

STATE OF ALASKA

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June 9, 1992

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 U.S. Fish and Wildlife Service Environmental Assessment (EA) for Bear Viewing on O'Malley Creek in the Kodiak National Wildlife Refuge. This letter represents the consolidated comments of the State's resource agencies. We apologize for the delay in submitting these comments; however we did not receive review copies until May 11. Our review has taken place within a 30-day period.

The State has numerous concerns with this proposal, most of which relate to the process the Fish and Wildlife Service has used to develop this program. The State supports the concept of providing bear viewing opportunities on the Kodiak Refuge, and the continuation of the partially completed three-year study of bear/human interactions. Additional research, analysis and consultation should take place, however, before implementing the public use restrictions accompanying this, or any other, permanent bear viewing program. The State's primary concerns are listed below, followed by explanations in greater detail of each.

SUMMARY OF CONCERNS

- * Lack of jurisdiction over state lands and waters
- * Lack of consultation and coordination with state agencies and the Board of Fisheries

- * Not consistent with the requirements of the National Environmental Policy Act and the Service planning process
- * Inadequate attention to site selection
- * Inadequate consideration of existing public uses
- * Access restrictions inconsistent with ANILCA Section 1110
- * Inappropriate and premature use of a concessionaire
- * Loss of cabin use

State Land and Water

Land Ownership

The EA fails to acknowledge state ownership and management responsibility for shorelands within the proposed bear viewing area. This needs to be corrected. A discussion similar to the one on pages 26-29 in the Final Togiak National Wildlife Refuge Public Use Management Plan (PUMP) should be included in the EA on page 11 in section 3.2.

The EA should also include a discussion about existing policy and legislation that affects state management of these lands. This discussion should include the language on page 29 of the Togiak PUMP that addresses the Alaska State Constitution.

State Management of Shorelands

The EA also fails to acknowledge and incorporate state management guidelines and practices for how the Alaska Department of Natural Resources (DNR) manages state land in the refuge. This needs to be corrected.

The State has submitted to the Service the management guidelines that DNR follows to manage shorelands in the refuge. The guidelines are contained in Director's Policy File 91-03 dated October 22, 1990. The Regional Office and Kodiak refuge staff have been provided with a copy. These guidelines should be included in the EA in a separate chapter titled, "Management of State Land and Water Within the Bear Viewing Area."

Including State guidelines in the EA will draw a clear line between refuge-owned land and the guidelines that apply to those lands, and state-owned land. The EA should make it clear that the proposed restrictions on public access and facilities in

the EA apply only to federal uplands. Management of state-owned shorelands are subject to state management guidelines.

If the Service wants the State to consider changes to its standard shoreland management guidelines, please contact this office or DNR. For example, in order to make the management of state shorelands consistent with upland management in this area, the State could designate shorelands as "Special Use Land." Once designated, the State can vary the policies included in the Director's Policy File. The State, for example, could limit the length of time camping is allowed on state-owned shorelands to something other than 14 days. If the Service proposes changes, the proposal will require review by several state agencies and the public.

The State is aware that the Service believes it has management and permitting authority over navigable water bodies in the refuge. The State, however, disagrees with this position and is proceeding on the basis that these areas are subject to State management and permitting authorities. The State does not acknowledge the validity of federal management or permitting authority on state-owned shorelands. In order to minimize conflicts and confusion to the public, the State strongly encourages the Service to work with the State on management of this area. A similar approach was successful in the Togiak Refuge. The State looks forward to working with the Service on management of land in this area.

We also recommend that the Service examine this bear viewing proposal in light of other areas where bear viewing programs are in place, including Pack Creek (cooperatively managed by the Alaska Department of Fish and Game and the U.S. Forest Service). Pack Creek may provide the Service and the State with additional insights and a model for how best to address issues associated with disputed land ownership.

Consultation and Coordination with the State

While it is regrettable that the State did not receive adequate opportunity to comment during the originally scheduled 30-day public review period, the State is even more concerned with the overall lack of consultation and coordination with the State prior to release of the EA. The Master Memorandum of Understanding between the Fish and Wildlife Service and the Alaska Department of Fish and Game (DFG) recognizes that cooperation between these two agencies on fish and wildlife concerns is essential. The DFG, especially with its many years of experience at McNeil River and Pack Creek, should have participated with the Service in addressing overall wildlife management priorities and in selecting an appropriate bear viewing site.

