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August 1, 1986

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

Dear Mr. Gilmore:

The State of Alaska has reviewed the final Togiak 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 final CCP has adequately addressed many of our previous concerns. We appreciate U.S. Fish and Wildlife Service (FWS) efforts to consider state comments on the draft CCP and to modify the alternatives accordingly. In particular, we would like to state our support for the following management alternatives:

- maintain the refuge's natural diversity and key fish and wildlife populations and habitat;
- restore big game populations through habitat protection, increased law enforcement, and other means;
- provide for continued subsistence use of refuge resources;
- conduct detailed subsistence studies in the refuge to document use patterns and problems for Togiak, Goodnews Bay, Platinum, Quinhagak, and other villages that use the refuge;
- coordinate refuge programs and plans that affect the local villages, including actions that affect subsistence;
- maintain existing (1985) recreational use levels and traditional access opportunities on the refuge's rivers (consistent with refuge purposes) until affected user groups, adjacent landowners, and other interested groups can make recommendations on river management and the FWS completes a detailed public use management plan; and

- manage the Cape Peirce/Cape Newenham area to protect fish and wildlife resources and meet subsistence needs.

In addition, the state has completed its review of the CCP for consistency with the Alaska Coastal Management Program (ACMP). Based on our review, we agree with the FWS determination that the CCP is consistent to the maximum extent practicable with the ACMP. Portions of the ACMP applicable to the CCP include the relevant standards of 6 AAC 80 and the enforceable policies of the Cenaliulriit Coastal Management Program.

However, we do have remaining concerns which we hope can be addressed in the Record of Decision (ROD). These include concerns about public use management; commercial fishing; fisheries and habitat improvement; subsistence; reindeer herding; water rights; 17(b) easements; RS 2477s; shorelands, tidelands and submerged lands; navigable waters; use of airboats; access; and oil and fuel spill planning.

Public Use Management

The final CCP calls for the preparation of a public use management plan to ensure the protection of refuge resources and resolve conflicts between subsistence, recreational, and commercial users of the refuge. However, the CCP does not adequately detail FWS intent with regard to developing such a plan. We request that the ROD contain a target date for initiation and completion of the plan, outline the process the FWS intends to follow in the planning process, and provide a tentative list of the issues the plan is expected to address. The state supports resolution of conflicts occurring on the refuge in as timely a manner as possible and looks forward to working with the FWS on the public use management plan.

In addition, we request that the ROD acknowledge that not all conflicts between local and non-local resource users are "perceived" and that "real" conflicts do exist.

Commercial Fishing

We object to the prohibition of commercial fisheries activities and onshore facilities as indicated on pages 143 and 151 of the CCP. The ANILCA Section 304(d) specifically provides for commercial fisheries activities and related facilities on refuges. We request that the ROD rescind this prohibition and reflect the ANILCA provisions.

Fisheries and Habitat Improvement

We also oppose the restrictions on permanent fisheries improvement activities and physical/mechanical habitat manipulation described on pages 144-145. These restrictions are unnecessarily stringent, eliminating what may be determined by

the FWS or the state to be the most feasible, desirable, and biologically sound management tools. Please reference our detailed objections included in the state's October 16, 1985 letter to the FWS on the draft Togiak CCP.

Subsistence

We note that discussions of subsistence in the CCP have been significantly improved from the draft. However, the CCP contains a number of statements and figures still in need of clarification. Under separate cover, we are providing the FWS with detailed suggestions to improve the discussions and accompanying maps. In addition, although we commend FWS intent to document subsistence uses, we request that the ROD contain a commitment to coordinate such efforts with the state.

Reindeer Herding

The final CCP states that requests to herd reindeer will be evaluated on a case-by-case basis; however, no guidance is provided regarding the circumstances under which herding would be allowed. We request that the CCP outline the specific terms and conditions under which herding would be compatible with the purposes of the refuge. The state would be interested in working with the FWS to develop these criteria.

Water Rights

The second sentence on page 173 of the CCP regarding water rights does not adequately reflect language agreed upon by the state and the FWS and contained in the Kenai ROD. We request that the Togiak ROD replace the language in the final CCP with the following:

Specific water resource requirements for the primary purposes of the refuge will be identified and the [reasonable] minimum amount of water reasonably necessary to maintain these purposes will be quantified in cooperation with the State of Alaska.

17(b) Easements

The state has several concerns about the language on page 175 of the CCP regarding 17(b) easements. The statement that easements are for access purposes only is incorrect. We request that the ROD clarify that there are site easements for camping and storage as well. The uses allowed for easements are outlined in the conveyance document.

