

# STATE OF ALASKA

## ANILCA IMPLEMENTATION PROGRAM

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July 28, 2004

Michael Rearden  
Refuge Manager  
Yukon Delta National Wildlife Refuge  
P.O. Box 346  
Bethel, Alaska 99559

Dear Mr. Rearden:

The State of Alaska has reviewed the Draft Yukon Delta National Wildlife Refuge Land Conservation Plan (LCP). The document provides excellent background information on the Refuge and its resources in addition to providing guidance on the priority status for voluntary land acquisitions and for other cooperative arrangements with non-federal landowners. The LCP also provides insight into the methodology used by the Refuge in prioritizing land of potential interest within the boundary of the refuge. The State's primary concerns with this document address the portrayal of waters within the refuge boundaries as discussed below. As you may know, the Service and the State are also working together on this issue in the context of a regional effort to recalculate the acreage of all refuges in Alaska.

### **Navigability and Marine Waters**

The State is concerned about how marine and inland navigable waters are addressed in the Draft LCP. In particular, the text on lands beneath navigable waters starting on page 24 and continuing to page 25 acknowledges the legal framework for determining navigability and thus state ownership, but does not address what this means for day-to-day management. We, therefore request adding the following paragraph after the continuing paragraph on page 25:

*Adjudicating the extent and precise boundaries of navigable waterways will take many years to resolve with certainty. In the mean time, the Service is working cooperatively with the State on a case-by-case basis regarding management of major waterways that are likely to be determined navigable.*

Currently the Table on pages 18-19 sorts "ownership" of "water acres" by federal, state, private, and Native corporations. In particular, the Table portrays the Refuge as owning nearly 2 million acres of "water acres" and Native corporations owning a combined total of over 600,000 acres of "water acres." We surmise that the 3,821 acres of water shown in state ownership are limited to

those waterways that have been adjudicated by BLM in the course of conveying land to Native corporations. As currently presented, the Table is highly problematic and potentially misleading to LCP reviewers because it characterizes vast amounts of water that are obviously navigable (even if not yet adjudicated) as refuge or Native owned. By the same token, we recognize the likely validity of the GIS-based calculations of actual water acreage. To address these concerns, we offer several modifications to the Table:

1. We request changing the first column from “Ownership Category” to “Category of Lands.” This change does not presume to indicate the ownership of water in the absence of formal navigability determinations or administrative processes.
2. We request placing the all water acres that have not been resolved administratively or judicially into a separate column with a label such as “unadjudicated water acres.”
3. Regardless of how or where the unadjudicated water acres are categorized, we request an accompanying footnote that explains the navigability status for most waterbodies within the refuge boundary is not yet resolved. For example:

*The navigability status and thus management authority for these waters has not been formally determined as of the date of this publication.*

### **Recognition of State Land and Authorities**

The first sentence in the second paragraph on page 29 also needs recognition of state interests, including waterbodies. We request insertion of the following language in italics: "A large component of the land within the Yukon Delta Refuge will always be owned and managed by Native corporations, private individuals, *and the State of Alaska.*"

### **Page-Specific Comments**

#### Page 10, “Fish” subheading:

The sentence that begins, “Salmon originating from refuge streams...” is problematic for the State. We request revision of the sentence to avoid what could be perceived by the public as a statement of ownership of potentially navigable waters that flow through the refuge. We suggest discussing waters in a neutral manner, e.g., “*a waterbody within,*” or “*waters flowing through the refuge,*” or “*within the boundary of the refuge.*” These alternate phrases convey the intended meaning without triggering state jurisdictional concerns or a formal response to maintain the continuity of our navigability position.

#### Page 11, photo caption:

“Several refuge streams...” See the above comment.