The MMOU further recognizes the process required to modify hunting or fishing regulations or implement closures through the Alaska Boards of Fisheries and Game. Any changes desired by the Service in State-established seasons, bag limits, or methods and means need to be approved through the Board process. Even in instances of resource damage (not applicable in this case), the State regulatory process should be used to the maximum extent to apply protective measures.

The ANILCA Section 1314 also specifically reaffirms the State's authority and responsibility to manage fish and wildlife. The State should be fully involved in any decision-making which impacts fish and wildlife resources and their uses. Proposals containing public use restrictions based on interpretations of fisheries or wildlife data should not be pursued without consultation with the State as the identified fish and wildlife manager.

Flawed Planning and NEPA Compliance

The process used to establish this viewing area does not meet National Environmental Policy Act (NEPA) requirements, the Service's own planning procedures, or the MMOU between DFG and the Service.

Inadequate Environmental Assessment

The State's review of the EA has determined that implementation of the program will result in extensive immediate and potential impacts that are not identified or adequately addressed in the document. In addition, the impacts associated with this proposal are significant enough to require an environmental impact statement. For example, the following topics need to be addressed in subsequent NEPA documents:

- Discussion of public uses, e.g. current bear hunting activities and how those activities may be affected by the viewing program. (See also page 7, "Existing Public Uses")
- Estimates of the loss of income to the Kodiak economy from restrictions on existing uses and how much these losses would be offset by the estimated income generated from the viewing area.
- Objectives that can be used to measure the success of the bear viewing area.
- Discussion of the relationship of this bear viewing program to the four other possible bear viewing sites identified in the draft PUMP.
- Establishment of goals for numbers of bears to be observed, from what distance, by how many people, and at what time of year. If "success" is

defined, it will be possible to determine at what point competing uses, such as sport fishing, should be restricted. Until then, no supportable assessment can be made.

- Outline of operational guidelines which will assure proper management of the site, including food handling, storage and availability; garbage and other solid waste treatments; and consistent human behavior procedures. We suggest an evaluation of existing guidelines that have proven effective in reducing bear/human conflicts at McNeil River and other sites. We are particularly concerned that in the haste to implement a bear viewing program, this experience is not being thoroughly considered.

Disjointed Planning Process

The Service released the draft Public Use Management Plan (PUMP) for public review on March 3, 1990, and the final PUMP has not yet been completed. The EA does not address why this expedited interim decision-making process is necessary, especially in light of State and public criticism of the PUMP which focused on the unnecessarily restrictive approach toward public uses protected by ANILCA, such as camping, fishing, hunting, cabin use, and aircraft landings. It is inappropriate and unnecessary to move forward with this expedited program without justification.

In the draft PUMP, the Service proposed five bear viewing areas and numerous public access closures and camping restrictions throughout the Kodiak refuge. Then later in 1990, without consultation with the State, the Kodiak refuge staff implemented an experimental bear viewing area at one site (Dog Salmon Creek). Plans to make this a permanent viewing area with public use restrictions were dropped after one year due to conflicts with existing activities in the immediate area; e.g., a State fishway structure and fishery project. Had the State been officially consulted prior to selection of this viewing area, this major conflict would have been evident.

Again without official consultation with the State, the refuge staff has now independently selected O'Malley River for another experimental bear viewing area. This experiment was initiated during summer 1991 without public use restrictions to evaluate bear responses to human disturbance. Subsequently, Kodiak refuge staff selected the "two-year (1992-1993) trial program" proposed in the EA.

Based on one season's observations at O'Malley River, the Service has proposed to implement a longer term experiment, even though the site is notably within the Karluk River system, one of the most popular fishing and hunting areas on the refuge. Most bear researchers advise multiple year studies prior to assuming conclusions because of the extent of variation in bear activities. However, this "experimental" proposal is not limited to verifying observation results--major

restrictions on existing public use activities will be implemented. Although aspects of the study have been discussed with individual State biologists, the State has not been officially consulted since commenting on the 1990 draft PUMP.

