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DIVISION OF GOVERNMENTAL COORDINATION

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May 11, 1990

Mr. Jay R. Bellinger
Refuge Manager
Kodiak National Wildlife Refuge
1390 Buskin River Road
Kodiak, Alaska 99615

Dear Mr. Bellinger:

The State of Alaska has reviewed the draft Public Use Management Plan (PUMP) for the Kodiak National Wildlife Refuge. This letter contains the consolidated comments of the State's resource agencies.

This review is organized into several components, starting with a review of specific U.S. Fish and Wildlife Service (FWS) policies, followed by suggested language for the PUMP that addresses State land within the refuge, and ending with additional comments intended to assist in the revision of the draft. The Kodiak PUMP focuses primarily on managing public use to protect fish and wildlife resources, especially brown bears. Consequently the State's comments are also primarily concerned with the relationship between public use and these refuge resources.

COMMENTS ON FWS POLICIES

The State of Alaska supports the proposed limitations on public access to areas with high potential for disturbance of brown bears and high potential for bear/human conflicts. Our data indicates that these limits are justified for resource protection. Proposed limitations on commercial users also appear to be supportable to assure that unguided users have reasonable opportunities to use the limited number of preferred access points. Other proposed limitations on public uses, however, do not appear adequately justified or supportable at present, as described below.

Public Facilities: Decisions Stemming From the CCP

The State continues to oppose the prohibition of new public use cabins and other public use facilities throughout most of the refuge. In the Comprehensive Conservation Plan (CCP), the FWS

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determined that new public facilities can only be constructed in Moderate Management areas - a small part of the refuge. The State objected to this policy in the CCP, and has consistently advocated provisions for additional public use cabins to reduce bear conflicts and complement other resource values. The FWS' position reflects an apparent management intent to maintain status quo use levels rather than actively planning for recreational uses, existing as well as projected. Cabins and campground improvements enhance "health and safety" (ANILCA 1303), and, if carefully located, can reduce impacts from concentrated tent camping at popular access points, including impacts which result in bears killed in "defense of life or property".

For example, the Alaska Department of Fish and Game (DFG) believes food/meat caches should be constructed at popular deer hunting sites to help hunters avoid bear conflicts. Parts of the refuge do not have trees which can support food or meat away from bears. Because hunters tend to camp at the same sites repeatedly each season, they can cause significant impacts on resources, including conflicts with bears. Minor campground improvements, such as caches, could reduce bear/human conflicts and minimize overall impacts at these sites. This type of "active" management would be consistent with the central theme of the PUMP to minimize bear conflicts. If the FWS does not consider use of such tools, in the long run we envision further FWS restrictions on public uses to protect bears and other resources, thereby countering another main purpose of the refuge - - providing recreational opportunities. The State supports a more active management approach which can increase the benefits to both the visiting public and refuge resources.

The State also reiterates that the restrictive FWS position regarding public facilities is largely based on faulty analyses. Specifically, the CCP contains an analysis (Appendix N) which attempts to describe the effects of commercial fishing facilities and related activities on brown bear in the refuge. As noted in DFG's June 1987 review (enclosed) of Appendix N, the analysis contains substantial misused or incorrect data. DFG does not support the findings or conclusions of Appendix N, and therefore believes that the resulting restrictions should be re-evaluated in cooperation with DFG. We also recommend, regardless of whether or not changes are made, that the final PUMP describe the justification for the number of commercial operators and camps allowed in the refuge. Providing justification and explanation will help demonstrate that use levels are not arbitrary.

The PUMP should also discuss the system FWS proposes to use for allocating commercial use permits. The State will work with FWS on the details of implementing the plan's allocation system to ensure the allocation system is consistent with Alaska Statutes.

The CCP prohibition of tent platforms in Minimal, Wilderness and Special River Management areas is another example of a policy which we believe is inappropriate for the Kodiak refuge. The State objected to this prohibition in the CCP and now requests reconsideration of this position in the PUMP. Section 1316 of ANILCA specifically allows temporary facilities (including tent platforms) which support the taking of fish and wildlife except where such uses constitute a significant impact on the resources. As previously explained for cabins and campground improvements, DFG believes the discussion supporting the prohibition is derived from the inaccurate analyses of facilities permitted for commercial fishing, and therefore does not justify the prohibition. DFG contends that provisions of cabins and temporary facilities in selected locations would actually help reduce adverse impacts to wildlife resources.

We strongly urge reconsideration of these management provisions to benefit both bears and refuge users. Pages where these comments apply include pp. 20, 21, 23, 27, 28, 133, and 213.

Preferred Alternative Provisions

The proposed alternative (C) contains numerous proposals for the management of access and public use to protect refuge resources. This section highlights the State's response to these provisions, some of which we support and others which we believe are not justifiable.

Snowmachines

The restriction on snowmachines in bear denning habitat and deer wintering areas is justified and supported by scientific literature. As previously discussed with FWS, the DFG looks forward to working cooperatively with the FWS in identifying the specific locations and timing of snowmachine restrictions.

