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March 10, 1993

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

Dear Mr. Stieglitz:

The State of Alaska has reviewed the February, 1993 internal review draft of the Arctic National Wildlife Refuge River Management Plan. This letter represents the consolidated comments of the State's resource agencies.

Please extend to Fish and Wildlife Service our sincere appreciation for an opportunity to review the internal draft of the Draft River Management Plan for Arctic National Wildlife Refuge. We welcome whatever opportunities the Service may provide for us to discuss or supplement the comments below prior to completion of the final plan.

We appreciate your patience in accepting these comments after their due date. As your planning staff will attest, these have been busy times. As a result of these circumstances, data corrections and issues discussions may have been overlooked in our review. This means, unfortunately, that new issues and information may come to light during the public review of the draft plan.

To benefit our constituents and aid in meeting state and federal resource responsibilities, we hope that additional consultation and coordination with the state will be provided to resolve as many issues as possible prior to completion of the river management plan.

Purpose of and Need for this Plan

The introduction to the plan paints a picture of significantly increased uses (nearly 500%) of several rivers in a vast area with low tolerance to use. The years cited (1985-1989) did experience rapidly increasing use on some rivers (e.g., the number of users on the Kongakut River increased from 36 to 168), but the significance of these comparatively low numbers is subjective, especially since these trends did not continue after 1989.

Most of the use occurs on two rivers during a brief period of summer, but most of the proposed restrictions affect all rivers in the refuge. Such blanket regulations do not appear to be necessary given the light use occurring on most streams due to limited access and poor floating conditions.

As Table 3 indicates, the number of river floaters subsequently declined and seems to have stabilized. The plan (pages 27-28) indicates the stabilization was largely due to limitations placed on commercial operators by the Service. Given that the number of nonlocal users was controlled through Service commercial services permits, which also stipulate activities such as camping locations, time periods, and group size, we question whether the plan is necessary for refuge management.

The plan proclaims to address necessary limits on public uses of rivers based on the relative impacts of an increase in users. It is difficult to understand how the current level of use, 2/3 of which is already restricted through terms in commercial use permits, can justify the expense and programs necessary to implement the proposed refuge-wide restrictions and regulations.

For example, "commercial floaters" increased from 42 in 1984 to 312 in 1991, with a high of 388 in 1989 (per Figure 7). Private floaters were estimated at 114 in 1991 (per Table 4). Therefore, the combined estimate of floaters for 1991 totals 326 users. Based on the estimated rate of increase in floaters (page 33; 5-8% annual increase for next 5-10 years), the 10 rivers receiving the focus of use in 19 million acres of refuge will reach 416-478 floaters in 1996. This is only 28-90 more users than the number of commercial floaters alone in 1988. This projected level of use does not appear to warrant the extent of restrictions proposed in the preferred alternative of the draft plan.

Scope of Proposed Restrictions

The plan does not clarify whether the proposed restrictions and objectives will be applied only seasonally to recreational floating groups or year around to all recreationists. We recommend that whenever possible, restrictions should be season-specific to minimize disruption of other users, such as sport hunters and subsistence users. Furthermore, limiting restrictions to the two river drainages receiving use levels deemed to be destructive may be more appropriately justified.

If the Service were to continue the status quo (Alternative A), but add those management prescriptions of the preferred alternative for commercial guided users which provide additional habitat protection, there would essentially be no need for the refuge-wide application of proposed restrictions. In particular, we suggest that the Service provide hardened campsites and temporary facilities to reduce habitat impacts due to limited access on the few heavily used rivers. This management direction would be more consistent with the stated objective on page 2: "...to protect fish, wildlife, habitats and wilderness of the Arctic Refuge with the minimum amount of regulation required."

