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September 16, 1999

David Allen  
Regional Director  
U.S. Fish and Wildlife Service  
1011 East Tudor Road,  
Anchorage, Alaska 99503

Dear Mr. Allen:

The State of Alaska has reviewed the U. S. Fish and Wildlife Service draft refuge planning template that defines management categories for Alaska refuges. This template will guide the development of revised comprehensive conservation plans (CCPs) for Alaska's national wildlife refuges over the next several years. The comments in this letter represent the consolidated views of the state's resource agencies.

The state appreciates this opportunity to review the template as well as the Service's continuing efforts to integrate state involvement in refuge planning. We acknowledge and appreciate the many changes incorporated in the template resulting from the September 1997 meeting with Service planners. Investing this time up front has and will continue to save considerable effort in the future. In this letter we have identified several issues which we hope to have the opportunity to discuss further, and have provided a number of specific requested modifications and clarifications.

## **State Management/Research Activities**

It is difficult to discern where State management and research activities fit within the management direction provided. For instance, there is no fish and wildlife management activity category that acknowledges the state's authority to conduct routine management or research activities, such as those currently performed by the Alaska Department of Fish and Game (ADF&G) fisheries staff (e.g., counting towers, sonar stations, and weirs and related

facilities). Some of these activities are listed, but only under the categories of fisheries restoration and enhancement.

We request a broader category be included which addresses our ability to continue conducting all current and future State fish and wildlife management activities that occur under all management categories, including Wild Rivers and Wilderness. Our request is consistent with the National Wildlife Refuge System Improvement Act of 1997, 43 CFR 24.4(e), and the Master Memorandum of Understanding between the Service and ADF&G. Based on this, we request the following additions or equivalent changes be made to the management activity table.

ACTIVITY	Intensive Management (1)	Moderate Management (2)	Minimal Management (3)	Management of Wild Rivers (4)	Management of Wilderness (5)
<b>FISH AND WILDLIFE POPULATION MANAGEMENT</b>					
<b>Research and Management</b> Collection of data necessary for management decisions or to further science. Studies may be conducted by the Service, ADF&G, or by other researchers in cooperation with the service.	Allowed	Same as (1)	Same as (1)	Same as (1)	Same as (1); use minimum tool
<b>Research and Management Facilities</b> May be permanent or temporary structures associated with weirs, counting towers, and sonar counters	Allowed	Same as (1)	Same as (1)	Same as (1)	Same as (1); use minimum tool

### Compatibility Determinations

Given the significant number of activities that the template indicates will require compatibility determinations, we look forward to reviewing Part 603 of the Service manual and pending compatibility regulations. From a fish and wildlife research and management perspective, the state maintains that ADF&G's routine activities have not and do not require compatibility determinations. ADF&G will continue to notify and work cooperatively with refuge managers consistent with our Master Memorandum of Understanding.

Where state fish and wildlife management activities and facilities are already allowed under existing plans, the National Wildlife Refuge System Improvement Act of 1997 exempts the compatibility determination requirement. Where a compatibility determination may be required that affects state management and research, we request the template reflect the standing agreement that ADF&G will be a participant with the Service in the determination process.

### **Helicopter Use for Volcano Monitoring and Research**

Most of Alaska's volcanoes are on federally managed land, and the majority of that land is in wilderness status either in the national park or national wildlife refuge system. Helicopter use in wilderness areas is generally prohibited, leading to conflicting federal mandates. Helicopter use in wilderness areas is certainly under scrutiny by the environmental community. One concern is that permitting the use of helicopters in wilderness areas for hazards mitigation and related research will "open the door" to commercial helicopter use. FWS has issued special use permits to the Alaska Volcano Observatory to use helicopters in wildlife refuge wilderness areas for the past several years. These permits are allowed because helicopter use "may be authorized when use [was] established before Wilderness designation" (see Table of Activities, page 11, public uses; and page 20, commercial uses). Use of helicopters for geologic field work in Alaska in general, and on Alaska volcanoes in particular, certainly precedes ANILCA.

Alaska's volcanoes may seem remote to many Alaskan and Washington, DC managers, but Alaska skies are heavily used as international freight routes. Virtually all air freight which moves between Asia and Europe, and the majority of air freight which moves between North American and Asia, overflies Alaska volcanoes. This amounts to some 60,000 aircraft per year, making the North Pacific air routes among the busiest in the world. The hazard to these aircraft from explosive eruptions of unmonitored volcanoes is significant. In recognition of this hazard, the Federal Aviation Administration contributes \$2 million/year to the volcano monitoring effort by the Alaska Volcano Observatory.

