

STATE OF ALASKA

WALTER J. HICKEL GOVERNOR

OFFICE OF THE GOVERNOR

OFFICE OF MANAGEMENT AND BUDGET DIVISION OF GOVERNMENTAL COORDINATION

SOUTH CENTRAL REGIONAL OFFICE
3601 "C" STREET, SUITE 370
ANCHORAGE, ALASKA 99503-2798
PH: (907) 561-6131/FAX: (907) 561-6134

CENTRAL OFFICE
P.O. BOX 110030
JUNEAU, ALASKA 99811-0300
PH: (907) 465-3562/FAX: (907) 465-3075

PIPELINE COORDINATOR'S OFFICE
411 WEST 4TH AVENUE, SUITE 2C
ANCHORAGE, ALASKA 99501-2343
PH: (907) 278-8594/FAX: (907) 272-0890

February 10, 1993

Helen Clough
U.S. Fish and Wildlife Service
1011 East Tudor Road
Anchorage, AK 99503

Dear Ms. *Helen* Clough:

The State of Alaska has reviewed the internal review draft of the Alaska Peninsula/Becharof Refuge Public Use Management Plan (PUMP). This letter represents the consolidated comments of the State's resource agencies. The State hopes that these comments can be used to facilitate resolution of outstanding issues prior to publication of the formal draft plan for public review. As always, this informal review does not constitute the State's final position on the draft plan.

State resource agencies appreciate the opportunity to review an internal version of the draft Public Use Management Plan for the combined Alaska Peninsula and Becharof refuges. We are particularly appreciative that the authors contacted state staff on several occasions for data or to clarify information presented in the plan. We encourage the Service to conduct similar consultation in preparation of future step-down plans for this and other refuges.

Due to the short period of time available for this review, we have not conducted as extensive or as detailed a review as we normally would. Unfortunately, issues that are inevitably missed in such a short review will necessitate attention during review of the public review draft. We are also dismayed that the Service has scheduled little time for incorporating changes before going to press, thereby potentially limited opportunities for valuable dialogue at this early stage. In the future, we strongly encourage more time be provided for internal review and for supplemental resolution of outstanding issues before going to press.

GENERIC STATE ISSUES

Most of the following generic issues are not specific to this plan, but represent long-standing State interests and concerns that often apply to other refuge plans as well. To the extent that these concerns reflect regional policy direction, we request that they be brought to the attention of appropriate regional office policy makers. This office will also follow-up with the regional planning staff on these issues.

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 the 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 FWS will work cooperatively with the State of Alaska to inventory and quantify its federal water rights under state law. Water resources of the Kenai Fjords National Park will be managed to maintain the primary purposes for which the park 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. By applying for water rights through the State it 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.

Section 17(b) Easements and NonExclusive Use Easements

The following language should be included in the Plan:

Sites and linear access easements may be reserved on Native corporation lands that are within or adjoin the Alaska Peninsula/Becharof Refuge Complex, 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.

Refuge Purposes

As we have requested in previous plans, we once again urge that all plans accurately introduce the purposes of the unit(s), consistent with the Alaska National Interest Lands Conservation Act (ANILCA). Specifically, references to ANILCA purposes should indicate that the listed purposes for each unit are not all inclusive. We are concerned that this seemingly straightforward but often-repeated request has not been heard or understood, and leads us to conclude that more dialogue on generic state concerns would be valuable.

Other Legislation

It has been the State's understanding that the Refuge Recreation Act was amended, updated, or administratively reinforced more recently than 1966, and in fact has more clout in consideration of plans and regulations now. If true, we suggest this discussion be clarified accordingly. We also request that the relationship of the recreational purposes contained in ANILCA Title I also be acknowledged.

Fish and Game Management (including Subsistence) on Refuge Lands

While we recognize that this larger issue is not one that this public use management plan can address, the State nonetheless must go on record to disagree with the assertion that the federal government has any authority to manage fish and wildlife. It may be possible to carefully edit this section to recognize that the federal government has assumed responsibility to assure provision of subsistence opportunities for rural residents on federal public lands. However, because the issue of federal preemption of state management authority is currently in federal court, we urge the authors to consider a more major rewrite.