Pack Animals

The State does not support the refuge-wide prohibition of pack animals. We request the FWS allow pack animals by permit on a case-by-case basis. The broad prohibition is not justified, and in our view is inconsistent with the provisions of Sections 811 and 1110 of ANILCA. The State acknowledges the potential for conflict between pack animals and bears, however closely regulated use by permit would give FWS the discretion to manage the type and location of use to minimize impacts. On the positive side, pack animals offer a nonmechanical alternative means of access to backcountry areas. As discussed in the PUMP, only a few locations are suitable for pack animals, and historical use has been limited to a few horse trails and pack dogs.

Bear Concentration Areas

The State supports the proposed seasonal closures of the five brown bear concentration areas proposed as "critical" under Specific Recommendation 1. These closures are justified by the recent increases in bear photography. Bears have been killed by photographers in two incidents in the past five years, including one in South Uyak Creek which is proposed for closure. This closure will result in minimal loss of recreational opportunity while providing potentially significant resource protection. The DFG requests opportunities to work with the FWS in refining the details of these closures prior to publication of the final plan.

The eight areas proposed for closure to overnight camping also appear to be supportable. At present, however, the physical descriptions of the areas are very general. Following public review of the PUMP, DFG wishes to work closely with FWS to insure that only minimum areas necessary for resource protection will be closed. Please contact Roger Smith, DFG's Kodiak area biologist, for appropriate follow-up.

The State also supports well-designed research to determine carrying capacity for recreational activities in bear concentration areas. DFG looks forward to working with the FWS in the design and conduct of such research.

Unguided Public Use

The State does not support the various camping limits for unguided public use throughout the refuge (page 131). Specific restrictions on unguided public use may be appropriate for selected areas where actual resource damage is occurring or anticipated due to long-term camping by the public. However, the current low levels of use in most of the refuge do not justify restrictions during all seasons in all locations. Furthermore, no information was presented in the PUMP indicating damage that presently necessitates such restrictions. This proposal would also unnecessarily restrict subsistence and recreational activities, such as trapping and camping by local residents.

The majority of camping use of the refuge is by hunters who generally stay less than the 7-day limit during the summer season. Only a few wish to stay longer, as illustrated by the figures on page 118. Some deer hunters, particularly archery hunters, plan relatively long hunts which enable them to be more selective in hunting trophy animals. The 7-day camping limit extends into October, which is a primary month for deer hunting. This proposal, therefore, would probably result in some decrease in harvest and loss of harvest opportunity. The restriction also is largely unenforceable without a major commitment of money and manpower.

The proposed 7 and 15-day restrictions on camping near anadromous streams would seriously limit the number of suitable camping sites. Without intensive mapping and field marking, the public would have difficulty complying with this proposal. For example, there are 211 anadromous streams on Kodiak Island, many of which are small and not easily identifiable as anadromous streams.

Many anadromous streams host salmon for much less than the June 15 - October 15 period, resulting in limited bear use when salmon are not present. Some streams receive very little bear use in years of weak salmon runs. We recommend that the FWS reconsider applying their original list of 34 streams (page 110) with "low" to "critical" ratings and, in consultation with DFG, apply necessary camping limits only to selected, appropriate streams.

The 30-day refuge-wide camping limit in winter months seems arbitrary and unnecessary. During winter, only occasional trapper camps occur on the refuge. Bears are rarely a concern in winter months. Therefore, existing refuge regulations on camping and trapping, and state regulations for fish and wildlife related activities, should be adequate during this off-season period.

Guide-Outfitter Limits

We acknowledge that the moratorium on Special Use Permits for big game guide-outfitters, in effect since 1989, is temporary pending passage of State legislation to initiate new State-regulated guiding areas. The fundamental basis for the proposed legislation is to allow increased opportunity for guide-outfitters to participate in commercial activities related to big game species.

In prior years, it appeared that limitations placed on numbers of hunter outfitters were arbitrary, and were implemented without public or DFG involvement. With the changes for all big game commercial service providers under the 1989 law and in pending legislation, DFG is committed to working closely with FWS to establish new guide-outfitter areas, examine historic wildlife populations and harvest data, and discuss levels of commercial use that will not adversely affect wildlife resources.

We expect that the new State management system for guide-outfitters will be implemented over the next two years. During this period, we look forward to cooperatively developing aspects of this system for the Kodiak NWR with FWS, the public, and with the Big Game Commercial Services Board which regulates this industry.

Inholdings

It is widely recognized that many of Kodiak Island's important wildlife habitats have been or will be conveyed to ANCSA Native

corporations. Protection of such critical habitats on refuge inholdings should be one of the FWS's highest priorities for the Kodiak refuge. Unregulated public use on non-federal land can significantly impact refuge resources. We urge the FWS to step up consideration of current options for cooperative agreements, easements and/or acquisition. This program should address impacts from activities occurring or likely to occur on inholdings and adjacent non-refuge lands as a result of refuge restrictions. The maintenance of critical habitats is essential to protect resource values and accompanying public use.

Jet Boats and Aircraft Landing Restrictions

The State has management authority for waters in the refuge, and consequently is interested in the public's response to the jetboat and aircraft landing restrictions. If, after the public comment period, the FWS and the State decide to include these restrictions in the final plan, the State will work with FWS to ensure that implementation is consistent with Alaska Statutes.

