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February 9, 1989

Mr. Walter O. Stieglitz
Regional Director
U.S. Fish and Wildlife Service
1011 East Tudor Road
Anchorage, AK 99503

Dear Mr. Stieglitz:

The State of Alaska appreciates the opportunity to review the U.S. Fish and Wildlife Service's (FWS) revised draft Cabin Management Policy for National Wildlife Refuges in Alaska. We appreciate the significant changes that the FWS made to this draft and the time the FWS has devoted to meeting with state agency representatives to discuss cabin management issues. The attached comments summarize our remaining concerns with this policy. We are hopeful that additional resolution of these concerns can occur before the policy is finalized and draft regulations are prepared.

Sincerely,

Robert L. Grogan
Director



By: Michelle Sydeman
State CSU Coordinator

Attachment

cc: Commissioner Collinsworth, DFC
Commissioner Gorsuch, DNR
Commissioner Hickey, DOTPF
Commissioner Kelso, DEC
Mr. John Katz, Office of the Governor
Mr. Denby Lloyd, Office of the Governor

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STATE OF ALASKA
COMMENTS ON
THE
U.S. FISH AND WILDLIFE SERVICE'S
REVISED DRAFT CABIN MANAGEMENT POLICY
FOR
NATIONAL WILDLIFE REFUGES IN ALASKA

GENERAL COMMENTS

I. New Commercial Use Cabins in Wilderness Areas

The state urges the U.S. Fish and Wildlife Service (FWS) to re-evaluate its policy prohibiting the construction of new cabins in support of commercial activities in designated Wilderness. Although the Wilderness Act generally prohibits "structures" within Wilderness, several sections of the Alaska National Interest Lands Conservation Act (ANILCA) authorize the construction and use of cabins and other facilities within Wilderness areas in Alaska. In particular, Section 1303(b) of ANILCA authorizes the construction of new cabins in Wilderness if "necessary to provide for the continuation of an on-going activity or use otherwise allowed within the unit or area where the permit applicant has no reasonable alternative site for constructing a cabin" and if "compatible with the purposes for which the unit or area was established."

The FWS appears to be interpreting this section of ANILCA as not applying to Wilderness areas; however, Section 1303(b) clearly indicates that Wilderness areas are included within its scope. This section reads as follows: "IMPROVED PROPERTY ON OTHER UNITS OR AREAS ESTABLISHED OR EXPANDED BY THIS ACT. The following conditions shall apply regarding the construction, use and occupancy of cabins and related structures on Federal lands within conservation system units . . ." (Emphasis added.) Section 102(4) states that "The term 'conservation system unit' means any unit in Alaska of the National Park System, National Wildlife Refuge System, National Wild and Scenic Rivers Systems, National Trails System, National Wilderness Preservation System, or a National Forest Monument including existing units, units established, designated, or expanded by or under the provisions of this Act" (Emphasis added.) Thus, Wilderness areas clearly fall under the purview of this section, and cabins for on-going commercial activities, such as guiding and commercial fishing, should be allowed under limited circumstances in designated Wilderness.

Additional clarification regarding this issue is provided in ANILCA's legislative history. For example, Senate Report 96-413 (Committee on Energy and Natural Resources, November 14, 1979) at page 308 states:

Section 13.15: Wilderness Management: It is recognized that some uses which are allowed within wilderness areas designated by this bill, most notably guiding and trapping, may in some areas require the use of rudimentary line cabins, shelters, caches and other minimal support facilities. Without recognition of these incidental uses and facilities, guiding, trapping and other allowed uses, while technically allowed, would be impossible to conduct as a practical matter. Therefore, the Committee intends that those related uses and facilities required to accomplish uses otherwise allowed within wilderness areas shall also be allowed, consistent with the allowed use and the purposes of the areas designated as wilderness.

On page 309, this report goes on to state:

Section 13.16: Allowed Uses: This section, adopted as a committee amendment, clarifies that activities incidental and necessary to allowed uses within conservation system units, including wilderness areas, shall be permitted, subject to reasonable regulations. The amendment provides that equipment and facilities, which would be utilized in carrying out permitted activities such as guided hunting, sport hunting, and commercial fishing, shall be permitted, but the Secretary may through reasonable regulations ensure these activities are made compatible with administration of the area. This amendment applies to the continuing use of existing facilities and equipment and to the use of new facilities and equipment.

The State of Alaska therefore urges the FWS to provide for the construction and use of new cabins in support of commercial activities, consistent with the clear language of ANILCA and its legislative history.