For example, we request that the plan continue to acknowledge the role of the memorandum of understanding between the Service and the Alaska Department of Fish and Game (DFG); the present allocation of subsistence opportunities does not violate the memorandum. We also suggest the plan simply recognize the current status of regulation promulgation without including interpretations of legal authorities. As written, not only do we

disagree with the presentation, but the assumed authorities may be significantly modified by the court before the ink dries on the plan. Since the plan notes it will be in place for 5 to 10 years before revision, it seems appropriate to avoid discussions which may quickly become out-dated.

Use of Motorized Equipment

For purposes of clarifying our interpretations of refuge policies regarding this issue, we note for the record that the State's use of "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 continue to object to the refuge policy (Alaska Policy Manual RW-16) reiterated on pages 11 and 12 which inappropriately limits use of equipment (e.g., chainsaws and generators) to subsistence users. ANILCA Section 1316 clearly provides such use may continue, as do the Service's own regulations. This position was also adopted in a unanimous resolution by the Alaska Land Use Council on November 24, 1987.

COMMENTS SPECIFIC TO THIS PLAN

Coordination with State Land and Water Management

Readers of this plan should know that some of the State's and Service's definitions, such as "navigable," differ. Therefore, in the Shorelands section of page 9, we request adding "Appendix B contains State of Alaska glossary and policy for...."

Information about refuge special use permit requirements is included under an alternative on page 18. For easier public reference, we suggest separating this information from the alternatives, preferably to a section near the front. Such a section should also include a statement that the State requires permits for land use and commercial use on state land and waters, referring readers to Appendix B, which includes this information.

Sport Fishing Data and Guiding

DFG appreciates the resolution of a number of concerns previously expressed regarding use of fish harvest data and limitations of sport fish guides, particularly the use of DFG's data in assessing harvest effort on rivers within the refuge. Cooperation and consultation with State subsistence staff,

fisheries biologists and managers has dramatically reduced earlier conflicts due to different and incomparable data sources. We encourage continued close coordination with the DFG Division of Wildlife Conservation staff to assure wildlife data, harvest reports, and seasons are accurately presented.

The State also supports the Service's decision not to implement a cap on sport fishing guides. However, we are concerned that the Service's recent decision to implement its own hunting guide criteria and limitations (rather than adopting the state program) has the potential to secondarily impact sport fish guiding opportunities. Because the relationship of these efforts is not discussed in sufficient detail in the plan, we desire further information and opportunities to address this issue.

Access

We are unaware of any studies by the Service (or anyone else) to document traditional (pre-ANILCA) access in order to determine types, locations, and uses of off-road vehicles (ORV). If such studies have been done, we request this information be included in the plan. The Service cites areas identified by the Division of Subsistence (e.g., page 49) and indicates that ORV use is authorized in traditional use areas, but provides no further details. (Please see our earlier comments, referenced above, regarding details needed to resolve this issue.)

ANILCA Section 810 Evaluation

While the third paragraph from the bottom of page 110 correctly notes DFG's Division of Subsistence role in subsistence evaluations, the text perhaps should also specify if the Service's Office of Subsistence Management will play a role in future 810 evaluations, now that it is involved in allocation of subsistence opportunities on federal public lands.

The State is concerned about a number of actions associated with alternatives C and D (paragraphs 1 and 2, page 112), which have the potential to significantly restrict subsistence uses. We will submit further comments on the 810 evaluation during our review of the public review draft and preferred alternative.

PAGE-SPECIFIC COMMENTS

Subsistence

The State appreciates that the Service consulted with DFG Subsistence staff in preparation of this planning document. The improvements made reflect the value of such consultation.

Pages 72-84. "Scarborough" is misspelled on pages 72,74, and 75, where it appears as part of the "Fall . . ." citation.

Page 78. The discussion concerning a definition of "subsistence" could also refer to the criteria defining a customary and traditional use. The State has such criteria in place and the Federal Subsistence Board will be adopting similar criteria for defining where subsistence uses occur on federal public lands. This illustrates that subsistence in Alaska is more complex than the dictionary definition portrayed.