Nonconsumptive Uses

The State recommends that the PUMP devote more attention to nonconsumptive uses such as wildlife viewing. We suggest the FWS assess what and where nonconsumptive uses could be encouraged in the future to minimize conflicts with consumptive users. The PUMP (pages 29 and 114) references the concept of a developed bear viewing area on the refuge. We support such a concept but suggest that this is a major component of public use which should be more fully addressed in the PUMP, including specific proposals for consideration. With their management responsibilities and experience in operating observation sites in mind, DFG looks forward to working with the FWS in the proposed study of bear observation opportunities.

Access

Page 30, ATVs. This provision should be clarified to indicate that the prohibition of ATVs does not apply to traditional subsistence use established prior to ANILCA (pursuant to Section 811).

Page 30, Roads, Airstrips, and Motorized Vehicle Trails. The State identified 4 traditional trails in the 1984 Resource Management Recommendations for the Kodiak refuge. Based on the provisions of Title XI and Section 811, this FWS policy should be modified by adding the language "subject to the provisions of Title XI".

New Issues for Consideration in the PUMP

Public Use Sites

The State recommends that the PUMP identify and include a list and map of important public use sites in all units of the refuge. If managers and users know where these sites are, activities can be managed to protect the sites and ensure their availability for public use.

The State also recommends that FWS include a fourth objective on Page 15 of the PUMP: "Ensure availability of public use sites to meet the needs of all users."

Karluk River Steelhead

Concern about the viability of Karluk River steelhead fishery stocks has resulted in reductions of the sport fishing bag limit in recent years. If use of this fishery along the middle Karluk River increases as a result of management directions in this PUMP, conflicts with the subsistence fishery in Larson Bay could occur, possibly necessitating further restrictions. We suggest FWS evaluate this scenario in cooperation with DFG and include any conclusions in the final PUMP.

Olga Bay Access

DFG understands that Akhiok residents are concerned about reported increases in the use of fishing boats for providing access to Olga Bay for deer hunting. Apparently, purse seiners from the City of Kodiak are chartered after the fishing season for this purpose, creating a concern about possible overhunting in Olga Bay. A joint DFG/FWS study to explore this issue further could indicate if a problem is developing, and identify solutions, if needed.

Raptors

The regulated capture of raptors on the refuge is an issue which we request be addressed in the PUMP. The FWS is currently prohibiting falconers from taking raptors from refuges. The activity is closely controlled by federal and state permits; i.e., only those with permits are allowed to take raptors. The agencies do not allow the capture of raptors to occur to the detriment of wild populations. We believe the Kodiak refuge (and other refuges) should be opened to a carefully monitored capture program consistent with the permit process.

MANAGEMENT OF STATE LAND WITHIN THE REFUGE

Shorelands, Tidelands, Submerged Lands, and Watercolumns

The State looks forward to reviewing the public responses to the plan and working to modify the draft PUMP to address public concerns related to State-owned shorelands, tidelands, submerged lands, and watercolumns. The State is committed to working with the FWS after the plan is completed to ensure provisions are effectively implemented in a manner consistent with Alaska Statutes.

Shorelands, tidelands, submerged lands, and watercolumns within the refuge are State-owned. To reflect this, the State recommends that FWS insert a section on page 5 of the PUMP similar to the statement in the Togiak PUMP, as shown in Appendix I.

Framework for Managing State and Federal Lands

The PUMP should also include a discussion about ANILCA, the Wilderness Act, the Alaska Submerged Lands Act, the Kodiak CCP, and the Alaska State Constitution. The discussion should be similar to the one in the Togiak PUMP about existing policy and legislation for managing federal and state land and waters within the refuge, as follows:

EXISTING POLICY AND LEGISLATION FOR MANAGING FEDERAL AND STATE LAND AND WATERS WITHIN THE REFUGE

There are numerous laws, regulations, and policies already in place that set the framework for management of federal and state lands and waters within the refuge. The State and Service have policies for the lands that they manage. What applies to federal lands does not necessarily apply to state land and vice versa.

Some of the more significant laws, regulations, and policies that affect management of federal lands and waters in the refuge are:

Alaska State Constitution: Shorelands, tidelands, submerged lands and watercolumns are owned by the state. Section 14 in Title VIII of the Alaska State Constitution says: "Free access to the navigable or public waters of the state . . . shall not be denied any citizen of the United States or resident of the state, except that the legislature may by general law regulate and limit such access for other beneficial use or public purposes.

Management of State Lands

The State also requests that the PUMP include a section about management of State shorelands, tidelands, submerged lands and watercolumns. This section could be located in Chapter 7 (Common Management Directions) or in an Appendix to the PUMP. See Appendix II of this letter for language to be included.

Definitions

The management provisions for State land included in Appendix II contain terminology that needs to be defined to achieve a complete understanding of management intent. These terms address State land only, and should accompany the above referenced State management provisions. The glossary should include the following definitions:

BOAT STORAGE. Storing any type of boat or water-related craft in the same place for longer than 14 consecutive days.

