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December 30, 1993

Walter Stieglitz
Regional Director
U.S. Fish and Wildlife Service
1011 East Tudor Road
Anchorage, AK 99503

Dear Mr. Stieglitz:

The State of Alaska has reviewed the internal review draft of the Final Public Use Management Plan for the Alaska Peninsula/Becharof National Wildlife Refuge Complex. This letter represents the consolidated comments of the State's resource agencies.

While we always appreciate the opportunity to review internal versions of planning documents, the two-week period offered during the holiday season has resulted in comments that are not as complete or in-depth as desired. Consequently our comments on the final plan will likely cover issues and/or errors in the public arena that might have been avoided given a longer review period.

Furthermore, it appears that issues in our February and June, 1993 letters have not been addressed, e.g. use of motorized equipment (page 21). The motorized equipment policies referenced from the Alaska Policy Manual are not consistent with ANILCA, as we have previously noted. An excerpt from our June 1993 letter on this issue is attached. We request the Service review our 1990 and 1993 submissions to make further appropriate changes prior to publication of the final public use management plan.

USE OF OFF-ROAD VEHICLES (ORVs)

We appreciate that the plan now recognizes that ORV use for subsistence purposes is protected statutorily in the Alaska National Interest Lands Conservation Act (ANILCA) and by regulation. We commend the positive changes to the plan which not only recognize and allow existing ORV use to continue, but also allow their use during traditional use periods and locations. We request that a map documenting the areas of ORV

use be included. We also request that the several affected divisions of the Alaska Department of Fish and Game (DFG) be involved in preparation of the ORV use monitoring plan discussed on page 37. We also reiterate our previous comment that ORV use analyses and guidelines can best be evaluated after studies of traditional (pre-ANILCA) access are completed.

The Service must not overlook the outstanding need to conduct studies to document traditional (pre-ANILCA) access. Relying on one field season's observation and recent discussions with a few local residents is not sufficiently comprehensive. We urge initiation of a cooperative, interagency study of pre-ANILCA ORV uses as soon as possible. A commitment to such a study will help reduce several anticipated public reactions: that the Service is allowing unrestricted ORV use throughout the refuge for subsistence uses, that the Service is discriminating in allowing only some types of protected uses, and that the Service will have a difficult time restricting uses because "adverse effects" are not measurable or defined.

We commend the Service's decision to recognize the need for, and allow use of, ORVs in the vicinity of the Yantarni Bay airstrip. The airstrip, a trail to the beach, and a trail to the "old well site" should be designated for use by ORVs. Such trails provide important access to unvegetated, state-owned shorelands and tidelands and will result in minimal habitat disturbance.

We request that the plan clarify the application of the new ORV policy in relation to existing regulations affecting the refuge; e.g., application of the ORV policy in relation to the restricted access provisions in the Naknek drainage under federal and State hunting regulations. The Federal Subsistence Board has apparently adopted the state's Naknek Controlled Use Area, which prohibits use of all motorized equipment except airplanes, boats and snowmobiles for hunting from August 1 to November 30 (see page 44 of 1993/1994 federal subsistence regulations booklet). The State's controlled use area was previously drafted by the local Fish and Game Advisory Committee, which is composed of local subsistence users, and adopted by the Alaska Board of Game. If the Service intends for the new ORV policy to apply to all refuge lands outside of the Naknek drainage and/or in other time periods within the Naknek drainage, this should be clarified.

The State continues to believe that the following statement is incorrect: "*recreational ORV use is prohibited on the refuges except for the proposed use in the Yantarni Bay airstrip area.*" 43 CFR regulations adopted by the Secretary of Interior for Alaska units clearly recognize the ANILCA provisions which protect traditional (pre-ANILCA) access for traditional (pre-ANILCA, not just subsistence) activities. Please refer to previous correspondence for a more thorough discussion.

ENVIRONMENTAL ASSESSMENT

The internal version of the final public use management plan does not contain an environmental assessment (EA) so there is no way to track how our June 1993 comments on this portion of the document were used. The EA in the draft plan contained numerous factual errors for which we provided substantive comments. Yet we understand that the EA was dropped from the final document because there were no changes made. We urge that a revised EA be printed with the final public review version of this plan and that our comments be reflected. It is inappropriate to retain an inaccurate and outdated EA as the final document. Furthermore, the State should have a written verification of how our comments were addressed.

