

# STATE OF ALASKA

## OFFICE OF THE GOVERNOR

DIVISION OF GOVERNMENTAL COORDINATION

WALTER J. HICKEL, GOVERNOR

STATE CSU COORDINATOR  
3601 'C' Street, Suite 37  
Anchorage, AK 99503

March 5, 1991

Mr. Steve Breaser  
Refuge Manager  
Tetlin National Wildlife Refuge  
P.O. Box 155  
Tok, Alaska 99780

Dear Mr. Breaser:

The State of Alaska has reviewed the January Internal Review Draft of the Tetlin National Wildlife Refuge Public Use Management Plan (PUMP). The State appreciates the opportunity to provide input at this stage in the planning process. This letter represents the consolidated comments and concerns of state resource agencies.

The State generally concurs with the environmental education focus of the plan and the proposals to increase public use opportunities for the refuge. However we have some concerns regarding other aspects of the plan. These concerns include:

- recognition and inclusion of State land and water management is lacking;
- the full range of public uses have not been addressed;
- access restrictions are not adequately justified or are inappropriate; and
- the ANILCA Section 810 analysis is insufficient to assess subsistence impacts.

### Management of State-owned Shorelands and Watercolumns

The State and the Fish and Wildlife Service (FWS) have worked on similar issues to those raised in the Tetlin PUMP during the Togiak PUMP planning process. FWS needs to incorporate the knowledge gained on Togiak into the Tetlin planning effort, rather than compelling the State to reiterate the same comments each time a new planning document is released.

The State's concerns relating to management of state-owned shorelands and waters within the refuge are summarized in past state comments on refuge Comprehensive Conservation Plans and PUMPS, especially Togiak. Also, the Department of Natural

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Resources (DNR), Division of Land and Water Management, Director's Policy File 91-03 (see attached) which outlines DNR's Policy on managing shorelands within the refuge was sent to refuge staff several months ago for inclusion in the PUMP. The refuge was asked to comment on the policy and suggest changes so that state management could be coordinated with FWS management, and be included in the PUMP.

The PUMP needs a separate chapter, as has been done in the Togiak PUMP, that addresses management of state-owned shorelands and water. The chapter should include the same language that is in the Director's Policy File DPF 91-03.

The PUMP also needs a discussion about the lands and waters affected by the PUMP and should have a section that discusses the Alaska Submerged Lands Act and the Alaska State Constitution. The discussion should be similar to the one in the Togiak PUMP. DNR recommends the following language.

#### LAND AND WATER AFFECTED BY THIS PLAN

Land ownership patterns and management authorities within the refuge boundary are complicated. Outlined below are the categories of land and water in the refuge and the agency or group responsible for management of each category.

#### Shorelands and Watercolumns

The State of Alaska owns the lands under many of the rivers in the refuge and all watercolumns. 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). Shorelands adjacent to or within the Alaska Native Claims Settlement Act 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.

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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 and watercolumns.

#### EXISTING POLICY AND LEGISLATION FOR MANAGING FEDERAL AND STATE-OWNED LAND AND WATER WITHIN THE REFUGE.

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

The Alaska State Constitution for example, acknowledges that, shorelands 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-owned Uplands

In addition to owning shorelands and watercolumns, the state owns uplands within the boundaries of the refuge. The discussion about land ownership patterns on page 2 of the PUMP should be updated. A portion of the refuge now portrayed as state selected (Township 12 North, Range 21 East, C.R.M) has been patented to the state. Only Section 22 within this township remains state selected.

The plan should say that all state owned lands are subject to land management by the state, and include a reference to DNR's Tanana Basin Area Plan. The Tanana Basin Area Plan tells how state uplands within the refuge will be managed.

#### Plan Title, Scope and Relationship to Other Plans

As stated on page 21 of the plan, there are no public use issues in the refuge which currently require regulation. It is also stated on this page that all ongoing and planned activities in the refuge's public use program are extensions of the common management decisions in the Comprehensive Conservation Plan (CCP) and can be implemented administratively. Therefore the plan as written is

more narrow in scope than the title indicates. The major thrust of the plan is to promote an environmental education program which concerns only one of the five legislative purposes of the refuge.

