

Draft Compatibility Determination

Yukon Delta National Wildlife Refuge

Bethel, Alaska

Use: Field investigation (reconnaissance drilling and sampling) for feasibility study of possible new road construction on Nelson Island connecting the communities of Toksook Bay, Tununak, and Nightmute, Alaska.

Refuge Name: Yukon Delta National Wildlife Refuge

Establishing and Acquisition Authority(ies): 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 Refuge, Hazen Bay National Wildlife Refuge, Nunivak National Wildlife Refuge.

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 extinguishments 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." These "22(g)" lands were deeded to multiple Native Corporations on Nelson Island 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 on 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 the 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)].

Refuge Purpose: Section 303(7)(B) of ANILCA sets forth 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, 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.

Applicable Laws, Regulations and Policies: Sections of ANILCA other than those delineating the specific refuge purposes are applicable in making this compatibility determination. Section 1315(a) addresses wilderness management provisions unique to Alaska. Section 304 required that comprehensive conservation plans be prepared and revised periodically for each refuge. Each plan was required to specify the uses within each area which may be compatible with the major purposes of the refuge and set forth those opportunities which will be provided within the refuge for fish and wildlife-oriented recreation if such recreation is compatible with the purposes of each refuge.

Other applicable laws, regulations, and policies include:

A. Laws:

- National Wildlife Refuge Administration Act of 1966 (16 U.S.C.668dd-668ee);
- Endangered Species Act of 1973 (16 U.S.C.1531-1544,87 stat. 884) as amended;
- Refuge Recreation Act of 1962 (16 U.S.C.460k-460k-4);
- Wilderness Act of 1964 (16 U.S.C.1131-1136, 78 stat. 890);
- Alaska Native Claims Settlement Act of 1971;
- Alaska National Interest Lands Conservation Act of 1980 (16 U.S.C.410hh-3233, 43 U.S.C. 1602-1784);
- Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407) as amended;
- Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa-470ll); and
- National Wildlife Refuge System Improvement Act of 1997.

B. Regulations:

- 50 CFR Subchapter C – The National Wildlife Refuge System;
- 50 CFR Part 36 – Alaska National Wildlife Refuges (specifically 36.31, 36.32, 36.42, and Subpart E);
- 43 CFR Part 36 – Transportation and Utility Systems In and Across, and Access into, Conservation System Units of Alaska;
- 50 CFR Parts 25, 26, and 29 – Final Compatibility Regulations Pursuant to the National Wildlife Refuge System Improvement Act of 1997.

C. Policies:

- 5 RM 20 – Compatibility Determinations;
- RW-21 – Compatibility Determinations;

- RW-7 – Special Use Permits; and
- RW-11 Compliance with ANILCA Section 810.

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

U.S. Fish and Wildlife Service Mission: *“to conserve, protect, and enhance fish and wildlife and their habitats for the continuing benefit of the American people”*

Description of Use: The State of Alaska, Department of Transportation (ADOT) is proposing the construction of a new road on Nelson Island connecting the villages of Toksook Bay, Tununak, and Nightmute. As part of a feasibility study, ADOT will be drilling 50 to 70 reconnaissance test holes (spaced about ½ mile apart) along the proposed road alignment providing information regarding soils, rock, geology and drainage. Standard auger techniques will be used with 4 inch augers sampling from 5 to 30 feet in depth. Standpipes for water and ground temperature monitoring may be placed where appropriate. Upon completion of testing, all holes will be back-filled and the surface will be left in a “clean and presentable condition.” A track mounted B 24 auger rig will be used to conduct the sampling along with ATV’s or snow machines.

Availability of Resources: The proposed test drilling operation on 22(g) lands will not result in an increase of costs for the refuge staff to administer of manage.

Anticipated impacts of the use: The closest large refuge surface estate lands are located approximately three miles from the project. Impacts to adjacent refuge lands and trust fish and wildlife resources are anticipated to be non-existent

Public review and comment: The period of public review and comment began Monday November 10, 2003 and ended Friday, November 14, 2003.

Determination:

This use is compatible.
 This use is not compatible.

Special Conditions / Stipulations Necessary to Ensure Compatibility: Due to the abundance of archeological sites in the use area, approval by the State Historical Preservation Officer (SHPO) will be necessary.

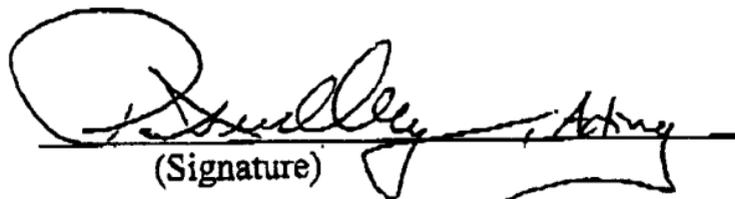
Justification: The impacts of this project are confined to the corporation ANCSA 22(g) lands. Refuge lands are located approximately 3 miles from the project and will not have a significant impact on refuge lands or detract from fulfilling the purpose of the refuge.

Mandatory Re-Evaluation Date: Re-evaluation is not required for compatible uses on 22(g) lands unless the use changes significantly, significant new information is made

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

Refuge Determination:

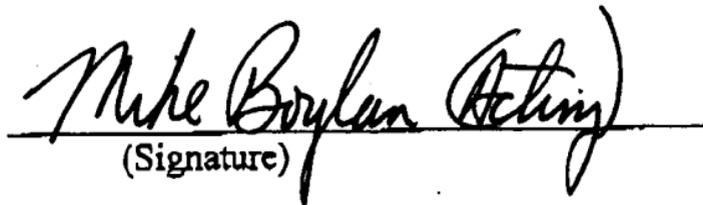
Refuge Manager/
Project Leader
Approval:


(Signature)

11/17/03
(Date)

Concurrence:

Regional Chief,
National Wildlife
Refuge System:


(Signature)

11/14/03
(Date)