FLOATING FACILITY. Includes floathomes, floatcamps, floating lodges, floating caretaker facilities (including mariculture), floating recreational facilities, and other floating residential or commercial facilities located on state shorelands, tidelands, or submerged lands.

NAVIGABLE. Waterbodies that are capable of transporting people or goods. The land beneath them is owned by the state. These waterbodies extend to the line of the ordinary high water (usually the vegetation line). The adjacent uplands may be in private ownership and not available for use without permission.

ORDINARY HIGH WATER MARK. The mark along the bank or shore up to which the presence and action of the nontidal water are so common and usual, and so long continued in all ordinary years, as to leave a natural line impressed on the bank or shore and indicated by erosion, shelving, changes in soil characteristics, destruction of terrestrial vegetation, or other distinctive physical characteristics [from 11 AAC 53.900(23)].

PERMANENT FACILITIES. Permanent facilities are buildings or tents that do not need to be removed and the site restored to its natural state after each season. Permanent facilities on state land may be authorized by the Department of Natural Resource by lease. Examples of permanent facilities are log or solid wall structures or frame tents.

PUBLIC USE SITE. Any site identified that is important for public access (including important float and wheeled plane landing areas), camping, hunting, fishing, or other recreation.

SHORELANDS. Land belonging to the state which is covered by nontidal water that is navigable under the laws of the United States up to the ordinary high water mark as modified by accretion, erosion, or reliction [from AS 38.05.965].

SUBMERGED LAND. Land covered by tidal water between the line of mean low water and seaward to a distance of three geographical miles [from AS 38.05.965].

TEMPORARY FACILITY. Temporary facilities on State land are defined as manmade buildings or tents that must be removed and the site restored to its natural state at the end of the term of use for which the activity was authorized. Temporary facilities on state land may be authorized by DNR by permits. If authorized permits are issued for the term of use, not to exceed one year. Examples of a temporary facility are heliports or frame, dome, or pup tents.

TIDELAND. Land that is periodically covered by tidal water between the elevation of mean high and mean low tides [from AS 38.05.965].

Definitions Related to Guides and Outfitters

Although historical data have been correctly categorized for "big game guides" and "outfitters", a May 1989 State law fused these terms into a single category "guide-outfitter". Any reference to big game guides or outfitters (e.g. Table 5 on page 31) after that date should refer to big game guide-outfitters. The "interim outfitters" are being phased out in 1991. These changes and usage of terms needs to be explained and consistently used where discussing present and future situations. The following definitions are consistent with State law:

BIG GAME GUIDE. A big game guide-outfitter means a person licensed by the State of Alaska to conduct guide-outfitted hunts and services in Game Management Units 17 and 18 within the Kodiak Refuge.

OUTFITTER. An outfitter means a State of Alaska licensed interim big game outfitter authorized to conduct outfitting services. All interim outfitter licenses will terminate by mid-1991.

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(Note: FWS may wish to eliminate the definition of outfitters because the category of an interim outfitter license will sunset soon.)

While we prefer that the actual terms in state law be used, we recognize that the terms "guides" and "outfitters" may already be established in FWS regulations, so we are more concerned that the definitions be correct.

We also request a more thorough presentation and discussion of conclusions be included in the text and table under proposed alternatives regarding big game guide-outfitting. Specifically, the text should explain that holding operator numbers constant would be influenced by varying the number of clients. Currently, this variable is not acknowledged in the text or the summary table of alternatives.

REMAINING COMMENTS ON DRAFT KODIAK PUMP

Compared to the recently-released Togiak PUMP, the State appreciates that the Kodiak PUMP provides a more comprehensive discussion of most of the refuge's public uses. However, the Kodiak PUMP would benefit from substantial editing to reduce redundancy; e.g., each of the first nine appendices repeats virtually identical background information and duplicates information provided in the main part of the document.

ANILCA Section 810 Evaluation

The Kodiak Section 810 evaluation appears to under-represent the level of refuge use for subsistence purposes, compared to discussions of subsistence uses in the CCP (pp. 131-142). Figures 35 and 36 in the CCP, for example, reveal substantial use of the refuge for salmon fishing and deer hunting. We do not dispute the specific findings of this 810 evaluation, but believe the characterization of subsistence uses in the PUMP should be consistent with information in the CCP unless new data are available. We also suggest that the 810 Evaluation consider changes in subsistence use patterns consequent to the Exxon Valdez oil spill, if any have occurred.

Alaska Coastal Management Program

The plan should include a section that describes the provisions of the federal Coastal Zone Management Act and the federally approved Alaska Coastal Management Program, which requires the following:

- o activities on State land in the coastal zone; activities on private land in the coastal zone which require State permits; and federally licensed or permitted activities which affect the coastal zone; must all be conducted in a manner consistent with the State Coastal Management Program;
- o federally supported or conducted activities which directly affect the coastal zone must be consistent to the maximum extent practicable with the State Coastal Management Program.

Purposes of the Refuge

Many references to the purposes of the refuge in the draft PUMP may mislead the reader into concluding that ANILCA provides only "four" purposes or only "major" purposes. In fact, ANILCA states "The purposes for which the Kodiak National Wildlife Refuge is established and shall be managed include". (emphasis added) To provide consistent references, the following changes are requested.

