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April 21, 1986

Mr. Robert Gilmore
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U.S. Fish and Wildlife Service
1011 East Tudor Road
Anchorage, AK 99503

Dear Mr. Gilmore: ^{Bob}

The State of Alaska has reviewed the draft Tetlin National Wildlife Refuge (NWR) Comprehensive Conservation Plan/Environmental Impact Statement/Wilderness Review (CCP). This letter is submitted on behalf of state agencies and represents a consolidation of state concerns and comments. The state has generally concluded that no individual management alternative is entirely acceptable as written; therefore, our comments focus on general issues, rather than on an analysis of each of the alternatives. Our comments address public involvement, fish and wildlife management, wilderness, transportation and access, navigability, management of watercolumns, water rights, and land protection planning.

PUBLIC INVOLVEMENT

The CCP is not clear regarding the extent and nature of FWS' commitment to future state and public involvement in planning and management of the refuge. Page ix says, "If major changes in the plan are proposed, public meetings may be held, or new environmental assessments/environmental impact statements may be necessary." Yet on page 16, under the heading Future Public Involvement, the following statement appears: "Additional opportunities for public review and comment will be provided as the plan is updated and as more specific management plans are developed." We support the direction given in the latter statement and request that the plan more fully describe a cooperative public and state involvement process consistent with ANILCA. (See additional comments on public involvement regarding access on page 12 under Access Restrictions).

FISH AND WILDLIFE MANAGEMENT

Opportunities for maintenance and improvement of fish and wildlife populations should be provided regardless of which alternative is selected. This is consistent with one of the refuge's key purposes: "to conserve fish and wildlife populations and habitats in their natural diversity" as mandated in the Alaska National Interest Lands Conservation Act (ANILCA). We believe it is essential that both the Fish and Wildlife Service (FWS) and the Alaska Department of Fish and Game (ADF&G) be able to conduct a full range of necessary, biologically sound, and mutually acceptable methods of maintenance or improvement in order to ensure the conservation of the populations. In particular we are concerned about restrictions on the use or construction of permanent fish passes, permanent spawning channels, permanent hatcheries, chemical habitat modifications, supplemental production catchable fish release, and mechanical manipulation as presented in Tables 8 and 9 and Appendix E of the plan. It is premature to restrict application of these management options until more information is available through studies and population assessments. This lack of data is recognized as an issue in the CCP, as shown by the statement on page 12 that, "[Additional resource] data are needed as a basis for recommending fish and wildlife harvest levels, managing habitat, and regulating human access".

The following illustrates our concern: Mechanical manipulation is a tool included in the current interagency fire management plan for the region. The CCP does not permit mechanical manipulation under the moderate or minimal land management categories which comprise most of the NWR under the preferred alternative. We believe the two plans should be compatible and that mechanical manipulation should therefore be permitted on the refuge on a case-by-case basis when cooperatively determined to be necessary by the FWS and the ADF&G.

Maximum flexibility for maintenance and improvement of fish and wildlife is consistent with the management objectives in paragraph 2 of page 118 which states that the FWS hopes to accommodate compatible public demands by striving to maintain or increase present population levels. It further states, "Should populations fall below desired levels, steps will be taken to restore populations." The latter direction is also consistent with state wildlife management plans for the area. We therefore urge that Tables 8, 9, and Appendix E be revised to allow potential management activities where they are currently indicated as not permitted. The tables and appendix should also clarify that case-by-case cooperative FWS and ADF&G determinations of acceptability will precede permitting these activities.

Throughout the CCP we believe a greater effort should be made to stress cooperative planning, research, and management efforts between the FWS and the ADF&G. Although this is mentioned on page 115 it should be emphasized and reiterated as appropriate in other portions of the CCP. As written, acknowledgement of the closely interrelated roles is inconsistent, rendering possible impressions that FWS may be exercising its oversight authority unnecessarily. We are certain that this is not FWS' intent and we request that the CCP be clarified to avoid this implication.

We also request that the CCP identify the need for public cooperation and education in adhering to resource harvest regulations on the NWR. This is consistent with ANILCA 304(g)(2)(E) which calls for identification and description of significant problems "which may adversely affect the populations . . . of fish and wildlife." The problem is indirectly mentioned on page 16 under the heading Law Enforcement by stating that "several people asked what the Service intends to do about hunting regulations . . ." As our respective staffs increase their efforts in the Tetlin NWR area, violations of harvest regulations may become more apparent. We request that the FWS clarify that such harvests may be a significant limiting factor of big game and waterfowl populations in the Tetlin NWR. A commitment to improved enforcement, education, and achieving local support in order to reduce and eventually prevent such harvest should be described. We request that the possible significance of illegal harvest in preventing attainment of population goals be more clearly evident in the CCP, as well as a discussion of programs to resolve the problem.