II. Trapping Cabins in Wilderness

The state requests that the FWS reconsider its proposed limitation on the use of trapping cabins in designated Wilderness to "interior Alaska" and to areas "where trapping is a customary and traditional use." There is no basis in the law or in ANILCA's legislative history for this limitation, and none is provided in the draft policy. In addition, this limitation does not appear to be warranted or to make sense in terms of the protection of refuge resources or the needs of refuge users. Trapping has traditionally occurred on refuges throughout the state, and the need for and impacts of cabins in support of trapping is not significantly different in the Interior than it is in other regions of the state.

The state also notes that Section 1303(b) of ANILCA establishes conditions under which cabins in support of on-going refuge activities, such as trapping, can be permitted. These conditions are very specific: 1) the cabin must be necessary to provide for the continuation on an on-going activity or use, 2) the permit applicant must have no reasonable alternative site for constructing a cabin, and 3) construction of the cabin must be compatible with the purposes for which the unit for area was established. The state does not believe it is consistent with these requirements or with standards of reasonable regulation for the FWS to adopt a policy which denies potential applicants the opportunity to attempt to meet the conditions listed in Section 1303(b) for use of a cabin within certain refuge areas. The proposed limitation appears to be arbitrary, and could potentially prohibit the use of cabins on approximately 16.9 million acres of existing Wilderness and 2.8 million acres of proposed Wilderness. The state urges the FWS to drop this proposal from the final policy, consistent with Section 1303(b) of ANILCA.

III. Definition of "Immediate Family Member"

The state requests that the FWS revise its proposed definition of "immediate family member" to include common-law spouses, second degree of kindred, and individuals who have resided with the family for an extended period of time. This revision would bring the policy into greater conformity with congressional intent, as expressed in ANILCA Section 802, to "cause the least adverse impact possible on rural residents who depend upon subsistence uses of the resources of such lands." This broader definition recognizes the cultural differences between rural and urban Alaskans and the more frequent existence of common-law relationships, non-legal adoptions, and extended family structures in rural Alaska.

IV. Public Use of Seasonally-Permitted Cabins

The state recommends that a new provision be added to the policy which explicitly provides refuge managers with the flexibility to allow public use of cabins under seasonal permit, when such cabins are not being used by the permittee. This would provide the public with the opportunity to benefit from cabins otherwise reserved for private use and would decrease the costs associated with constructing new public use cabins. The state recognizes that this would require the consent of the cabin owner in the case of "existing" cabins.

V. ANILCA Section 810 Analysis

The state requests that the final policy and/or upcoming draft cabin regulations contain an ANILCA Section 810 analysis. Such an analysis is required prior to implementation of any federal

action which may affect subsistence activities. The analysis should include an examination of the effects of this policy on the use of cabins for subsistence purposes.

VI. Rights of Access

The state requests that the final policy clarify that adequate and feasible access to cabins will be provided to cabin permittees.

VII. Scope of this Policy

The state requests that the FWS clarify that the use of temporary facilities (ANILCA Section 1316), administrative sites and visitor facilities (ANILCA Section 1306), revenue producing facilities (ANILCA Section 1307) and new facilities for activities such as fisheries research and monitoring [(ANILCA Section 1310(b))] do not fall within the scope of this policy.

PAGE-SPECIFIC COMMENTS

Page 2, New Cabins. We request that this policy statement be expanded to address new cabins for the purposes of public health and safety, administration of the area, trapping, and continuation of subsistence opportunities.

Page 2, Objective 6. We recommend that this objective and the final paragraph on page 8 be rewritten to reflect the special ANILCA provisions for cabins in Wilderness areas for subsistence, guiding, and trapping (Section 1303), commercial fishing [Section 304(d)], and public recreation (Section 1315), provided they meet certain conditions.

Page 2, Objective 7. Consistent with previous comments, we request that the phrases "in interior Alaska" and "where trapping is a customary and traditional use" be deleted from this objective and from the final paragraph on page 8. Provisions restricting the taking of wildlife to areas of traditional use are only referenced in ANILCA for certain national park units.

Page 2, Objective 8. We request that the part of this objective that follows the comma be revised to be consistent with the Alaska Land Use Council's "A Synopsis for Guiding Management of Wild, Scenic, and Recreational Rivers in Alaska," guideline #11. As written, the objective is unnecessarily restrictive of cabin use.