Page 2, paragraph 3; page 14 line 1 in last paragraph. Delete "four". The ANILCA does not reiterate all purposes of each refuge but states that the purposes "include" those listed.

Page 5, paragraph 2. Delete "following major". Insert "shall include" before the colon. The resulting sentence more closely parallels the ANILCA language.

Pages 64, 81, 96, 115, 132, 148, 168, 183, and 198. Revise the last line in each last paragraph to read "ANILCA states the purposes of Kodiak Refuge shall include". This more accurately parallels the ANILCA language. (In other words, replace "lists" with "states" as done on pages 132, 148, and 813; delete "major"; and add "include" to the end.)

Page 93, paragraph 3; page 129, paragraph 4, page 145, paragraph 2; page 164, paragraph 1; page 180, paragraph 3; page 195, paragraph 3; page 212, paragraph 1. Delete "four primary".

Appendices

The legal mandate section of Appendices A through J should include a discussion about state land. Rather than repeat information that was included in earlier sections of the plan, DNR recommends the following be added to each appendix:

See Lands and Waters Affected by this Plan (Chapter 2),
Policy Framework for Managing State and Federal Lands

(Chapter 2), and Management of State Shorelands and Tidelands (Chapter 7) for information about legal mandates and management of state shorelands, tidelands, submerged lands and watercolumns.

Page-Specific Technical Comments

Page 6. Statistical tests done by Earl Becker, DFG Biometrician, confirmed that a significant overestimate of hunter numbers and deer harvest was made in the analysis of the 1987-1988 deer hunter questionnaire. The magnitude of the overestimate, however, could not be quantified. Roger Smith, Area Wildlife Biologist at Kodiak, explained this problem in his December 1, 1988, report "Preliminary Report on the Deer Hunter Survey for Game Management Unit 8, 1987-1988". Nevertheless, the inflated estimates of 13,800 deer and 5,800 hunters were cited throughout the PUMP. DFG's best estimate is that actual harvest for 1987-1988 was 10,000-10,500 deer with 4,000-4,500 hunters afield. Contacts with local air taxis and hunters in the 1988-1989 and 1989-1990 seasons indicate that hunting effort and harvest has stabilized or possibly declined since the 1987-1988 season because of general decline in the deer population. That decline is due to poor overwinter survival. Table 4 (page 11) indicates a decline in hunters using outfitters on the refuge in 1988.

Page 7, Table 1 would more accurately reflect visitor use on the refuge by deleting Visitor Center data. Visitation rates at the Visitor Center (located in the City of Kodiak) have no relationship to visitation rates, and thus human use impacts, on the refuge itself. Also, we suggest that the final PUMP better describe the method for determining the number of visits.

Pages 8 and 12-14. The background information on waterfowl hunting should be improved by including specific data from the state waterfowl hunter survey (enclosed). We also request that the PUMP include the following statement: "Kodiak accounts for a large share (20-40%) of the state's sea duck harvest and has a later season to accommodate sea duck hunting by locals and visitors."

Page 10, paragraph 2. Although the Alaska Supreme Court eliminated the former system of exclusive guide areas, the State's regulations for Kodiak hunts have remained in effect. These regulations restrict hunting by requiring drawing permits for mountain goat, elk, and brown bear. Thus, the loss of the former guiding areas did not open Kodiak Refuge to unregulated harvest, as implied. We therefore suggest deletion of the third sentence in this paragraph.

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Page 11, paragraph 1. Draft legislation was submitted January 25, 1990.

Page 11, Tables 3 and 4. It appears that the number of permit applications for big game guide-outfitters in these tables may include transporters. We request these categories be distinguished because inclusion of transporters makes a significant difference in the totals presented.

Page 15, paragraph 2 is followed by objectives, of which the third states: "To provide opportunities for fish and wildlife orientated recreation emphasizing short-term, low-density public use." This objective is consistent with the existing situation throughout most, but not all, of the refuge and most, but not all, of the year. Consistent with our previous comments, we request the FWS reassess intent to manage the entire refuge for "low-density" recreation and correspondingly qualify, or define the term "low-density".

Page 15 paragraph 2. The fourth objective, second sentence, should be revised to move accurately reflect ANILCA mandates by deleting "and non-motorized". Until research studies have been cooperatively conducted with the State and public to assess traditional motorized access, the FWS should avoid arbitrarily discounting access means which are clearly protected by ANILCA. If such studies conclude that motorized access has not been traditional (pre-ANILCA) or has been traditional in very limited areas, the stated objective is still applicable with the wording change.

Page 21, continued paragraph. The last sentence should be deleted and replaced by the ANILCA Section 1303 language: "Where designated for public use by the unit or area manager, such [new] cabins may be used by the general public." Consistent with previous comments, we continue to interpret ANILCA to allow cabins which are permitted for commercial purposes to also be permitted for use by the public for traditional and customary uses. These uses include hunting, provided that the cabin is available for general public use rather than for private recreational use by the cabin owner.

