

Compatibility Determination
Togiak National Wildlife Refuge
Dillingham, Alaska
Yukon Delta National Wildlife Refuge
Bethel, Alaska

Use: Helicopter access to collect approximately 200 surface samples of stream bed sediments on Togiak and Yukon Delta National Wildlife Refuges from randomly selected sites within 50 miles of the Bering Sea coastline.

Refuge Name(s): Togiak National Wildlife Refuge and Yukon Delta National Wildlife Refuge

Establishing and Acquisition Authorities: Togiak National Wildlife Refuge was established on December 2, 1980 when Congress passed the Alaska National Interest Lands Conservation Act (ANILCA). Togiak Refuge lands encompass approximately 4.7 million acres in southwestern Alaska, with the northern 2.3 million acres designated as wilderness. The former Cape Newenham Refuge was established January 20, 1969, by Public Land Order 4583 and was incorporated into the present Togiak National Wildlife Refuge in 1980.

Yukon Delta National Wildlife Refuge was established on December 2, 1980 when Congress passed the Alaska National Interest Lands Conservation Act (ANILCA). It includes all federal land on the Yukon-Kuskokwim Delta and incorporates the previously established Clarence Rhode National Wildlife Range, Hazen Bay National Wildlife Refuge, and Nunivak National Wildlife Refuge.

Refuge Purposes: Section 303(6)(B) of ANILCA sets forth purposes for which the Togiak Refuge was established and shall be managed to include:

- (i) to conserve fish and wildlife populations and habitats in their natural diversity including, but not limited to, salmonoids, marine birds and mammals, migratory birds and large mammals (including their restoration to historic levels);
- (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 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 subparagraph (i), water quality and necessary water quantity within the refuge.

In addition to the ANILCA purposes cited above, Public Land Order 4583 established the Cape Newenham National Wildlife Refuge and set forth the purposes for which it shall be managed to include:

To protect the seabirds, migratory birds, and marine mammals concentrating around the Cape Newenham area.

Section 303(6)(B) of ANILCA sets forth the purposes for which the Yukon Delta Refuge was established and shall be managed to include:

- (i) to conserve fish and wildlife populations and habitats in their natural diversity including, but not limited to, shorebirds, seabirds, whistling swans, emperor, white-fronted and Canada geese, black brant and other migratory birds, salmon, muskox, and marine mammals;
- (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 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 subparagraph (i), water quality and necessary water quantity within the refuge.

In addition to the ANILCA purposes cited above, the following Executive Orders and Public Land Orders identified purposes for lands that have been incorporated into the Yukon Delta NWR.

Public Land Order 2213, dated December 6, 1960, which established the Kuskokwim National Wildlife Refuge, later to be renamed the Clarence Rhode National Wildlife Range set forth the following purpose for which it shall be managed to include:

"...as a refuge, breeding ground and management area for all forms of wildlife..."

Executive Order 7770, dated December 14, 1937, which established the Hazen Bay National Wildlife Refuge set forth the following purpose for which it shall be managed to include:

... as a refuge and breeding ground for migratory bird and other wildlife."

Executive Order 5095, dated April 15, 1929, established Nunivak Island and waters around it as a reservation and identified the following purpose:

"...set apart for the use of the Department of Agriculture in conducting experiments in the crossing and propagation of reindeer and native caribou, for contemplated experiments in reestablishing the musk ox as a native animal of Alaska, and also as a preserve and breeding ground for native birds and wild game and furbearing animals for the purposes of the Alaska game law of January 13, 1925 (43 Stat. 7329, U.S.C., Title 48)."

Wilderness purposes: As designated by the Wilderness Act of 1964 (16 U.S.C. 1131-1136), Section 2.(a):

"For the purposes there is hereby established the National Wilderness Preservation System to be composed of federally owned areas designated by the Congress as "wilderness areas," and these shall be administered for the use and enjoyment of the American people in such a manner as will leave them unimpaired for future use and enjoyment as wilderness, and so as to provide for the protection of these areas, the preservation of their wilderness character, and for the gathering and dissemination of information regarding their use and enjoyment as wilderness..."

National Wildlife Refuge System Mission: "to administer a national network *of* lands and waters for the conservation, management, and where appropriate, restoration *of* the fish, wildlife, and plant resources and their habitats within the United States for the benefit *of* present and future generations *of* Americans. "

The National Wildlife Refuge System Mission will not be considered in the compatibility determination evaluation with regard to lands under section 22(g) of the Alaska Native Claims Settlement Act (ANSCA) per 50 CFR 2521(b)(1xiii).