The Alaska Volcano Observatory (AVO) is a joint program of the United States Geological Survey (USGS); University of Alaska Geophysical Institute; and the Alaska Department of Natural Resources, Division of Geological and Geophysical Surveys (DGGS). The AVO uses federal, state, and university resources to monitor and study Alaska's hazardous volcanoes, to predict and record eruptive activity, and to implement public safety measures. The majority of the funding comes from the USGS and the Federal Aviation Administration. A major component of AVO monitoring is the installation and operation of seismic stations on the flanks of volcanoes. These comprise several hundred pounds of equipment installed in small fiberglass enclosures and require a helicopter for transport to the site of installation. The AVO also undertakes geologic hazards studies of

volcanoes and fundamental research aimed at improving our ability to predict the onset and course of eruptions. These studies are most efficient, and have the least impact, when helicopters are used to transport geologists to and from the field. These studies are essentially federally mandated by virtue of being federally funded. DGGS accepts funding from the USGS under a Cooperative Agreement to partially fund our participation in AVO, and is thus responsible for performing this work.

The state strongly encourages the refuge management template to specifically allow the use of helicopters for volcano monitoring and mitigation as well as baseline geologic hazards studies and scientific studies aimed at improved understanding of volcanic processes (and thus improved ability to predict the onset and course of eruptions). The AVO expects that special use permits would still be needed, and permits would contain conditional clauses restricting activities around critical habitat areas and during critical times in the life cycle of certain species. The AVO also expects to be held to the concept of "minimum tool" - as the way they operate already. Specifically listing volcano hazards mitigation as an allowed activity provides the following advantages:

- 1) Streamlines the annual permitting process, saving time for both AVO and FWS.
- 2) Improves FWS efforts to justify its permitting decisions.
- 3) Clearly separates the AVO from "commercial operators and general public", which is the only user group AVO falls into in the current CCP template. This approach avoids the appearance of inappropriate users getting a "foot in the door" and hopefully alleviates some of the concern of the environmental community.

There are other considerations which support our request: ANILCA Section 101 specifically includes "...maintain opportunities for scientific research...", "...provides adequate opportunity for satisfaction of the economic and social needs of the State of Alaska...". Hazards mitigation is a legitimate social need. ANILCA Section 1010 requires field studies for non-wildlife purposes for the Alaska Minerals Resource Assessment Program (a now-inactive USGS program). The current template permits use of helicopters in wilderness areas for AMRAP studies. Specifically allowing volcano monitoring and volcano hazards mitigation and research is not outside the general spirit of existing allowed activities.

To accommodate this activity, we suggest a statement on page 29 (Helicopters and Off-Road Vehicles) indicating that geologic hazards monitoring and research will be allowed (e.g. "Helicopter landings for volcano monitoring and hazards evaluations will be allowed by the refuge manager under special use permit.") We also suggest expanding the Helicopter column on page 11 of the Management Table to include: "Helicopter landings for volcano monitoring and hazards evaluations". For this activity, all management categories should reference "Allowed; with special use permit."

If you would like to discuss the specifics of this request, we encourage you to contact Chris Nye, Alaska Volcano Observatory, Alaska Division of Geological and Geophysical Surveys via email at [cnye@giseis.alaska.edu](mailto:cnye@giseis.alaska.edu) or by phone at 907-474-7430.

## NARRATIVE PAGE-SPECIFIC COMMENTS

**Page 3, Minimal Management.** The italicized note says currently allowed activities don't conform to the new description. Given our understanding of the purpose of the management category revisions, we presume that future CCPs will have more areas in moderate or intensive management to accommodate this shift.

**Page 5, Wilderness.** The first full paragraph on this page addresses the "values of wilderness" in a rather highhanded fashion for a planning document. While there is a point to be made, we suggest this paragraph be toned down a bit.

**Page 13, Ecosystem/Landscape Management,** second paragraph. The selection of ecosystem components, which we interpret to include **indicator species**, is a potential issue. We are concerned that management actions benefiting an indicator species in a given habitat may adversely affect other species which share that habitat, or that management actions which could benefit co-inhabitants may be precluded due to special requirements of an indicator species. Both of these consequences could defeat the inherent value of ecosystem management. In addition, impacts or potential impacts to selected species may lead to restrictions of other compatible activities. We request close coordination with ADF&G in the selection and monitoring of ecosystem components or indicator species.

**Page 13, second italicized Note.** Throughout this document there are various citations to materials and manuals such as this: 56FW2.1. There is no consistent approach to explaining what these reference. Assuming the public will be reviewing the template, we suggest either a glossary and list of abbreviations, or a footnote or explanation with each use.

