



February 24, 2021

Mr. Greg Siekaniec – Regional Director
United States Fish and Wildlife Service
1011 East Tudor Road
Anchorage, AK 99503
greg_siekniec@fws.gov

Reference: Letter Dated February 19, 2021

Dear Mr. Siekaniec,

Kaktovik Inupiat Corporation (KIC) is writing to express its extreme frustration and disappointment regarding the U.S. Fish and Wildlife Service's (Service) treatment and response to our application for incidental harassment authorization (IHA) in support of our proposed 2021 seismic survey in the Coastal Plain of the Arctic National Wildlife Refuge (ANWR). Importantly, we seek to address and correct the Service's blatant mischaracterization of KIC's actions with respect to the IHA application. As you know, as part of the IHA, KIC proposed to conduct three aerial infrared polar bear den detection surveys, which the Service has indicated causes incidental harassment to denning bear. Therefore, the Service's timely issuance of the IHA for their authorization was a critical component to being able to conduct the planned flights within the appropriate timeframe. Because the Service did not issue the IHA by the anticipated date, KIC was precluded from conducting the planned aerial flights. Contrary to the characterizations in your February 19, 2021 letter and February 20, 2021 press release, KIC did not fail with respect to our IHA application. Instead, the Service has again discriminated against and failed my corporation causing reputational damage, significant economic losses through the cost of permitting this activity and failed my community of Kaktovik under the Alaska National Interest Lands Conservation Act of 1984 (ANILCA).

As you are aware, KIC is the Village Corporation established pursuant to the Alaska Native Claims Settlement Act of 1971 (ANCSA) for Kaktovik, Alaska. Alaska Native Corporations (ANCs), including KIC, were designed by Congress as a way of settling aboriginal lands title in Alaska after oil was discovered on the North Slope and the resolution of unresolved Alaska Native aboriginal land claims became necessary for development of the newfound resources to move forward. ANCs were established to empower Alaska Natives' self-determination and ensure their

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ability to utilize their lands and their surface and subsurface resources, to provide for their economic and social needs, and to ensure their quality of life. The intent of ANCSA was to provide for a fair and just settlement of all claims by Natives and Native groups of Alaska, based on aboriginal land claims. ANCSA also was intended to enable Alaska Natives to participate in the subsequent expansion of Alaska's economy. Through ANCSA, KIC received 92,000 acres of surface lands pursuant to its village entitlement within the Coastal Plain of the Arctic National Wildlife Refuge (ANWR).

On August 17, 2020, KIC, as the private landowner, submitted its application for an IHA pursuant to Section 101(a)(5)(D) of the Marine Mammal Protection Act (MMPA) for the non-lethal, unintentional taking of small numbers of polar bears (*Ursus maritimus*) incidental to seismic acquisition activities in the Coastal Plain of ANWR. Following modelling of the program by the Service, KIC submitted a revised application on October 28, 2020 that addressed additional mitigation measures and included, as requested by the Service, three separate aerial infrared polar bear den detection surveys to occur no later than February 13, 2021. In your letter you state that, because KIC did not perform the surveys, the requested IHA is no longer actionable, and the Service does not intend to issue or deny the requested authorization. Instead of faulting KIC, the Service should recognize and acknowledge that the aerial surveys were contingent on issuance of the IHA and, because the IHA was not issued in a timely manner, KIC was unable to conduct them. This is not a failure by KIC, but instead a failure by the Service to allow us to meet a Service-imposed deadline as reflected in our October revised application. In other words, the Service put KIC in an untenable situation where it could not perform a task without the Service's authorization, and then turned around and blamed KIC for the Service's failure to provide said authorization.