Description of Use: The Mineral Resources Program of the U.S. Geological Survey (USGS), Reston, Virginia, is requesting a Special Use Permit to collect approximately 200 surface samples of stream bed sediments on Togiak and Yukon Delta National Wildlife Refuges from randomly selected sites within 50 miles of the Bering Sea coastline (attachment 1). Researchers would use helicopters to access each site and collect approximately five pounds of surface materials at each site. The proposed work would commence on July 23, 2001 and end approximately August 10, 2001. This effort is part of a USGS program to map the nation geochemically. The geochemical data will represent a baseline against which the nature and magnitude of future regional changes can be gauged. Because of their pristine nature, the USGS believes refuges will provide data that may better approximate background (pre-anthropogenic) values than regions elsewhere in the nation.

The project is funded through annual Congressional appropriations in the budget of the USGS. Numerous collaborators are involved with this project. The DuPont Corporation, Calista Corporation, and the Bristol Bay Native Corporation are also providing financial support for the project. Corporate contributions from DuPont are provided through a Cooperative Research and Development Agreement (CRADA).

Availability of Resources: The Service expects minimal refuge personnel or budget resources will be needed to administer, manage, or monitor the proposed use.

USGS Legal Authority: The National Geochemical Survey Project is conducted at the direction of the Mineral Resources Program of the USGS. The work conducted by the USGS is Congressionally mandated and funded through 43 U.S.C. 31 et seq. (Organic Act, 1879), 16 U.S.C. 4141 et seq. (ANILCA, 1980), 30 U.S.C. 1601 et seq. (MMPA), among others.

Anticipated Impacts of the Use: Helicopter access within the Togiak and Yukon Delta National Wildlife Refuges for the purpose of collecting mineral samples to map the area geochemically is a non-program use that does not contribute to the primary objectives of the National Wildlife Refuge System. However, permission for such uses may be granted when compatible with the major purposes for which the refuge was established (50 CFR 29.3).

The proposed low level use of helicopters may cause short term disturbances to wildlife and impact the refuge wilderness qualities to other users. The collection of approximately five pounds of sediment is not expected to have any significant impacts to refuge resources.

Potential impacts to refuge resources would be minimized or avoided through Special Use Permit (SUP) conditions and stipulations, including flight separation minimums between aircraft and noise sensitive areas. For instance, the USGS crew would be prohibited from flying within a ½ mile radius of active seabird colonies or Pacific Walrus and Steller sea lion rookeries/haulouts. SUP stipulations would also prohibit approaching on foot within ½ mile, or within sight, of a documented rookery or haulout. The permit requires the USGS to identify proposed locations of each sample site prior to initiating field work. Each site has been evaluated on a case-by-case basis to determine if additional stipulations are necessary. The most significant potential concern is the impact to wilderness values resulting from the use of a helicopter within the Togiak and Yukon Delta Wilderness Areas. The summer season is the peak period of use by the visiting public. The USGS request does not fall within the "minimum tool" provisions as provided for in the Wilderness Act. Helicopter access within the designated wilderness areas will not be authorized. Refuge staff have agreed to assist USGS by collecting sediment samples within the Togiak Wilderness Area while conducting other field activities. The USGS Project Manager has agreed to modify their request to exclude wilderness areas of either refuge.

Subsistence resources and their use will not be significantly impacted.

Public Review and Comments: A Public Notice, dated June 5, 2001 was published in the Fairbanks Daily Miner, Anchorage Daily News, Tundra Drums, Bristol Bay Times, Region 7 Compatibility Web Site, and mailed to parties on the refuges mailing lists. The public notice (attached) asked for comments over a 30 day period. Native village corporations who own 22(g) lands in either refuge and local village leaders were faxed a copy of the public notice as well. A total of twelve public comments were received. Six of the comments were in support of the request, four were neutral expressing concerns to insure permit conditions protect the refuge and it's resources, and two were against the project request citing wilderness concerns and potential use of this type of data to support development within the refuges. Helicopter use within wilderness areas will not be authorized, and Director's order No. 109 (Use of specimens collected on Fish and Wildlife Service Lands) will be incorporated in the special use permit conditions to address these concerns.

Determination:

-This use is compatible

This use is not compatible

This use will not materially interfere with or materially detract from fulfilling the purposes of the Togiak and Yukon Delta National Wildlife Refuges or mission of the National Wildlife Refuge System provided the following special conditions and stipulations are adhered to.

Special Conditions/Stipulations Necessary to Ensure Compatibility: The project area includes both the Togiak and Yukon Delta National Wildlife Refuges. Conditions to be incorporated into the Special Use Permits are intended to lessen impacts on refuge lands and resources and include:

Failure to abide by any part of this Special Use Permit; convictions of willful violation of any refuge related provision in Titles 43 (Part 36) or 50 (Subchapters B and C) Code of Federal Regulations; or violations of any pertinent state regulation (e.g., fish or game violation) will be considered grounds for revocation of this permit and could result in denial of future permit requests for lands administered by the U.S. Fish and Wildlife Service. This provision applies to all persons working under the authority of this permit (e.g., assistants or contractors). Appeals of decisions relative to permits are handled in accordance with 50 Code of Federal Regulations 36.41.

