

Hon. Harry A. Noah  
Commissioner  
Department of Natural Resources

November 18, 1994

661-95-0139

269-5100

Addition to Yakataga  
State Game Refuge

John T. Baker  
Assistant Attorney General  
Natural Resources-Anchorage

You have requested an opinion on whether legislation will be necessary to implement your recommendation that certain lands within the Yakataga Special Management Area be included within the Yakataga State Game Refuge. As explained below, legislation will be required to implement the recommendation.

In 1990 the legislature amended AS 16.20 by adding a new section creating the Yakataga State Game Refuge ("the Refuge"). Sec. 1, ch. 143, SLA 1990 ("the Act"). Section 4(a) of the Act directed the Commissioner of Natural Resources to develop an area plan for the Yakataga area, but mandated that the area plan would not include the land of the Refuge west of the Kaliakh River. Section 4(c) of the Act authorized the Commissioner to include in the area plan recommendations for the restriction or expansion of the Refuge and for legislation defining any part of the Yakataga area as a park, forest, refuge, critical habitat area, or other legislatively designated area.

The legislature further directed that "[t]he area described in sec. 1 of this Act that is east of the Kaliakh River shall be included in the [Refuge] only if and to the extent that the area plan ... [so recommends]." Sec. 9, ch. 143, SLA 1990.<sup>1</sup> It is unclear from the plain language of the Act whether the legislature intended this language to be self-executing in effect. However, principles of statutory construction suggest that the legislature did not intend such a result.

The language of a statutory subsection is to be

---

<sup>1</sup> Section 9 of the Act requires that, until the issuance of a final area plan, the area east of the Kaliakh River shall be managed as the Yakataga Special Management Area. At the time of this opinion, the draft area plan does recommend the inclusion of land east of the Kaliakh River in the Refuge.

construed in light of the overall purpose of the statute and in accordance with common sense and good policy, absent legislative history resolving any ambiguities as to the specific purpose of the subsection. Saunders Properties v. Municipality of Anchorage, 846 P.2d 135 (Alaska 1993). Each part or section of a statute is construed with every other part or section, so as to produce a harmonious whole. Forest v. Safeway Stores, 830 P.2d 778 (Alaska 1992); City of Anchorage v. Scavenius, 539 P.2d 1169 (Alaska 1975). AS 16.20.033(a) currently contains a legal description of all state-owned land and water included in the Refuge.<sup>2</sup> The draft area plan recommends that certain land falling within this description be included in the Refuge, and that other land, designated as subunits 3c-1, 3c-2 and 3c-3, be excluded. If Section 9 of ch. 143, SLA 1990 were construed as effecting a change in Refuge boundaries immediately upon issuance of the area plan, the current description of land in AS 16.20.033(a) would become obsolete upon issuance of the area plan. One would then be unable to determine the boundaries of the Refuge by consulting AS 16.20.033(a). This would produce a result at odds with common sense and good policy.

Further, Section 9 of ch. 143, SLA 1990 must be construed in harmony with Section 4 of the Act, wherein the legislature gave DNR the discretion to include recommendations for the restriction or expansion in the Refuge boundaries, as well as for additional designations which are purely legislative prerogatives. This suggests that the legislature intended to retain the discretion to adopt or reject recommendations to restrict or expand the Refuge. Thus, it will be necessary to amend AS 16.20.033(a) to reflect the exclusion from the Refuge of land currently described by the statute. This raises the question of the proper method to implement the area plan's recommendation.

It appears unlikely that such an amendment can be accomplished through the annual bill of the revisor of statutes. Under AS 01.05.031, the revisor of statutes has the authority to make technical changes, including the correction of typographical or other "manifest errors" in existing statutes. While the revisor's bill would clearly be an appropriate vehicle to correct

---

<sup>2</sup> The section states that all state-owned land and water "lying within the parcels described in this subsection are established as the Yakataga State Game Refuge[.]"

Hon. Harry A. Noah, Commissioner  
Department of Natural Resources  
661-95-0139

November 18, 1994  
Page 3

an erroneous legal description, the area plan's recommendation requires the deletion of lands which at present are accurately described by AS 16.20.033(a).

Therefore, sponsored legislation, which simply adopts the recommended changes to the legal description of the Refuge in AS 16.20.033, will be required. If you wish this office to assist the Department of Natural Resources in drafting such legislation, we would happy to do so upon receiving approval from the Governor's Office.

cc: Ron Swanson, Director, Division of Land  
Nancy Pease, Division of Land  
Kevin Saxby, Assistant Attorney General