Your letter states that "KIC's specific activity is predicated on the completion of three AIR den detection surveys of the entire project area by no later than February 13, 2021." However, the surveys were never authorized to commence. These surveys and dates were imposed by the Service based on their polar bear model that incorporates historical denning locations, efficacy of aerial infrared den detection, availability of denning habitat, assumed depth of den under snow, and the overall project footprint.¹ KIC inquired as to whether or not surveys could begin prior to issuance of the IHA, perhaps by flying higher to reduce noise and potential effects to polar bear. The Service stated that, due to the unknown efficacy of surveys performed at altitudes above 1,500 feet above ground level (AGL), the surveys must be flown at lower altitudes to adhere to the model assumptions and, therefore, required a valid IHA to authorize any incidental take that might occur. Thus, as detailed in the following two communications, KIC could not perform different surveys due to their inclusion in the IHA modeling, and KIC could not perform the surveys as proposed

¹ The Service has deemed that polar bear sows with cubs begin emerging from their dens, and may be more prone to disturbance from aircraft, about mid-February—hence the Service-imposed February 13, 2021 deadline to complete the surveys.

without the approved IHA given the potential effects to polar bear that required prior authorization from the Service.

October 12, 2020 email from Christopher Putnam (emphasis added)

"Hello Ms. Imm, Mr. Rexford, and others,

Ryan Wilson updated the model runs based on the schedule of issuing the final IHA by 21 Jan 2021. The two models detailed below have two FLIR surveys, one on 21 Jan, and one on 25 Jan. The second FLIR date is merely used for the model run, another date after the 21st is also fine. Crews would enter the 1002 Area as early as 26 Jan and arrive at sub-block 1.1 to start work by the advance crew on 1 Feb. Those dates assume departing Deadhorse on 21 Jan and proceeding as described by KIC. However, to allow activity to be completed by 28 April, Ryan had to reduce the time spent in the first 21 sub-blocks from 3 days to 2 days. The remaining sub-blocks still had 3 days assigned to them. Here are the results.

Land Route, 2 FLIR:

N dens potentially exposed: mean=3.20 (95%CI: 0-8)

N LevB: mean=1.61 (0-9)

N Serious LevA + Lethal: mean=0.55 (0-4)

P(>=1 serious LevA or Lethal) = 0.24

Ice Route, 2 FLIR:

N dens potentially exposed: mean=2.71 (95%CI: 0-7)

N LevB: mean=1.13 (0-7)

N Serious LevA + Lethal: mean=0.41 (0-3)

P(>=1 serious LevA or Lethal) = 0.19

As you can see, the Ice Route with two FLIR surveys meets MMPA determinations while the Land Route is still slightly above determinations. The FLIR surveys are assumed to be conducted as they have been in the past. The question of conducting the FLIR surveys above 1500 feet AGL posed a challenge for us. All the information we have to use for an analysis of the effects of a FLIR survey on polar bears is from historical surveys. To evaluate the effects and benefits of the FLIR surveys, we must use the information we have available. That means we aren't able to evaluate the FLIR surveys as if they would be conducted above 1500 feet and still consider them with the same effectiveness as previous surveys. **That also means that the FLIR surveys would still need to be conducted with an authorization for incidental take. That is the reason for the FLIR surveys starting no earlier than 21 January. Please let me know if you have any questions or want us to run any additional analyses with other dates or variations.**

If you would like to have a call to discuss these results, the IHA schedule, or to ask any other question, please let us know when us convenient. Thank you.

Christopher Putnam
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October 17, 2020 email from Patrick Lemons

"Hi Teresa,

Thanks for the quick turnaround. I have an update for you relative to your question about where the bulk of the take is coming from. I actually have this for both the land and sea ice based access routes but they're not that different. Given that, and your response, I thought I'd just focus on the land access route. 59% of the Level A/lethal take occurs along the access route and 41% occurs in the acquisition area. I hope that answers your question but let me know if you would like to discuss.

Importantly, I want to make sure you are well aware of the dates associated with the analysis and this is also directly relevant to your question. The numbers Christopher sent you a couple days ago are based on the following dates.