The CCP for the Tetlin Refuge on page 138 states that "following adoption of the CCP, more detailed management plans will be prepared" and "these will specify actions to take in implementing the general direction outlined in the CCP." Therefore, we request the plan be redrafted to include more information on the full range of public uses and their management. Even if the public use management program could be administratively implemented, the public will be better served if the current management program (policies, regulations, permit stipulations, etc.) is consolidated, described and justified. For example, the PUMP should include specific information on the management of habitat improvement, fire suppression, motorized and non-motorized access for both visitors and inholders, mining, and temporary facilities used for hunting, trapping, fishing and land-based activities in support of commercial fishing.

We request that the plan's purpose, contents and relationships to other refuge step-down plans be explained at the beginning of the document. We have found that a concise explanation of what the plan will and will not address is very helpful to the public and other plan reviewers.

#### Environmental Education

Although we strongly feel that the PUMP needs to address the full spectrum of public use activities and issues, we support existing and proposed environmental education activities by the FWS. This program needs to stress basic conservation requirements of fish and wildlife species and be tailored to the needs of fish and wildlife users, including consumptive users. The value of a viable enforcement program for minimizing illegal harvests should be an important component of this program.

#### Fish and Wildlife Management

The State and FWS have worked extensively on explaining the differences in agency jurisdiction for managing fish and wildlife in the national wildlife refuges. The State believes the public interest is best served when agency responsibilities for managing and conserving fish and wildlife are described in the PUMP. This information was provided on page 2 of a December 19, 1990 letter to George Constantino, FWS, regarding State comments on the Togiak Refuge PUMP (copy attached).

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Refuge Access Restrictions

We feel that it is misleading to place the discussion on access under "Recreational Access" on page 15. ANILCA Section 1110(a) makes no distinction between access among different uses or users and also applies to commercial and subsistence activities. In order to further comply with the language in ANILCA, we recommend the second sentence be changed to read, "The use of snowmachines, motorboats, .....for traditional activities and for travel to and from villages and homesites."

We also note that documentation of resource damage is a required justification for prohibiting or restricting traditional access. Therefore it is vitally important that baseline information on public uses and the impacts of these uses on refuge resources is documented. A description of existing information and/or plans for acquiring this information should be addressed in the PUMP.

ANILCA and federal regulations (50 CFR) provide for the use of off-road vehicles (ORV's) for traditional activities on designated areas, routes, or trails. Prohibiting the use of ORVs in the refuge is not adequately justified and may be inconsistent with the provisions and/or intent of ANILCA. This prohibition is justified on page 15 on the basis that "due to the nature of the lands within the Tetlin Refuge and their susceptibility to damage, no such routes or areas exist." FWS has a commitment to study and report on pre-1980 ORV use and designate, where appropriate, traditional or other statutorily protected ORV access on specified areas, routes or trails. We are unaware of such studies. We note that there is no discussion in the Refuge's CCP regarding the decision to prohibit ORVs. We also recommend that FWS give consideration to the requests of local residents for designation of all-terrain vehicle trails to facilitate traditional access between the Alaska Highway and Hidden Lake and along the Cheslina River.

Before prohibiting air-boats and air-cushion vehicles, the FWS must clarify their intent to prohibit this use and show that FWS has the jurisdiction to do so, especially since their use occurs on state waters and the CCP provides no supporting justification for this action. In fact, the CCP on page 121 states that "airboats, considered ORVs by Service policy, are currently used within the congressionally designated refuge boundaries on waters adjacent to private inholdings" and "No information is currently available suggesting the current level of airboat use is detrimental." The FWS has no jurisdiction or proper justification for management actions taken to prohibit their use.

Trail closures proposed under Alternative D are illegal under the

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traditional access provisions of ANILCA unless resource damage can be documented. The discussion of biological and socio-economic consequences associated with this alternative does not indicate that such resource damage is occurring.

#### Documentation of Public Uses

It seems ironic that documentation of commercial guiding for moose and bear is provided, but there is no information on other important recreational and subsistence uses of fish and wildlife, including waterfowl for which the refuge was created. Baseline information on public uses of fish and wildlife is needed to evaluate what impacts such uses are having on refuge resources and the need for taking management actions for conservation purposes. If this information is not available, then the plan should explain how this information can be provided in the future.

