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DIVISION OF GOVERNMENTAL COORDINATION

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June 29, 1990

Mr. George Constantino
Associate Manager, Refuges and Wildlife
U.S. Fish and Wildlife Service
1011 East Tudor Road
Anchorage, AK 99503

Dear Mr. Constantino:

George

The State of Alaska has reviewed the Draft Public Use Management Plan for the Togiak National Wildlife Refuge. The following consolidated comments are submitted on behalf of State resource agencies.

The State appreciates the effort that the U.S. Fish and Wildlife Service (FWS) has devoted to addressing public use conflicts on rivers in and adjacent to the Togiak Refuge. As participants in the planning process from the standpoint of providing recommendations to the FWS, and also as manager of State land and water in the refuge, State agencies are aware of the complexity and difficulty of responding to the issues raised by the public. It is important for all planning participants to realize that this document is just one component of an on-going process to protect refuge resources, local needs, and continuing high quality recreation opportunities. State and federal agencies, the Alaska Board of Fisheries, sportfishing guides, local residents and landowners will need to remain focused on these issues through implementation and subsequent modification of this plan, as well as address those issues that extend outside this planning process.

It is clear that this plan will not be able to solve all public use conflicts. Inadequate resource and public use data and analyses, (especially regarding impacts on subsistence) along with uncertain or lacking regulatory authorities, insure that many of the issues addressed in this plan will require on-going dialogue.

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The State's detailed comments are organized as follows:

- p. 2 Response to Proposed Federal Management Provisions
- p. 6 Management Provisions for State-owned Land & Water
- p. 8 Comments on the Overall Document
- p. 11 Recommendations for the Future
- Attachment A: Implementation Process for State
Management Plan
- Attachment B: Technical Comments

The State continues to be concerned that the overall scope of this plan is not consistent with our understanding of what a "public use" management plan should contain, e.g. the more comprehensive Kodiak Public Use Management Plan. See more detailed comments regarding this concern on page .

STATE RESPONSE TO PROPOSED FEDERAL MANAGEMENT PROVISIONS

Sport-fishing Guide Provisions

We understand that FWS is examining alternatives to the competitive bid system for selecting guides. We support the concept of recognizing previous experience and making opportunities available for direct participation of local residents in the guiding industry.

The FWS should also consider alternate means for monitoring and regulating guided use levels. For example, FWS could evaluate establishing limits on the number of guided clients per week (instead of total user days) to facilitate monitoring and enforcement. Such an alternative would help reduce the guiding over-flow into the lower rivers.

Camping Provisions

As noted elsewhere in this letter, the Department of Natural Resources (DNR) will modify its 14-day camping limit on State lands within the refuge to 3 days to be consistent with the FWS 3-day limit on refuge lands.

Wherever possible, we also recommend that similar language and terms be used for describing the camping limit provisions for all planning units. For example, the new DNR unit provisions refer to "use taking place at one site for longer than 3 consecutive days", while FWS unit provisions refer to "use for up to 3 days at the same location". The use of consistent language for describing these provisions, to the extent possible under existing authorities, should enhance their understanding and acceptance by the public.

Inadequate Justifications for Other Proposals

In addition to the above comments, the state continues to believe that some FWS management proposals still are not supported by adequate justification. Based on the document alone, differences in the proposed guided use levels and the other recreational use provisions between planning units appear arbitrary.

Section 1110(a) of ANILCA also addresses this concern. This section states that any proposed restriction of traditional access requires a finding that "such use would be detrimental to the resource values of the unit or area". Such findings should provide analyses of historic use and the impacts of proposed changes on use patterns in the affected unit and/or adjacent units.