Page 45, paragraph 6. Compared to Alternative A, this alternative would have a moderate to major localized impact on the bear population.

Page 52, paragraph 5. Add "adverse" in the statement that this alternative would have no impact on bear.

Page 54, Figure 4. Under Alternative B, Issue 6a, we suggest changing the statement describing impacts to correspond with statement under Issue 6b.

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Pages 56-57, Figure 5. In Figure 4, each statement of impacts refers specifically to the bear population and/or habitat. Figure 5 summarizes socioeconomic/recreational consequences of each alternative; however, it is not clear what is being "increased" and "decreased" or which human "populations" will experience the increases and decreases. Often an action benefits one user group at the expense of another. Each of the statements should be clarified, if possible, by listing benefits and adverse impacts to each user group separately.

Page 95, "Rationale". This section inappropriately bases the need for a pack animal prohibition on consideration of "unrestricted pack animal use for recreational and commercial purposes". In past discussions with the FWS and public, we are unaware of any support for unrestricted pack animal use. In all cases, the support has been for limited, permitted use.

Page 153, paragraph 1. Add the following: "The law redefined big game guides and outfitters by combining them into the single category 'guide-outfitters'. It also required those providing outfitter services to become guide-outfitters, although 'interim outfitters' may be authorized to operate until mid-1991."

Thank you for the opportunity to comment on this draft plan. We look forward to review of the final PUMP following public comment and revision. If we can be of assistance in clarifying any of these comments, please do not hesitate to call this office.

Sincerely,
Robert L. Grogan
Director


by: Sally Gibert
State CSU Coordinator

cc: George Constantino, FWS
Commissioner Don Collinsworth, DFG
Commissioner Lennie Gorsuch, DNR
Commissioner Mark Hickey, DOT/PF
Commissioner Dennis Kelso, DEC
Denby Lloyd, Governor's Office

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May 1, 1990

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- [1239] Mr. Rob Walkinshaw, Department of Natural Resources, Anchorage
- [1240] Mr. Dan Wilkerson, Department of Environmental Conservation, Anchorage

APPENDIX I
Proposed insert from the State of Alaska
for page 5 of the Draft Kodiak PUMP

LANDS AND WATERS AFFECTED BY THIS PLAN

Landownership patterns and management authorities within the refuge boundary are complicated. Outlined below are the categories of land and water in the refuge and the agencies or groups responsible for management of each category.

Refuge Uplands and Waterways

The Service manages federal land within the refuge. In most cases, this includes the uplands and the beds beneath non-navigable waters both within and outside the designated wilderness area.

Shorelands, Tidelands, Submerged Lands, and Watercolumns

The State of Alaska owns the lands under many of the rivers in the refuge, all watercolumns, and all tidal areas adjacent to the refuge. The Submerged Lands Act of 1953, the Alaska Statehood Act of 1958, and the Alaska State Constitution establish state ownership of shorelands (the beds of navigable rivers), tidelands (lands subject to tidal influence), and submerged lands (lands seaward to 3 miles from shore). Shorelands, tidelands, and submerged lands adjacent to or within ANCSA lands are also in state ownership and subject to state management.

The courts have defined navigable waters as those used or susceptible to use for travel, trade, and commerce at the time of statehood. In the absence of more specific guidance, there are questions about the ownership of many small waterbodies in Alaska.

The watercolumn is the actual water that is in a lake or river. State ownership of the watercolumn is established in the acts identified above and the State Constitution. The service also may have some authority to manage watercolumns within the refuge.

The service and the state have agreed to work cooperatively to ensure that existing and future activities occurring on these lands and waters are compatible with the purposes for which the refuge was established, and the purposes for which the state was given ownership of shorelands, tidelands, submerged lands, and watercolumns.

APPENDIX II

Management Intent for State-Owned Shorelands and Tidelands

Management of State-owned shorelands and tidelands will be directed toward maintaining free access and ensuring that access is not denied to the navigable or public waters of the state for any citizen of the United States or resident of the state (Section 14 of the Alaska State Constitution).

Short Term Uses on State Shorelands or Tidelands (uses that take place at one site on State shorelands or tidelands for 14 consecutive days or less)

Short-term uses are allowed. Permits are not required for short-term uses. Camping, hiking and fishing are examples of short-term uses.

There are no established limits on the level of short-term use allowed on state shorelands or tidelands.

Long-term Uses on State Shorelands or Tidelands (uses that take place at one site on State shorelands or tidelands for longer than 14 consecutive days).

The Department of Natural Resources (DNR) currently issues permits and leases for permanent facilities, temporary facilities, floating facilities, boat storage, and other uses that occur at one site on State land for longer than 14 consecutive days. Long-term uses on State shorelands or tidelands require a DNR permit or lease.

Permanent and temporary facilities on state shorelands or tidelands within or adjacent to the refuge are prohibited. Shorelands and tidelands flood periodically or are subject to tidal influence. Authorizing facilities in places that are likely to flood can jeopardize public safety and environmental protection. Additionally, the State's management intent for shorelands and tidelands is to protect the opportunity for all users to use these areas and to protect the public values of these areas.