The Management Alternatives section on pages 99 - 141 summarizes the general direction of the different management alternatives. Oftentimes, however, it does not provide enough substantive detail for a meaningful review of the proposals. Some of this needed information is found in the Environment Consequences section of the CCP. Management intent would be more apparent if the information in this section were included in the Management Alternatives discussion. This would enable proposals to be compared to tables and maps that are presented in the Management Alternatives section.

Fisheries

Page 38, paragraph 2 - This paragraph states that 14 fish species have been observed on Tetlin NWR and refers to Appendix D, which includes Dolly Varden as a fish species of Tetlin NWR. Paragraph 3 on Page 38, however, states "to date, Dolly Varden have not been found in any surveyed drainages on the refuge." Likewise ADF&G is unaware of documentation to substantiate the

presence of chinook salmon and rainbow trout on Tetlin NWR. We suggest that these three species be removed from Appendices C and D, as well as from paragraph 2 on page 117.

Page 113, Commercial Fishing - Table 9 indicates that commercial fishing, including all land-based activities and facilities, would not be permitted on Tetlin NWR. The ANILCA Section 304(d), however, states that "the Secretary [of the Interior] shall permit within units of the National Wildlife Refuge System . . . the exercise of valid commercial fishing rights or privileges . . . subject to reasonable regulation" " Until such time as information is available which supports FWS, proposed prohibition of commercial fishing activities on the refuge, we cannot support this proposal.

Page 117, paragraph 3, last sentence - We request that resident and anadromous fish migration, spawning, and rearing areas be added to the list of critical wildlife habitats.

Pages 152 and 158, Scenario - It is stated that chum salmon would be reintroduced in two sites in Alternative B (Page 152) and six sites in Alternative C (Page 158) in an attempt to restore populations to historic levels. The CCP should clarify that these are basic fisheries management goals and that site-specific details will be worked out in subsequent step-down planning. These details include the specific sites chosen for release of juvenile chum salmon and the reason for their selection, the proposed source of chum salmon eggs (i.e., from what brood stock), the hatchery facility to be used, and the number of fry to be released at each of the locations under each scenario. We also request clarification of "reintroduced" as used in these paragraphs. Consistent with previous state comments on refuge plans, ADF&G is also interested in a cooperative forum to assist in determining "historic levels" of salmon populations and use.

Page 220, Appendix E - Unlike Table 9 (Page 104) which refers to this appendix, no wilderness category is shown. The final plan should include the intent for fisheries management activities in wilderness areas.

Subsistence

Pages 57-58, Human Environment - We applaud the intent to pursue archaeological investigations on the Tetlin NWR and recommend that this be given high priority.

We would appreciate inclusion of references in the text of this section and clear identification of information sources throughout the CCP, including maps, tables, and appendix.

Page 59, paragraph 3 - The population of Tok includes former residents of Tanacross, Tetlin, Northway, and possibly Eagle and Mentasta. These people generally retain strong ties to their former community of residence and continue to harvest resources with friends and relatives from those communities.

Page 61, Sociocultural Systems, paragraph 1 - The phrase "some of the older families still move to traditional fish camps in the summer" should be clarified to reflect that persons of all ages in Tetlin, Northway, and Tanacross participate in harvest activities based in seasonal camps.

Page 61, Sociocultural Systems, paragraph 2 - Although the Boards of Fisheries and Game have not determined it necessary to separate subsistence from other harvest types, the statement that the Boards have not determined "what constitutes subsistence uses in this area" is not totally correct. Data from the report The Use of Copper River Salmon and Other Wild Resources by Upper Tanana Communities, 1983-1984 (Division of Subsistence Technical Report Paper No. 115) strongly suggest that Tetlin and Northway have an established customary and traditional use pattern that includes portions of the Tetlin NWR.

Page 61, Sociocultural Systems, paragraph 4 - We would encourage use of the term "subsistence-based socio-economic system" to generally describe the economies of Tetlin, Northway, and Tanacross, rather than considering them to be "transitional." It is unclear at this time whether the cash economy will significantly expand in the years ahead, or whether economic conditions in Alaska may change such that resource harvesting will regain greater importance.

