

Mr. Scott Aikin
National Native American Programs Coordinator
U.S. Fish and Wildlife Service
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October 5, 2015

Re: Comments from the Alaska Native Village Association on Draft Native American Policy FWS-HQ-NAL-2015-N11; FXGO166009NALO156FF09D02000 (80 Fed. Reg. 46043, proposed August 3, 2015).

Dear Mr. Aikin:

The Alaska Native Village Corporation Association (ANVCA) submits these comments on the U.S. Fish and Wildlife Service's ("FWS") Notice of Availability of a draft "Native American Policy for the U.S. Fish and Wildlife Service," published in the Federal Register on August 3, 2015 ("Consultation Policy").^[1] ANVCA appreciates FWS's efforts to update its Consultation Policy so that it may provide additional guidance for FWS officials on interactions with Alaska Native Corporations ("ANCs") and Tribes. ***FWS should expand its draft Consultation Policy to specifically recognize its obligation to consult with ANCs on the same basis as Tribes as required by federal law.*** We appreciate that FWS intends to draft an Alaska-specific step-down plan that reflects its obligation to consult with ANCs. That parallel legal duty should not be relegated to an implementation document, however. FWS should formally recognize its obligation to consult with ANCs in the Native American Policy that it is adopting here.

^[1] Native American Policy for the U.S. Fish and Wildlife Service, 80 Fed. Reg. 46043 (notice published Aug. 3, 2015), available at <https://www.federalregister.gov/articles/2015/08/03/2015-18918.native-american-policy-for-the-us-fish-and-wildlife-service>.

There are approximately 200 Alaska Native Village Corporations in Alaska. ANVCA is a non-profit organization whose mission is to provide services that will improve the efficiency, profitability and stability of its member village corporations, and to build a network of mutual support and technical assistance that will help Alaska Native Village Corporations and their shareholders succeed. ANVCA membership, comprised of representatives from village corporations, works cooperatively to contribute to the future health of these groups by sharing knowledge and resources, and by collaborating on issues they have in common. The ANVCA Board of Directors met September 22, 2015 making a determination that providing written comments were in the best interest of our member village corporations. FWS policies, rules, and actions could have significant implications for Alaska Native Village Corporations and their shareholders. Many of our shareholders are subsistence hunters and gatherers who are dependent on access to and use of these areas.

Federal law requires that federal agencies, including FWS, are obligated to consult with ANCs on the same basis as Tribes on issues impacting their interests. Executive Order 13175 directs federal agencies to establish “regular and meaningful” consultation and collaboration with Tribal officials when developing policies that impact Tribes. Alaska Native Tribes are included within the Executive Order’s definition of “Indian tribe,” and Congress expanded the Executive Order protection to ANCs by expressly directing federal agencies to consult with ANCs

on the same basis as tribes under Executive Order 13175.^[2] FWS’s “parent” agency, Department of Interior (“DOI”) has formally recognized this obligation by adopting a separate but parallel policy governing consultations with ANCs.^[3] The policy sets forth guiding principles, key definitions of what activity will trigger consultation, training for employees and other information. FWS should carry out the DOI policy by incorporating the same types of requirements in its own policy statements.

The federal government settled its land claims with Natives in Alaska differently than with Natives in the Lower 48. The Alaska Native Claims Settlement Act created Native regional and village corporations to hold land and to invest cash settlement money for the benefit of their Native Alaskan shareholders and their descendants.^[4] Village corporations were given land surface rights in settlement of their Native land claims, while regional corporations were granted the subsurface rights of their own selected lands and those of the village corporations within the region.^[5] If FWS actions will impact ANC-owned Native land or related water or resources, it must consult with ANCs if it wants to ensure that its decisions properly take Native interests into account. ***As the owners of the land surface, Alaska Native Village Corporations have the most direct and tangible interests at stake related to those areas.***

In its proposal, FWS recognizes that it needs to tailor implementation of the agency’s broader goals and policies to Alaska to accommodate unique laws and interests. However, mention of ANCs should not be relegated to a step-down document alone. FWS should formally recognize

^[2] Consolidated Appropriations Act, 2004, Pub. L. No. 108-199, Div H. Section 161, 118 Stat. 3, 452 (2004) as amended by Consolidated Appropriations Act, 2005, Pub. L. No. 108-447, Div H., Title V. Section 518, 118 Stat. 2809, 3267, codified at 25 U.S.C.A. § 450 note (emphasis added).

^[3] Department of Interior Policy on Consultation with Alaska Native Claims Settlement Act Corporations.

^[4] 43 U.S.C. §§ 1606, 1607.

^[5] 43 U.S.C. § 1613.

its obligation to consult with ANCs in the Native American Policy it is adopting. It also should clarify how it intends to use the “step-down” plans in the consultation process or eliminate the concept altogether in favor of direct parity. An Alaska-specific implementation plan could be useful to provide practical details on how FWS intends to work with Tribes and Alaska Native Village Corporations on issues that impact either or both if FWS does not include these details in its primary policy.

To ensure that FWS engages with Alaska Native Village Corporations and Tribes in a meaningful way that fulfills its consultation obligations; FWS’s updated policy should include requirements to provide pertinent information to ANCs and Tribes prior to consultations. These should include how much notice the agency is required to give before a consultation occurs, what information is provided to these groups in advance of consultation, and how comments gathered at consultations will be incorporated into the official record and decision-making process of the agency.

Thank you for the opportunity to comment on the draft Consultation Policy. We would appreciate being notified of any future opportunities for Alaska Native Village Corporations/Tribal consultation with FWS. Please feel free to contact us with any questions or to advise if we can be of any assistance.

Sincerely,

Keja Nokomis Whiteman
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