Page 2, Objective 11. We recommend that the FWS re-assess this objective, based on consideration of the costs associated with fire suppression and the desirability of maintaining the option to allow fires to burn in pre-designated areas.

Page 3, Guidelines Applicable to All Cabins. We request that the statement "New cabins are the property of the federal government . . ." be slightly modified to clarify that this does not apply to cabins reconstructed after loss due to fire, vandalism, etc.

Page 3, Guidelines Applicable to All Cabins. We recommend that the FWS require permittees to post a copy of their permit on the exterior of their cabin. This could help assure the public that the cabin is authorized and deter trespassers.

Page 4, paragraph 3. We recommend that the policy specify the procedures that will be followed in attempting to notify owners of cabins not under permit. Alternatively, this section could reference the public notice procedures described in the Code of Federal Regulations.

Page 5, paragraph 1. We suggest that the FWS rewrite this first sentence to indicate that the term "trespass cabins" refers to cabins built after ANILCA's passage.

Page 5, Guests. We recommend that the specific process for identifying guests "in writing" be delineated here.

Page 5, Uses, paragraph 1. ANILCA's legislative history acknowledges that subsistence and traditional activities are evolving. Since this evolution of traditional patterns of use must be recognized and allowed, the state suggests further refinement of this guideline.

Page 5, Uses, paragraph 2. We suggest that this guideline be addressed and clarified in the implementation procedures.

Page 5, Uses, paragraph 3. We suggest inserting the term "reasonable" in line 3 before "alternative site . . ." In addition, we request clarification of the provision that "year-round residency is not considered a traditional use." The state believes year-round use of cabins should be allowed, if necessary to support year-round traditional activities.

Page 8, Modification/Rehabilitation. We recommend that the last statement regarding reconstruction of cabins destroyed by accidents or natural causes also be a guideline for new cabins.

Page 8, Permits, paragraph 1. We request deletion of the third sentence in the paragraph: "In addition, these activities must have historically been supported by the construction and use of cabins in the geographic area [Lands Act Section 1303]." ANILCA does not contain such a requirement. To the contrary, ANILCA provides only that the activity or use for which a cabin is needed must be "on-going or otherwise allowed within the unit." We further request revision of the following two sentences, as

they do not fully reflect ANILCA provisions. New cabins may be built for administrative sites, trapping, commercial fishing support, etc. under various sections of ANILCA.

In addition, we recommend that the FWS clarify under what circumstances new cabin permits would be issued to "local residents" to pursue a "legitimate subsistence activity." We request that the terms "local resident" and "legitimate subsistence activity" be defined in the final policy.

Page 9, Construction Specifications. We note that the location of new cabins should consider "adequate and feasible access" in addition to the factors specified.

Page 9, Permits, paragraph 2. ANILCA Section 304(d) does not limit the exercise of valid commercial fishing rights, including use of cabins, to "non-wilderness lands" as stated here. We request that the first sentence be revised to read "The refuge manager shall permit the exercise of valid commercial fishing rights, including the use of cabins on all refuge lands," to be consistent with Section 304(d) and the recently adopted refuge comprehensive conservation plans.

Page 9, paragraph 3. We recommend that FWS require that new cabins be located at least 100 feet from navigable or floatable rivers, unless it is not possible to do this in a particular location. This would make FWS policy consistent with state policy.

Page 10, Guidelines Applicable to Administration and Government Owned Public Use Cabins, paragraph 3. We suggest modification of the second sentence to recognize that public use cabins may be used for subsistence activities and trapping as well as "public recreational use."

Page 11, Definitions, Cabin. We encourage the FWS to maintain flexibility to allow for the construction of cabins larger than 200 square feet if necessary to accommodate customary and traditional activities.

Page 11, Definitions, Commercial Cabin. The definition of commercial cabin only cites ANILCA Section 304(d). Section 304(d) is specific to equipment and facilities necessary for commercial fishing only. Section 1303 should also be cited.

Page 12, Definitions, Public Use Cabin. We question why the cabin must be "owned by" rather than just "administered by" the FWS. A privately-owned cabin used seasonally may be administered by the FWS for public use during other times of the year.

Page 12, Definitions, Year-round Use or Occupancy. We request clarification regarding how this definition relates to other provisions in this policy. In addition, we note that cabin users who reside on refuges should not be required to live in their cabins for a "majority of the year," consistent with Section 1303 and with guidelines adopted by the Alaska Land Use Council for management of cabins on federal lands.