Before finalizing the management proposals, adequate justification should be documented. Some specific examples of management proposals requiring additional justification include:

1. Prohibition of guided fly-in use: Such a prohibition is proposed for several planning units, including Unit 3 (Negukthluk/Ungalikthluk Rivers) and Unit 5 (Upper Togiak River). A substantial portion of the current guided use days in these units is comprised of fly-in trips.
2. Guided use-day limits: The management proposal for Unit 9 (Upper Kanektok River) proposes a 20% reduction in guided use-days. The only other unit with a proposed reduction in guided use-days is Unit 3. Justification for the Unit 9 reduction is lacking, especially in light of the statement on p. 59 that this unit "receives moderate sport fishing use".
3. Outboard horsepower restrictions: Management proposals prohibit the use of outboard motors exceeding 40 horsepower by recreational users in Units 2 and 3. Reasons given for this prohibition include possible stream bank erosion and sedimentation, unsafe conditions and impacts to natural values. Additional information is needed to support these claims. Page 83 suggests a study to determine the effects of jet and propeller driven boats on eggs and alevin survival and stream erosion. Study results may be used to indicate time and area closures or limitations on motor and boat size by river system to mitigate these concerns. In addition, a joint study by the National Park Service and the University of Alaska will be initiated later this year to address these concerns. In light of this pending research, we suggest that FWS delay action to restrict the size of outboard motors until more definitive information is available.

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4. Decreased motor boat use on the Kanektok River: The plan proposes to decrease motorboat use on the upper Kanektok River instead of prohibiting such use as first contemplated. Rationale is not provided for the proposed reduction in the upper Kanektok River while an increase in motorboat use is being proposed in the upper Goodnews River. Both of these drainages have very similar physical and biological characteristics. The State believes Alaska's constitution and ANILCA require more justification for either motorboat prohibitions or size restrictions than are presently documented in the plan. If the problem is a conflict between motorized and non-motorized recreation use, then perhaps a more thorough analysis of public opinion and impacts on public uses is needed.

The protection of "wilderness values" is a stated management concern for units within the designated wilderness area. If this objective contributes to the justification for public use restrictions, including those above, then these values and associated protective measures also need to be more clearly defined and assessed in the plan.

Possible Policy Gaps and/or Need for Clarification

Ambiguous language: An excessive number of terms is used to describe uses. It is difficult to determine what specific uses or users are affected by the various management proposals. Some of the terms used in the management proposals include subsistence, traditional subsistence, recreational, commercial recreational, sportfishing, guided sportfishing, unguided sportfishing, commercial guided, commercial operators and non-consumptive. Efforts to simplify terminology will help clarify the management intent.

Affected User Groups: The plan is frequently unclear about what management proposals apply to what user groups. For example:

1. FWS planning unit descriptions indicate that management proposals do not affect subsistence uses. However, management proposals for DNR planning units make no such distinction and are applicable to everyone, including subsistence users. This should be further clarified in the plan's introduction.
2. Although there is a definition in the Glossary for "Local and Subsistence Uses", the FWS management proposals make no distinction between regulating sportfishing uses by local or non-local residents. It is unclear whether the plan addresses sportfishing by those residing in or immediately adjacent to the refuge. Such legal sportfishing activities

by local residents, including activities such as the Togiak coho salmon derby, occur in the refuge and should be recognized, monitored and addressed as unguided sport fishing in the management proposals.

3. The management proposals for most FWS planning units contain a section titled, "Commercial Sport Fish Guiding Camps and Recreational Facilities" that describe boat storage and camping regulations. We request additional clarification regarding the specific users are affected by the various proposals (only sportfishing guides and their clients, all sportfishers or all recreational users). The State suggests that FWS review these proposals to insure minimum disruption to other uses of the refuge, including hunting, trapping and backcountry use.
4. It is not clear if the various aircraft landing restrictions for Unit 3 (page 36) apply to all recreational users, sportfishing guides, licensed air taxi operators or all of these groups.
5. Proposed public use levels for Unit 7 indicate that recreational use in the Cape Pierce sub-unit will be limited to only non-consumptive users. If the intent is to prohibit hunting, trapping and sportfishing, the plan needs to discuss the impacts of this proposal on these existing and/or projected uses. The Department of Fish and Game (DFG) notes that there is at least one anadromous fish stream in this sub-unit which indicates there are sportfishing opportunities here.
6. Provisions for the use of primitive tent camps in Unit 13 are different than those for other FWS planning units since they are written to apply only sportfishing users (page 76). Is this intentional? Does the 3-day limit in other FWS units also apply only to sport fishing? If not, why the different approach? For consistency purposes, FWS should be aware that the DNR camping limitations apply to all users regardless of their purposes and activity(s).