**Page 14, Water Quality:** We request the first sentence of this paragraph be revised to read as follows, with requested revisions in bold:

To comply with the legislative mandate of ANILCA and the Refuge System Improvement Act (**provide citations**), the Service Manual (Part 403, Water Rights) directs the Service to quantify water right needs using stream flow data, **lake level data, and other hydrologic data needed** and file for reservations of water under state law when possible.

**Page 15, Water Rights:** We request the first paragraph in this section be revised to read as follows, consistent with federal and state law, with requested revisions in bold:

Water Rights. Two types of water rights affect the Service in Alaska: Federal Reserved Water Rights (**FRWR**) and appropriative water rights **under Alaska Statute 46.15 (the Alaska Water Use Act)**. A **FRWR** exists when Congress or the President withdraws land from the public domain for a specific **primary purpose or purposes** (wildlife refuges, parks, etc.). **Unless specified otherwise by Congress, normally unquantified minimum** unappropriated water necessary to accomplish the **primary purpose(s)** of the **future federal land** reservation is reserved **under FRWR**. The priority date **for FRWR** is the date of the **federal land** reservation. The State of Alaska functions within the prior appropriation doctrine which allows the first appropriator of water a priority right to use water over subsequent appropriators on a "first in time, first in right" basis. A priority date for an appropriative water right is established on the date an application is filed **and accepted** with the Alaska Department of Natural Resources.

**Page 15, Water Rights, second paragraph:** We request the second sentence be revised to read as follows, with requested revisions in bold:

As directed by national and regional policy, the Service in Region 7 is applying for appropriative water rights with the State of Alaska under State laws, regulations, and procedures **for both withdrawing and reserving water**.

Also, the last sentence should again refer to "**primary purposes**" of the reservation.

**Page 16, Navigable Waters.** Change second sentence regarding reserved waters from "lands beneath these waters were reserved by the US" to "lands beneath these waters **may have been** reserved by the US". Whether or not the land beneath waterbodies were reserved depends upon the purpose of the withdrawal; most federal reservations do not defeat the state's title. In most cases, the courts have needed to resolve this issue.

**Page 25, Fisheries Management.** We request that the third paragraph also recognize commercial and personal use fishing as legitimate and traditional uses.

**Pages 26-28, Subsistence Use Management.** In general, any language in the template that is contingent upon extension of federal subsistence management into navigable waters may be changed by further judicial actions during the life of a refuge plan. Thus, revisions to every CCP may be necessary unless some language is included to address such a possibility. We are interested in working with the Service to develop such language.

The section in italics at the bottom of page 26 and continuing on page 27 is only accurate if the federal government extends its jurisdiction into navigable waters after October 1, 1999, and regardless is inaccurate with respect to fish. The discussion should clarify that, even where federal agencies may administer allocation of subsistence harvests, the state retains management authority for non-subsistence harvest of fish and wildlife on federal public lands. Even though this section focuses on subsistence, the above clarification is important given the potential confusion surrounding this issue.

**Page 27, continuing paragraph.** The citation to Babbitt is incomplete.

**Page 27, second full paragraph.** No mention is made here of the state's harvest and resource monitoring programs, which often involve refuge and other federal lands and occur in conjunction/consultation with federal land management agencies. State monitoring is alluded to in a later paragraph but should be more clearly acknowledged.

**Page 27, final paragraph.** The second sentence inappropriately suggests that tribes and fish and game advisory committees are subsistence management entities, thus potentially misrepresenting the advisory role these entities have in resource management.

**Page 28, Section 810 Evaluations.** The Service intent to work with a variety of entities, including ADF&G, to determine if a proposed activity would significantly restrict subsistence uses, is laudable. In the past we have seen few of the Section 810 analyses prepared by the Service and have not been very involved in such discussions. We welcome additional opportunities to work with the Service on Section 810 evaluations.

**Page 28, Public Access and Transportation Management:** We request the Service precede any access restrictions with studies that document traditional use patterns. We are concerned that the Service has not yet initiated the studies necessary to fully document access for traditional activities on lands under their jurisdiction, but have imposed a variety of access restrictions. We urge the Service to conduct such studies cooperatively with the state due to state agencies' (especially ADF&G) extensive knowledge of past and current use patterns. The Service should also cooperate with residents of affected communities and local organizations to actively document subsistence and other traditional activities on federal public lands as soon as possible.