Page 78, final paragraph. This section presents an interesting hypothesis concerning possible displacement of hunters if federal subsistence regulations are viewed more favorably than corresponding state regulations. This could be an important area for cooperation between the State and the Service.

Page 106, Economy. The relevance of the mention in the second paragraph of "wide differences" between reported 1990 per capita and household incomes for refuge area communities is not evident. Such differences between the two categories are not unusual.

Caribou

Pages 21 and 25. There are few, if any, "key" crossings of the Becharof Lake by caribou. We know of no place that receives enough hunting pressure to interfere either with caribou a movements or subsistence hunting opportunities. Perhaps a further explanation is needed of where and on what basis such crossings are "key". Without more substantiated data are available, DFG would not likely support the sport hunting closures proposal.

Page 52, paragraph 2. "a. Populations". While there have been fluctuations in the post-calving census during the past 12 years, and perhaps some decline from 20,000 to about 17,000 (in accordance with our stated management objectives), it is very inaccurate to characterize the population status as showing "steady decline". In fact, given the nature of caribou populations and the difficulties of accurate censusing, this herd has been remarkably stable between 16,000-20,000 since 1981. (We urge the Service to not perform independent interpretation of DFG data and encourage review of available reports such as Sellers 1992, S&I report.)

Page 52, "b. Sensitive Areas". While most of the material in the first two paragraphs is directly copied from Sellers 1990 S&I report with proper credit and citation, the last

paragraph in "b." appears derived from casual observations of refuge staff. The description of caribou activity and hunting took place out of the refuge, so has little application to the plan. Additionally, the statement that local hunters saw a "decrease . . . in hunter success" is not supported by any data. The reported local harvests for 1991-1992 were the highest ever reported. No data are available yet for the 1992-1993 season.

Page 53, paragraph 2, "c. Uses". DFG has made no proposal to reduce the bag limit from 4 to 2. (see Sellers 1990, 1992.) We are concerned about the winter harvest, but the Mulchatna Caribou Herd is already drawing some hunters away from the Northern Alaska Peninsula Caribou Herd. If further liberalization is made for Mulchatna hunting, DFG will maintain the desired harvest from the Northern Alaska Peninsula Caribou Herd. The last sentence should specify that DFG is making a recommendation to the Board of Game for liberalized seasons for the Mulchatna Caribou Herd.

Page 88, Caribou Hunting. Hunting begins on August 10, not August 1. The citations throughout this section should be corrected to Sellers 1992, not Abbott 1992. For example:

Sellers, R. A. 1992. Unit 9C and 9E caribou survey-inventory management report. Pages 18-25 in S. M. Abbott, ed. Survey-Inventory Management Report 1 July 1989 - 30 June 1991. Proj. W-23-3, W-23-4. Study. 3.0. Juneau 189pp.

Page 89. We urge this section be rewritten to base caribou hunting effort on more recent available numbers than 1987 which are more reflective of current use. The numbers used in the last paragraph on caribou hunting and assumptions are inaccurate. Additionally, the last sentence has no supporting data. Overall, we suggest that caribou harvests from the refuge may have declined in the past 3 years. We urge the Service to consult extensively with Dick Sellers of DFG in King Salmon to correct this and other specific wildlife information.

Bears

Page 26. If other specific bear viewing opportunities are being considered, they should be identified. The bear viewing trail provides no more opportunity than currently exists. A de facto bear viewing trail from Ruth River to Kanatak already exists and needs no substantial improvements.

Page 50. We suggest the first paragraph be corrected with the following substitute paragraph:

"DFG extrapolated census results from a study at Black Lake in 1989 to reach a rough estimate of 3,200 bears for Game Management Unit 9E, which includes the refuge (Sellers and Miller 1991). Recent increases in bear harvests led to concerns that if the trend continued, bear populations would be overharvested in 9E and 9D (Sellers 1991). Harvest data in 1989 from Becharof Refuge area suggested that harvests were already excessive, and the spring 1990 hunting season in that area was shortened by an emergency order. The general season for 9C, 9D and 9E was reduced by 1 week in the fall of 1991 (Sellers 1991)".