Sportfishing Use Data

Concern has been expressed by some members of the public and the DFG staff that the estimates of sportfishing use days reported in the plan are inaccurate. Several factors that may influence the accuracy of these data include: 1) incomplete surveys and inconsistent survey methodology; 2) sportfishing effort by local refuge residents may be excluded in these data; and 3) other recreational uses not related to sportfishing may be included. Since these data are the basis for most of the plan's management actions, it is crucial that the information be reliable,

understandable, and applicable to the purpose for which it is being used.

A specific concern is that the "sportfishing use-days" reported in Tables 1-12 of the plan apparently includes non-fishing activities (river floating, sightseeing, hiking, etc.). We note that the same use-days data are referred to as "sportfishing uses" in Tables 1-12, but as "recreational uses" in Tables 13-18 in the plan. DFG surveys of the Togiak River sportfishing effort further indicate that the refuge surveys may include non-fishing activities. Under a cooperative agreement between DFG and FWS, intensive aerial surveys were flown on the Togiak River in 1984 and 1985 resulting in estimates of 2,807 and 2,905 angler-days, respectively. Refuge surveys for the same area in 1984 and 1985 resulted in estimates of 4,520 and 3,262 use-days, respectively. The plan should include a commitment to improve data collection and the means to assure comparability of existing and future data.

MANAGEMENT PROVISIONS FOR STATE OWNED LAND AND WATER

The following comments apply to the portions of the plan that address State-owned land and water, including watercolumns and the beds of navigable waterbodies throughout the refuge.

The plan does not acknowledge state management authority over navigable waters and the watercolumns within the wilderness boundary. It only includes state guidelines for the lower rivers. These same guidelines need to be included or referenced in all units, not just on the lower rivers.

FWS should add guidelines for State land for each unit. Each unit, therefore, should have two sections: Management of State-Owned Land and Water, and Management of Federal Land. The section on state land and water management should include the state management guidelines that are currently included for only the lower rivers.

In addition, the following revisions should be made to each section of the plan that addresses management of State land and waters:

- Change "14 consecutive days" to "3 consecutive days" in paragraph 1 of the section on Short-Term Uses; paragraphs 1 and 2 of the section on Long-Term Uses; and paragraphs 3 and 4 of the section on Public Use Sites.
- Delete the word "currently" from paragraph 2, first sentence of the section titled Long-Term Uses.

- Add the following after paragraph 4 of the section titled Public Use Sites:

"DNR will work with the FWS to identify public use sites. Sites will be added to this plan as a plan amendment. See Chapter on Implementation and Recommendations: Procedures for Plan Modification and Amendment for details that would apply to adding public use sites to the plan."

- Add the following after the section titled Coordination with Adjacent Upland Landowner:

"Siting Floating Facilities

Floating facilities will be sited so as not to block narrow waterways or impede the free passage of waterborne traffic. Floating facilities will be sited to minimize visual evidence of the facility from main river channels."

Easement Atlas

Add to page 3 paragraph 5:

"DNR will publish an easement atlas for the Bristol Bay area that includes land in the Togiak Refuge. The atlas will identify Native, state and federal land, navigable waters, 17(b) easements, and Native allotments."

Implementation

The plan should include sections addressing "Implementation" and "Recommendations". The implementation section should provide a discussion about amending both the federal and State portions of the plan. Attachment A of this letter addresses the State's implementation and amendment process. Please include the language in Attachment A in the implementation portion of the plan.

The amendment language calls for a periodic review "at least once every five years". The State wishes to clarify that reviews may take place sooner if new information or changing conditions warrant.

COMMENTS ON THE OVERALL DOCUMENT

Limitations of the Plan

The plan represents the culmination of a long and difficult process which attempted, initially, to devise a comprehensive federal/state management framework for establishing overall levels of public use and resolving both real and perceived conflicts among user groups. For a number of reasons, this effort may fall short of the public's expectations in light of the different approaches to land use management by federal and State agencies.

As noted in the plan (page 7), a major issue identified throughout the public involvement process is "the lack of consistent management objectives between various land managers and landowners." Although the plan summarizes some of the constitutional, statutory, and regulatory authorities that determine land management of federal and State lands and waters (pages 13-14), it does not discuss the effects or constraints imposed by these various legal authorities.

