting big game animals. Snowmobiles may be used to transport fur animals, including wolves, and small game."

REQUESTED CHANGE: Delete.

JUSTIFICATION: There are currently no open or proposed big game hunting seasons in the Kenai Refuge where snowmachines could be used, except for wolves and wolverines. This regulation eliminates a potential management tool more appropriately considered through the normal consultation and Alaska Board of Game processes.

13. PROPOSED REGULATION: "(5) Hunting and trapping. (i) Firearms may not be discharged within  $\frac{1}{2}$  mile of designated campgrounds, trailheads, waysides, buildings or the Sterling Highway."

REQUESTED CHANGES:

(A) Change "buildings" to "public buildings."

(B) Delete "trailheads," "waysides," and "the Sterling Highway."

JUSTIFICATION: The 50 CFR 36.34 already restricts the use of firearms for target practice, "plinking," or other indiscriminate use by prohibiting carrying and possession of firearms except for hunting and personal protection. We support the closure  $\frac{1}{2}$  mile from campgrounds and public buildings for reasons of public safety; this is also consistent with the Kenai Refuge CCP (page 132) which proposed limited area closures to firearm discharge. However, we oppose the closure for the Sterling Highway. State regulation reads "5 AAC 92.080. UNLAWFUL METHODS OF TAKING GAME. The following methods of taking game are

prohibited: (1) by shooting from, on, or across a highway;." Also, in this area it would be more appropriate to correct the litter problems noted in the FWS justification for this proposal through enforcement of existing regulations without eliminating the popular winter small game hunting. Regarding trailheads and waysides, we suggest a  $\frac{1}{2}$  mile closure between May and August 30. During the remainder of the year, visitor use other than hunters is significantly reduced.

14. PROPOSED REGULATION: "(5)(ii) A special use permit, available from the Refuge Manager, is required prior to baiting black bears."

REQUESTED CHANGE: Delete.

JUSTIFICATION: 50 CFR Part 32, § 32.2 (b) states: "(Baiting is authorized in accordance with State regulations on national wildlife refuges in Alaska.)." We believe the Kenai Refuge proposed regulation violates the intent of the existing FWS regulation, particularly since there are no data which support a need to further restrict harvest under existing state regulations. The FWS supporting material address a number of problems such as visitor conflicts and litter as reasons for proposing this regulation. The following synopsis of state regulations address these concerns. As an alternative to the proposed permit requirement, the FWS might consider a requirement of notification of bait station locations. This would provide the desired information. If further data become available which suggest a need to further restrict this activity, restrictions should be pursued through the Alaska Board of Game's regulatory process prior to involving federal regulations.

"5 AAC 92.075. LAWFUL METHODS OF TAKING GAME. (a) All Big game may be taken as follows:"

"(5) black bears may be taken with the use of bait; however

"(A) only biodegradable materials may be used for bait; only the heads, bones, viscera, or skin of legally harvested fish and game may be used for bait;

"(B) no person may use bait within one-quarter mile of a publicly maintained road or trail;

"(C) no person may use bait within one mile of a house or other permanent dwelling, or within one mile of a developed campground or developed recreational facility;

"(D) a hunter using bait shall clearly mark the

bait station with a sign which displays the hunter's name and current address, phone number, and hunting license number; and

"(E) a hunter using bait shall remove litter and equipment from the bait station site when hunting is completed."

15. PROPOSED REGULATION: "(v) A person who has been airborne may not take, or assist in taking, free roaming fur animals on Kenai NWR until after 3:00 A.M. following the day in which the flying occurred. This does not apply to a trapper using a firearm or other means to dispatch an animal legally caught by trap or snare. This also does not apply to transportation of persons by regularly scheduled flights, to and between cities, town or villages that normally provide scheduled services to this area."

PROPOSED CHANGE: Delete.

JUSTIFICATION: A similar regulation is currently under consideration by the Alaska Board of Game for wolf harvests in the game management units encompassing Kenai Refuge. The Game Board reviewed all available biological and harvest data and, although the regulation is not presently needed for biological reasons, the Board will likely implement this regulation proposal either this June or at their next scheduled meeting. We request the FWS exhaust the state's regulatory process prior to implementing independent regulations, particularly since data indicate lack of biological necessity.

16. PROPOSED REGULATION: "(v) All radio transmitters, neck and leg banks, ear tags, or other research marking devices recovered from wildlife shall be turned into the refuge manager within 5 days after recovery."

REQUESTED CHANGE: After "refuge manager" insert "or Alaska Department of Fish and Game."

JUSTIFICATION: Compliance by the public is easier when both agencies cooperate as recipients.

17. PROPOSED REGULATION: "(vii) The use of motorized equipment, including but not limited to, chainsaws, generators, and auxiliary power units, is not permitted within the Kenai Wilderness, except for the use of snowmobiles, airplanes, and motorboats in designated areas."

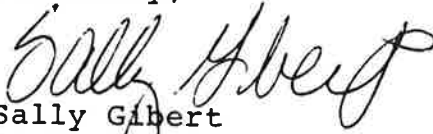
REQUESTED CHANGE: After "permitted within the," insert "pre-ANILCA."

