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September 12, 1997

Mr. David B. Allen
Regional Director, U.S. Fish and Wildlife Service
1011 E. Tudor Road
Anchorage, Alaska 99503-6199

Dear Mr. Allen:

The State of Alaska has reviewed the internal draft of the revised Togiak Public Use Management Plan (PUMP). This letter represents the consolidated comments of the state's resource agencies and is offered informally for your use in continued preparation of the draft plan. As is always the case, we are available to discuss any aspect of these comments.

We greatly appreciate the process used by the U.S. Fish and Wildlife Service to revise and update this plan. The Alaska Department of Fish and Game (DFG) and Alaska Department of Natural Resources (DNR) have enjoyed a high degree of active involvement. At the outset, we wish to recognize the efforts of Service staff Donna Stovall and Helen Clough to facilitate involvement of local residents and agency personnel in issue discussions and information updates. We also appreciate Service staff Jon Dyasuk's efforts to alert the planning team to concerns of refuge area residents.

We will be supportive of a plan that reflects continued cooperative strategies provided it does not inappropriately imply, or impose, refuge management onto non-federal ownerships, especially navigable waters. This letter covers these potential pitfalls in depth so that the public review draft presents the most accurate and defensible proposals in light of the complex land ownership and management jurisdictions in the Togiak Refuge. These pitfalls, include:

- inconsistent recognition of State authorities over navigable waterways across all alternatives
- inappropriate and unjustified extension of federal authority over state-owned waterbodies
- lack of recognition of the public trust doctrine regardless of ownership of submerged lands and adjacent uplands
- consistency with the Alaska National Interest Lands Conservation Act (ANILCA) access and wilderness management provisions
- superficial discussion of subsistence impacts
- lack of management provisions to address water quality across all alternatives

STATE AUTHORITY ON NAVIGABLE WATERBODIES

As a threshold matter, every alternative presented in the planning process contemplates the regulation of State owned navigable water bodies. The Service has no basis for the imposition of use and access restrictions on navigable water bodies unless it can establish that such uses adversely impact refuge uplands. Because an activity such as sportfishing is confined to navigable water bodies, the Service cannot dictate the allocation between guided and nonguided activity, the number of passengers per trip or the length of trip on the waterway. As the owner of navigable waterways, the State retains authority to regulate these activities.

Where the plan does attempt to address the issue of State ownership and management authority, the treatment of the issue is fundamentally flawed. Rather than discuss the implications of State authority on navigable waters as it applies to the entire plan, the Service confines its discussion of State authority to a single alternative in the plan, Alternative B. Federal law provides that the State owns the beds and banks of all navigable waterways within the refuge. Thus, State authority over navigable water bodies is not an alternative that can be chosen in the planning process; it is a fact that must be addressed in each alternative to the plan.

The state welcomes opportunities to cooperatively engage in discussions with the Service and other land managers to seek agreement on management of activities wherever possible. Through cooperative efforts, it may be desirable to continue to achieve consistent state and federal management of significant uses that affect each other's lands and responsibilities, as has been already been pursued for activities such as camping within the waterways. However, without state consent and cooperation, with certain exceptions, the Service may not regulate public use activities, including guiding and sport fishing, in state waters or on state lands below the ordinary high water mark of navigable waterways.

PREJUDICIAL ALTERNATIVES REGARDING STATE AUTHORITIES

In Alternative B, the Service correctly assumes that refuge guide permit conditions do not apply to navigable waters, including associated gravel bars. Under this alternative, the refuge would only manage guide activities occurring on refuge land. We understand this alternative is the result of legal advice from the U.S. Department of Justice which provides that the federal government may not regulate activities on navigable water bodies unless the preponderance of the regulated activities occur on federal uplands. The Service is governed by this fundamental point of law, and each of the five alternatives, not just Alternative B, should reflect this.

Even in light of Alternative B's recognition of State authority, Alternative B contains restrictions which cannot be justified by the Service. For example, the plan imposes strict limitations on guiding activity on the Togiak, Kanektok, Arolik and Goodnews river systems with no legitimate basis for placing limitations on activities which are confined primarily to State owned navigable waterways.

Throughout the plan, and particularly in discussion of environmental consequences of the alternatives, statements are made which would prejudice the reader from supporting Alternative

B—the only alternative that appropriately recognizes that federal authorities do not apply to state lands and waters. The plan should be edited throughout to clarify that, although the state does not currently restrict guided use of its navigable waterways, the state does regulate use of state waters and submerged lands. This fact is evidenced by the State's Special Use Area designation and the management plan adopted by DNR for the drainages within the refuge. Yet the message accompanying Alternative B is that the State cannot or will not contribute management solutions. We trust this implication is not intentional to garner support for unnecessarily extending jurisdiction off federal lands. Two examples of this problem are included in page specific comments (pages II-18 and II-19).

Currently the State of Alaska does not restrict guiding activity on navigable waters within the refuge. However, both DFG and DNR have consistently indicated a willingness and desire to consider and adopt, to the extent possible, a management strategy that recognizes the concerns of local residents and recreationists as well as the Service. If resource impacts to the refuge in specific areas can be documented, then the Service should approach the state land managers and/or Boards of Fisheries and Game to pursue further management actions through these appropriate state regulatory processes.