It would be valuable to add a new subsection to page 15 which explains how these differing legal mandates limit the ability of the plan to address many of the user conflicts. Ideally it should focus on how respective federal and State authorities and objectives affect regulation of access to the area. This would go a long way toward improving public understanding of the legal and policy constraints faced by agencies. Such a discussion would also help establish the basis for the additional recommendations discussed later.

Purpose, Scope and Title of Plan

Consistent with the State's recommendations, DFG appreciates that improvements have been made for explaining the scope and purpose of the plan. The primary focus of the plan is on "commercial and noncommercial sport fishing uses" and on the "allocation of fishing opportunities between and among subsistence, nonguided and guided sportfishing users." While we believe the plan as yet does not adequately address subsistence fishing opportunities, it is nonetheless clear that the major management emphasis is on sportfishing uses. Therefore, if it becomes necessary to release another draft plan, we continue to support a title change to "Recreational River Management Plan" or "Recreational Fishery Use Management Plan" which is more representative of the contents and objectives of the plan. Such a title change would tend to minimize future confusion over the intent and scope of other Togiak Refuge management plans identified for later preparation, Fishery, Furbearer, Big Game, Migratory Bird, Subsistence Resource and Wilderness Management Plans. We also note that

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management plans being developed to manage recreational river use on other refuges use similar titles (Kisaralik River Management and Arctic National Wildlife Refuge River Management Plans).

Impacts of the Plan on Subsistence Uses

We understand that FWS is embarking on a major re-evaluation of subsistence impacts. We appreciate that FWS has already been in contact with DFG Division of Subsistence staff in this regard. The following comments provide an assessment of the existing draft plan.

Research by the DFG, Division of Subsistence indicates that the lower portions of the Togiak, Goodnews, and Kanektok rivers are particularly sensitive subsistence fishing areas for salmon and char. There is a high density of traditional subsistence net fishing areas along the lower rivers, and a large part of the subsistence food supply traditionally comes from these areas. These areas are all within the boundaries of the Togiak Refuge.

Specifically, there are three serious conflicts which have developed during the past decade between subsistence fishing and guided sport fishing along the lower portions of the Togiak, Goodnews, and Kanektok rivers. These include:

1. displacement of subsistence fishermen from traditional subsistence fishing sites by guided sport fishermen at traditional fishing sites;
2. trespass of guided sport fishermen on private lands within the refuge (individual Native allotments and Native Corporation lands);
3. wasteful and offensive catch and release fishing practices for salmon and char by guided sport fishermen, as perceived by residents of local subsistence villages (Togiak, Goodnews Bay, and Quinhagak).

Displacement of subsistence fishing from traditional fishing sites, and at times direct confrontations between sport and subsistence fishermen, have developed as major problems because of the growing numbers of guided sport fishermen along the lower river during the past decade.

The draft plan, as written, does not adequately address resulting subsistence use impacts. These impacts are described below, along with recommendations for strengthening the discussion in the current draft. Additional information on Togiak Refuge subsistence use conflicts is provided in a March 13, 1990

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memorandum by Robert Wolfe and Jim Fall, DFG's Division of Subsistence.

Most of the proposed recreational use restrictions apply only to FWS planning units, consequently resulting in increased recreational uses in the less restrictively managed lower river areas under DNR jurisdiction where most of the subsistence use occurs. The Section 810(a) analysis in the plan describes some of these subsistence use impacts, but fails to recommend any measures for their mitigation.

For example, a statement on page 3 reads, "actions taken in this plan will not resolve several long-standing subsistence concerns by village residents". The section 810(a) analysis on pages 93-94 and 109-110 states that displacement of subsistence users from traditional fishing sites and cultural conflicts between subsistence and sport fishermen will continue after plan implementation. The Section 810(a) analysis also indicates that adequate subsistence harvests can be maintained through the harvest regulation authority of DFG. While harvest regulation by DFG, in concert with the Alaska Board of Fisheries, is essential for providing adequate harvests, this will be increasingly difficult to accomplish when sportfishing use and user group conflicts are rapidly increasing. The Section 810(a) analysis also states the "the Service will promulgate regulations, develop stipulations and issue permits to mitigate other impacts", but fails to provide specific information on how this will be accomplished.