Number of Encounters

We suggest reconsideration of the guidelines establishing an acceptable number of encounters per day. As written the plan appears to be unnecessarily restrictive, even going beyond acceptable levels reported in studies of other wilderness settings in the United States, which are cited in the plan. For example, page 2 paragraph 3 states: **"Some studies indicate that up to two contacts per day is acceptable to wilderness users."** Yet this same paragraph states that: **"In this plan, overcrowded conditions are defined as situations where recreationists regularly encounter, on the average, more than one other group per day."**

The actual management objective used in the plan is even more restrictive (page xvii, first *), calling for **"not more than five encounters per recreational group per week."** This equates to one contact per 1.4 days. While we recognize that the open arctic tundra increases the likelihood visible encounters, the State nonetheless questions the current guideline, which appears to be arbitrary.

The unselected Alternative A (current situation), according to page 68, "would likely result in **more than 50% of recreationists encountering one or more groups each day** of their trip . . ." The State believes this level of encounters is acceptable for wilderness values according to the studies referenced above.

We also suggest that the plan consistently define the selected acceptable level of encounters. There is some unnecessary variation in the current document:

Page xvii, first *: "The Service would establish a management objective of not more than five encounters per recreational group per week."

Page 72, paragraph 4: "The Service would establish a management objective that any recreational group should encounter, on the average, no more than five groups per week."

Page 81: "Management objective to not exceed 5 encounters per group per week." (per recreational and commercial combined?)

Group Size

Since few groups of over 12 persons use the refuge, according to numerous discussions in the plan, it is not clear why such limits are necessary. This number appears to be arbitrary. Group size is virtually self-limiting because of limited access. The few groups over that size are primarily specially-organized parties similar to Girl or Boy Scouts or are commercially guided parties which often are exceedingly conscientious of minimum impact camping techniques.

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.

Tidelands, Shorelands and Submerged Lands

The following definition should be included on page xi:
Tideland - state land that is periodically covered by tidal water between the elevation of mean high and mean low tides (from AS 38.05.965).

The public interest will be better served if the plan clarifies the ramifications of the judicial dispute over landownership. To accomplish this, we suggest the addition of the following insert on page xiv (Navigable Waters, para. 2, line 2): "...planning process. If court resolution favors the state, certain USFWS restrictions (such as those for group size and allocation, camping, aircraft landings, access, and commercial recreation use on state land and water within the refuge may continue or may be modified. Until then the Service and the state will coordinate their management to ensure that guidelines are compatible."

Page 61 (Navigable Waters): Repeat the same 2 paragraphs from Page xiv. Both sections should contain exactly the same wording, to avoid reader confusion. (Executive summaries should never contain more information than included in the text.)

Page 63: Insert in second line from the bottom: "...pp. 131-139). DNR requires commercial operators using state land to have a permit (see Appendix A, pp _____). The Service...."

Appendix A: Please include the attached DNR management items after Page 139 in this appendix (Interim Fee Schedule; Adding Short-term Commercial Recreation Camps to List of Generally Allowed Uses/Registration).

Fisheries of the Rivers

The plan contains only fragments of discussion on fishery information, deferring fishery management issues to the upcoming Fishery Management Plan, but including many discussions of geology, wildlife, subsistence, and other uses and interests; yet one of the reasons people recreate on these rivers is to sport fish. We suggest the description of refuge fish resources be more complete, though not necessarily as detailed as is typically provided in fishery management plans.

For example, page 12 contains a single paragraph discussion of the fish resources of the entire refuge and page 25 briefly explains that sport fishing is not the primary recreational activity on the refuge. We suggest adding the explanation that sport fishing for adult anadromous Arctic char (technically Dolly Varden according to specialists) is unproductive in the summer in all but the Kongakut River because most adults are feeding in marine waters. Simple life history descriptions of the most fished species would aid reader comprehension of the fisheries situation, at least on north slope rivers.

Subsistence Uses

We request the plan provide some discussion regarding "if" and "how" the assumption of federal management of subsistence uses of fish and wildlife may influence management of areas covered in the plan. Silence on this subject leads to further speculation that the management of recreational uses of the rivers is paramount over other purposes of the refuge, i.e., subsistence.