DFG has found that knowledge of brown bear behavior has continued to increase during the life of the bear viewing management program at McNeil River. The State believes that management decisions should be based on the most complete data available and only one year of information could lead to erroneous conclusions and faulty management decisions.

Site Selection Process

Since the O'Malley Creek site is the only alternative discussed in the EA, there is no discussion of how this site might compare to other possible bear viewing sites in or near the refuge. Nor is it clear why the Service has chosen to proceed on this site over any other. It appears, without supporting documentation or selection criteria, that this site was chosen arbitrarily.

In addition, there is no reference to ANILCA Section 1306 which requires that ANCSA corporations be provided preference in providing visitor services for conservation system units. Such local interest should be solicited and documentation should be included in the EA which indicates such notification. For example, a large portion of the Thumb River (also within the Karluk River drainage) is privately owned by ANCSA corporations and has general characteristics suitable for a bear viewing area. As an alternative to the O'Malley River site, the Service could evaluate providing assistance to the local landowners to establish a viewing area on private land.

One characteristic of the highly successful McNeil River and Pack Creek viewing areas is the adjacent pattern of landownership and associated public use. In those areas, little private land or developments occur for many miles. This reduces the likelihood of bears associating humans with a readily available food source, hence reducing the need for measures necessary to habituate ("train") bears. In contrast, Katmai's Brooks Camp has nearby developments and sources of bear/human interactions which require the constant attention of many federal staff. The proposed O'Malley River viewing area has a mixed landownership pattern and many public use activities which result in frequent bear/human interactions. Even with the proposed fishing and access restrictions, such interactions will be unavoidable. Consequently, we believe that management of the proposed O'Malley River bear viewing area cannot be entirely patterned after McNeil River. Perhaps management should parallel Brooks Camp. If so, subsequent NEPA documents should acknowledge that more personnel will be necessary to handle management challenges.

Existing Public Uses

The EA lacks adequate recognition of existing public uses and an assessment of impacts to these uses which will likely occur with implementation of the program. In addition, there is no justification provided for the public use restrictions, and no weighing of the pros and cons of restricting existing public uses vs. the benefits of a new bear viewing area. It is premature to restrict public use and access unless and until additional studies and analysis indicate that they are necessary.

For example, there is no discussion of current bear hunting activities in the area. The proposal appears to continue to allow this activity; however, that is unclear.

Except for impacts associated with the cabin use closure, there will be little immediate loss of deer hunting opportunity because no more than 10 percent of the Game Management Unit 8 harvest occurs during the time period the area is proposed for closure.

However, a significant issue that is not addressed concerns encouraging bears to become habituated to humans and then subjecting the same bears to hunting. This was a significant concern during the State's recent expansion of the McNeil River sanctuary/refuge, and it is reasonable to expect this same concern will exist in this instance.

DFG staff knowledgeable about bear behavior believe that bears readily distinguish where they are--bears may be "habituated" in one locale but remain wild and wary in the remainder of their habitat. However, the public has consistently expressed belief that habituated bears should be protected throughout their range. If this were to occur based upon the O'Malley bear viewing area, significant loss of bear hunting opportunities would result. The economic loss of guided bear hunting could be similarly significant.

The size and configuration of the area affected by public use restrictions also amounts to a defacto closure of a considerably larger area. For example, the northwest corner of the viewing area cuts across a portion of Meadow Creek, thus effectively blocking public use of the upstream drainage during the bear viewing season.

The State's experience with bear viewing areas to date has been that sport fishing in adjacent areas is incrementally restricted to reduce human/bear encounters. The Karluk River drainage, including the O'Malley River, is one of the most popular fishing and bear hunting areas in all of Kodiak Refuge. Sixty-four percent of visitors to the area indicate they sport fish, and DFG's Sport Fish Division estimates 200-400 angler use days in the area of the proposal (contrary to smaller estimate included on page 14). Existing public use opportunities, therefore, will be significantly impacted if the proposal results in a substantial reduction of use. The State perceives the

immediate closure of a relatively large area around the viewing site as not only unjustified, but also the first step toward much more expansive closures.