The failure of the plan to adequately evaluate and mitigate subsistence use conflicts is not consistent with one of the purposes for which the refuge was established under ANILCA ("to provide . . . the opportunity for continued subsistence uses of local residents"). An adequate 810 analysis will further support the following Togiak Refuge public use objectives: "to provide public use programs which minimize possible conflicts between and among subsistence, recreational and commercial users".

Additional information on subsistence uses and use patterns should be provided in the plan, including evaluation of temporal and spatial distribution of subsistence effort and harvests. We further recommend the plan contain a discussion on the adequacy of the subsistence use data base and measures to improve future data collection.

In order to effectively evaluate subsistence use impacts, the existing and proposed numbers of sportfishing guides should also be clarified. Examples of confusing numbers are noted in the technical comments. The FWS management provisions regarding guides may change substantially following the recent Togiak public meetings. The following comments, therefore, may no

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longer be applicable. However, we noted some confusing differences between the FWS's preliminary proposal and the public review draft. The FWS's preliminary proposal draft (Table 1) indicated a proposed decrease of 11 guides over existing levels for all FWS planning units (37 to 46). However, the current draft (Table 13) shows a proposed increase of 5 guides over existing levels for the same planning units (23 to 28). Also different numbers than these are displayed in tables 14 and 15 in the current draft that compare the existing situation and the preferred alternative, respectively. Apparently some of these differences or discrepancies arise from guides operating in two or more planning units. If still applicable, the FWS needs to provide the numbers of different guides, guiding opportunities and guided use days for each planning unit and for the entire refuge in terms of the existing situation and the preferred alternative. It is recognized that this may require the projection of guided use levels in DNR units after plan implementation.

We recommend that the following subsistence use issues be considered for further evaluation and mitigation:

1. The cumulative affects of guided and unguided recreational activities on subsistence use should be evaluated for all planning units. The current Section 810(a) analysis either ignores or only partially addresses the impact of unguided use. Although we recognize the final plan could change the proportions, the published draft has the potential of increasing refuge use approximately three-fold before FWS will prepare an environmental assessment to determine if unguided use levels require regulation. In revising this analysis, the FWS needs to project unguided use trends for each planning unit.
2. Proposed increases in guided use-days for each unit with increases. [e.g. Kwethluk subsistence users have reported that low-flying aircraft in the vicinity of Heart Lake (Unit 13 Headwater Lakes) have affected their hunting activities by disturbing caribou and bear.]
3. Cumulative impacts associated with the proposed increase in guided use-days combined with a decrease in the number of guides or guiding operations.

RECOMMENDATIONS FOR THE FUTURE

As noted at the beginning of this letter, there are a number of activities that would further address public use management issues for the Togiak Refuge after this plan is finalized. The following section discusses the need for continuing research, improved data analyses, implementation actions, management

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procedures, etc. that go beyond the scope of this plan. The plan should recognize and address these concerns in a separate section devoted to "Recommendations". Additional recommendations may be identified as the plan is revised and as FWS consults further with the public and the State.

Maintaining a Responsive Planning Process

FWS step-down plans are reviewed every three to five years. DNR plans are reviewed at least once every five years. Considering the extent of potential user group conflicts and the incomplete data base, the plan should recognize that more frequent reviews will likely be necessary to modify or fine-tune management actions based on new information and changing conditions. To facilitate this review process, the plan should recommend consideration of a more frequent review by State and federal resource agencies, refuge users and local residents and landowners.

Cooperative Programs with Other Agencies and Individuals

Three other specific efforts should be included in the recommendations. First, refuge staff should facilitate meetings in the villages prior to each field season with village representatives and guides holding special use permits in order to maintain an on-going dialogue between all parties. Second, refuge staff should work with Native corporations to examine the potential for providing other revenue-producing visitor services that are compatible with the purposes of the refuge. For example, developed campsites along the lower rivers which offer certain amenities, goods or services would enable corporations to realize a financial benefit from recreational use as well as help to direct camping associated with recreational use to specific sites. This, in turn, may also help to reduce some of the conflicts between subsistence and recreational users. Third, FWS, DNR and Native corporations should work together to explore additional options for a cooperative on-the-ground management program for the lower rivers.

