



September 29, 2009

Helen Clough, Project Coordinator
U.S. Fish and Wildlife Service
1011 East Tudor Road, MS-231
Anchorage, Alaska 99503

Dear Ms. Clough:

The U.S. National Ramsar Committee (USNRC) is a voluntary organization devoted to promoting the goals and objectives of the Ramsar Convention on Wetlands. The USNRC provides support and advice to initiatives that promote the conservation and wise, sustainable use of domestic and international wetlands. In particular, the USNRC and its member organizations promote the designation and conservation of Wetlands of International Importance within the United States (also known as Ramsar sites), foster linkages among different sectors of domestic and international wetland communities, and support wetland education and public awareness efforts. More information about the USNRC is available at www.ramsarcommittee.us.

I write to provide the USNRC's comments concerning the scope of the Environmental Impact Statement (EIS) for the proposed land exchange involving Izembek National Wildlife Refuge (NWR). As you know, in 1987 Izembek NWR became the first site designated by the United States as a Wetland of International Importance under the Ramsar Convention. Izembek NWR was chosen for this honor because it is

[c]ritically important for migratory waterbirds, notably as spring and autumn staging sites for almost the entire world population of the goose *Branta bernicla nigricans*. Other staging birds include thousands of other geese and 300,000 ducks. Nesting species include *Cygnus columbianus columbianus*, while moderate to large numbers of other Anatidae (ducks, geese, swans, etc.) occur in winter. The site is also important for marine mammals and fish.

Wetlands International, Ramsar Sites Information Service, Summary Description of Izembek Lagoon NWR, (available at <http://ramsar.wetlands.org/GISMaps/WebGIS/tabid/809/Default.aspx>).

On behalf of the USNRC, I urge that the EIS process consider the Ramsar Convention's obligations and principles when deciding whether to proceed with the proposed land exchange. In addition to the issues raised below, the EIS should examine which species were instrumental in Izembek NWR's Ramsar designation and how the proposed land exchange would affect these species.

Please note that as a general policy the USNRC does not make particular recommendations on proposed actions; rather, the USNRC views its role as educating decision-makers about the importance of Wetlands of International Importance and the obligations associated with the Ramsar Convention. We appreciate the opportunity to provide comments during the environmental impact statement (EIS) process.

Primary Ramsar Duties

The United States is one of 159 Contracting Parties to the Ramsar Convention. The Contracting Parties to the Ramsar Convention, which by itself is non-regulatory, commit to three main pillars of implementation:

- (1) the designation and conservation of sites as "Wetlands of International Importance" (Articles 2 and 3);
- (2) the "wise use," as far as possible, of all wetlands within their respective territories (Article 3.1); and
- (3) international cooperation with respect to wetlands (Article 5).

All three pillars are implicated by the proposed Izembek NWR land exchange.

Duties Related to Sites Designated as Wetlands of International Importance

When a country becomes a Contracting Party to the Ramsar Convention, it must designate at least one Ramsar site. A Contracting Party has much discretion in which sites (and how many) should be designated. Presently, the United States has designated 27 Ramsar sites. Izembek NWR was the first site designated by the United States as a Wetland of International Importance, in part because it provides critical habitat for migratory waterbirds, including almost the entire world population of the goose *Branta bernicla nigricans*. We understand that the designated Ramsar site includes the 206 acres proposed to be transferred to the State of Alaska for the purpose of constructing a single-lane gravel road between the communities of King Cove and Cold Bay.

The Ramsar Convention makes clear that the designation of a site is voluntary and does not affect the Contracting Party's sovereignty over the area. Indeed, a Contracting Party may even delist a site or restrict its boundaries for urgent national interests, although no Contracting Party has ever invoked this provision to formally delist a site. Only in the rarest of cases (perhaps three) has any Contracting Party even restricted a site's boundaries for urgent national interests. If a Contracting Party does delist or restrict the

boundaries of a Ramsar site, both a procedural and a substantive duty arise. Procedurally, the Contracting Party must inform the Ramsar Secretariat in the changes to the site's boundaries. Substantively, Article 4 of the Ramsar Convention states that

[w]here a Contracting Party in its urgent national interest, deletes or restricts the boundaries of a wetland included in the List, it should as far as possible compensate for any loss of wetland resources, and in particular it should create additional nature reserves for waterfowl and for the protection, either in the same area or elsewhere, of an adequate portion of the original habitat.

