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**OFFICE OF MANAGEMENT AND BUDGET
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November 30, 1993

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

Dear Mr. Stieglitz:

The State of Alaska has reviewed the Draft Public Use Management Plan for the Tetlin National Wildlife Refuge. This letter represents the consolidated comments of the State's resource agencies.

Overall, state agencies are very pleased with the numerous editorial and substantive differences in this plan compared to many other refuge plans we have reviewed in the past few years. The plan accurately reflects most provisions of the Alaska National Interest Lands Conservation Act (ANILCA), and clearly describes management intent (dependent upon funding) for public use opportunities. Except for the portrayal of certain access provisions, the State particularly appreciates efforts made to accommodate most of our concerns during preparation of the plan. The Service's decision to provide two opportunities to work on mutual issues during development of the plan contributed to resolution of most outstanding issues. Such attention to cooperation are commendable. Hopefully, the benefits of taking such steps toward reducing conflict will serve as an example for other refuge planning efforts.

Public Involvement

We commend the Service for working closely with local residents most directly affected by the public use management plan prior to making decisions about direction. We are pleased to see the commitments on page 4 to further participation by the State and public in subsequent revisions of this plan and in other plans affecting public use. These commitments appear to be consistent with those contained on pages 8-9 of the Tetlin Refuge Comprehensive Conservation Plan.

Management of Fish and Wildlife in Alaska

The plan contains erroneous information on pages 4-5 and 31-32, implying that the Master Memorandum of Understanding between the U.S. Fish and Wildlife Service and the Alaska Department of Fish and Game (DFG) is no longer in effect. The Memorandum contains a provision for either of the signatories to cancel the agreement, which has not occurred. All the provisions currently quoted in the past tense are still in effect. DFG remains the primary manager of fish and wildlife on ALL lands in Alaska. The discussion should clarify that the federal government has assumed regulatory responsibility for *subsistence* management of federal public lands--not all management of fish and wildlife. As recently as the fall of 1992, the Commissioner of DFG and the Service's Regional Director met and confirmed the continuance of the responsibilities as listed in the Master Memorandum of Understanding.

Information and Education Program

We suggest consideration of incorporating local ecological knowledge in interpretive and educational programs. For example, conveying, in a positive manner, information about how the Upper Tanana Athabaskans have sustained their culture through hunting, fishing, and trapping in the refuge area would benefit visitors and reinforce important values among local residents. Several specific strategies could be employed:

- Include in the school curricula such topics as traditional fishing practices, winter travel and survival skills, hunting and processing methods, and treatment of animals.
- Video productions such as Richard Nelson's "Make Prayers to the Raven" could be used to illustrate the role of resources among Athabaskans or to serve as a model for new local film productions.
- Roadside and trailside interpretive panels could describe sustained yield harvest practices and depict tools used over time for harvesting resources. Roadside pullouts overlooking the Northway Flats are a suitable location for informing visitors that the land is not "wilderness" void of human activity; instead it is a land with a rich heritage of human use. Local place names, settlements, seasonal camps, harvest sites, and trail networks occur throughout the landscape and further illustrate this fact.

We encourage the refuge to communicate with DFG to share ideas if development of such educational tools are considered.

Subsistence

Although the introduction to this section (page 15) clarifies that the definition of subsistence is incomplete, we urge the Service instead to insert the entire ANILCA definition. The complete definition is necessary because this document will likely be used for a number of years as a reference document by local and non-local users of the refuge as well as managers.

The discussion of subsistence uses by residents of Tok (page 17) includes specifics which are not source cited. We request the Service identify the source of information on estimated numbers of game and waterfowl harvested from the refuge by Tok residents.

The plan references only one of two published reports which describe subsistence activities in Tanacross and other refuge area communities. We urge review of the second report to supplement the general picture of subsistence uses of the refuge:

McMillan, Patricia O. and Sal V. Cuccarese. 1988. *Alaska Over-the-Horizon Backscatter Radar System: Characteristics of Contemporary Subsistence Use Patterns in the Copper River Basin and Upper Tanana Area*. Vols. I & II. Anchorage: Arctic Environmental Information and Data Center.