Enforcement

DNR currently lacks citation authority to enforce management provisions on State lands. To address this problem, the joint recommendations section should include the following:

"DNR's ability to enforce regulations on State lands is currently hampered by costly and time-consuming civil litigation. DNR should continue to seek funding for field presence in the Bristol Bay area and legislation to amend AS 38 to provide authority to issue citations and fines, and to confiscate property."

Permits for Commercial Operators

As a first step in managing guided sport fishing on the lower rivers, the following recommendation should be included:

"DNR should consider developing a system in which all commercial operators using state land for any period of time are required to have a permit or to register."

Litter, Water Pollution, and Trespass on Private Lands

These issues extend beyond the scope of this plan. They are, nonetheless, important factors in the overall context of public use conflicts. The recommendation section should address these concerns.

These concerns were arduously considered by the federal, native, and state participants in the Alaska Land Use Council during the Bristol Bay cooperative study and by its trespass work group. The principle results of these efforts have been recognition of the need to further develop public information and education programs in cooperation with local organizations. The plan should address the continuing commitment to these programs.

Specifically, the plan should work with local representatives to develop a continuing cooperative assessment and education process to better understand use patterns and initiate collective ways to mitigate these problems. For example, handouts describing local customs and uses and encouraging respect for private lands, as well as the appropriate disposal of waste, should be available at key public contact points such as transportation hubs and drop-off points.

Monitoring and Evaluating Uses of Refuge Resources

As previously indicated, the recommendations should address improvements in the methods for monitoring refuge fishery resources and uses. The State feels that the acquisition of this information can be facilitated through the development of Joint FWS/DFG monitoring program. Local residents should also be enlisted in such a coordinated interagency work program. Criteria need to be developed for determining threshold levels that would trigger permitting regulations or restrictions for the protection of refuge resources and values.

Thank you for the opportunity to provide these comments. If we can be of assistance in clarifying our comments, please do not hesitate to contact this office. State agencies understand that FWS envisions substantial changes from the published draft and that additional opportunities will be provided for the State and

Attachment A

FOR INCLUSION IN IMPLEMENTATION PORTION OF THE TOGIAC REFUGE PLAN

Plan Implementation by Department of Natural Resources

This plan serves as a management plan for the Alaska Department of Natural Resources (DNR) Division of Land and Water Management (DLWM) and supplements the Bristol Bay Area Plan. DLWM will implement the plan based on authorities as described in Title 38 of the Alaska Statutes and associated regulations. Application for uses of state land will be considered by the Regional Manager, Department of Natural Resources, Division of Land and Water Management, Southcentral Region, P.O. Box 107005, Anchorage, Alaska 99510-7005.

Three types of changes may be made to a plan: amendments, special exceptions, and minor changes. Amendments and special exceptions are plan revisions subject to the planning process requirements of AS 38.04.065; minor changes are not. The director of the Division of Land and Water Management determines what constitutes an amendment, special exception, or a minor change.

Changes to the plan may be proposed by agencies, municipalities, or members of the public. Requests for changes should be submitted to the Regional Office of the Division of Land and Water Management, Alaska Department of Natural Resources.

1. Plan Amendment

An amendment permanently changes the land use plan by adding to or modifying the basic intent for one or more of the plan's subunits, or by changing its allowed or prohibited uses, policies or guidelines, or reclassifying a subunit.

The following actions are examples of changes that would require an amendment:

- a proposal to prohibit a use that is now a designated use, or, conversely to allow a prohibited use;
- a proposal to close or open an area to mineral entry; or
- a new land offering in an area designated for retention.

Amendments are a revision to a plan and must be approved by the commissioner. The Department of Natural Resources will convene the planning team as needed to make recommendations on plan amendments. Management plans developed by the Department of Natural Resources may amend this plan.

Procedures for Plan Amendments

- A. Taking into account the requirements of 38.04.065(b), the commissioner will prepare a written document that specifies:
- the reasons for the amendment such as changed social or economic conditions;
 - the alternative course of action (what the plan is being changed to); and
 - why the plan amendment is in the best public interest.
- B. Where practical, the document should be part of or circulated with a finding required by AS 38.05.035(e).
- C. Before making the final decision on the amendment, the commissioner will provide for meaningful participation in the planning process and public notice consistent with AS 38.04.065(b)(8) and AS 38.05.945. The notification will include the points described in A and may be combined with the public notice required by the applicable permitting procedure. If warranted by the degree of controversy, the commissioner may hold a public meeting before making a decision.