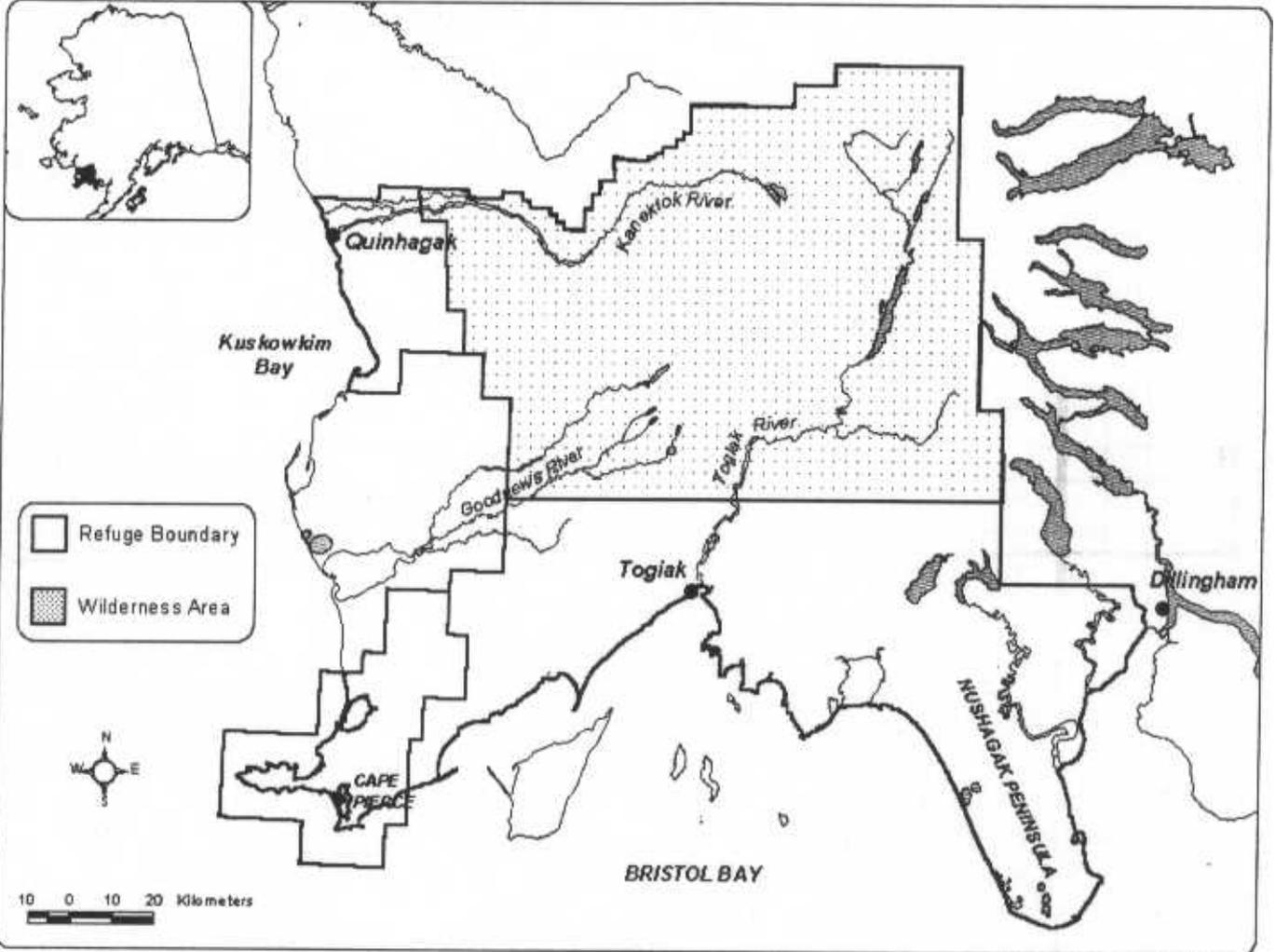
2. The permittee is responsible for ensuring that all employees, party members, contractors, aircraft pilots, and any other persons working for the permittee and conducting activities allowed by this permit are familiar with and adhere to the conditions of this permit.
3. This permit is applicable only on Togiak and Yukon Delta National Wildlife Refuge lands. Activities on Native lands that have been selected, but not yet conveyed within the boundaries of the refuge, are prohibited unless a letter of concurrence from the appropriate Village Corporation or individual is on file at Refuge Headquarters. Activity on Native Allotments is prohibited.
4. This permit may be canceled or revised at any time by the Refuge Manager to protect refuge resources.
5. The permittee and permittee's clients do not have the exclusive use of the site(s) or land(s) covered by this permit.
6. The permittee or Party Chief shall notify the Refuge Manager during refuge working hours, Monday thru Friday 8:00 a.m. to 5:00 p.m., in person or by telephone before beginning and upon completion of activities allowed by this permit.
7. Prior to beginning any activities allowed by this permit, the permittee shall provide the Refuge Manager with the name and method of contact for the field Party Chief/Supervisor; a list of aircraft and other vehicle types to be used along with identification information for these vehicles; and the names field party members.