Page 62, paragraph 5 - The important points in this paragraph need clarification. Some residents of communities on or near the Tetlin NWR have expressed legitimate concerns about actual or potential increased competition for resources which have been an essential part of their traditional economy, not merely "benefits now enjoyed." Rural residents throughout Alaska resist changes which they perceive might increase competition for limited fish and wildlife resources.

We take exception to the statement that there is "general resentment and suspicion" directed toward all "outsiders." The impressions conveyed in this paragraph are unnecessarily negative and do not acknowledge differences in the communication styles of non-local government employees and local residents. Our experience suggests that many residents of communities on or near the Tetlin NWR (1) are genuinely concerned about the affects of the refuge on their lives and livelihoods; (2) have had limited opportunities to interact with government staff outside the context of public meetings or brief community visits; and (3) are hospitable and conversant under proper circumstances.

Page 67, Table 6 - The column totals in this table bear no relationship to the sum of the figures presented in each column and all numbers have been rounded. This suggests these figures are only estimates; the table needs corresponding clarification.

Page 71, continuing paragraph - The ADF&G, particularly Division of Subsistence, requests participation in any resource use studies planned for Tanacross and Tok.

Page 72, Figure 22 - Information derived from our research indicates that Northway residents also hunt waterfowl in the shaded area of the Chisana River corridor used by Tok residents (see attached revised map, Figure 22).

Page 73, Figure 23 - Available information indicates that fishing areas used by Northway residents should be extended to include Scottie Creek all the way to the mouth and a larger area east of Northway on Moose Creek (coinciding with "Fish Camp" to the west of the fishing area depicted east of the community). Refer to the attached revised map, Figure 23, for specific details.

Page 74, Figure 24 - According to our mapped data, Northway residents hunt for moose up the Nabesna River to and including the Pickerel Lake area. Our information does not indicate use of Jatahmund Lake for moose hunting, but use of Takomahto Lake immediately to the east (this lake is unlabeled on the map). This discrepancy may be due to the fact that our maps are derived from interviews with a sample only of Northway residents (see attached revised map, Figure 24).

Page 75, Figure 25 - Northway residents also use the Jatahmund Lake area for furbearer trapping (see attached revised map, Figure 25). This is noted in the text on page 77 but not depicted in the map. Other areas trapped by Northway residents and depicted on our revised Figure 25 include (1) the west bank of the Nabesna River from the Cheslina River south to the

refuge boundary; (2) the area from the Northway road west to the Nabesna River; and (3) the area along the Alaska Highway south from the northwest border of the refuge to Seattle Creek.

Page 76, Table 7 - This table refers to months of harvest on the refuge and adjacent areas used by "local residents" from Northway, Tanacross, Tetlin, and Tok. This should be clarified in the table heading and in the text on page 71 where Table 7 is referenced. Since the table does not restrict its coverage only to harvest on the refuge, we recommend adding caribou, salmon, and sucker to the species list. Caribou are harvested in August, September, and November through February. Salmon are harvested primarily in June and July, but also occasionally in May and August. Suckers are taken primarily from June through September but also occasionally in May and October. Additions to this table based on our Northway data are shown on the attached and revised Table 7. Current limited data for Tetlin also reveal (1) occasional use of young pike ("pickle") in September, December, and January; and (2) occasional use of edible plants in October.

September is the primary month for moose hunting, with occasional effort occurring in July, August, December, and January, according to ADF&G, Division of Subsistence, information for the four communities. We suspect other studies will show this to be potentially a year-round harvest activity, generally excluding fall rut and spring calving season.

Preliminary findings from a Division of Subsistence study conducted in Northway were provided for incorporation in this plan, as were data from a study in Tetlin conducted by a FWS researcher to whom the Division provided assistance. Selected data from these two studies and from Division research conducted in Tok and Tanacross are presented in the recently-published The Use of Copper River Salmon and Other Wild Resources by Upper Tanana Communities, 1983-1984. Copies have been provided to the Tetlin Refuge and other FWS staff. The Division is continuing research in Northway and will submit additional information to the refuge as it becomes available. We also look forward to continuing our cooperative research efforts.

Page 77, paragraph 3 - The ADF&G mapped data for Northway indicates that wood is also cut in areas of the refuge accessed from the Alaska Highway.