The discussion of subsistence use (pages 15-18) should also acknowledge that there probably is some use of the refuge by some residents of the Copper River Basin who conduct subsistence activities with friends and relatives from the Upper Tanana region. Similarly, Upper Tanana residents engage in subsistence activities with friends and relatives in the Copper River Basin. The extent of this use has not been documented but was noted in the following report which we request be appropriately reviewed and referenced:

Haynes, Terry L. et al. 1984. *The Use of Copper River Salmon and Other Wild Resources by Upper Tanana Communities, 1983-1984*. Alaska Dept. Fish and Game, Div. of Subsistence. Technical paper No. 115. Fairbanks.

We appreciate the refuge's commitment to cooperating with DFG in subsistence monitoring and in determining whether proposed actions will significantly restrict subsistence uses. The Department's Division of Subsistence, however, has had no contact from the refuge concerning these activities in recent years. Refuge management should communicate with the Division of Subsistence as well as the Division of Wildlife Conservation and Division of Commercial Fisheries regarding subsistence harvest monitoring.

Recognition of State and Federal Land Management Authorities

In many instances the plan accurately portrays the land management authorities affecting state, federal, and private lands. We request inclusion of the following additional boilerplate language concerning 17(b) easements and water rights, and an update of Appendix A:

SECTION 17(b) EASEMENTS AND NONEXCLUSIVE USE EASEMENTS

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

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

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

(continuation of proposed insert)

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

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

WATER RIGHTS

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

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

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

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

APPENDIX A

Remove pages 81-83, and replace with the enclosed two-page fact sheet prepared by the Alaska Department of Natural Resources.

DEFINITION OF NAVIGABILITY

In the discussion of navigable waters, page 10 includes a footnote with the Service's definition of navigable waters. The footnote should also reference the State's definition, which is included in Appendix A. It is important for the public to be fully aware of the State's definition because the Service's definition may, by implication, confuse potential applicants about where to seek appropriate State permits.

Numerous locations in the plan accurately portray navigable waters as regulated by the State. We note that most airboat access within the exterior boundaries of the refuge would begin on navigable waterbodies. Therefore, rather than prohibiting such use, the Service should approach the State to consider any access-related management actions affecting State navigable waterways (e.g., state land plans, state Boards of Fisheries and Game controlled use areas).

Mechanized Access Restrictions

As we have previously stated in comments on the Tetlin Comprehensive Conservation Plan and during preparation of this plan, the State objects to continued incorrect statements such as "off-road vehicles and airboats will not be permitted on the refuge" (e.g., pages ii, vi, 36, 41, 49, 51, 55, and 59).

Such administrative prohibitions by the Service are contrary to federal access regulations for Alaska refuges contained in 43 CFR Part 36 and in ANILCA Sections 811 and 1110. Congress specifically protected traditional (pre-ANILCA) access. The Secretary of the Interior's regulations protect mechanized equipment for subsistence and traditional activities and access to inholdings. The Service participated in the Alaska Land Use Council team that put together the regulations to implement Congressional intent for access in Alaska.

We object to the unilateral closures of access which may be traditional (pre-ANILCA), are protected by ANILCA and allowed under appropriate refuge regulations. To date, the Service has taken no steps to pursue our repeated requests that cooperative, thorough studies be conducted to determine traditional routes or areas used by all terrain vehicles (including airboats) prior to establishment of the refuge. Refuge administrators have the authority to designate such routes and areas, but because studies have not been done, no trail designations have been made or considered.

Administrative determinations that "ORVs were not traditionally used" (page 33) and subsequent blanket prohibitions (page 36) without studies to document traditional (pre-ANILCA) uses are *de facto* closures of legislatively protected access. Such actions are inconsistent with the clear intent of ANILCA and provisions of Interior regulations. It is inappropriate for users to be prohibited from traditional (pre-ANILCA) access for traditional activities just because the agency has failed to complete the administrative designation process.

We also find it frustrating that the Service took time and expense to survey people as to their "feelings" about what methods and means of access should be allowed on the refuge (page 27). The State has repeatedly identified the necessity of cooperative study and identification of pre-ANILCA access--what better opportunity to initiate this type of study than through source identification by such a survey of local residents and other refuge users. Furthermore ANILCA and federal regulations protect access in ANILCA units with a specific process to initiate closures. Survey respondents' "feelings" are frankly of little relevance in light of legislatively protected access which was part of the compromise that enabled Congress to establish conservation system units in Alaska.