The Federal Aviation Authority has provided a pilots advisory on their aerial section maps, indicating that there is a minimum altitude for flights over the McNeil falls. Similar pilot notification should be pursued as part of implementation of a bear viewing program on the Kodiak refuge.

ANILCA Section 1110 Requirements

The State is extremely concerned that the lack of justified and documented rationale for public use restrictions will set a precedent which lowers the standard that Congress intended for public use protection in conservation system units.

Section 1110 of the Alaska National Interest Lands Conservation Act protects existing access and requires a specific process for implementing public access restrictions. That process includes a formal finding of resource damage resulting from the access, followed by public hearing, and publication in the federal register. We have reviewed the resource data presented with the proposal and conclude that the data base is insufficient to support the proposed public access closures, as required by ANILCA Section 1110.

Access regulations for Alaska adopted by the Department of the Interior (43 CFR) provide for temporary closures in addition to permanent restrictions. We note that the temporary closures proposed for this season are not based on definable resource damage. Instead the closures are based on an intent to implement a special management area. This two-step process to implement a permanent closure is not supported by justifying data and appears to be inconsistent with the intent of ANILCA.

Many streams and other waterbodies throughout the state periodically have salmon and rainbow trout concentrations. Logically, bear concentrations occur seasonally in the same areas. These same concentration areas are frequented by fishermen. If data on bear avoidance of humans are used to justify public use closures at O'Malley River, the State is concerned that such justification could be applied to many other areas throughout the state. In order to justify public access closures, the Service must carefully reassess the difference between simple avoidance behavior and resource damage such as abandonment of the area.

Concessionaire

The State objects to concessionaire management of wildlife viewing on public land for the following reasons: 1) Public use management should be fully integrated with agency management of wildlife populations and habitat, 2) concern about public safety and liability issues, and 3) private industry may escalate fees beyond that reasonably necessary to run the program, at the expense of public enjoyment of a public resource.

Currently, there are three bear viewing areas on public lands in Alaska: McNeil River managed by DFG, Brooks Camp managed by the National Park Service, and Pack Creek managed cooperatively by DFG and the U.S. Forest Service. These agencies have gained extensive experience in the many detailed and individual aspects of each successful viewing program. We do not believe a program of such high visibility and potential liability should be turned over to a concessionaire. If it were to be turned over, prior to doing so it should be operated for several years by Service or State personnel. Variables which could affect the outcome of an experiment should remain constant for the duration of the three years if the study is to be scientifically evaluated.

Regarding the safety issue, there is considerable risk to users of the site, with the potential for a serious accident to occur. Actions of the concessionaire and staff directly relate to how great this potential for injury and/or death may be. We are concerned about the ability of the Service to insure adequate management experience and operating standards for the bidder/employees regarding how they would react to bear/human confrontations. The EA does not address criteria to be used in the selection of successful bidders (or employees), or discuss liability issues.

If the FWS adequately addresses these concerns and chooses to continue plans for a concessionaire-run program, perhaps an upper limit should be placed on the amount that could be charged for services.

Cabin Use

Removal of the O'Malley cabin appears to be unnecessary and the State opposes such removal without justification. We believe ANILCA intended for existing and additional public use cabins to be part of the management of the refuges in Alaska. Yet the Kodiak refuge has a track record in earlier planning efforts of attempting to eliminate existing cabins. The State has consistently taken the position that the handful of existing cabins is inadequate from a public use and safety standpoint. Public use of this area by deer and bear hunters, fishermen and others is high. Without the cabin, those uses are effectively reduced.

If cooperative assessment between the Service and the State results in a mutual conclusion to implement a bear viewing program in this area, the State would only concur with removal of the cabin if a cooperative determination is made that the cabin's continued use would not be compatible, and a replacement structure is provided in an adjacent area.

810 Subsistence Evaluation

We concur with the ANILCA Section 810 finding that the proposed action will not result in a significant restriction of subsistence uses. However, a number of technical corrections should be made to information provided in the evaluation.