Page 77, paragraph 4 - The final sentence should begin "In the 1982 and 1983 seasons . . ." ADF&G data indicates that the primary moose harvest areas in 1982 and 1983

coincide with the river drainages and tributaries mentioned and not only "between the Nabesna and Chisana rivers near the Black Hills"; the FWS may have obtained additional information of which we are unaware.

Page 77, paragraph 6 - We caution against indicating that the panhandle and Black Hills areas are not used by Northway residents for furbearer trapping on the basis of data we provided. Information was derived from a small sample of active harvesting households (as is noted on Page 70) and may not include all trapping areas being used.

Page 77, paragraph 7 - In this section on fishing areas, it may be more appropriate to begin the first sentence "The majority of sampled households in Northway . . ." We again are not aware of whether the FWS is basing this assessment on information other than studies provided by ADF&G, Division of Subsistence.

Pages 80-85 - It is unclear whether the maps presented in Figures 26-30 are designed to depict areas used only by residents other than of Northway, Tanacross, Tetlin, and Tok or also by recreational users from these four communities. This confusion should be corrected by labeling the maps more clearly as was done in Figures 22-25.

Page 86, final paragraph - We request clarification that trapping is an important activity on the refuge despite the statement ". . . less than 25 local residents used the refuge for trapping" in 1983.

Pages 151, 156, 162, and 192, Subsistence/Section 810 Findings - The CCP generally concludes that each of the proposed management alternatives would result in at least nominal positive impacts on subsistence uses of the refuge. Yet, it also cites the likelihood of continuing (or possibly increasing) perceptions among local residents of increasing competition from non-local residents. Consequently, we strongly encourage refuge staff to enhance communication and consultation with local communities as it proceeds with population and habitat improvement activities that will facilitate increased public use of the refuge. This will increase the identification of potential conflicts and provide for their timely resolution. As mentioned earlier, the ADF&G Division of Subsistence remains committed to working cooperatively on studies which will (1) strengthen our understanding of local fish and wildlife use patterns; and (2) provide data needed to minimize conflicts among user groups.

WILDERNESS

As we explained more fully in our comments on the Kodiak draft CCP, we are concerned that the FWS has neither developed adequate criteria for a wilderness suitability determination, nor provided specific criteria to determine which suitable lands should be recommended for wilderness. Since the preferred alternative does not propose wilderness recommendations, our immediate concern focuses on the suitability process. We request that more specific criteria, as well as a map or specific description illustrating lands that have been determined to be suitable, be included in the final CCP. We also request that the Tetlin CCP, and all other CCPs, include a Wilderness Designation Issues analysis similar to the section on pages 26 - 32 of the draft Kodiak CCP. We request that such a discussion include each of the issues in the attached statement presented to the National Park Service on the same subject.

ACCESS AND TRANSPORTATION

We recommend that FWS make the following revisions to the portions of the plan that address transportation and access. These proposed additions are to help clarify the issues of traditional access, RS 2477 rights-of-way and 17(b) easements. We recognize that the CCP has already incorporated some of our suggestions, however the plan as currently written still contains some ambiguity on these issues. Most of the information requested below addresses concerns which we have with all of the ANILCA plans for the national park and wildlife refuge systems in Alaska. The general comments below are addressed more specifically in the page-specific comments beginning on page 13 of this letter.

General Organization of Access Issues

The sections on access and transportation in the Affected Environment chapter should include a more detailed summary of the existing roads, trails, airstrips, and waterways used currently or historically for transportation in the refuge, including a brief discussion about the historical use, current use, and management status of each. The information in this section should include, but not be limited to 17(b) easements and RS 2477 rights-of-way as noted in our page-specific comments. The Management Alternatives chapter should also address 17(b) easements, RS 2477 rights-of-way and non-exclusive use easements.

If the FWS cannot at this time explain in detail how it intends to address each RS 2477 right-of-way and 17(b) easement, the plan should refer to a land protection plan that FWS will develop upon completion of the CCP. This

discussion in the CCP should state in general how 17(b) easements and RS 2477 rights-of-way will be addressed in the land protection plan. The discussion should also indicate that the State and other interested parties will be involved in the development of this plan.