PURPOSES OF THE REFUGES

The purposes for creating the conservation system units in ANILCA are not exclusive of other purposes of the units. This is correctly reflected under the second paragraph of the EXECUTIVE SUMMARY (page v) but incorrectly referenced in the third paragraph: "*the ANILCA refuge purposes do not include recreation*".

ANILCA Section 101 of TITLE I--PURPOSES, DEFINITIONS, AND MAPS clearly states that recreation is one of the purposes in creation of the units:

In order to preserve for the benefit, use, education, and inspiration of present and future generations certain lands and waters in the State of Alaska that contain nationally significant ... recreational ... values, the units . . . are hereby established It is the intent of Congress in this Act to ... protect and preserve ... [sites, rivers, lands, and wilderness resources] and related recreational opportunities including but not limited to hiking, canoeing, fishing, and sport hunting"

AMENDMENTS TO THE COMPREHENSIVE CONSERVATION PLAN

The EXECUTIVE SUMMARY states that "the plan includes minor amendments of the . . . comprehensive conservation plans." The State has previously asked for amendments to the CCPs to address system-wide issues (e.g., allowed uses in administrative zones such as minimal management) which have been resolved following adoption of the original CCPs. Since the plan incorporates the current amendments sought by the refuge manager, we request that it also address those amendments previously requested by the State. We urge the Service to delay publication of the final public use management plan until this request can be revisited.

SPORT FISHING AND OTHER TRADITIONAL USES

We request the definition of "sport fishing guide" on page xii be expanded to read:

Sport Fishing Guide is a person who assists another person to take fish with the intent of receiving monetary or material payment for services, by accompanying and directing that person personally for the duration, or any portion, of a fishing trip and not solely for the purpose of providing transportation.

Page 25, 1a. Sensitive Wildlife Areas. The brown bear discussion implies that the refuge staff place bear viewing above other legitimate uses of resources within the refuge. The Service needs to carefully monitor its own activities so that actions to enhance one use at the expense of another use are clearly justified. For example, before sport fishing opportunities are restricted, the Service should clearly demonstrate the benefit to the resource and the public.

Page 31, item b. The section describing a five-year monitoring program to determine possible future management actions should acknowledge opportunities for DFG to be involved in the planning and conduct of the program.

By adopting a moratorium on issuance of permits for base camps, and by initiating a five-year study, it is only reasonable to expect the result to be increased demand for such activity, leading to the competitive prospectus process. Since adoption of the prospectus approach is likely, please be aware that the State considers inappropriate any attempt to bypass the State's management of fish and wildlife by granting "points" or benefits to operators who willingly agree to take less than legal bag limit of sport fish species.

We urge the Service to refer to the Master Memorandum of Understanding with DFG prior to considering any limits on sport fishing activities more appropriately regulated by the Alaska Board of Fisheries. Close consultation with local staff and policy-level discussions should reduce possible future disagreements.

TEMPORARY FACILITIES

The plan is inconsistent in its use of the terms and restrictions for "temporary facilities", "camp sites", "temporary base camps", "primitive tent camps", and "minimum impact camping". According to the definition of temporary facility on page 21, it applies to "temporary campsites . . . temporary facilities, and equipment." On page F1, "temporary facility means any structure or other manmade improvement . . ." Does a free standing tent, weather port, etc. qualify as a structure? If so, do the limits proposed on page 32 apply to temporary campsites established by subsistence users, the general public, etc.?

It is not clear who precisely will be required to have a reclamation bond. The State questions the authority for requiring bonding of temporary facilities. Neither the Service's cabin policy nor the cabin policy developed by the Alaska Land Use Council contain a provision for bonding.

The current wording implies that all campsites must be accessible by "refuge aircraft and boats" This requirement, even if it were applied only to commercial use operators, may be counter productive because the more accessible their temporary camps are, the more likely they will be in conflict with subsistence users and the general public. It would be better, in terms of reduced conflicts, for commercial camps to be as inaccessible as possible. Judging by the number of helicopters based at the refuge each summer, the Service should be able to visit any remote sites for inspection.