Floating facilities and boat storage located at one site on state land for more than 14 consecutive days may be allowed in this unit on a case-by-case basis.

Public Use Sites on Shorelands and Tidelands

Public use sites are any sites on state shorelands or tidelands identified that are important for public access (including important float and wheeled plane landing areas), camping, hunting, fishing, or other recreation.

The management intent for these sites is to protect the opportunity for users to use the sites, and to protect the public values of the sites.

Short-term uses (uses that take place on state land for 14 consecutive days or less) are allowed at public use sites.

The following long-term uses (uses that occur at one site on State land for more than 14 consecutive days) are prohibited at public use sites: permanent facilities, temporary facilities, floating facilities, and boat storage.

The public use sites identified in the refuge are: (list sites).

Coordination with Adjacent Upland Landowner

Application for shoreland and tideland uses that require use of private uplands will not be considered by the State until there is a written agreement between the applicant and the upland owner(s) approving the necessary use. The term of the lease or permit should not be longer than the term of agreement between the applicant and the upland owner. If the applicant has not applied for use of the adjacent uplands, the application must show how all necessary associated uses will be accommodated on the shorelands or tidelands.

Defining the boundary of state-owned shorelands and tidelands is often difficult and may require technical expertise. If DNR issues a permit, DNR will require applicants to use areas that will reduce the likelihood of possible land ownership disagreements with upland owners (such as unvegetated gravel areas).

Attachment 3

STATE OF ALASKA

DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

P.O. BOX 3-2000
JUNEAU, ALASKA 99803-2000
PHONE: (907) 488-4100

June 19, 1987

Mr. Walter O. Stieglitz
Regional Director
U.S. Fish and Wildlife Service
1011 E. Tudor Road
Anchorage, Alaska 99501

Dear Mr. Stieglitz:

The Department of Fish and Game (DFG) has reviewed Appendix N of the Comprehensive Conservation Plan/Environmental Impact Statement/Wilderness Review (CCP) for the Kodiak National Wildlife Refuge. We understand that this appendix, entitled Effect of Commercial Fishing Facilities and Related Activities on Brown Bear, Kodiak National Wildlife Refuge, is the basis for the U.S. Fish and Wildlife Service (FWS) proposal specified in the May 11 federal register, to "not allow new permits, cabins, and campsites incident to commercial fishing rights." At this time, we would like to provide our written comments regarding this proposed policy and the associated background information (Appendix N) upon which it was based. The attachment to this letter explains our concerns in more detail.

In the Alaska National Interest Lands Conservation Act (ANILCA), section 304(d) specifies that the exercise of valid commercial fishing rights or privileges shall be permitted to the extent that these activities are not inconsistent with the purposes of the National Wildlife Refuge System unit, and do not represent a significant expansion of commercial fishing activities within such unit beyond the 1979 level. It is our understanding that background information on this issue was included in the final Kodiak CCP in response to public comments received during review of the draft CCP. The public review draft did not contain this background information but did include the proposed policy to prohibit additional shore-based support facilities for commercial fishing. The initial appearance of this background information (as Appendix N) in the final plan is problematic because we recognize the need for a published evaluation of the Section 304(d) issue, but we find serious technical flaws in the data presentation, analysis, and the resulting policy recommendations.

Mr. Walter O. Stieglitz

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Specifically, we question the data that are presented regarding non-sport losses of brown bear, and the manner in which these data have been used to support the proposed restriction on additional commercial fishing support facilities. The most current and detailed data on bear losses (gathered cooperatively by the FWS and this department) do not show a significant loss of bears that can be specifically attributed to land-based support facilities for commercial fishing, yet that is the conclusion stated in Appendix N. This conclusion is then used as the primary basis in the final Kodiak plan for the proposed policy to prohibit additional facilities for commercial fishing, as well as a proposed policy to prohibit additional public use cabins.

The data used to support these proposals include a summary showing how the size of some individual facilities has increased. We do not believe this is a valid indicator of an increase in overall commercial fishing activities. Although FWS acknowledges in Appendix N that actual information about human use should be utilized, virtually no data of this nature are presented that relate to the issue of evaluating expansion of commercial fishing activities as mentioned in ANILCA. The department has previously asked to be closely involved in any evaluations of whether significant expansion of these activities has occurred on refuges, and we reiterate the need to cooperatively develop these analyses.

Regarding the proposed policy itself, we are concerned that FWS recognize the possibility that transfer of existing commercial permits may result in the need for additional fishing sites (e.g., where a family currently fishes several permits from one site and a permit is transferred to a new fisherman). This possibility should be further addressed in the final policy. Additional comments on the proposed policy will be forthcoming in the state's letter commenting on the Kodiak CCP.

We believe that it is imperative that FWS take swift action to resolve the concerns we have raised at this time. First, we request that FWS withdraw the information presented in Appendix N, correct the necessary data and analyses, and release a revision as part of the Kodiak CCP Record of Decision. Second, we ask that FWS withhold the implementation of the proposed policy to not allow new permits, cabins, and campsites incident to commercial fishing rights until Appendix N has been revised, as noted above. The revision should include a cooperative determination of whether the expansion of commercial fishing activities above 1979 levels on the Kodiak Refuge is in fact significant.