#### Effects on Consumptive Use

The preferred Alternative C calls for expansion of the Deadman Lake campground and a boat launching site on the Chisana River in addition to development of a recreational canoe trail in the Scottie-Desper Creek drainage. While these public use and access facilities appear to have merit, the Chapter IX discussion of the biological and socio-economic consequences of these developments is currently inadequate. Discussion regarding the consequences of the recreational canoe trail is totally lacking. We also question the conclusion that the campground and boat launch expansions will result in an insignificant increase in consumptive use. For example, non-local recreational boaters in other areas of the state have been attracted to rivers with improved access regardless of "navigation difficulties". Further analysis will likely determine that the benefits of increased access opportunities, including increased consumptive uses, will outweigh possible impacts; nonetheless, such analysis is essential.

#### Subsistence

When developing the draft plan, the FWS should pay close attention to documenting all consumptive uses of fish and wildlife, especially for areas and species used for subsistence purposes. This information is required by Sections 810 and 811 of ANILCA to ensure that subsistence remains the highest priority consumptive use in the refuge. Once again, we refer you to the Togiak Refuge planning staff who have strived to address these ANILCA requirements. If the PUMP is not going to discuss subsistence and

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other consumptive use patterns in more detail, then it should refer the reader to available sources; without that information, the reader cannot assess how the other proposed public use activities might impact or enhance subsistence uses by local residents. Will "difficult" access really discourage recreational users while public use is being promoted and as boat ramps and foot trails are built or upgraded? To what extent are conflicts already present between local and non-local users? To what extent will the developed facilities increase subsistence opportunities?

The ANILCA Section 810 evaluation on page 49, which concludes that the preferred alternative has no significant impact on subsistence uses, is incomplete and possibly inaccurate without the aforementioned information. We recommend FWS follow its own guidelines regarding compliance with the provisions of ANILCA Section 810.

Since the federal government assumed subsistence management responsibilities on federal public lands on July 1, 1990, the PUMP should discuss changes actually made or being proposed to the regulations and the reasons for these changes. The PUMP should also recognize where no changes have been made to previous state management and/or where none are anticipated.

#### PAGE-SPECIFIC TECHNICAL COMMENTS

Page 3 of unnumbered Introduction. The Biological Consequences discussion under Alternative B claiming "negative biological impacts" appears over-stated when compared to the more comprehensive discussion of overall impacts in Section 9. The area is already influenced by far more significant road-related impacts and some of the developments discussed here would likely have negligible additional impacts.

Page 4 of unnumbered Introduction. The brief reference to habitat loss and increased disturbance to wildlife from the Deadman Lake public use facilities could imply greater impacts than would in fact result. This area has already absorbed highway-related impacts and the proposed changes would likely have negligible additional impacts. Further specificity is needed.

Page 3, Refuge Purposes. The introductory statement listing the purposes of the refuge in the first paragraph should be changed to read, "and shall be managed include:" This uses the exact language in ANILCA and furthermore supports the full range of activities currently occurring on the refuge.

Pages 5&6, History of Refuge Public Use. This section does not

clearly distinguish between the levels of subsistence and recreational use on the refuge. For example, do the 250 waterfowl hunting visits each year include or exclude local residents? What proportion of the reported moose and bear harvests is by local residents? What is the basis for the statement concerning the decline in popularity of whitefish as a target of subsistence fishing efforts? Our whitefish harvest data for samples of Northway households in 1984-85 and 1987-88 suggest that whitefish remain an important component of the wild food base.

Page 5, History of Refuge Public Use. The second paragraph discussing declining wildlife populations should be clarified to indicate that the declines are probably not a result of past state or federal management decisions.

Page 10, History of Commercial Use. It would be more appropriate to amend the last sentence of the second paragraph on this page to read "Finally this act established a Big Game Commercial Services Board which is charged ... prior to January 15, 1991".

Page 16, Roads, Airstrips and Motorized Vehicle Travels. This discussion is incomplete as it merely states that the development of roads, airstrips and motorized vehicle trails is not permitted except subject to Title XI of ANILCA. We recommend that this section be expanded to include a description of existing roads, airstrips and motorized vehicle trails and the extent that FWS will maintain or provide for continued use of these facilities. We also find it curious that the October 1989 Worksheet stated that "primitive airstrips may be designated", but there is no mention of this in the draft PUMP.

Page 16, Commercial Use. We recommend that pertinent refuge regulations, stipulations and policies regarding the management of commercial uses be explained and/or appended to the plan. Similar to the discussion of the management of recreational activities on page 17, commercial uses should also be managed to avoid subsistence use conflicts and adverse impacts to fish and wildlife.