ANCSA 17(b) Easements

More specifically, the Affected Environment discussion of 17(b) easements reserved pursuant to Section 17(b) of the Alaska Native Claims Settlement Act (ANCSA) should include a description of the easement types and uses for which each easement was designated. A list of all ANCSA 17(b) easements within the refuge boundary or on adjacent lands that terminate at the refuge boundary should also be included. A complete list and additional information about these easements may be obtained from the Bureau of Land Management (BLM) or an affected ANCSA corporation. We also suggest referencing the section of the plan which will be addressing management of these easements.

A separate section on 17(b) easements in the Management Directions Common to All Alternatives should reference the list of easements in the Affected Environment chapter of the plan, as described above. It should then indicate the FWS management intent for these easements. The plan should also explain what modifications to the terms of conveyance, if any, FWS intends to propose for these easements. By law, proper notice is required before any modifications to the terms are made. If no modifications are intended, the plan should state that policy for refuge management will not affect 17(b) easements, and that all uses that are authorized in the conveyance document are allowed. If FWS does not at this time know the policy it intends to follow, then the CCP needs to explain in detail what the issues are that the policy will address and how the public will be involved in developing that policy.

RS 2477 Rights-of-Way

The discussion of Revised Statute (RS) 2477 in the Affected Environment chapter should briefly describe the nature of these rights-of-way and include a list of possible RS 2477 rights-of-way in the NWR. Available information regarding the current and historical use and the management status of each should be described. The section should also include a reference to the section of the plan where FWS addresses RS 2477 management concerns. The Management Alternatives chapter should similarly reference the rights-of-way listed under Affected Environment and address management intent.

Because it is important that the FWS recognize that valid RS 2477 rights-of-way may exist within national wildlife refuges, the State has suggested in the past that the CCPs include maps of possible RS 2477 rights-of-way (ROWS). Since our recommendation last summer, it has become clear that private landowners are concerned that the depiction of possible RS 2477 ROWs in the CCPs may lead to unauthorized use of adjacent private land or inholdings. Furthermore, since the CCPs acknowledge that the units are subject to valid existing rights, including RS 2477 ROWs, and the State has provided information to FWS concerning possible routes, including their location, the State believes that it is no longer necessary to include such maps in the plans. Rather, the State recommends that these maps be kept on file in FWS offices and be available for public review. Additionally, the State recommends that each CCP include a statement that additional RS 2477 ROW information is available from the FWS regional office or the State of Alaska.

Even though we feel it is no longer necessary to include maps of possible RS 2477 ROWs in the CCPs, we reiterate our request that all CCPs continue to acknowledge valid existing rights. Therefore, we request that the language on page 115 be replaced with the following:

RS 2477 (formally codified as 43 U.S.C. 932; enacted in 1866) provides that: "The rights-of-way for the construction of highways over public lands, not reserved for public uses, is hereby granted." The act was repealed by P.L. 94-579 as of October 21, 1976, subject to valid existing claims.

The Tetlin National Wildlife Refuge is subject to valid existing rights, including rights-of-way established under RS 2477. The validity of these rights-of-way will be determined on a case-by-case basis. The following list identifies rights-of-way that the State contends may be valid under RS 2477:

(List of potential RS 2477 ROWs)

A map of these possible RS 2477 rights-of-way has been provided by the State and is on file at the refuge managers office and the regional office. This list and map are not necessarily all inclusive. Private parties or the State of Alaska may identify and seek recognition of additional RS 2477 rights-of-way within the Tetlin National Wildlife Refuge. Supporting material regarding potential rights-of-way identified by the State may be obtained through the Alaska Department of Transportation and Public Facilities, or the Alaska Department of Natural Resources.

Identification of potential rights-of-way on the list and map does not establish the validity of these RS 2477 rights-of-way and does not necessarily provide the public the right to travel over them.

Unless a cooperative management agreement between the State and FWS is developed, it is inappropriate to require that users of any rights-of-way must comply with FWS permit requirements.

Access Restrictions

Because of inconsistent and sometimes vague statements, it is often difficult to determine actual management intent. For example, in describing public use of the Affected Environment, paragraph 5 of page 65 states "The modes of transportation currently used on the refuge and the level of use are expected to remain the same." Figure 20 on page 68 illustrates that air boats are commonly used for access in both the Northway area and the Nabesna River drainage. Table 9 on page 107, however, excludes air boats and air-cushion boats from the permitted modes of access. Paragraph 3 on page 120 prohibits air boats and air-cushion vehicles for subsistence use in accordance with FWS policy and definitions found in FWS regulations (50 CFR 36). In addition, on page 121, paragraph 4 in the discussion of ANILCA Section 1110(a), the CCP states, "Therefore, none of the access restrictions or prohibitions proposed in this plan will be implemented until procedures for the establishment of refuge regulations (including public hearings) are met."