**Page 30, State Transportation Planning.** We suggest more specificity in the last sentence of first paragraph. Here is a suggestion right out of TEA-21:

TEA-21 also provides \$100 million dollars nationwide for Refuge Roads over the next 5 years. These funds can be used for

- a. Maintenance and improvement of refuge roads;
- b. Maintenance and improvement of adjacent vehicular parking areas, provision for pedestrians and bicycles, and construction and reconstruction of roadside rest areas including sanitary and water facilities that are located in or adjacent to wildlife refuges,
- c. Administrative costs associated with such maintenance and improvements.

**Page 30-31, RS 2477 rights-of-way.** While we appreciate the Service's attempt to treat this issue with sensitivity, we have identified several specific concerns with the language provided in the draft template. It will be especially important in this instance to arrive at language that both the state and Service can support, and we are prepared to work with you toward that end. In the meantime, here is an alternative for your consideration.

The State of Alaska, through AS 19.100.010, public use, expenditure of public funds for construction and other means, claims numerous rights-of-way across federal land under RS 2477, including section line easements and rights-of-way identified in AS 19.30.400. The validity of all RS 2477 rights-of-way will be determined on a case by case basis. Although the DOI has attempted to define the terms of the grant through regulation, Congress mandated that no rules governing RS 2477 would be effective until specifically authorized by an act of Congress. The Secretary plans to prepare federal legislation to try to resolve outstanding issues related to RS 2477.

**Page 31, Section 17(b) Easements:** We request this discussion be revised to read as follows, with requested revisions in bold. We are prepared to discuss the rationale associated with these revisions in detail if necessary.

Section 17(b) of the Alaska Native Claims Settlement Act (**ANCSA**) of December 18, 1971, **authorizes** the Secretary of the Interior to reserve public easements on lands conveyed to Native corporations to guarantee access to public lands **and waters**. These easements include linear easements (**e.g., roads and trails**) and site easements. **Site easements are reserved for use as campsites and to change modes of transportation. They can be established at** periodic points along the course of major waterways flowing through Native lands, **along** coastal areas, **and at junctions of roads and trails**.



**In order to be reserved for the public, ANCSA Section 17(b)(1) requires that easements must be determined to be** "reasonably necessary to guarantee international treaty obligations, a full right of public use and access for recreation, hunting, transportation, utilities, docks, **and other** public uses ...." A 17(b) easement **grants** a right to use land owned by another **for access to public lands and waters**. Public activities, such as recreation and hunting, are not authorized on **the easement or** the private lands surrounding or through which the easement reservation was made. Public uses are allowed only on public lands.

The Service is responsible for administering those public easements inside and outside refuge boundaries that provide access to refuge lands. However, the Service **may** not have adequate legal authority to bring **an** action against an individual who strays off an easement onto private lands. The size, route, and **general** location of 17(b) easements are identified on maps filed with conveyance documents. Conveyance documents also specify the terms and conditions of use including the acceptable periods and methods of public access.

We suggest deletion of the last sentence on page 31 as it is redundant. We also request that the first paragraph on Page 32 be deleted. We understand that only the Bureau of Land Management has the authority, under recent Department of the Interior policy, to terminate or make legal land decisions regarding Section 17(b) easements. Furthermore, we do not believe the Service should encourage refuge managers to change easement configurations. Easements were determined based upon considerable agency and public input to accommodate access to public lands and waters. Any changes should be proposed only through a Bureau of Land Management sponsored public process, not based on the refuge manager's discretion.

**Page 32, Recreation and Other Public Use.** The second sentence of the second to last paragraph on this page refers to density of recreation that will be allowed based on management category. We request that this section provide the mechanism and regulatory and refuge manual citation that allows limits of recreational use based on desired user density. We are concerned that this intent may be implemented in a way that is not consistent with ANILCA Section 1110(a) and 43 CFR 36 rule making. We request the opportunity to review carrying capacity studies and other documents and procedures that will be used for managing recreational user densities and seasonal restrictions.

This paragraph also says "leave no trace" will be the standard. A definition is needed. It appears this standard may not be consistent with intensive management and possibly not the moderate management category.

**Page 37, Other Mineral Leasing.** The template should address the inconsistency between ANILCA and the current wording by modifying the prohibition so it's not so absolute, perhaps by adding a note such as "If your refuge has known leasable minerals, they should be identified and the refuge plan should include appropriate management direction." This approach is consistent with language for oil and gas facilities, top of same page. Since to our knowledge there are no known developable leasable minerals on refuge lands, there is no need to draw attention to a hard line position.

**Page 41, Wilderness Proposals.** The state recognizes that the exhaustive ANILCA Section 1317 wilderness review process has not been fully concluded since previous recommendations have not been formally provided to Congress. Nonetheless, we question the merits of revisiting this issue in the CCP revision process. Among other things, the inevitable controversy associated with this debate will obscure discussion of more meaningful refuge issues. Narrowing the scope to new wilderness issues or new data since the first CCPs might help in this regard.