JUSTIFICATION: 50 CFR 35.5(b) specifically provides for, and the ANILCA legislative history indicates congressional intent that, traditional activities in Alaska be allowed to

continue, including motorized equipment where such uses occurred prior to designation as Wilderness.

On behalf of the State of Alaska, thank you for the opportunity to review the proposed regulations for public use and access on the Kenai National Wildlife Refuge. If we can be of any assistance in clarifying these comments, please contact this office.

Sincerely,

  
Sally Gibert  
State OSU Coordinator

cc: Bill Knauer, Wildlife Resources, FWS, Anchorage  
Senator Rick Halford, CACFA, Fairbanks  
Alaska Land Use Council Members  
Land Use Advisors Committee Members  
Commissioner Notti, DCRA, Juneau  
Commissioner Sundberg, DPS, Juneau  
John Katz, Office of the Governor, Washington, D.C.  
Molly McCammon, Office of the Governor, Juneau



- [1311] Mr. Bill Allen, Fairbanks
- [1317] Dr. Robert Baker, Anchorage
- [1312] Mr. James Barkeley, Esq., Anchorage
- [1252] Mr. Michael Barton, U.S. Forest Service, Juneau
- [1037] Ms. Joyce Beelman, Department of Environmental Conservation, Fairbanks
- [1] Mr. Jay Bergstrand, Department of Transportation and Public Facilities, Anchorage
- [994] Ms. Bonnie Borchick, Department of Commerce and Economic Development, Juneau
- [248] The Honorable Don Collinsworth, Department of Fish and Game, Juneau
- [942] Ms. Tina Cunning, Department of Fish and Game, Anchorage
- [1292] Mr. Frederick O. Eastaugh, Juneau
- [1293] Mr. Bart Englishoe, Anchorage
- [1286] Mr. Boyd Evison, Regional Director, National Park Service, Anchorage
- [469] Mr. Ned Farquhar, Department of Natural Resources, Juneau
- [203] Mr. Peter Freer, Department of Community and Regional Affairs, Juneau
- [1313] Mr. John Galea, Ketchikan
- [1263] Mr. Joseph W. Geldhof, Department of Law, Juneau
- [359] Ms. Lennie Gorsuch, Juneau Capitol Information Group
- [303] Mr. Robert L. Grogan, Office of Management and Budget, Juneau
- [1243] Mr. Robert D. Heath, Alaska Power Authority, Anchorage
- [1244] Mr. Robert Henderson, Department of Public Safety, Anchorage
- [1324] Mr. Jack Hession, Anchorage
- [1268] Mr. Mark Hickey, Juneau Commissioner's Office
- [1247] Mr. Steve Hole, Department of Education, Anchorage
- [1271] Ms. Sharon Jean, Alaska Land Use Advisors, Soldotna
- [1297] Mr. Arthur Kennedy, Anchorage
- [1298] Dr. John Choon Kim, School of Business & Pub. Affairs University of Alaska, Anchorage
- [1270] Mr. Larry Kimball, Alaska Federation of Natives, Anchorage
- [1289] Commissioner Richard J. Knapp, Dept. of Transportation & Public Facilities, Juneau
- [1331] Mr. Bill Knauer, U.S. Fish and Wildlife Services, Anchorage
- [1250] Mr. Stan Leaphart, Citizens Advisory Commission on Federal Areas, Fairbanks
- [937] Ms. Janie Leask, Alaska Federation of Natives, Anchorage
- [1258] Mr. Craig Lindh, Project Analyst Office of Management & Budget, Juneau
- [509] Mr. Robert McVey, U.S. Department of Commerce, Juneau
- [1316] Mr. Barry Moorhead, Juneau Federal Highway Administration
- [499] Mr. Donald Nielsen, Anchorage
- [594] Ms. Mary Nordale, Commissioner Department of Revenue, Juneau
- [1314] Mr. Vernon R. Olson, Anchorage
- [595] Major General Edward G. Pagano, Department of Military Affairs, Anchorage
- [1287] Mr. Michael J. Penfold, State Director, Bureau of Land Management, Anchorage
- [501] Ms. Eileen Plate, Department of Labor, Juneau
- [1279] Mr. Gerald Rafson, Ak. Dept. of Transportation & Public Facilities, Fairbanks
- [1288] Commissioner William A. Ross, Department of Environmental Conservation, Juneau
- [1299] Mr. Wayne Ross, Anchorage
- [1315] Ms. Laura M. Schroder, Dillingham
- [87] Dr. Lidia Selkregg, Anchorage
- [233] Mr. Steve Sorensen, Juneau
- [1300] Mr. James F. Stratton, Anchorage
- [486] Mr. R. I. Swetnam, Anchorage
- [1242] Mr. Ike Waits, Department of Community & Regional Affairs, Anchorage
- [1239] Mr. Rob Walkinshaw, Department of Natural Resources, Anchorage

- [940] Mr. Vernon R. Wiggins, Anchorage
- [1240] Mr. Dan Wilkerson, Department of Environmental Conservation, Anchorage
- [1249] Mr. David Williams, Dept. of Health and Social Services Division of Planning,  
Juneau
- [1264] Ms. Vicki Williams, Department of Corrections, Anchorage
- [120] The Honorable Esther Wunnicke, Department of Natural Resources, Juneau