In general it appears that various statutes, executive orders, regulations, and studies are inappropriately referenced to support prohibitions and restrictions which seem to violate Congressional intent. In passing the ANILCA, which amended previous statutes and supercedes regulations and policies (Section 305), Congress intended a liberal approach to access, different than "lower 48" management, assuring continuance of traditional and customary activities.

It is our understanding that Congress intended closures to be pursued on a site-specific and case-by-case basis as necessary to reduce impacts on public health and safety, resource protection, protection of cultural or scientific values, subsistence uses, etc., as specified in 50 CFR 36.16 and 36.42. To be consistent with these ANILCA implementation regulations, FWS should follow established criteria and procedures to gain data and public input prior to implementing proposed restrictive actions. Our interpretation of ANILCA and subsequent regulations suggests that, at a minimum, this process should include the following:

determine and document existing use levels or activities; determine the basis (finding) or reason for the proposed action or decision; substantiate the finding by documenting the known impact of not making the decision; investigate alternative measures for accommodating the activity in question that would avoid the same impacts; and pursue separate public notice and public hearing.

Page-specific Comments Concerning Access

Page 19, Table 1 - The table should acknowledge that there is an undetermined amount of land that is or may be encumbered with RS 2477 rights-of-way or 17(b) easements. This could be added as a footnote.

Page 65, paragraph 4 - Although not specifically addressed in the CCP, we request that the plan clarify that access to and use of existing materials sites within the NWR will not be precluded. These materials sites are identified on the attached "Materials Site Strip Maps". The CCP should also specifically recognize the possible future needs of Department of Transportation and Public Facilities with regard to highway realignment and sand and gravel extraction adjacent to the Alaska Highway within the northern NWR boundaries.

We also request that the CCP recognize that there may be a future need for telephone or electrical transmission lines from the Alaska Highway to Northway. We recognize that the lands on either side of the existing road corridor are currently selected by the Northway Corporation, however we seek assurances that such utility development will not be precluded by the CCP.

Page 69, Figure 21 - The title on this map should be corrected to read: "Trails Included in the 1973 Alaska Existing Trail System Inventory." In addition, the key that identifies these trails as "snowmobile trails" should be deleted. The 1973 Inventory does not distinguish methods of travel.

This map or a similar map should include the 17(b) easements that have been reserved in and adjacent to the refuge. The legend should refer to a document that will be available at various FWS offices where the reader can find the exact location of the 17(b) easements on more detailed maps than those included in the plan. The Department of Interior manual (601 DM 4) requires that this information be made available. The map should also note that since Native conveyances have not been completed, the total list of 17(b) easements in the NWR is not yet known.

Pages 106-110, 116 and 121 - The sections of Table 9 titled "Access," "Hiking," "Snowmobiles," "Other Motorized Vehicles," and "Roads" should include a footnote referring the reader to a discussion in the Management Directions Common to All Alternatives section of the plan about how FWS will manage a route being used for access that coincides with a RS 2477 right-of-way. Conservation system units were established by ANILCA subject to valid existing rights. Therefore, these sections of the plan should identify that state management authority applies to valid RS 2477 rights-of-way, and indicate that when a route coincides with an RS 2477, the management of this right-of-way will be addressed through cooperative management agreements with the state. Similarly the sections on Access to Inholdings and Recreation and Access also need to be clarified.

Page 115, paragraph 1 - We request that the list of examples of cooperative efforts include RS 2477 rights-of-way and navigable rivers.

Page 124, paragraph 3 - This paragraph states that "The Service will not permit any additional corridors within the refuge boundary." This sentence is clearly inconsistent with the provisions of ANILCA Title XI and should be deleted.

NAVIGABILITY

The FWS should consider developing cooperative management agreements with the state concerning the management of navigable rivers. The state is willing to consider FWS management proposals for management of the rivers. Any such proposals should be directed to the Department of Natural Resources, Division of Land and Water Management. The CCP should be clarified to reflect this.

Page 19 - This land status table should include the acreage of submerged lands beneath navigable waters that are in state ownership. It should also include a footnote that acknowledges the unresolved navigability status of many of the waterbodies in the refuge.