Page 18, Trapping. The attempt to define trapping as a recreational or subsistence activity is contrary to provisions of ANILCA, State and federal regulations. We request that the language on this page and page 9 be changed.

The Department of Fish and Game is aware of conflicts between trappers in the refuge area in recent years. Have these been satisfactorily resolved? We recommend further discussion of how increasing trapping pressure would be cooperatively assessed with the State as there may be a need to take some type of corrective action before a trapping management plan could be developed.



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Page 23, Consumptive Recreation. The first sentence should be changed to read, "The refuge is open to hunting, fishing and trapping in accordance with state and federal regulations.

Page 33, Alternative A. References should be provided that support the estimate of a 25% increase in public use visitation during the next 5 years. The FWS has estimated public use at 35,000 visitor use days in 1989. If possible, we request inclusion of annual public use trends during the last five years and a breakdown of the estimated public use by commercial, recreational and subsistence users.

Page 36, Alternative C (Preferred Alternative). Clarification is requested to explain why the projected increase in public use under Alternative C (20%) is less than that for Alternative A (25%) considering that Alternative C is promoting the expansion of visitor facilities and the environmental education program while Alternative A represents the status quo.


Page 45, Biological Consequences of Alternative C. Since this is the FWS preferred alternative, it would be appropriate to expand on the Environmental Education discussion as was done under the Alternative B discussion of this same topic.

Page 51, Table. Use of the terms "minor" and "moderate" to describe impacts is only helpful when these terms are defined. Otherwise they degenerate into personal value judgements. The information would be more acceptable, however, if the accompanying text discussed these impacts with greater specificity and consistency. For example, the text does not explain the "moderate impacts" associated with nature trails, cabins, or boat access under Alternative B. Furthermore, the text describes the impacts of Alternative B campgrounds as minimal while the table indicates they are moderate. Where possible, it would be more helpful to describe the specific impacts and let the reader be the judge of the relative magnitude of these impacts.

Pages 51 and 53. The titles of the two tables are missing.

Thank you for the opportunity to provide these comments. Please feel free to contact this office if you have any questions.

Sincerely,



Sally Gibert  
State CSU Coordinator

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Mr. Steve Breeser  
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**Attachment**

cc: The Honorable Harold Heinze, Commissioner, DNR  
The Honorable John Sandor, Commissioner, DEC  
The Honorable Frank Turpin, Commissioner, DOT/PF  
The Honorable Carl Rosier, Commissioner, DFG  
George Constantino, FWS

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# STATE OF ALASKA

STEVE COWPER, GOVERNOR

## DEPARTMENT OF NATURAL RESOURCES

DIVISION OF LAND AND WATER MANAGEMENT

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### MEMORANDUM

TO: Distribution

FROM: Gary Gustafson *Gus*  
Director

DATE: October 22, 1990

SUBJECT: Guidelines for Shorelands

*Attachment  
referenced on p. 2*

Attached is a copy of Director's Policy File 91-03 for shorelands adjacent to non-state land. Thank you for your help developing this policy.

Also attached for your information is a copy of a letter to regional supervisors in the National Park Service, Fish and Wildlife Service, Forest Service, and Bureau of Land Management informing them of this policy.

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PHONE: (907) 561-2020

October 23, 1990

Ronald Perry  
Refuge Manager  
Yukon Delta National Wildlife Refuge  
P.O. Box 346  
Bethel, Alaska 99559

Dear Mr. Perry:

Attached for your information is a copy of the Department of Natural Resources' guidelines for state owned shorelands within the boundaries of National Parks, Forests, Wildlife Refuges, and Bureau of Land Management lands in Alaska. The purpose of the guidelines is to provide a uniform set of rules for Alaska shorelands, and to provide DNR adjudicator's with consistent management guidelines. DNR will manage its shorelands within federal conservation system units consistent with these guidelines.

Please circulate the guidelines to appropriate staff. If your agency has changes it would like DNR to make, please let me know. Include appropriate background and justification information, as necessary.

If you have no suggested changes, please include these guidelines as an Appendix or a separate chapter in all planning documents that address land or public use management for units that include shorelands.

Thank you for your help. Please feel free to contact me if you have any questions.