## **MANAGEMENT TABLE**

As a general comment regarding the table, we suggest the template table provide regulatory and/or refuge policy manual citations for activities that are listed as "May be Allowed", "May be Authorized", and "Not Allowed". This information would provide a better understanding of the underlying rationale. It would also streamline the discussion in cases of possible dispute.

**Page 2, Definitions.** The definition "May be allowed subject to site specific NEPA analysis and compatibility determination" is also supplemented in various activities in the table with the phrase "actively pursued". We suggest the significance given to the phrase "actively pursued" be provided with the definition.

**Page 3, refuge guidelines.** We request providing the appropriate regulatory and Refuge Manual citations for all guidelines listed on this page.

**Page 7, Fish and Wildlife Population Management.** We request a definition and citation for "approved wildlife inventory procedures". Consistent with our general comments at the beginning of this letter, we desire clarification that ADF&G does not need specific authorizations beyond the coordination procedures in the MMOU for routine management of fish and wildlife.

**Pages 8-9, Fishery Restoration Facilities and Fishery Enhancement Facilities.** Weirs, counting towers, and sonar counters are shown as "not allowed" under the Wild Rivers and Wilderness management categories unless severe resource damage has occurred. These types of facilities are normally associated with routine commercial and sport fisheries research and management conducted by ADF&G, such as the ADF&G Togiak tower project located within the Togiak Refuge wilderness. As stated earlier, we request that the table be revised to clarify that current and future ADF&G project activities and facilities are allowed in all management categories.

In order to consolidate all "facilities" activities in one section, we suggest that **fishery restoration and enhancement facilities** be listed under the "Administrative Facilities" category rather than the "Fish and Wildlife Population Management" category. We also request inclusion of a definition for "temporary facilities" as included in current refuge plans under the Fisheries Development category. This will clarify that fish and wildlife facilities are considered temporary if they can be completely removed after a project is complete rather than seasonally removed. For instance, under this former category, the Arctic refuge CCP provides that "a temporary fishery development is any structure or man-made improvement that can be readily and completely dismantled and removed from the site when the period of authorized use terminates."

**Page 10, Bicycles.** The template indicates that bicycles are not allowed under the Wilderness category. We request that "not allowed" be replaced with "allowed subject to 43 CFR 36 closure procedures", as bicycles fall under non-motorized surface transportation as provided in ANILCA Section 1110(a). We encourage further dialogue with the Service regarding this interpretation.

**Page 11, Helicopters.** "Administrative uses" are listed in the general category of "Public Access". Consistent with our discussion about helicopter access for volcano research, we request the table clarify that administrative use is not public access. The table could be enhanced by the addition of an administrative access category.

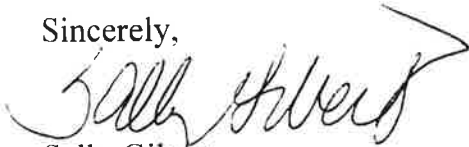
**Page 16, Administrative Facilities.** The template says temporary field camps "may be allowed": This appears to be a change in policy from previous refuge management tables where administrative facilities were "permitted" (allowed). There is no supporting discussion of this policy change in the narrative. We request that "may be allowed" be replaced with "allowed" under this activity.

**Page 18, Radio Repeater Sites.** Other than the "minimum tool" requirement, what is the difference between columns (4) and (5)?

**Page 20, Ecotourism.** "Ecotourism" (or a substitute such as "nature-based" or "soft adventure" tourism) is not an appropriate activity to include in the table. It has no common definition and overlaps numerous other activities addressed in other parts of the table (guiding, boating, hiking, camping, lodging, etc).

In closing, we wish to express our desire for continued dialogue between the Service and state agencies in order to mutually identify and resolve current and potential issues prior to finalizing the template. If some of our suggestions appear problematic, we hope to be able to discuss the underlying issues before the next draft is produced. We are optimistic that most issues can be satisfactorily resolved. Such effort will assist in the expeditious development of sound refuge management plans. Thank you again for this important review opportunity.

Sincerely,



Sally Gilbert  
State CSU Coordinator

cc: Ken Rice, Planning Chief, U.S. Fish and Wildlife Service  
John Katz, Governor's Office, Washington, D.C.  
John Sisk, Governor's Office, Juneau  
Pat Galvin, Director, Division of Governmental Coordination  
John Shively, Commissioner, Department of Natural Resources  
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Joseph Perkins, Commissioner, Department of Transportation and Public Facilities