Page 20, Land Status Map - Rivers within the refuge that have been determined to be navigable should be identified. Additionally, the legend to the map should identify the uncertain status of lands in other drainages. At a minimum, a footnote should be included in the legend of the map mentioning the possibility that other rivers in the refuge may also be determined to be navigable.

Page 127, Navigable Waters - This discussion is confusing because two issues are being addressed in this section that could better be dealt with under separate headings. The first issue is how to manage lands under navigable waters. The second issue is how to manage the use of the watercolumns of rivers and other waterbodies in the refuge. (See next section)

We request that the discussion under Navigable Waters be replaced with the following paragraph:

At the time of Statehood, the State received ownership of the beds of navigable waters to the "ordinary high water mark." At present the (name of waterways) have been determined navigable.

The FWS will seek cooperative agreements with the State concerning the management of submerged lands under navigable waters. The FWS will make requests for the use of these lands to the appropriate State agencies.

MANAGEMENT OF THE WATERCOLUMN

As discussed above, we request that the CCP include a separate section titled "Management of the Watercolumn." This section should include the portions of the discussion on page 127 that address the use of the watercolumn itself, not the lands under the watercolumn. It should also acknowledge that these watercolumns remain subject to management authority by the State, although the State may choose to cooperatively manage such areas with FWS on a case-by-case basis.

Additionally, the "Motorboats" section on page 107 needs to be clarified. The management of these uses may require cooperative management agreements with the state. This needs to be acknowledged in the discussion about these uses. We are also concerned about the apparent qualification that motorboats may only be used to "provide access to the refuge". Such a restriction would be inconsistent with ANILCA. We request that this phrase be deleted.

WATER RIGHTS

Federal reserved water rights are created either expressly or by implication when federal lands are withdrawn from entry (by Congress or other lawful means) for federal use. It is the state's position that federal water rights, both instream and out-of-stream, are either generally or specifically reserved for the primary purposes of the reservation. Characteristics of a federal reserved water right include:

1. it may be created without actual diversion or beneficial use;
2. it is not lost by non-use;
3. its priority date is from the date the land is withdrawn for the primary purpose(s) involved; and
4. it is the right to the minimum amount of water reasonably necessary to satisfy both existing and reasonable foreseeable future uses of water for the primary purpose(s) for which the land is withdrawn. Water for secondary purposes must be obtained under State law, AS 46.15.

Discussion at the March, 1985 meeting of the Alaska Water Resources Board emphasized the importance of two aspects of federal reserved water rights. First, they are recognized only for the primary purposes for which the land was withdrawn, and second, they apply only to the minimum amount of water reasonably necessary to satisfy the primary purposes of the withdrawal. Legislation establishing the withdrawal of land is critical, because it establishes the priority date for the federal reserved water right, and often expressly state the primary purposes of the withdrawal. All of these aspects of federal reserved water rights - the priority date, the primary purposes, and the minimum amount of water reasonably necessary to maintain the primary purposes - are important concepts that should be reflected in the plan.

Page 125 - We suggest that the following language be included under the section titled Water Rights:

"The water resources of the Tetlin National Wildlife Refuge will be managed to maintain the primary purposes for which the unit was established. The primary purposes of this NWR are _____, as cited in the following legislation establishing this national wildlife refuge (reference to legislation). Specific water resource requirements for the primary purposes of the refuge will be identified and the minimum amount of water reasonably necessary to maintain these purposes will be quantified in cooperation with the State of Alaska. Once federal reserved water rights have been quantified, the Fish and Wildlife Service will file this information with the State in accordance with State laws." Water for secondary purposes and all other uses within the NWR will be applied for under AS 46.15.

LAND PROTECTION PLAN

The CCP on page 116 mentions that several land exchanges and acquisitions have been recommended but does not identify where these are located within the refuge. The plan should show these areas and explain that the details of the exchanges will be worked out during the development of a land protection plan.

The CCP should outline in greater detail than is included on page 227 how and when a land protection plan for the refuge will be developed. The discussion should include a list of the issues the plan will address. Included on this list should be the recommended land exchanges referenced above State land and waters, and RS 2477 rights-of-way.

REMAINING PAGE-SPECIFIC COMMENTS

Pages vii, 17, 19, and 132 - The ANILCA Section 302(8) directs that the Tetlin NWR shall consist of approximately seven hundred thousand acres of public land. The CCP, however, uses different figures, including 924,000, 699,086, and 697,616 acres. Although a brief explanation regarding the differences is presented in paragraph 3 of page 17, we recommend (for the purposes of comparative charts and tables) that one figure be used.