Cordially,

  
Gary Gustafson  
Director

# STATE OF ALASKA

STEVE COWPER, GOVERNOR

## DEPARTMENT OF NATURAL RESOURCES

### DIVISION OF LAND AND WATER MANAGEMENT

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## MEMORANDUM

TO: Director's Policy File 91-03

FROM: Gary Gustafson *Gus*  
Director

DATE: October 22, 1990

SUBJECT: Shorelands Adjacent to Non-State Land

### INTRODUCTION

DNR will manage shorelands adjacent to land not in state ownership (i.e. Federal Conservation System Units and ANCSA Corporation land) consistent with the guidelines in this DPF. The purpose of these guidelines is to provide a uniform set of rules for Alaska shorelands, and to provide DNR adjudicator's with consistent guidelines to follow when considering land use authorizations for shorelands.

### GLOSSARY

This glossary includes definitions of terms used in this document.

**AIRSTRIP DEVELOPMENT.** Construction or maintenance of a landing strip for airplanes that involves levelling the ground or removing or modifying a substantial amount of vegetation.

**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.

**GUIDELINE.** A course of action to be followed by DNR resource managers or required of land users when the manager permits, leases, or otherwise authorizes the use of state land or resources. Guidelines also range in their level of specificity from giving general guidance for decision making or identifying factors that need to be considered, to setting detailed standards for on-the-

ground decisions. Some guidelines state the intent that must be followed and allow flexibility in achieving it.

LAND. All land, including uplands, shorelands, and water, or resources belonging to or acquired by the state.

LEASE. An agreement which gives rise to relationship of landlord and tenant. AS 38.05.070 describes types of leases for state land.

LONG-TERM USE. Use that takes place at one site on state land for longer than 14 consecutive days.

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 or federal ownership and not available for use without permission. Federally determined navigable waterbodies are those administratively determined navigable by the federal Bureau of Land Management (BLM). State determined navigable waterbodies are those determined navigable by the state (usually these are waterbodies BLM has not yet determined navigable, or are waterbodies previously determined navigable, but the state disagreed with BLM criteria).

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 FACILITY. 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 Resources by lease. Examples of permanent facilities are log or solid wall structures or frame tents. Trapping cabins are considered permanent facilities.

PERMIT. A Department of Natural Resources authorization for use of state land that is revocable at will, usually issued for the term of use, and usually not to exceed one year [11 AAC 96]. Note: As of September 1990, the regulation that limits permits to one year is in effect. It is likely that this regulation will be changed to allow five year permits. This document reflects the five year change.

PUBLIC TRUST. A common law doctrine that requires the state to manage shorelands for the benefit of the people so that they can engage in such things as commerce, navigation, fishing, hunting, swimming, and ecological study.

**PUBLIC USE.** Any human use of state-owned land or water, including commercial and noncommercial uses.

**PUBLIC USE SITE.** Sites on state land that are important for public access (including important float and wheeled plane landing areas), camping, hunting, fishing, or other recreation or public use.

**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].

**SHORT-TERM USE.** Generally allowed use that takes place at one site on state land for 14 consecutive days or less. Examples of uses include hiking, backpacking and camping, boating, fishing, and noncommercial or commercial temporary fishing or hunting camps.

**SHOULD.** States intent for a course of action or set of conditions to be achieved. Guidelines modified by the word "should" states intent and allows the manager to use discretion in deciding the specific means for best achieving the intent or whether particular circumstances justify deviation from the intended action or set of conditions.

**TEMPORARY FACILITY.** Temporary facilities are 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 permits. If authorized, permits are issued for the term of use, not to exceed five years. Examples of a temporary facility are heliports or frame, dome, or pup tents. Floating facilities are not considered temporary facilities and are treated separately.

**UPLANDS.** Land above the ordinary high water line.

**WILL.** Requires a course of action or a set of conditions to be achieved. A guideline modified by the word "will" must be followed by land managers or users. If such a guideline is not complied with, a written decision justifying the noncompliance is required.

#### **PUBLIC TRUST DOCTRINE**

Under the Alaska Constitution the state has special duties and management constraints with respect to state-owned land underlying navigable waters. The Alaska Constitution contains principles commonly known as the public trust doctrine. That doctrine requires the state to exercise authority to ensure that the right of the public to use navigable waters for navigation, commerce, recreation, and related purposes is not substantially impaired.