It is misleading to say that "Local residents (villages of Karluk and Larsen Bay) . . . have traditionally relied on salmon and char for subsistence. Subsistence fishing areas are located at the Karluk Lagoon and along the lower Karluk River." DFG's Division of Subsistence household harvest surveys for 1983, 1986, 1989, and 1990 show that the residents of Karluk and Larsen Bay use a wide variety of resources besides salmon and char. In 1990-91, for example, the average use of resources by Karluk households included 15.9 wild food types. Larsen Bay households used an even wider average range of 19.3 food types in 1990-91 (Fall 1992).

Of particular note is Larsen Bay's traditional use of steelhead from the Portage area of the Karluk River near the head of Larsen Bay. Subsistence harvests of steelhead by Larsen Bay residents occur from November through April and are often done through the river ice. It is not clear from the EA what exactly constitutes "the lower Karluk River", but the Portage area could certainly be thought of as "the middle or upper Karluk River."

It is unlikely that substantial numbers of steelhead move into Karluk Lake or into O'Malley River, so it may be reasonable that the EA does not address potential impacts. We suggest that the study of steelhead which supports this conclusion (Chatto 1987) be cited.

Data Needs and Page-Specific Comments

- Page 5. "The goal of the project and the study is to develop procedures that will provide KNWR visitors with high quality bear viewing without adversely affecting brown bears."
Bears likely require less habituation if viewing areas are sited to minimize interactions with people. The Fish and Wildlife Service implies that this can only be done by eliminating motorized vehicles, human noise, and human use

of the same area. We suggest this goal be modified to reflect intent to measurably minimize abandonment of the area by brown bears.

Page 5. "The purpose of this Environmental Assessment is to assess management alternatives for the O'Malley River area that allow public enjoyment of the area and are compatible with FWS mandates for management of the KNWR wildlife populations and habitat."

We request clarification that the State manages wildlife, not the KNWR. Furthermore, public enjoyment due to existing sport fishing and hunting activities will be severely curtailed. Those current recreational pursuits are consistent with ANILCA purposes of the Kodiak refuge. The preferred alternative of the EA will significantly impact those refuge-compatible (and ANILCA-protected) activities.

Page 13. We request data also be included on what percent of O'Malley cabin users listed hunting as an intended activity.

Page 15. We are skeptical of the Service's projection that 10-20% of the bears observed in 1991 would entirely abandon the O'Malley River area. The single year of bear observation data from O'Malley River is being extrapolated too liberally. The observed short-term movements cannot be equated with permanent abandonment of the area. With over 400 workers at the peak of the Terror Lake construction project, DFG found little evidence that bears vacated their favored fishing drainages.

Page 16. We do not find data to support the premise that economic benefits would decline to present levels. Such a decline should not occur unless the refuge manager limits access with a permit system.

Page 20. If bear use increases 20% by 1993 under the preferred alternative, will it be because of reduced disturbance on O'Malley River? What measure is being recorded of activities in adjacent areas or the bear population numbers?

We question the basis of the projection that a 20% increase in bear use will occur by 1993. The term "bear use" is not well-defined but has a major role in evaluating the viewing area. We interpret the intended meaning is diurnal feeding on salmon in the O'Malley River and connecting tributaries and the adjacent shoreline of Karluk Lake in the viewing area.

Page 21. Under Economic Impacts, the conclusion that the viewing program would make recreation available to more people and provide more economic benefit is only valid when compared with the 1991 use. Peak economic benefit which is estimated for the No Action alternative exceeded that estimated for the Preferred Alternative.

The State would appreciate opportunities to participate in reassessment of this proposal. If this is can be arranged, please contact Sally Gibert at 561-6131 so that she may notify the appropriate agency representatives.

Sincerely,



Paul C. Rusanowski, Ph.D.
Director

cc:

Jay Bellinger, Refuge Manager, Kodiak National Wildlife Refuge

Carl Rosier, Commissioner, Department of Fish and Game

Glenn Olds, Commissioner, Department of Natural Resources

John Sandor, Commissioner, Department of Environmental

Frank Turpin, Commissioner, Department of Transportation and

Facilities

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