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Third, the FWS should develop a new proposed policy that is substantiated by the revised Appendix N; this proposed policy should then be specified in the Record of Decision.

We appreciate the opportunity to provide comments on this aspect of the final Kodiak CCP. I would gladly make departmental staff available to provide additional assistance or information to expedite the requested revisions. If you have questions about this letter, or if there are other ways in which my staff or I can be of assistance, please call me.

Sincerely,


Don W. Collinsworth
Commissioner

Enclosure

Enclosure

Following are ADF&G's technical comments regarding "Effect of Commercial Fishing Facilities and Related Activities on Brown Bear, Kodiak National Wildlife Refuge" (Appendix N of the Kodiak National Wildlife Refuge Comprehensive Conservation Plan/Environmental Impact Statement/Wilderness Review).

1. The FWS has used three criteria to evaluate whether or not there has been a "significant expansion" of commercial fishing activity on the Kodiak NWR: 1) the number of onshore commercial fishing sites, 2) the number and type of onshore facilities, and 3) the human use associated with onshore commercial fishing sites. However, Section 304(d) of ANILCA states that it is the expansion of "commercial fishing activity" that is to be evaluated. Thus we question the appropriateness of applying data primarily on numbers of sites and size of facilities as a measure of activity. Of the three criteria, we consider that human use associated with sites and facilities is the most relevant measure of fishing activity, yet virtually no data on human use are presented.
2. Data presented in Appendix N indicate that a mortality rate of no more than one bear per year due to defense of life and property can be reasonably attributed to the increase of commercial fishing activities from 1979 to 1983. This mortality rate constitutes less than one percent of the annual sport harvest of bear on Kodiak. We do not consider this mortality rate to be significant to the bear population on Kodiak.
3. Page 426, paragraph 1: The difficulty of monitoring trends in bear populations is not the reason populations outside Alaska "have been extirpated or reduced to remnant(s)." The decline in bear populations was recognized early on but other, competing uses of bear habitat, especially livestock grazing, have historically had a stronger constituency than bear habitat advocates. The species is still not classified as endangered even though only about 900 remain in the continental United States; these are located in small, non-contiguous populations primarily in Glacier National Park. Certainly the FWS should be concerned about deterioration in "quality or quantity of habitat" and take steps to regulate or restrict those land uses and human activities with significant potential to adversely affect bear habitat or populations. On Kodiak, the hunting of either deer or bear and the use of cabins can be monitored and regulated as necessary to prevent deterioration of bear habitat or populations.

4. Page 429, paragraph 2: The authors appear to have misinterpreted the data from Miller and Chihuly (1986). These data did not indicate that defense of life and property (DLP) kills were most common "near" cabins and dwellings, but instead reflected the classification of people's activity when an incident occurred ("in home or dwelling"). Therefore, the last sentence in this paragraph should be revised to read, "According to these data, at least thirty-three percent of the non-sport kills occurred near cabins and dwellings. An additional thirty-one percent occurred when people were hunting." We strongly recommend the use of data from a draft report by ADF&G and FWS staff (Smith, Barnes, and Van Daele) which provides more area-specific information on Kodiak DLP bears than Miller and Chihuly (1986).
5. Page 429, last paragraph: We request revision of this section to indicate that it is unclear what factors may be limiting brown bear populations on Kodiak or whether they are limited at this time. Hunting and high bear population density as well as food supplies may limit bear populations. Certainly food supply affects production and survival of young when food is limiting. In habitats where bear populations are densest (Kodiak, Alaska Peninsula, Admiralty Island), recruitment rates appear to be lower than in Miller's study area in Unit 13 where food is less abundant and bears are smaller. High bear population density may depress reproductive rates by increasing the dependency period of offspring and, perhaps, age at first reproduction. It seems more appropriate to indicate that brown bear populations in Kodiak may be limited by several factors, including density, hunting, food supply, and amount of suitable habitat.
6. Page 430, paragraph 2: Miller and Chihuly (1986) concluded that females with young appeared to be less prevalent than expected in the statewide non-sport data. Appendix N cited the opposite conclusion, and needs to be corrected accordingly. Females with newborn cubs may have lower probabilities of encountering humans because of avoidance reactions, geographic separation from areas of human activity, and smaller home ranges. DLP kills tend to be most selective of young subadult males, probably because these animals are dispersing and hungry. Miller and Chihuly concluded that age structure of Kodiak male bears was not different in sport and non-sport harvests; compared to sport harvests, non-sport kills included more older females and fewer younger ones. We request revision of

7. Page 430, last paragraph: An increasing trend in non-sport kills is not, in itself, a cause for concern about the population. It is clear from Table 3 that these kills are a very small portion of overall bear deaths. From a bear population standpoint, therefore, it appears that the concern over these kills is overstated. If the population was threatened because of bear losses to hunting and DLP kills, fewer permits could be issued and DLP reporting could be more effectively enforced to better quantify and assess these losses. We believe it is unreasonable to target non-sport kills associated with commercial fishing activities, because available information indicates such mortality over the past 12 years constitutes only three percent of all reported DLP losses.