

Compatibility Determination

Use: Core sampling and gravel removal from ANCSA 22(g) lands in support of the Barter Island Airport Improvement Project

Refuge Name: Arctic National Wildlife Refuge
County: North Slope Borough, Alaska

Establishing and Acquisition Authorities:

The Arctic National Wildlife Refuge was originally established as the nine-million acre Arctic National Wildlife Range by Public Land Order 2214 on December 6, 1960. On December 2, 1980, the Alaska National Interest Lands Conservation Act designated eight million acres as Wilderness, added nine million acres of land, and renamed it the Arctic National Wildlife Refuge (Arctic Refuge). In 1988, Public Law 100-395 added an additional 325,000 acres to the refuge.

Refuge Purposes:

Public Land Order 2214 established the original purposes of the Arctic National Wildlife Range, “For the purpose of preserving unique wildlife, wilderness and recreational values...”

The Alaska Native Claims Settlement Act (ANCSA) was enacted in 1971 to settle aboriginal land claims of Alaska’s natives by providing land and money in exchange for extinguishment of their land claims. Section 22(g) of the Act made National Wildlife Refuge lands available for selection by native village corporations, but contained a provision that “...such lands remain subject to the laws and regulations governing use and development of such Refuge.” Surface estate lands within Arctic National Wildlife Range were deeded to the Kaktovik Inupiat Corporation with specific restrictions, called covenants, on their sale and use.

Final compatibility regulations pursuant to the National Wildlife Refuge System Improvement Act of 1997 went into effect on October 18, 2000. The Code of Federal Regulations, 50 CFR 25.21(b)(1), states that compatibility determinations will be completed for uses of ANCSA 22(g) lands. Compatibility determinations, for proposed uses of 22(g) lands, will include only evaluations of how the proposed use would affect the ability of the refuge to meet its mandated purposes [50 CFR 25.21(b)(1)(iii)]. Compatibility determinations for proposed uses of 22(g) lands will only evaluate the effects of the use on the adjacent refuge lands, and the ability of that refuge to achieve its purposes, not on the effects of the proposed use to the 22(g) lands [50 CFR 25.21(b)(1)(v)]. Therefore, only the impacts of this project to refuge lands are subject to compatibility requirements.

The boundaries of the Arctic National Wildlife Range were modified, purposes expanded, and name changed to Arctic National Wildlife Refuge under the provisions of the Alaska National Interest Lands Conservation Act (ANILCA) on December 2, 1980 (Public Law 96-487 Stat. 2371). ANILCA purposes for the refuge include: “(i) To conserve fish and wildlife

populations and habitats in their natural diversity including, but not limited to, the Porcupine caribou herd (including participation in coordinated ecological studies and management of this herd and the Western Arctic caribou herd), polar bears, grizzly bears, muskox, Dall sheep, wolves, wolverines, snow geese, peregrine falcons and other migratory birds and Arctic char and grayling; (ii) to fulfill the international treaty obligations of the United States with respect to fish and wildlife and their habitats; (iii) to provide, in a manner consistent with the purposes set forth in subparagraphs (i) and (ii), the opportunity for continued subsistence uses by local residents; and (iv) to ensure, to the maximum extent practicable and in a manner consistent with the purposes set forth in paragraph (i), water quality and necessary water quantity within the refuge.”

Section 305 of ANILCA and 603 FWS 2.8 direct those pre-ANILCA purposes remain in force and effect, except to the extent that they may be inconsistent with ANILCA or the Alaska Native Claims Settlement Act, and that such purposes only apply to those areas of the Refuge in existence prior to ANILCA.

The Wilderness Act of 1964 (Public Law 88-577) purposes are to secure an enduring resource of wilderness, to protect and preserve the wilderness character of areas within the National Wilderness Preservation System, and to administer this wilderness system for the use and enjoyment of the American people in a way that will leave these lands unimpaired for future use and enjoyment as wilderness.

Sec. 4(a) of the Wilderness Act provides that the purposes of the Act are to be within and supplemental to the purposes for which national wildlife refuges are established and administered. These purposes are applied to the approximately eight-million acres of congressionally designated wilderness within the refuge. They are also applied to the remaining approximately 11 million acres of refuge lands (that are not designated as wilderness) in any way that a proposed use might affect the area’s suitability for designation as wilderness.

National Wildlife Refuge System Mission: The National Wildlife Refuge System Mission will not be considered in a compatibility determination evaluation with regard to lands under Section 22(g) of ANCSA, per 50 CFR 2521(b)(1)(iii).

Description of Use:

(a) What is the use?

The use, as described by the applicant, would be: “A tracked drill rig will be mobilized to the mainland across the lagoon from Barter Island for the purpose of taking soil samples from nineteen locations.” The nineteen proposed borings will be approximately 45-feet in depth. Eleven borings are proposed near the existing material site and eight borings in an area approximately 3,000 feet west of the existing material site. If sufficient sources of gravel are located in this area, the extraction and transport of approximately 873,000 cubic yards to Barter Island would occur. This compatibility determination does not review the extraction and transport of gravel or site rehabilitation upon completion.

(b) Where would the use occur?

The proposed use would occur on 22(g) lands approximately four miles south of Kaktovik in and adjacent to an area where 14 borings have been drilled and gravel removed in the past. The proposed site is less than two miles north and within 1,000 feet of coastal shoreline and submerged lands under jurisdiction of the refuge. The transport of the drill rig over coastal shoreline and submerged lands under jurisdiction of the refuge is considered compatible by a determination made in 1994.

(c) When would the use occur?

The Borough's request, dated 16 March 2009, seeks to start the core sampling on 23 March 2009 and conclude by 15 April 2009.