The limit of 7 nights for the six popular areas listed on page 30 is worthy of consideration, but many traditional uses (e.g., bear hunting) camp 10 days or longer. We request extending the limit to 10 days or longer as one option. We also request the Service consider camping limits only after guidelines are cooperatively established for determining impacts. The Service should carefully consider provisions in ANILCA Section 1316, for without the reasonable use of temporary facilities, many allowed uses cannot reasonably continue. We also request that the six areas listed for restrictions be defined more accurately with a map; without such maps, future regulations will not be enforceable.

Due to the short time offered for considering these proposals, the comments above should not be construed as support or opposition to the proposed Service policy and/or future restrictions. Please also review previous correspondence on temporary facilities.

FISH AND WILDLIFE MANAGEMENT

We appreciate the substantial re-write which more accurately reflects existing management authorities and agreements regarding fish and wildlife. We are pleased to see appropriate recognition of the Master Memorandum of Understanding between the Service and DFG. We request two changes to further improve the discussion:

Delete the sentence starting at the bottom of page 18, carrying over to page 19. As written it may inadvertently imply State general management authority over private land.

Insert clarification that the issue of federal regulation of the fish and wildlife harvests is presently in litigation. In that manner, future users of the final plan will look for applicable court decisions rather than assuming the January 1994 status still applies.

17(b) EASEMENTS

The State appreciates the Service's commitment (page 32) toward identification, resolution, and marking of 17(b) easements. Such an effort will facilitate public access across private lands to public land and water and reduce trespass on private lands. We again request inclusion of the State's suggested generic language on 17(b) easements, attached. At a minimum, 3b should read:

Refuge staff will begin working with Native corporations and the State of Alaska to identify and mark Alaska Native Claims Settlement Act Section 17(b) easements on the ground as requested by the corporations and the State and subject to funding availability.

WATER RIGHTS

As requested in the State's letters of February and June 1993 the plan should include the generic language concerning water rights, attached.

PAGE-SPECIFIC COMMENTS

Please add the following to the plan for further clarification for the public when applying for land use authorizations:

Page ix, 2. Guided/Non-guided: Add that the State requires permits for certain land uses and commercial uses on state lands and waters.

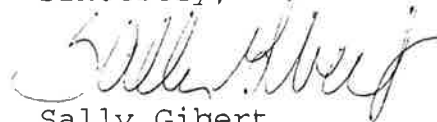
Page xi, Navigable waters definition: Since the federal and State definitions differ, please add a note referring to the state glossary in the Appendix.

CONCLUSION

The State appreciates the significant modifications made to this document over the last year. It appears, however, that the plan is being unnecessarily rushed and that sufficient opportunities have not been provided for either Service or State staff to work out potentially troublesome details. We urge that the Service take stock of remaining issues and devote the time it takes to resolve them. The investment of the additional weeks or months will pay off in the long run.

Thank you for the opportunity to review this document. If you have any questions, please feel free to call this office.

Sincerely,



Sally Gibert
State CSU Coordinator

cc:

Ronald Hood, Refuge Manager, Alaska Peninsula/Becharof Refuge

Carl Rosier, Commissioner, Department of Fish and Game

Harry Noah, Commissioner, Department of Natural Resources

John Sandor, Commissioner, Department of Environmental
Conservation

Bruce Campbell, Commissioner, Department of Transportation and
Public Facilities

Richard Burton, Commissioner, Department of Public Safety

John Katz, Governor's Office, Washington, D.C.

CSU Distribution List
AP/B IRF
December 30, 1993

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Jeff Otteson, Department of Transportation/Public Facilities, Juneau

Paul Rusanowski, Division of Governmental Coordination, Juneau

Cheri Jacobus, Attorney General's Office, Anchorage

Stan Leaphart, CACFA, Fairbanks

ATTACHMENTS

December 30, 1993

State of Alaska comments concerning internal review draft of the
Final Public Use Management Plan for the
Alaska Peninsula/Becharof National Wildlife Refuge Complex

- * Use of Motorized Equipment
- * Section 17(b) Easements
- * Water Rights

Excerpted from June 28, 1993 letter from the State of Alaska to the U.S. Fish and Wildlife Service concerning draft Alaska Peninsula/Becharof Public Use Management Plan:

USE OF MOTORIZED EQUIPMENT

For purposes of clarifying our interpretations of refuge policies regarding this issue, we again note for the record that "traditional" is defined as "pre-ANILCA". In other words, activities which were generally occurring in the area or unit prior to December 2, 1980 are "traditional activities" which are protected by ANILCA and for which traditional (pre-ANILCA) access is guaranteed.