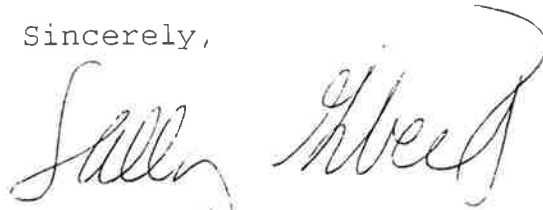
In previous reviews and input to public use management plans, we have requested the Service give consideration to requests of local residents for designation of ATV trails to facilitate traditional access between the Alaska Highway and Hidden Lake and along the Cheslina River. We urge the Service to reconsider its decisions and pursue consideration of the designation of the existing trail from the Alaska Highway to Hidden Lake. Such a trail would require stabilization of the low-lying portions with corduroy or other techniques to avoid trail degradation or braiding. Similarly, a designated ATV access route to the Cheslina River drainage could accommodate the historical and pre-ANILCA use of ATVs in the area. The plan states that such access simply won't be allowed because of damage during "unauthorized" use. Yet the first test should be to identify protected pre-ANILCA access, then determine whether there are data to follow the appropriate process to restrict that access.

Wildlife Inventory Plan

DFG is concerned that the "Wildlife Inventory Plan" referenced on page 2 has apparently been developed without appropriate consultation with the State agency having primary responsibility for management of wildlife in Alaska. We request the Service to consult with DFG about this plan.

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

Sincerely,

A handwritten signature in cursive script, appearing to read "Sally Gibert". The signature is written in dark ink and is positioned above the typed name.

Sally Gibert
State CSU Coordinator

cc:

Sue Matthews, Refuge Manager, Tetlin Refuge
Carl Rosier, Commissioner, Department of Fish and Game
Harry Noah, Commissioner, Department of Natural Resources
John Sandor, Commissioner, Department of Environmental
Conservation
Bruce Campbell, Commissioner, Department of Transportation and
Public Facilities
Richard Burton, Commissioner, Department of Public Safety
John Katz, Governor's Office, Washington, D.C.

**CSU Distribution List
Tetlin PUMP
December 2, 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

Norm Piispanen, Department of Transportation/Public Facilities, Fairbanks

Paul Rusanowski, Division of Governmental Coordination, Juneau

Connel Murray, Division of Tourism, Juneau

Dick Swainbank, Department of Commerce & Economic Development, Fairbanks

Colonel Phil Gilson, Fish & Wildlife Protection, Anchorage

Bob Stevens, Planning, U.S. Fish and Wildlife Service, Anchorage

Fact sheet:



Alaska Department of
**NATURAL
RESOURCES**

GENERALLY ALLOWED USES ON STATE LAND

Division of Land • April, 1993

The following uses and activities are **generally allowed** on state land managed by the Alaska Division of Land that is not in any special management category or status. Uses listed as "generally allowed" do not require a permit from the Department of Natural Resources. Note that this list does not apply to state parks, nor to land owned or managed by other state agencies such as the University of Alaska, Department of Transportation and Public Facilities, or the Alaska Railroad. Before beginning an activity on state land, the user should check to be sure it is **generally allowed** in that particular area.

TRAVEL ACROSS STATE LAND:

Hiking, backpacking, skiing, climbing, and other foot travel; bicycling; traveling by horse or dogsled or with pack animals.

Using a motorized vehicle, including a four-wheel-drive vehicle, pickup truck, snowmobile, or all-terrain vehicle (wheeled or tracked), on or off an established road right-of-way, if use off the right-of-way does not kill or break through the plant cover and expose the soil to erosion.

Landing a small aircraft such as a single-engine airplane or a helicopter, or **using watercraft** including a boat, raft, or canoe, without damaging the land.

Driving livestock, including any number of reindeer or up to 100 horses, cattle, or other domesticated animals.

ACCESS IMPROVEMENTS ON STATE LAND:

Brushing or cutting a trail less than five feet wide using only hand tools such as a chainsaw, if the root system is not disturbed, and if the trail is not intended as and does not establish a right-of-way.

Anchoring a mooring buoy in a lake, river, or marine waters for an upland owner's personal, noncommercial use, or **placing a float or dock** in a lake or in marine waters for an upland owner's personal, noncommercial use, if the use does not interfere with public access or other public use. A float or dock is defined as an open structure without walls or roof that is designed and used for access to and from the water rather than for storage, residential use, etc.

REMOVING OR USING STATE RESOURCES:

Hunting, fishing, or trapping, including placement of a crab pot, shrimp pot, or herring pound, in accordance with regulations of the Board of Game or the Board of Fisheries (this item does not apply to entry by a big-game guide-outfitter).