(d) How would the use be conducted?

A Geoprobe 66DT, tracked, drill rig would travel approximately four miles over land and sea ice from Kaktovik to the site to take the soil samples. The rig weighs approximately 5,000 pounds and is 48-inches wide and 94 inches long. Deep snow may necessitate some snow removal prior to drill rig mobilization across snow-covered, frozen tundra. The Geoprobe is a direct-push machine that utilizes static weight and percussion to advance a hollow, soil-coring rod. Continuous, undisturbed core samples will be collected in five-foot runs for the entire depth of the bore holes. Bore hole locations will be mapped using GIS.

(e) Why is the use proposed?

The North Slope Borough and the Federal Aviation Administration have released a *Final Environmental Assessment and Section 4(f) Evaluation for Barter Island Airport Improvements – Kaktovik, Alaska*. To facilitate the airport improvement, the Borough has requested approval to conduct a “geotechnical investigation associated with the Barter Island Airport Improvements.”

Availability of Resources:

The core drilling and transport of equipment on ANCSA 22(g) lands as proposed on Kaktovik Inupiat Corporation 22(g) lands to support the Barter Island Airport Improvement Project will not result in an increase of costs for the refuge staff to administer or manage.

Anticipated Impacts of the Use:

Impacts to adjacent refuge lands and trust fish and wildlife resources are anticipated to be non-existent. The closest refuge surface estate lands are located approximately two miles from the project site although refuge coastline and submerged lands lie within 1,000 feet. Activities associated with core sampling are site specific and temporal. Impacts to polar bears will be avoided through adherence to the Service's polar bear interaction guide.

Public Review and Comment:

The period of public review and comment was 23 March 2009 through 6 April 2009. A *Public Notice* was sent to the postmaster in Kaktovik for display in the post office; to the City of

Kaktovik; the Kaktovik Inupiat Corporation; and the Native Village of Kaktovik. The notice and draft determination was posted in refuge headquarters; featured on the Alaska Region compatibility determination Web page at <http://alaska.fws.gov/nwr/planning/completed.htm>; and distributed to members of the Alaska Region compatibility determination listserv. The notice (attached) asked for public comment over the 14-day period.

The Northern Alaska Environmental Center responded with concerns that: 1) the refuge manager be clear that the determination be specific to this project and not core sampling and equipment transport in general; 2) the activity be limited to specific non-summer dates; 3) the determination does not address crossing of refuge waters, i.e., the lagoon; and 4) the determination should address how the potential impacts to bears will be addressed. We appreciate the comments from the Center, and offer the following: 1) the final determination does reflect their request for specificity in use and timing; 2) crossing of refuge sea ice was found compatible in 1994; and 3) the US Fish and Wildlife Service has reviewed the proposed activity for compliance with laws to protect polar bears on and off refuge lands. The applicant has consulted with endangered species and polar bear biologists and developed a polar bear/human interaction plan and identified areas near the sampling site that will be avoided. Furthermore, the refuge special use permit to cross the refuge lagoon requires adherence with the Service's polar bear interaction guide. Finally, the final compatibility determination does address avoiding impacts to polar bears.

Determination:

_____ Core sampling and gravel removal from ANCSA 22(g) lands in support of the Barter Island Airport Improvement Project is not compatible

X Core sampling and gravel removal from ANCSA 22(g) lands in support of the Barter Island Airport Improvement Project is compatible

Justification:

In 1971, Congress enacted ANCSA to settle aboriginal land claims of Alaska's natives by providing land and money in exchange for extinguishment of their land claims. Section 22(g) of the Act made National Wildlife Refuge lands available for selection by native village corporations, but contained a provision that "...such lands remain subject to the laws and regulations governing use and development of such Refuge." This means that the refuge laws and regulations requiring that we determine the compatibility of proposed refuge uses applies to the village lands in national wildlife refuges in Alaska withdrawn under Section 22(g) of ANCSA. These lands were deeded to Alaska Native Village Corporations with specific restrictions, called covenants, on their sale and use. On 22(g) lands refuge managers focus their compatibility determination on how the impacts of the proposed use would affect adjacent refuge lands and the degree that the proposed use would materially interfere with the refuge's ability to achieve its legally mandated purposes. This is the fundamental protection provided to the parent refuges from the effects of uses of 22(g) lands that Congress provided in Section 22(g) of ANCSA.

The impacts of this project are confined to Kaktovik Inupiat Corporation ANCSA 22(g) lands. The use area is located within 1,000 feet of refuge submerged lands and coast and within two miles of refuge surface estate lands and will not have a significant impact on refuge lands or materially interfere with or materially detract from fulfilling the purposes of the refuge.

Mandatory 10- or 15-Year Re-Evaluation Date:

Re-evaluation is not required for compatible uses on 22(g) lands unless the use changes significantly, significant new information is available that could affect the compatibility determination, or if requested by the owner.

NEPA Compliance for Refuge Use Decision:

- Categorical Exclusion without Environmental Action Memorandum
- Categorical Exclusions and Environmental Action Memorandum
- Environmental Assessment and Finding of No Significant Impact (FAA, 2009)
- Environmental Impact Statement and Record of Decision (CCP, 1988)

This use is not proposed to occur on refuge lands. National Environmental Policy Act compliance for the proposed activity was completed in the *Final Environmental Assessment and Section 4(f) Evaluation for Barter Island Airport Improvements – Kaktovik, Alaska*, which was published in January 2009. The refuge manager consulted this document for preparation of this compatibility determination.

Signature: Refuge Manager /s/ Jimmy Fox, acting, April 7, 2009
(Signature and Date)

Concurrence: Regional Chief /s/ Todd L. Logan, April 7, 2009
(Signature and Date)