2. Special Exceptions

A special exception does not permanently change the provisions of the plan. Instead, it allows a one-time limited-purpose variance of the plan's provisions, without changing the plan's general management intent or guidelines. Special exceptions may be made if complying with the plan is excessively burdensome, impractical, or inequitable to a third party; and if the purposes and spirit of the plan can be achieved despite the exception.

Special exceptions may also occur when the proposed activity requires only a small part of a management subunit, does not change or modify the general management intent, and serves to clarify or facilitate the implementation of the plan. A special exception cannot be used to reclassify an area. Special exceptions may apply to prohibited uses or guidelines.

The following actions are examples of changes that would be a special exception:

- allowing a prohibited use based on more detailed data in a small area on the edge of a management subunit next to a subunit where it is allowed; or
- a preference right granted under AS 38.05.035(e) to purchase land in a subunit designated for retention in public ownership.

Special exceptions are revisions to a plan and must be approved by the commissioner. The Department of Natural Resources will convene the planning team as needed to make recommendations on plan amendments.

Procedures for Special Exceptions

- A. Taking into account the requirements of 38.04.065(b), the director will prepare a written document that specifies:
- the reasons for the special exception (i.e., why a variance of the plan's provisions is needed);
 - the alternative action or course of action to be followed;
 - why the special exception is in the best public interest; and
 - how the general intent of the plan and management unit will be met by the alternative course of action.

- B. Where practical, the document should be part of or circulated with a finding required by AS 38.05.035(e).
- C. Before making the final decision on the special exception, the commissioner will provide for meaningful participation in the planning process and public notice consistent with AS 38.04.065(b)(8) and AS 38.05.945. The notification will include the points described in A and may be combined with the public notice required by the applicable permitting procedure. If warranted by the degree of controversy, the commissioner may hold a public meeting before making a decision.

3. Minor Changes

Minor changes do not modify or add to the basic intent of the plan or a management unit. Minor changes may be needed for clarification, to make technical corrections, or to facilitate implementation of the plan.

Minor changes are made at the discretion of the regional manager and do not require public review. Affected agencies will be notified and have an opportunity to comment; the comment period may be provided through existing inter-agency review processes for associated actions. The regional manager's decision may be appealed to the director. The director's decision may be appealed to the commissioner.

ATTACHMENT B

TECHNICAL COMMENTS REGARDING DRAFT TOGIAC PUBLIC USE MANAGEMENT PLAN

page VII, Glossary of Terms. Consistent with our original comments, we feel that the definition of "recreational guide" will be enhanced by the following language: "a commercial operator who accompanies clients on trips into the refuge for photography, sightseeing, river trips, or other activities not related to hunting and fishing." The term, "into" clarifies that this definition is applicable to such activities occurring inside the refuge.

page 3, Public Use Sites. It would be appreciated if DFG's involvement with the identification of public use and subsistence use sites be acknowledged in this section.

pages 1-22, Introduction. Consistent with refuge fishery management step-down plans, we recommend that the Master Memorandum of Understanding between FWS and DFG be discussed in the plan's introduction and be included with the other appendices.

page 11, Shorelands, Tidelands, Submerged Lands, and Watercolumns. It is requested that FWS clarify the rationale and/or authorities regarding issuance of special use permits for commercial operations on navigable waters where the Service owns the adjacent uplands on only one side of the waterbody.

pages 16-18, Wilderness Management Policies. We are concerned that some of the policies described on these pages do not correctly interpret provisions of ANILCA. For example, page 7 states "Other motorized equipment, such as generators, chainsaws, and water pumps, are not permitted in wilderness areas in accordance with wilderness policy guidelines." This longstanding issue was addressed during consideration of the CCPs by the Alaska Land Use Council, of which FWS was a member. The Council recommended that, consistent with ANILCA, the use of such equipment in areas where it occurred traditionally (preANILCA) is protected and use of mechanized equipment is not limited to chainsaws by subsistence users.