8. Any problems with wildlife (bear or other species) which occur will be reported immediately to the Refuge Manager. Any animal taken in defense of life or property must be reported to the Refuge Manager immediately. Alaska Department of Fish and Game requirements with regard to taking wildlife in defense of life or property must also be adhered to.
9. In accordance with the Archeological Resources Protection Act (16 USC 470aa), the disturbance of archeological or historical sites and the removal of artifacts is prohibited. The excavation, disturbance, collection, or purchase of historical, recent, ethnological, or archeological specimens or artifacts is prohibited.
10. Permittees shall maintain their use areas in a neat and sanitary condition. Latrines must be located a minimum of 150 feet from springs, lakes, and streams. All property of the permittee, including non-combustible waste materials, is to be removed from refuge lands upon completion of permitted activities, or as often as necessary to maintain sanitary camp conditions. No waste materials may be buried on refuge lands.
11. The construction of aircraft landing strips or pads is prohibited. Clearing vegetation for aircraft landing or take off areas is also prohibited.
12. The permittee is not allowed to construct cabins, tent frames, or any form of permanent shelter.
13. The discharge of firearms, fireworks or other explosive devices is prohibited, except in conjunction for protection of life or property.
14. The use of helicopters for recreational purposes is prohibited.
15. The use of helicopters in the designated Wilderness Areas is prohibited (see attached map).
16. Coast Guard Approved Personal Floatation Devices must be available for all boat/raft occupants. Appropriate fire extinguishers will be carried on all boats/rafts equipped with motors.
17. No wildlife species will be baited, harassed, or approached closely enough to disrupt the animal's natural activity or to endanger human life.
18. Fixed-wing aircraft, motor boats, and snow machines (during periods of adequate snow cover), are permitted in refuge areas designated as part of the National Wilderness Preservation System. All other motorized transportation equipment, or other motorized equipment, such as: electric generators, water pumps, chain saws, etc., are prohibited.
19. The operation of aircraft at altitudes and in flight paths resulting in the herding, harassment, hazing, or driving of wildlife is prohibited. It is recommended that all

aircraft, except for take off and landing maintain a minimum altitude of 2,000 feet above ground level (AGL).

20. No activities may be conducted within one-half ($\frac{1}{2}$) mile of any sea bird rookery prior to August 1, of the current year.
21. No activities may be conducted within two miles of Cape Peirce and Cape Newenham.
22. You may use specimens collected under this permit, any components of any specimens (including natural organisms, enzymes, genetic materials or seeds), and research results derived from collected specimens for scientific or educational purposes only, and not for commercial purposes unless you have entered into a Cooperative Research and Development Agreement (CRADA) with us. We prohibit the sale of collected research specimens or other transfers to third parties. Breach of any of the terms of this permit will be grounds for revocation of this permit and denial of future permits. Furthermore, if you sell or otherwise transfer collected specimens, any components thereof, or any products or research results developed from such specimens or their components without a CRADA, you will pay us a royalty rate of 20 percent of gross revenue from such sales. In addition to such royalty, we may seek other damages and injunctive relief against you.

Attachment 2. Map of the Togiak National Wildlife Refuge



Supporting Documents:

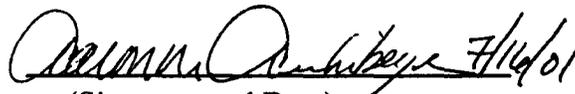
Togiak National Wildlife Refuge Comprehensive Conservation Plan/Environmental Impact Statement

Yukon Delta National Wildlife Refuge Comprehensive Conservation Plan/Environmental Impact Statement

Justification: Refuge special use permit conditions will include restrictions on the use of helicopters to avoid impacts to refuge resources and/or other refuge users, and to ensure the proposed use is compatible with refuge purposes. Helicopter access will not be allowed in designated refuge wilderness areas to avoid impacts to wilderness purposes.

Signature:

Refuge Manager:

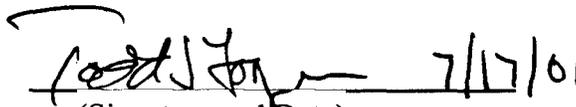

(Signature and Date)

Refuge Manager:


(Signature and Date)

Concurrence:

Regional Chief:


(Signature and Date)

Mandatory 10-year Re-evaluation Date: July

2011