The Alaska Constitution (Article VIII, sections 1, 2, 3, 6, 13, and 14) and Alaska Statutes (38.05.127 and 38.05.128) are the legal basis for applying the public trust doctrine in Alaska. This doctrine guarantees protection of areas for ecological study and the public right to engage in such things as commerce, navigation, fishing, hunting, swimming.

The Constitution provides that "free access to the navigable or public waters of the state, as defined by the legislature, 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 uses or public purposes." Eliminating private upland owners' reasonable access to navigable waters may result in compensation.

Because 99 percent of Alaska was in public ownership at statehood, both federal and state laws providing for the transfer of land to private parties also provide for public access to navigable waters. Implementing the state constitutional guarantee of access to navigable waters under Article VIII, Section 14, AS 38.05.127 requires that the state commissioner of natural resources must "provide for the specific easements or rights-of-way necessary to ensure free access to and along the body of water, unless the commissioner finds that regulating or eliminating access is necessary for other beneficial uses or public purposes."

It has never been held that any lands normally subject to the public trust doctrine in Alaska are exempt from it, including land occupied and developed.

These statutes and concepts are considered in this document. Any management actions will be consistent with the public trust doctrine as defined by the Alaska Constitution, statutes, court decisions, and public involvement.

## GUIDELINES

The following guidelines are specific directives that will be applied to management decisions. DNR will use criteria included in the guidelines when considering permit or lease applications on state shorelands.

### SHORT-TERM USES (GENERALLY ALLOWED USES)

Short-term (generally allowed) uses are uses that take place at one site on state land for 14 consecutive days or less. These uses do not require a permit or lease. The following are examples of short-term (generally allowed) uses: hiking, backpacking and camping, light plane and helicopter landings, use of boats, rafts, canoes, and hunting, fishing, and trapping (in accordance with fish

and game regulations).

#### LONG-TERM USES

Uses that take place at one site on state land for longer than 14 consecutive days require a permit or lease.

#### LENGTH OF PERMITS AND LEASES/TYPE OF FACILITY AUTHORIZED

Leases and permits, if issued, will be for the term of use or minimum length of time required by the applicant to carry out the purposes of the intended use.

Issued permits will not exceed five (5) years. See Glossary for "Permit."

#### SHORELANDS

Permanent facilities and temporary facilities\* will be prohibited on shorelands. Shorelands flood periodically. Authorizing facilities in places that are likely to flood can jeopardize public safety and environmental protection. Additionally, the management intent for shorelands is to protect the opportunity for all users to use these areas and to protect the public values of these areas.

Floating facilities, boat storage, airstrip development, docks, and other long-term uses (uses that take place at one site on state land for longer than 14 consecutive days), such as trails and waterlines, may be allowed if consistent with management intent and applicable guidelines.

Permit or lease applications for these other uses of shorelands will include a description of all necessary associated uses. If permits from other agencies are required (such as Department of Environmental Conservation permits for fuel storage, food service, or waste disposal), DNR will consider issuing a permit or lease contingent upon issuance of these other permits.

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

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\* Camping at one site on state land for longer than 14 consecutive days is considered a temporary facility. See Temporary Facility in the Glossary.

DNR will consult with the upland owner and use its best professional judgment to determine if a proposed use occurs on state-owned shorelands.

The state constitution requires DNR to ensure that the rights of the public to use state lands and waters for navigation, commerce, recreation, and related purposes are protected. DNR will retain the right to issue a permit or lease for uses that are not prohibited over the objection of adjacent landowners. However, DNR will carefully consider comments from private landowners and others when making a decision.

Applications for shoreland uses that require use of private uplands will not be considered 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.

The table below summarizes these guidelines.

Short-term uses

Allowed

Long-term uses

Permanent facilities  
Temporary facilities  
Floating facilities  
Boat storage  
Airstrip development  
Docks  
Other long-term uses

Prohibited  
Prohibited  
May be allowed (case-by-case)  
May be allowed (case-by-case)  
May be allowed (case-by-case)  
May be allowed (case-by-case)  
May be allowed (case-by-case)

PUBLIC USE SITES

Public use sites are sites that are important for public access (including important float and wheeled plane landing areas), camping, hunting, fishing, or other recreation or public use. One of the sources DNR can use to identify public use sites is information received during agency or public review of a permit or lease. Usually, public use sites are sites that are intensively used by the public and are no more than 640 acres in size.