We urge that a more thorough and accurate discussion of the subsistence-related issues be included in the draft plan. For example, page 54 includes the following statement: "The federal government is solely responsible for subsistence management on federal lands." This is inaccurate¹ and an oversimplification of the existing situation of dual management. ANILCA clearly indicates that a preference must be granted for subsistence uses among consumptive uses on federal public lands. The federal government has assumed responsibility for managing fish and wildlife harvests on federal lands, thereby establishing the Federal Subsistence Board. The relationship of this Board to the refuge's intentions for regulating activities and gathering information within the rivers needs to be clarified.

We also question the application of Section 304 in the discussion of harvests on page 54. The closure authority regarding subsistence and recreational harvesting is contained elsewhere (except as pertains to commercial fishing, which has different closure requirements).

Public Involvement in Revisions to the Plan

The comprehensive conservation plans for the refuges were adopted with the understanding that significant detail required by ANILCA was not included. Instead, it was agreed that future "step-down" plans would contain this detail, and the development and revisions of such plans would include the same opportunities for state and public involvement as required for the original plans. We request that these commitments to state and public involvement in the revisions of the River Management Plan be reiterated in the appropriate places (e.g., page 3). The State recognizes and appreciates the considerable effort that refuge staff have devoted to public involvement in this plan to date.

Page-Specific Comments

Page 12: The last sentence of the first paragraph should also include chinook and chum salmon, which spawn in some south slope rivers.

¹ The State is litigating, based on ANILCA provisions, that the Secretaries do not have the authority to manage fish and wildlife.

Pages 12-16, **Subsistence Use:** The plan is strengthened through addition of this section, which describes in general terms subsistence uses of the refuge by local communities and refuge residents. A relevant reference not cited in the report is a product of research conducted under terms of Cooperative Agreement No. 14-16-0007-88-7744 between the Service and Department of Fish and Game, Division of Subsistence. The planning team should at least be aware of this report:

Pedersen, Sverre, August 1990. Assessment of the 1988-1989 Kaktovik Subsistence Fishery. Alaska Department of Fish and Game, Division of Subsistence, Fairbanks.

The "Pedersen, Coffing, and Thompson 1985" reference cited in Figure 5 on page 13 does not appear in the references:

Pedersen, Severre, Michael W. Coffing, and Jane Thompson, 1985. Subsistence Land Use Baseline for Kaktovik, Alaska. Alaska Department of Fish and Game, Division of Subsistence Technical Paper No. 109. Fairbanks.

Page 16, **Refuge Rivers:** The descriptions of the refuge rivers could be more complete here rather than later in the plan. It would be particularly helpful to have a more complete description of the rivers with highest use potential and current use, including key limiting factors such as water velocity and pick up or drop off points.

Pages 19-20, **Wilderness:** We request the discussion include recognition that wilderness designations in Alaska were the result of extensive compromise, specifically that ANILCA amended the Wilderness Act by virtue of provisions for continuation of pre-designation activities, such as aircraft and other mechanized access, and temporary facilities for hunting and fishing activities, among others.

Page 45, **Aircraft Access** and Page 47, **Other Access:** Reasons by which the Service can restrict aircraft and other access should be revised to be consistent with ANILCA. Restrictions under ANILCA Section 1110(a) can only be pursued AFTER a finding of resource damage and hearing in the affected community(ies). These sections state that regulations can be implemented "following a determination" of incompatibility "with refuge purposes". Since access guarantees were a vital part of the compromises that went into the final version of

ANILCA, we are sensitive to being sure such discussions are precisely accurate. In particular, the State does not believe that guaranteed access for traditional (pre-ANILCA) activities is subject to a compatibility test.