The Ramsar Convention itself provides no further explanation of what constitutes urgent national interests or what suffices as appropriate compensation, but the Contracting Parties have discussed the matter in detail. Attached for your consideration is Resolution VIII.20, entitled *General guidance for interpreting "urgent national interests" under Article 2.5 of the Convention and considering compensation under Article 4.2*, which was adopted by the Conference of the Parties in 2002. The document is also available at http://www.ramsar.org/cda/ramsar/display/main/main.jsp?zn=ramsar&cp=1-31-107^21415_4000_0.

Public Law 111-11 expressly states that 206 acres of federal land within Izembek NWR may be transferred to the State of Alaska. The statute is not clear, however, whether this transfer would affect the boundaries of the Ramsar site. This is an issue that should be considered in the EIS.

In the United States, the Director of the U.S. Fish and Wildlife Service (FWS) makes the determination on whether to designate a site. According to FWS policy, a Ramsar site must meet specified ecological criteria, the designation must be supported by state and federal governmental officials, and all affected landowners must consent to the designation. Accordingly, the EIS process should examine whether, if the land transfer occurred, the State of Alaska will consent to its property remaining within the boundaries of the designated Ramsar site. If it does not consent, it would appear to be inconsistent with FWS policy to maintain the Ramsar designation over that parcel. If this area were no longer part of the Ramsar site, then the United States would have an obligation to provide compensation pursuant to Article 4.

Regardless of whether the transferred area formally remains part of the Ramsar site, there are other pertinent Ramsar duties to consider. For example, Article 3 of the Ramsar Convention requires a Contracting Party to notify the Ramsar Secretariat when the ecological character of a Ramsar site has changed, is changing, or is likely to change due to human interference. The land transfer and construction of a road would likely trigger the notification requirement. Attached for your consideration is Resolution X.16, entitled

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A Framework for processes of detecting, reporting and responding to change in wetland ecological character, which the Conference of the Parties adopted in 2008. This document is also available at http://www.ramsar.org/doc/res/key_res_x_16_e.doc.

Duties Related to Wise Use

Second, the commitment of “wise use” applies to the management of the Izembek NWR. The Contracting Parties have defined “wise use” to mean the maintenance of a site’s ecological character, achieved through the implementation of ecosystem approaches, within the context of sustainable development. Thus, beyond any duty to notify the Ramsar Secretariat about a Ramsar site’s change in ecological character, the “wise use” principle calls on Contracting Parties to strive to maintain the ecological character of Ramsar sites. The EIS should evaluate whether, and to what extent, the proposed land transfer and road construction would be consistent with this fundamental pillar of the Ramsar Convention.

Duties Related to International Cooperation

Third, it is important to observe that Ramsar designation is more than a mere award or recognition of the outstanding ecological qualities of a particular area. As a Ramsar site, Izembek NWR is part of an international network of sites, and the migratory nature of the waterfowl and fish species that rely on the site underscores the importance of international cooperation. The Contracting Parties have noted that a critical component of international cooperation is the development of a management plan for Ramsar sites with shared wetland-dependent species, such as the black brant, emperor goose, Taverner’s Canada goose, and Steller’s eider. The Ramsar Convention’s duty of international cooperation requires that any impact on these and other migratory species should be considered when making management decisions for Izembek NWR. In particular, we suggest that attached Resolution X.22, entitled *Promoting international cooperation for the conservation of waterbird flyways*, be considered during the EIS process. This document is also available at http://www.ramsar.org/doc/res/key_res_x_22_e.doc.

Additional information about the Ramsar Convention may be found on the Ramsar Secretariat’s website at www.ramsar.org. Please do not hesitate to contact me if you would like to discuss the Ramsar Convention in more detail. Thank you very much for your consideration.

Sincerely,



Suzanne Pittenger-Slear
Chair, U.S. National Ramsar Committee