The management intent for public use sites is to protect the opportunity for users to use the sites, and to protect the public values of the sites. The guidelines for public use sites in this section take precedence over guidelines associated with shorelands.

Permanent facilities, temporary facilities\*, floating facilities, and boat storage will be prohibited in public use sites. Airstrip development, docks, and other long-term uses may be allowed on a case-by-case basis if consistent with management intent for the public use site and if there is a demonstrated significant public need.

To address increases in use, DNR may change the number of days that short-term uses (generally permitted uses that take place at one site on state land for 14 consecutive days or less) can occur in public use sites. 11 AAC 96.010 provides for this change by establishing "special use areas."

The table below summarizes the guidelines for public use sites on shorelands:

<u>Short-term uses</u>	Allowed
<u>Long-term uses</u>	
Permanent facilities	Prohibited
Temporary facilities	Prohibited
Floating facilities	Prohibited
Boat storage	Prohibited
Airstrip development	May be allowed (case-by-case)
Docks	May be allowed (case-by-case)
Other long-term uses	May be allowed (case-by-case)

#### AIRSTRIP DEVELOPMENT

Airstrip development may be allowed on shorelands and in a public use site if consistent with management intent and applicable guidelines, and where there is a demonstrated significant public need.

Airstrips developed on public land should be made available for use by the general public.

#### NAVIGATION

Commercial and noncommercial public use will not impede navigation.

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\* Camping at one site on state land for longer than 14 consecutive days is considered a temporary facility. See Temporary Facility in the Glossary.

### PUBLIC ACCESS

Commercial and noncommercial public use activities will not interfere with the ability of all users to use or access state land or public water. DNR will ensure adequate access exists to adjacent land when authorizing use of shorelands.

### SITING CRITERIA

Boat storage, airstrip development, docks, and other long-term uses (uses that take place at one site on state land for longer than 14 consecutive days) will be sited to minimize environmental impacts and evidence of human use.

Applicants should site facilities to impact the least amount of ground consistent with the purpose of the facility.

Floating facilities will be sited to minimize visual evidence of the facility from main river channels and to minimize hydrological alterations and habitat impacts.

Floating facilities will be sited so as not to block narrow waterways or impede the free passage of waterborne traffic.

Scope of the Plan

Attachment to page 4

For clarification, we suggest the following new language be included at the end of the sub-section titled, "The Scope of the Plan" on page 3:

"The management of fish and wildlife in refuges is guided by a Master Memorandum of Understanding (MMOU) signed by the FWS and DFG (appendix \_\_\_\_\_). Under provisions of this document, DFG has primary responsibility for the management of fish and resident wildlife and FWS has responsibility for the management of migratory birds, endangered species and other species mandated by Federal law. The Alaska Boards of Fisheries and Game are responsible for promulgating regulations affecting the take of fish and resident wildlife under state jurisdiction including the allocation of harvests among user groups. Since FWS and DFG have shared responsibility for conserving fish and wildlife, both agencies agree to consult and cooperate with each other in the development of research and management plans, legislation and policies affecting these resources."

We also understand that, despite previous state comments, the plan will remain titled a Public Use Management Plan. We recognize the difficulties of changing the title of a plan mid-stream. However, for future reference, state agencies continue to believe that a public use management plan should more fully address the range of public uses on the refuge, which this plan does not.

Distinctions Between Federal and State Management

The Togiak PUMP contains two separate and distinct sets of guidelines. It includes guidelines for FWS management of federal land, and guidelines for DNR management of state owned shorelands and waters. It is important that this distinction is clear throughout the plan.

The section of the plan that provides an overview of the refuge needs to include background on state owned shorelands and waters. To accomplish this, we suggest inserting the following on page 5, at the end of the Overview section:

"In addition to the laws passed to establish the Togiak National Wildlife Refuge, a set of actions taken prior to the creation of the refuge gave the State of Alaska ownership of the beds of navigable waters (shorelands), tidelands, and submerged lands within the current boundaries of the refuge. State ownership of these lands is an inherent attribute of state sovereignty protected by the United States Constitution. Ownership was vested in the newly formed State of Alaska in 1959. Under the Alaska Constitution, the state also owns and manages all waters in the state regardless of navigability. The water, and beds