The statement that easements will be managed under refuge laws and regulations also needs to be clarified. Easements that have not been transferred to the FWS are managed by the Bureau of Land Management consistent with the terms identified in the conveyance

document. Easements transferred to the FWS must also be managed consistent with the terms outlined in the conveyance document.

We request that the ROD contain a list of 17(b) easements with a description of the allowed uses of these easements, and state that these easements will be managed consistent with the terms outlined in the conveyance document. The state requests that the ROD replace the language on page 175 with the following language that was developed by the National Park Service (NPS) for inclusion in the NPS General Management Plans (GMPs).

Easements

Campsite and linear access easements may be reserved on native corporation lands that are within or adjoin the refuge, as authorized by Section 17(b) of ANSCA. The FWS will be responsible for management of these public access easements inside the refuge and for those assigned to the FWS outside the unit. Pursuant to Part 601, Chapter 4.2 of the Department of the Interior "Departmental Manual" (601 DM 4.2) where these easements access or are part of the access to a conservation system unit, the easements shall become part of that unit and be administered accordingly. The purpose of these easements is to provide access from public lands across these private lands to other public lands. The routes and locations of these easements are identified on maps contained in the conveyance documents. The conveyance documents also specify the terms and conditions of use including periods and methods of public access. A list of 17(b) easements and authorized uses is included with this document. Further record keeping by the FWS may result in revision to the locations and authorized uses of 17(b) easements presented in this GMP.

The FWS will work cooperatively with the affected Native corporation and other interested parties, including the State of Alaska, to develop a management strategy for the easements. Management of these easements will be in accord with the specific terms and conditions of the individual easements and applicable refuge regulations. As the easements are reserved and the FWS assumes management responsibilities for them, the locations, mileages and acreages will be compiled and management strategies will be formulated. This information will be maintained at refuge headquarters.

As authorized in 601 DM 4.3G, an easement may be relocated to rectify a usability problem or to accommodate the underlying landowner's development of the lands if both the FWS and the landowner agree to the relocation. Easements may also be expanded if an acceptable alternate easement or benefit is offered by the underlying landowner and the exchange would be in the public interest. An easement may

be relinquished to the underlying landowner if an alternative easement has been offered by the landowner or termination of the easement is required by law. The FWS may also propose to place additional restrictions (to those authorized in the conveyance document) on the use of an easement if existing uses are in conflict with the purposes of the unit. In all cases where a change is proposed in authorized uses or location from the original conveyance, the FWS will give adequate public notice and opportunity to participate and comment to the affected Native corporation and other interested parties, including the State of Alaska. FWS proposals for changing the terms and conditions of 17(b) easements will include justification for the proposed change, an evaluation of alternatives considered, if any, and an evaluation of potential impacts of the proposed action.

The FWS will request the reservation of public (nonexclusive use) use easements from the Bureau of Land Management on lands being conveyed under the Native Allotment Act of 1906, where important public use trails cross the lands being conveyed. The public use easements will ensure continued public access to public lands and resources.

RS 2477's

The state has concerns about the language on page 175 regarding RS 2477 rights-of-way. We request that the ROD clarify FWS's interest in developing cooperative agreements with the state concerning the management of RS 2477's. Additionally, we request that the ROD state that questions regarding RS 2477's should be directed not just to the refuge manager, but also to the State of Alaska Department of Natural Resources and Department of Transportation and Public Facilities.

In addition, we recommend that the ROD replace the discussion about RS 2477s on page 175 with the following language. The language was developed with the NPS for inclusion in the NPS GMPs.

Revised Statute 2477 (formally codified at 43 U.S.C. 932; enacted in 1866) provides that: "The right-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 (name of unit) 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 trail number and name)

A map illustrating the above list is found in _____. 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 park. Supporting material regarding those 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.

The various types of access routes discussed above may overlap. For example, a valid RS 2477 right-of-way may overlap an easement conveyed under Section 17(b) of ANSCA. Management strategies, where this occurs, will reflect valid existing rights and other considerations unique to the situation. The FWS will work cooperatively with interested parties to assure that management is compatible with the purposes of the park. Overlap situations will be dealt with on a case-by-case basis in conformance with the management policies outlined in other sections of this plan.

The only change proposed and not included in the NPS language is in the third paragraph and is underlined.