- First FLIR flight occurs no earlier than Jan 21
- Second FLIR flight occurs no earlier than Jan 25
- Entrance into the 1002 Area occurs no earlier than Jan 26 and cannot occur before the FLIR flights occur and the information is processed so that dens can be identified and mitigated.
- Entrance into the acquisition area occurs no earlier than February 1.
- Importantly, we need your help in understanding the following
 - Where would a 3rd FLIR flight would fit in with this schedule?
 - Updated information on days for each block and any change to the number of blocks and which blocks would be surveyed.

There is quite a bit of information going back and forth here that I think we should discuss as I don't want any surprises for either you or us as this starts moving towards an IHA. Any delay would significantly jeopardize our ability to make the Jan 21st

timeline. Given that, can we setup a meeting with your team and ours to talk through the most important points early next week?

Thanks,
Patrick

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In your letter you also state that "The Service took extraordinary measures to review and consider all public comments on an expedited basis. These efforts included hiring a contractor to process and sort the comments, assembling a team of approximately 40 Service staff members to review unique comments, and working nights, weekends, and holidays to ensure that all substantive comments were appropriately addressed. However, the Service was unable to review and consider all public comments and make appropriate refinements to the IHA and supporting analyses prior to a key milestone identified in KIC's request." While we appreciate the Service's effort with respect to reviewing the public comments, we believe that it is the Service's responsibility to address those comments and to take the process to conclusion. It seems that the Service utilized taxpayer's money to address the public comments and to ensure that KIC receive the environmental justice that it deserves as an Alaska Native corporation. Counter to your statement above, and as documented below, on February 2, 2021, KIC was told that the Service had completed that effort. We found this response encouraging, and we were hopeful that we would receive approval in time to meet the obligation to conduct three aerial surveys prior to the February 13, 2021 deadline.

February 2, 2021 email from Patrick Lemons (emphasis added)

"Hi Teresa,

Thanks for your email. **We just finished up reviewing all 6.3M plus public comments, developing responses, and incorporating changes to the IHA where necessary.** We are working quickly to get the package ready to finalize and issued to KIC while we also work to understand how the Executive Orders and Secretarial Order may influence the issuance of this IHA. My office's plan is to get the IHA and associated documents ready to issue so that as soon as we receive guidance on those Orders, we can issue if warranted. In parallel to this effort, I and Regional leadership have been briefing

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headquarters and the Department on the importance of this IHA and the potential impacts if it were not to be issued quickly.

I will definitely keep you in the loop as I know more but don't hesitate to let me know if you have further questions or would like to discuss.

Thanks,
Patrick

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Again, Mr. Siekaniec, it appears that the Service was very disingenuous in its correspondence with KIC. During our engagement and planning prior to our October revised IHA application, we were told that it would take the Service until January 20, 2021 to process our IHA request. We were patient with the Service due to the change in Administrations, and KIC had time to conduct the surveys between February 2 and February 13, 2021. Instead, the Service delayed in providing the approved IHA, and then faulted KIC as a politically motivated excuse for not issuing a decision on our IHA application. KIC is extremely unhappy and does not understand why the Service felt the need to issue a press release on February 20, 2021 where the Service stated that it could not complete the IHA because KIC "failed" to perform an activity that we did not have Service authorization to perform. In our view, this reflects on-going discrimination against our corporation and community. We have a long history of the Service ignoring our rights as an in-holder and private landowner within ANWR as provided for under ANILCA, and the notion that we "failed" is completely false and has the potential to cause irreparable harm to KIC's reputation with regard to our businesses. We demand that the Service expeditiously prepare a correction to its very misleading press release and that it be approved by KIC prior to its publication.

Sincerely,



Matthew Rexford
President

Cc: Scott De La Vega, Acting Secretary of Interior

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Laura Daniel-Davis, Acting Assistant Secretary for Land and Minerals Management
Shannon Estenoz, Acting Assistant Secretary of the Interior for Fish and Wildlife and Parks
Martha Williams, Principal Deputy Director, United States Fish and Wildlife Service
Senator Lisa Murkowski
Senator Dan Sullivan
Representative Don Young
John Moller, Office of the Governor, Mike Dunleavy
Randy Ruaro, Acting Chief of Staff, Office of the Governor, Mike Dunleavy