Page vii, paragraph 2, last sentence - We suggest adding caribou, black bear, grizzly bear, and Dall sheep to the species list for consistency with the species addressed in the Environmental Consequences section (Pages 143-170).

Page ix, paragraph 2, first sentence - Add "appropriate state laws and regulations" to the list of policies governing refuge management.

Page 49, paragraph 4 - The caribou registration permit hunt referred to here was discontinued by Board of Game action in March 1985.

Page 87, paragraph 1 - According to this paragraph, three big game guides have permits to operate on the refuge. The final paragraph on page 79 says that four big game guides operate within the refuge. We request that this discrepancy be corrected or otherwise explained.

Page 90, last paragraph - This is technically correct, though somewhat misleading. Significant wilderness acreage occurs south of the NWR in the Wrangell/St. Elias National Park and Preserve.

- Page 126 - We recommend that a section addressing pollution control and abatement be added following the discussions of water and air quality. The National Park Services draft general management plan for the Noatak National Preserve (page 3-22, attached), contains a discussion on this topic which could serve as a model.
- Page 127-128, Mining Operations - We request that the following sentence be added to the first paragraph: "Plans of Mining Operations will be evaluated and administered in consultation with the Environmental Protection Agency and the Alaska Department of Environmental Conservation."
- Page 130, paragraph 3, last sentence - This sentence mentions that three acres at Northway Junction would be designated intensive management. Table 11 on page 132, however, lists six acres for intensive management. We request that this discrepancy be corrected.
- Page 134 and 136 - We note that an intensive management area at Northway Junction is included in Alternatives A and D but excluded in Alternative B and C. We understand that there is an existing administrative site at this location. Assuming that the site will remain in use, it would seem appropriate for all alternatives to include an intensive management area for the site. If there is some justification for the variation, we request it be provided in the final CCP.
- Page 136, paragraph 5 - Of the NWR, 24 percent would be under moderate management and 5 percent under intensive management. However, Table 11 on page 132 lists 29 percent and less than one percent for each classification, respectively. We request that this discrepancy be corrected.
- Page 138, Public Use and Access Management - In our view, it would not be appropriate to concentrate all camping in Tetlin in one area. Consequently, we request that the last sentence in this paragraph be clarified as follows: "Campsites may be designated if needed to confine resource degradation to specific areas."
- Pages 144, 152, 158, and 163, Scenario - The Alaska Fire Management Plan: Fortymile Area was an interagency effort, cooperatively developed for environmentally sound fire management of the Tetlin NWR area. However, the FWS proposes to limit annual acreage burns to a maximum 7,500 acres. This policy is not consistent with the interagency plan. While it is true that approximately 1 to 1½ percent of this portion of Alaska

burned annually prior to federal fire suppression, this is an average percentage. The fire rotation of approximately 80-100 years could be significantly altered by implementing "initial attack" after 7,500 acres have burned in any given year.

The Tetlin NWR has a good mosaic of older plant communities including the most fire prone black spruce forest. Studies indicate that fire is likely to leave many unburned inclusions of deciduous forest, riparian white spruce forest, and riparian brush. Fire effects on sedge hummock and other moist herbaceous habitats are minor and short lived. We request that the FWS not manage this relatively small area independent of, but rather as a portion of, a larger ecosystem including adjacent Tanana Upland and Nutzotin-Mentasta Mountains foothills. We thus request that the 7,500 acre annual burn limit be removed so that fire management is consistent with the region's interagency plan.

Page 165, paragraphs 5 and 6 - We support cooperative habitat improvement efforts for waterfowl and suggest these efforts not be limited to damming river sloughs. We request that provisions to pursue cooperative efforts to improve waterfowl habitat, including studies and habitat improvements, be included in management directions for the refuge, regardless of alternative selected. We also support the reestablishment of waterfowl breeding populations, wherever appropriate. The CCP should note that such efforts need corresponding public education, support, and enforcement to assure their success.

On behalf of the State of Alaska, thank you for the opportunity to review this draft Tetlin National Wildlife Refuge Comprehensive Conservation Plan/Environmental Impact Statement/Wilderness Review. If we can be of any assistance in clarifying these comments, please contact this office. The state looks forward to review of the final comprehensive conservation plan.

Sincerely,



Sally Gilbert
State CSU Coordinator

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