Page 46: We remain opposed to any mandatory restrictions on aircraft overflights. This issue was addressed during the passage of ANILCA. It was subsequently addressed on many occasions in earlier Service planning efforts. Altitude restrictions may be published as advisory where cooperatively developed to protect identified resources (e.g., wildlife concentrations). However, weather, geographic factors, and limited access necessitate that such restrictions only be pursued when absolutely necessary. On the other hand, the Service has identified travel corridors as terms of commercial services permits, as a means to protect resources in other areas (e.g., Izembek waterfowl nesting).

We understand that surveys frequently indicate people who are offended by aircraft overflights are the same persons who accessed the area by aircraft and had unrealistic expectations of the area they were visiting. Implementation of the public's suggestion that commercial services provide educational materials to visitors might reduce this complaint.

Pages 48-49 and 69: The access discussion and chart should also address subsistence use of ATV's.

Page 48, last paragraph: We reiterate our concern regarding the need for baseline studies conducted cooperatively to determine what is traditional (pre-ANILCA) access. It is particularly troublesome that the Service prohibits ATV use, asserting it is not traditional, but without having conducted baseline studies.

Page 59: "The construction of new airstrips is not allowed." This is not an accurate reflection of ANILCA Title XI provisions.

Page 71: Under the preferred alternative, commercial recreation would increase 4-6% annually during the next 5-10 years while private recreation would increase 5-8% annually. The refuge managers predict (page 33) that refuge-wide use will increase 5-8% annually. Given these figures, it appears that the proposed regulatory and commercial use scheme, with its inherent expenses and manpower requirements, will only reduce uses among the commercial users by 1% (only a few dozen people). Either these numbers are incorrect or the Service does not stand to gain much by this plan.

Pages 99-104, **Environmental Consequences, Alternative C (Preferred Alternative)**: The Preferred Alternative appears to be least disruptive to continued subsistence uses of the refuge by local residents. We are concerned that increased aircraft use (predicted in Alternatives A, B, and C) and the resulting estimated effects on wildlife resources and subsistence activities by local residents may exacerbate an existing area of concern among subsistence users in Kaktovik and Arctic Village. This concern is directed primarily to Fish and Wildlife Service aircraft in the Kaktovik area during the summer months and to private aircraft north of Arctic Village in the late summer and early autumn months.

Pages 103-104, **Environmental Consequences, Alternative C, Section 810(a) Evaluation and Finding**: Under this alternative, some wildlife displacement and increases in guided and private recreation uses of selected refuge areas are anticipated. The plan reports that no negative impacts are expected to occur to subsistence uses. However, the Service should determine how it will institute low key monitoring of recreation activities in areas where contact is most likely between local subsistence users and visiting recreationists. This will enable staff to respond in a timely manner if unanticipated impacts do occur to subsistence resources or uses.

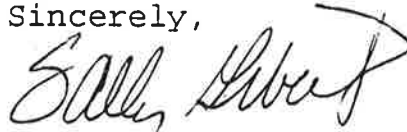
Page 122, Designation of the Preferred Alternative:

"Alternative A would allow an unlimited increase in recreational activities which could have, contrary to refuge purposes, moderate to major adverse affects on wildlife populations, . . ." This statement contradicts information provided in the Summary of Biological Impacts on page 16. Under the summary, Alternative A as would have minor to moderate impacts for all fish and wildlife listed.

The State contends that the small numbers of increased users will not have "moderate to major impacts on habitats" if the Service limits commercial groups to camping in hardened areas, provides temporary facilities, and imposes time limits ON THE FEW RIVERS EXPERIENCING HEAVIER USE. Certainly no projected "moderate to major" impacts can be projected for the remaining river corridors throughout the refuge.

Thank you for the opportunity to provide these comments. If you have any questions, please feel free to call this office.

Sincerely,



Sally Gibert
State CSU Coordinator

cc:

Glenn Elison, Refuge Manager, Arctic National Wildlife Refuge
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
Arctic Refuge Rivers Plan
March 10, 1993**

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Terry Haynes, Department of Fish & Game, Fairbanks

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