We therefore object to language on page 17 of the PUMP reiterating Alaska Policy Manual RW-16 provisions which are inappropriately applied to Alaska units to limit use of equipment (e.g., chainsaws and generators) to only subsistence users. ANILCA Section 1316 clearly provides such use shall continue on all public lands, and provides specific guidance to follow in restricting such uses in designated Wilderness areas.

This issue was thoroughly discussed, and a resolution policy applicable to the Service was unanimously adopted by the Alaska Land Use Council (ALUC) on November 24, 1987. The State has consistently requested and continues to request that the ALUC policy and existing regulations be accurately reflected in all Service plans and policies.

SECTION 17(b) EASEMENTS AND NONEXCLUSIVE USE EASEMENTS

Sites and linear access easements may be reserved on Native corporation lands that are within or adjoin the Alaska Peninsula/Becharof National Wildlife Refuge, as authorized by Section 17(b) of the Alaska Native Claims Settlement Act. The Service will be responsible for management of the public access easements inside the refuge and for those assigned to the Service outside the unit. The purpose of 17(b) easements is to provide access to public lands. The routes and location of these easements are identified on maps contained in the conveyance documents. The conveyance documents also specify the terms and conditions of use including periods and methods of public access.

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

As authorized in the Department of the Interior Departmental Manual, part 601 DM 4.3G, the physical location of an easement may be adjusted to rectify a usability problem, or to accommodate the surface and or subsurface landowner's development of the lands, if both the Service and the landowner agree to the relocation. Easements also may be expanded, if an acceptable alternate easement or benefit is offered by the landowner and the exchange would be in the public interest. An easement may be relinquished to the landowner if an alternative easement has been offered by the landowner or termination of the easement is required by law. Such actions would require a full land exchange procedure that meets applicable legal requirements.

The Service may also propose to place additional restrictions (to those authorized in the conveyance document) on the use of an easement, if existing uses are in conflict with the purposes of the refuge.

In all cases where a change is proposed in authorized uses or location from the original conveyance, the Service will give adequate public notice and opportunity to participate and comment to the affected Native corporation and other interested parties, including the state of Alaska. Service proposals for changing the terms and conditions of 17(b) easements will include justification for the proposed change, an evaluation of alternatives considered, if any, and an evaluation of potential impacts of the proposed action.

WATER RIGHTS

The plan should acknowledge the role of the State regarding water rights. Please include the following language:

Federal reserved water rights are created when federal lands are withdrawn from entry for federal use. They are created for the minimum amount of water reasonably necessary to satisfy both existing and reasonable foreseeable future uses of water for the primary purposes for which the land is withdrawn. The priority date is the date the land is withdrawn for those primary purposes.

Federal reserved water rights in Alaska can be claimed and adjudicated in basin-wide adjudications in conformance with the McCarran Amendment under state law, AS 46.15.165-169 and 11 AAC 93.400-440, either administratively or judicially. Alternatively, federal water rights may be applied for and granted under state law for either out-of-stream or instream water rights. In any case, water claimed or requested must be quantified.

The Service will work cooperatively with the State of Alaska to inventory and quantify its federal water rights under state law. Water resources of the Alaska Peninsula/Becharof National Wildlife Refuge Complex will be managed to maintain the primary purposes for which the unit was established.

In addition to federal reserved water rights, the plan should note that a federal agency can apply for water rights through the existing state water rights system. Use of the State's application system will, in many cases, provide the NPS with the senior water rights and save both the State and federal government the cost of a federal reserved water right adjudication. The issuance of state water rights will not preclude the federal agency from applying for its federal reserved water rights in the future if the need arises. The Alaska Water Use Act also allows public agencies to apply for reservations of water for instream uses including fisheries, recreation, and water quality purposes.