In addition to the above changes, we request that the ROD clarify that conservation system units (CSU) were established by the Alaska National Interest Lands Conservation Act (ANILCA) subject to valid existing rights, which include RS 2477's. The discussion on page 175 in the "Public Access Management Directions" does not adequately convey this. The ROD should make clear that when an RS 2477 is determined to be valid, it is subject to state management authority. The FWS may also want to note that the state may wish to cooperatively manage RS 2477 rights-of-way with the underlying fee land owner.

Shorelands, Tidelands and Submerged Lands

We request that the ROD clarify FWS intent with regard to shorelands, tidelands and submerged lands by replacing the language on page 158 of the CCP with the following language. This language was developed with the NPS for inclusion in the NPS GMPs.

Shorelands, Tidelands and Submerged Lands

The Submerged Lands Act of 1953, the Alaska Statehood Act of 1958 and the state constitution provide for state ownership of the water (subject to the reservation doctrine discussed below in the water rights section), shorelands (the beds of

navigable waters), tidelands (lands subject to tidal influence) and submerged lands (lands seaward from tidelands).

Determinations of what waters are navigable is an ongoing process in Alaska at both the administrative and judicial levels. At present, (list waters) have been determined to be navigable by the Bureau of Land Management. Other water bodies may be determined navigable in the future. (Add description here of any tidelands and or submerged lands within the unit or state there are none within the unit.)

The FWS will work cooperatively with the state to ensure that existing and future activities occurring on these shorelands, tidelands and submerged lands are compatible with the purposes for which the unit was created. The FWS will manage the refuge uplands adjacent to shorelands, tidelands and submerged lands to protect their natural character.

Additionally, the FWS recommends that the state (list the FWS's recommendations here), and will apply to the state for these actions. The FWS will also pursue cooperative agreements with the state for the management of lands under navigable water bodies (shorelands).

Navigable Waters and Management of WaterColumns

The section of the CCP on navigable waters confuses two issues: (1) the state's management authority over shorelands (land under navigable waters), tidelands and submerged lands; and (2) the state's ownership and management authority over water in the unit. The recommendations outlined above for shorelands, tidelands and submerged lands address the first of these issues. To address the second issue, the state requests replacing the current language on page 158 of the CCP with the following language:

Management of Watercolumns

The FWS will work with the state on a case-by-case basis to resolve issues concerning the use of the various waterways where management conflicts arise. Cooperative agreements for the management of uses on the water will be pursued if a case by case resolution of management issues proves unacceptable to the FWS and the state.

Discussions in the CCP currently fail to convey the complexity of the legal questions involved with this issue and acknowledge that the state has certain authorities concerning the use of watercolumns. The CCP states that the FWS "has" the authority to regulate certain uses. This would be more accurate if written to say that the FWS "may have" the authority to regulate certain

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uses. The state recommends that the FWS avoid getting swamped in this legal question, but rather acknowledge the need for the FWS and the state to work cooperatively on management of the watercolumns in the refuge.

Use of Air Boats

We request that the ROD rescind the prohibition of air boats described on page 175 of the CCP, in line with the discussion above. The state does not support the prohibition of use of air boats and air cushion boats on watercolumns under all alternatives. The state acknowledges that prohibitions in some areas may be appropriate and recommends cooperative state/FWS development of criteria to guide management of this use.

Access

We request that the ROD clarify what criteria the FWS intends to use in making case-by-case determinations on whether helicopter use will be allowed. We also request a definition of the terms "adequate" and "feasible" as used on page 175 of the CCP.

Oil and Fuel Spill Planning

The final CCP does not address oil and fuel spill planning, as we requested in our October 16, 1986 comments on the draft. We request that the ROD provide assurance that oil and fuel spill planning for the refuge has been completed or that the FWS is committed to developing such a plan.

On behalf of the State of Alaska, thank you for the opportunity to review the final Togiak 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.

Sincerely,



Michelle Sydeman
CSU Coordinator

cc: Senator Rick Halford, CACFA, Fairbanks
Commissioner Collinsworth, DFG, Juneau
Commissioner Knapp, DOTPF, Juneau
Commissioner Lounsbury, DCED, Juneau
Commissioner Notti, DCRA, Juneau
Major General Pagano, DMVA, Anchorage
Commissioner Robison, Labor, Juneau
Commissioner Ross, DEC, Juneau
Commissioner Sundberg, DPS, Juneau
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- [1312] Mr. James Barkeley, Esq., Anchorage
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- [994] Ms. Bonnie Borchick, Department of Commerce and Economic Development, Juneau
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- [1243] Mr. Robert D. Heath, Alaska Power Authority, Anchorage
- [1244] Mr. Robert Henderson, Department of Public Safety, Anchorage
- [397] The Honorable Adelheid Herrmann, Juneau
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