Page 50. The third paragraph should also be corrected as follows: change the first reference to Sellers and Miller 1991, change the second reference to Miller and Sellers 1992, and strike the sentence beginning "However, information gathered in the Black Lake . . ." Population estimates have been extrapolated for the entire Alaska Peninsula (see above).

Page 51, carryover paragraph. What is the Dewhurst 1990 reference? The only Dewhurst 1990 publication DFG is aware of concerns eagle surveys. The only location we are aware that this data are reported is in the annual narrative reports of Becharof refuge (e.g., 1987, 1988).

Page 51, "c. Uses". The distinction made between sport harvests and "commercial uses" is not supported. No data indicate a bear population decline. The actions taken in 1990 and 1991 were precisely targeted to avert overharvest and prevent population decline. For illustration--the beginnings of an overharvest do not cause an immediate population decline (i.e., the male segment is overharvested initially, but usually total population size is not affected until the excessive harvest continues for several years). The restrictions on bear hunting were imposed based on the trend of increased harvests, not on data demonstrating that a population decline had already occurred.

Page 56, paragraph 3. While Game Management Unit 9 may rank behind Kodiak in reported defense of life or property (DLP) kills, in reality, there are undoubtedly more in Unit 9 but fewer are reported. Despite the problem of DLP kills, they represent a fraction of the total human-caused bear mortality (i.e., the sport kill is many times larger). As long as the State manages total human kill of bears, the DLP kills themselves will not seriously "influence both present and future recruitment". The citation "USFWS 1992" needs a letter to identify which of four such references is meant. There is no listing for Harting 1987 (appears top and bottom of page 56) in the References section.

Moose

Page 51, "Moose". DFG surveys in the Park boundary area do not show any decline in recruitment. We suspect this is a misapplication of available data. The source (DEPARTMENT OF FISH AND GAME) of the population data should be credited.

Page 51, "b. Sensitive Areas". Delete Black Lake as a concentration area for moose, as there is no substantiating documentation.

Page 89, Moose Hunting. The season dates are not current and vary between Game Management Unit 9C and 9E. The moose harvest data should be referenced (Sellers 1990, Goodwin, 1991, Goodwin 1992).

Seabird, Eagle and Caribou Viewing

Page 27. The purpose of evaluating and prioritizing staff effort in promoting such viewing is not evident. All these opportunities currently exist and could be utilized by private tour guides if there is a market and if refuge management would cooperate in issuance of commercial use permits. We urge that evaluation and promotion of such opportunities be done by the private sector, so that the refuge can focus on evaluating plans of would-be permittees.

Definitions

All pages that refer to tent platforms/frames/tent facilities (including Appendix A, page 3): Please clarify or tighten up use of the various terms referring to these improvements. They currently appear to be used interchangeably, which is a source of confusion.

Appendix B

We suggest reordering Appendix so that Director's Policy File 91-03 comes first.

Conclusion

The State appreciates the opportunity to review this internal document and urges that the Service work closely with state agencies to correct information and resolve outstanding differences prior to publication of the public review draft of the plan. We also encourage the Service to review past submissions of generic state concerns and issues which we believe should be addressed in any Public Use Management Plan.

If you have any questions or wish to discuss any aspect of this letter, please feel free to call this office.

Sincerely,



Sally Gibert
State CSU Coordinator

cc:

Ronald Hood, Refuge Manager, AK Peninsula/Becharof Complex

Carl Rosier, Commissioner, Department of Fish and Game

Glenn Olds, Commissioner, Department of Natural Resources

John Sandor, Commissioner, Department of Environmental
Conservation

Frank Turpin, 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/BECH IRD
February 22, 1993**

Tina Cunning, Department of Fish & Game, Anchorage

Terry Haynes, Department of Fish & Game, Fairbanks

Priscilla Wohl, Department of Environmental Conservation, Anchorage

Alice Iliff, Department of Natural Resources, Anchorage

Jeff Otteson, Department of Transportation/Public Facilities, Juneau

Paul Rusanowski, Division of Governmental Coordination, Juneau

Stan Leaphart, CACFA, Fairbanks