#### Page 11, Large Mammals:

Third sentence, discussion concerning caribou. With recent changes in the migration pattern of the Mulchatna Caribou Herd, we suggest revising and expanding the third sentence to read :

*From the 1860's until the 1990's, caribou nearly disappeared from the area, with only remnant herds utilizing the Kilbuck and Andreafsky mountains. In the 1990's large portions (tens of thousands) of the burgeoning Mulchatna Caribou Herd began crossing north of the Kilbuck mountains and entering portions of the Lower Kuskokwim River area on an annual basis. It remains to be seen if this trend will continue.*

The same paragraph also includes discussion of the density of moose populations along the Lower Yukon River. While the densities are low along much of the lower river, the trend is currently increasing and the portion between Russian Mission and Holy Cross is generally considered to have high density moose populations. The fifth sentence could be revised to state:

*Moose populations are still very low over many portions of the Delta but are generally increasing and have reached high density levels in the Russian Mission to Holy Cross portion of the Yukon River.*

Page 11 and 12, Threatened or Endangered Species:

In the discussion concerning the Eskimo curlew, we request the last sentence be changed as follows, “*However, this species has not been documented near St. Michael or elsewhere since the 19<sup>th</sup> century.*”

Page 25, RS 2477 “Highways” discussion:

We find the discussion about RS 2477 rights of way to be unnecessarily divisive. Since the evolving nuances of the RS 2477 issue are not likely to be relevant in the context of the LCP, we recommend replacing the current discussion with a more general description of the issue found in the Service’s general management guidelines applicable to all future refuge comprehensive conservation plan documents. This Service language is attached as an Appendix. Check with Ken Rice in the Anchorage office for more background about this language if necessary.

Page 32, second paragraph under “User Group Conflicts” subheading:

See comment on “refuge waters” above.

Page 41, Access, second sentence:

Suggest deletion of the word “normally” in this sentence. Provisions in ANILCA Section 1110 specifically allow for the use of snowmachines, motorboats, airplanes and non-motorized surface transportation methods, and for access to private and state lands on *all* conservation system units (including national wildlife refuges and designated wilderness areas) in Alaska.

Page 48, second paragraph:

This paragraph discussing commercial fishing, would be improved with the following information in the second sentence, “*The abundance of salmon stocks is often cyclical and recent declines have seriously reduced opportunities for commercial, subsistence and recreational harvest.*” Based on the latest information available to the Department of Fish and Game, we also recommend extending the final sentence with, “...cancelled entirely in 2001, *but abundance is showing signs of rebound in 2004.*”

Page 49, Effects on Public Access discussion:

The fifth sentence inadvertently mixes subsistence access with access under Section 1110. The following revision clarifies the narrative without getting bogged down in unnecessary detail:

*Most non-local visitors access the refuge via air taxi or private plane, while local residents rely on the full range of access modes identified under Section 1110. In addition, subsistence users are guaranteed reasonable access using motorboats, snowmobiles and other means of motorized and non-motorized surface transportation (ANILCA Section 811).*

Thank you for the opportunity to provide these comments. If you have any questions, please call me at 907-269-7477. We also request an opportunity to work with you as you fine tune the language and Table regarding navigability. We recognize this is not the forum for resolving who owns what waters, but we are interested in an accurate and balanced portrayal of the situation in the interim.

Sincerely,

/ss/

Sally Gibert  
State ANILCA Coordinator

cc: Ken Rice, Senior Planning Team Leader, Regional Office  
Todd Logan, Regional Chief, National Wildlife Refuges, Alaska

## Appendix

From: General Management Guidelines for all refuges in Alaska  
February 23, 2004

### RS 2477 Rights-of-Way

The State of Alaska asserts numerous claims to roads, trails, and paths across Federal lands under Revised Statute 2477 (RS 2477), a section in the Mining Act of 1866 that states, “The right-of-way for the construction of highways over public lands, not reserved for public uses, is hereby granted.” RS 2477 was repealed by the Federal Land Policy and Management Act of 1976, subject to valid existing claims. Under authority of the Federal Land Policy and Management Act, the Bureau of Land Management expanded the regulations at 43 CFR 1864 to allow the State of Alaska and others to apply for Federal “disclaimers” for routes of travel that applicants believe qualify as RS 2477 rights-of way.

Identification of potential rights-of-way does not establish the validity of these claims nor the public’s right to use them. In the absence of specific regulation or law, the validity of all RS 2477 rights-of-way will be determined on a case-by-case basis, either through the courts or by legally binding agreement of all landowners.