Similarly, restrictions on cabins, shelters, and temporary facilities and on-site equipment storage discussed on page 18 are not consistent with ANILCA or the guidelines for management adopted by the Alaska Land Use Council. Until restrictions of traditional uses become necessary to protect the resources, the State continues to believe the prohibitions contained within the plan are inappropriate.

Clarification is also requested to what extent these policies affect subsistence uses and users in the refuge. For example, Kwethluk subsistence users are known to occupy temporary campsites on refuge lands and store equipment over the winter months at these sites in the vicinity of Heart Lake in Unit 13A. Additional sites used by local communities on refuge lands may be identified as work continues on this planning process.

page 27, Tables 1-12. The term, "Base Camps" is used in these planning unit tables showing current and proposed levels of sportfishing use and facilities. Consistent with the definition in the Glossary, we recommend that this term be changed to, "Temporary Base Camp" in this table and subsequent tables. We also suggest that FWS re-evaluate use of the term "no limit" for unguided use as it implies limits elsewhere.

page 28, Unit 2- Kulukak River, Existing Public Use Characteristics. Dillingham and Aleknagik residents also conduct seasonal subsistence activities (including herring fishing) in this unit.

page 31, Unit 2-Kulukak River, Recreational Use Levels During the Fishing Season. The proposed levels of sportfishing use and facilities for this and other FWS planning units are contained in this section. The term "fishing season" should be deleted or clarified since the use of this term implies that there may be a period of time when these proposals are not applicable.

pages 31-32, Unit 2-Kulukak River. The discussion on permitting commercial fishery set-net sites should be changed to indicate that only on shore commercial fishing support activities and facilities fall under FWS jurisdiction consistent with the Record of Decision signed by the Regional Director on February 12, 1987. Also DNR shore leases for set gillnet sites are not mandatory under State law.

page 40, Unit 5-Upper Togiak River, Existing Public Use Characteristics. Residents of Manokotak also use this unit for subsistence purposes.

pages 51-54, Unit 7-Cape Pierce/Cape Newenham. Discussions regarding the affect of commercial fishing activities on marine mammals in this unit should be expanded to include the commercial herring fishery. Proposals to the Alaska Board of Fisheries to close commercial fisheries adjacent to this unit should include a description of any existing commercial fishery effort and harvest by area and time, biological status of marine mammal populations, harvests of marine mammals, and specific fishery-related impacts on these populations. Proposals for regulatory changes should be drafted to minimize impacts on existing commercial fisheries (area time closures, etc.).

page 74, Unit 13-Refuge Lakes. Due to the lack of subsistence use information, both agency staffs met recently and agreed that the first sentence in the second paragraph, which characterizes subsistence use as low in this unit, would be deleted. Also, a unit map should accompany the discussion of management proposals for this unit. We observe that Figure 3 on page 23 erroneously includes this unit within the unit 5 and 9 boundaries.

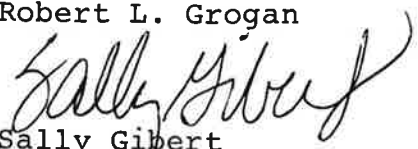
page 86, Subsistence/Section 810 Evaluation and Findings. The paragraph on "Economy" in this and the other alternatives suggests that increased economic activity might increase local revenues and decrease local dependency on subsistence resources. However, some studies have also shown that economic activity might result in more involvement in subsistence pursuits. DFG is willing to work with FWS in improving this section.

Mr. George Constantino
Togiak Draft PUMP

June 29, 1990

the public to review these changes. Following review of subsequent materials, additional State comments will be forthcoming. We look forward to working with you as the planning process moves forward.

Sincerely,
Robert L. Grogan


by: Sally Gibert
State CSU Coordinator

Attachments

cc: Dave Fisher, Togiak Refuge Manager, Dillingham
Dave Menke, Fish and Wildlife Service, Kodiak
Mikel Haase, Fish and Wildlife Service, Anchorage
Commissioner Don Collinsworth, Department of Fish and Game
Commissioner Lennie Gorsuch, Department of Natural Resources
Commissioner Dennis Kelso, Department of Environmental
Conservation
Commissioner Mark Hickey, Department of Transportation &
Public Facilities

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