Harvesting a small number of wild plants for personal, noncommercial use; using dead and down **firewood for a cooking or warming fire**, unless the area has been closed to all fires because of the danger of wildfire; **harvesting mushrooms, berries, and other plant material** for personal, noncommercial use.

Grazing as many as five domesticated animals.

Recreational gold panning; mineral prospecting or mining using light portable field equipment, such as a hand-operated pick, shovel, pan, earth auger, or a backpack power drill or auger; or **suction dredging** using a dredge with a nozzle intake of six inches or less, powered by an engine of 16 horsepower or less, and pumping no more than 30,000 gallons of water per day.

OTHER IMPROVEMENTS AND STRUCTURES ON STATE LAND:

Setting up and using a camp for personal, noncommercial recreational purposes, or for any non-recreational purpose (such as a support camp during mineral exploration), for no more than 14 days at one site, using a tent platform or other temporary structure that can readily be dismantled and removed, or a floathouse that can readily be moved. Moving the camp at least two miles starts a new 14-day period. Cabins or other permanent improvements are not allowed, even if they are on skids or some other form of non-permanent foundation. The camp must be removed immediately if the Division of Land determines that it is interfering with public access or other public uses and interests.

Operating a short-term camp for commercial recreation purposes, including guided or outfitted hunting, fishing, rafting, hiking, touring, or other recreational activity operated as a business, **and/or entry onto state land to guide-outfit a big-game hunt**, if before entry each year the camp operator or guide registers the camp's or entry's general location (such as a game management unit or river drainage) with the Division of Land; pays the annual registration fee for the camp's or entry's full period of operations; and agrees to comply with written conditions, including agreeing that any campsite used will be at least two miles from the previous campsite, will be used no longer than 14 days (or a shorter period set by an applicable land use plan or special use land designation), and will be left vacant and clean after use. A short-term camp is a spike camp or overnight camp, or a series of such camps, using tents or other portable facilities that can easily be moved from the site, and that remains at each site no more than 14 days.

Brushing or **cutting a survey line** less than five feet wide using only hand tools such as a chainsaw, if the root system is not disturbed; or **setting a survey marker** (but setting a survey monument--a permanent, official marker--requires written survey instructions issued by the Division of Land).

Placing a **sewer outfall** into marine waters from a residence or residences on contiguous privately owned upland, if the outfall complies with regulatory requirements, flow volume is less than 500 gallons per day, the outfall is located within the projected sidelines of the contiguous upland owner's lot, and the outfall line is buried to the extent possible or, where it crosses bedrock, is secured and covered with rocks to prevent damage.

MISCELLANEOUS USES: Recreational or other use (not including a camp for commercial recreation purposes or entry by a big-game guide-outfitter), for no more than 14 consecutive days at a site, that causes no lasting damage to vegetation, drainage, or soil stability; does not interfere with public access or other public purposes; and does not involve harassment or disturbance of wildlife other than lawful hunting, trapping, and fishing.

Check for special conditions and exceptions!

Remember that this list does not apply to state parks. In addition, some other areas managed by the Division of Land are not subject to the full list of generally allowed uses. Exceptions may occur because of special conditions in a state land use plan or management plan (for example, a management plan may reduce the number of days that people can camp at a specific site), or by a "special use land" designation (for instance, a special use land designation for the North Slope requires a permit for off-road vehicle use).

Also, be aware that this list does not exempt users from the permit requirements of other state, federal, or local agencies. For example, a permit might be required by the Department of Fish and Game if the use will take place in a state game refuge.

Finally, this list does not authorize a use if another person has already acquired an exclusive property right for that use. For instance, it does not give people permission to graze livestock on someone else's state grazing lease, to build a trail on a private right-of-way that the Division of Land has granted to another person, or to pan for gold on somebody else's state mining location.

Division of Land staff can help users determine the land status of state-owned land and whether it is subject to any special exceptions or to private property rights.

All activities on state land must be conducted in a responsible manner that will minimize or prevent disturbance to land and water resources, and must comply with all applicable federal, state, and local laws and regulations. By acting under the authority of this list, the user agrees to protect the State of Alaska against any claim, liability, or lawsuit arising out of the use.

For additional information, contact Department of Natural Resources:

Public Information Center
3601 C Street, Suite 200
Anchorage, AK 99503
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