The State will continue to be a responsible land manager within the refuge boundaries and will continue its effort to work with federal and private landowners to develop an approach to land and water management which meets the state's needs and is complimentary to adjacent federal and private lands.

As a further indication of the state's responsiveness, DNR's Division of Land would like to incorporate its public notice needs with the federal notice announcing public review of the proposed revisions to the PUMP. Additionally we would like to be included at public meetings scheduled to discuss these proposals. Following public input we will be prepared to consider changes to the provisions of the existing Special Use Area. Any changes that occur will be designed to further the state's management objectives in the refuge while recognizing the concerns and needs of the adjacent upland owners.

In contrast with the difficulties noted above, Alternative B's treatment of the management of fisheries is the most balanced. The Fisheries section better recognizes the realistic potential for growth versus portraying Alternative B as guaranteeing immediate growth of great proportion. The Fisheries section seems to recognize the fact that there is also real opportunity for DNR and DFG to adopt policies and regulations that better accommodate the concerns of local residents, tourists, state residents and the Service.

Attached is a Memorandum of September 3, 1997 which DFG's Sport Fish Division has provided to explain the state's current authorities regarding sport fish guides and the Task Force established by the Alaska Board of Fisheries to make recommendations regarding the orderly development of the industry.

AROLIK RIVER

The State disputes the portrayal that the Arolik River is non-navigable. The plan (page I-23) correctly reports the State's notice of intent to quiet title. Paragraph 4 on page I-24, however, needs additional work. The Bureau of Land Management (BLM) ruled in a Native Allotment conveyance that an area further upstream on the Arolik River was navigable. The 1980 decision for the lower river upon which the conveyance was based preceded the Gulkana River decision. The Arolik River clearly meets the Gulkana standard for navigability; the BLM decision on the Native Allotment confirms this. Hence, the Arolik is navigable and state owned. The document should recognize this or, at a minimum, reflect that this is the state's position.

THE PUBLIC TRUST DOCTRINE

Under any scenario where all or portions of the river bed have been conveyed to private ownership, we request the Service recognize the public trust rights under Alaska law. The Alaska Constitution (Article VIII, Sections 1, 2, 3, 6, 13 and 14) and Alaska Statutes (AS 38.05.127 and 38.05.128) are the legal basis for applying the public trust doctrine in Alaska. The Constitution says "free access to the navigable or public waters of the state, as defined by the legislature, shall not be denied any citizen of the United States or resident of the state, except that the legislature may by general law regulate and limit such such access for other beneficial uses or public purposes." Under the public trust doctrine, the public has a right to utilize waterways even where the underlying bed and banks have been conveyed into private ownership.

Throughout the document (e.g. I-24, II-10, II-16, II-23, III-6, III-38), the Service contends that private landowners have the sole authority to allow any use on non-navigable water bodies. Such statements are incorrect and fail to recognize public trust rights.

For example, after the fourth paragraph on page I-24 which asserts native corporation ownership of the Arolik River streambed, the state's position on the public trust rights to access the waterway should be included, such as:

The ownership of land beneath navigable waters is in dispute. Regardless of ownership, it is the state's position that the public has the right to use and have access to the Arolik River and other navigable waterways under the public trust doctrine and state constitution. Water is available for public use for the purpose of fishing, boating, and other activities regardless of ownership of the submerged lands. Such use includes standing on the river bed below ordinary high water to fish and pushing a watercraft off riffles. However, any overnight camping or other use of privately owned uplands for any purpose, except at designated public use easements, requires the permission of the upland owner.

We urge the Service to help us clarify these points throughout the plan so that the private land owners pursue only those trespass violations on their lands where public trust rights are not involved.

PUBLIC USE RESTRICTIONS

The plan does not sufficiently justify the access and use restrictions imposed under each alternative. The "environmental consequences" section discusses the impacts that will result from limitations on river use and access imposed by each alternative. However, the plan fails to discuss the specific resource damage and environmental problems which it believes justify the imposition of those limitations in the first place. For example, the plan identifies what it feels will be the minimal environmental consequences flowing from the ban on commercial guiding activity on the Arolik and Kanektok rivers. Yet, the plan does not identify the environmental degradation that justified the imposition of the underlying ban on commercial activity. Similarly, the plan does not identify the resource degradation that justifies the limitations on the use of motorboats which are found in each of the plan's alternatives.

The failure to justify these restrictions violates the provisions of ANILCA Section 1110(a) which provides that the Secretary shall permit motorboats, airplanes and nonmotorized surface transportation methods on CSUs for traditional activities. Such uses shall not be prohibited unless, after notice and a hearing, there is a finding that such uses are detrimental to resource values. According to the associated regulations at 50 CFR 36.12 the refuge manager must show that such use is causing or is likely to cause an adverse impact on public health and safety, resource protection, protection of historic or scientific values, subsistence uses, conservation of endangered or threatened species, or other purposes and values for which the refuge was established. Section 1110(b) protects the State of Alaska as an inholder within the refuge (the beds of navigable waterbodies), providing that the Service must assure adequate and feasible access for economic and other purposes.

Over the years we have also noted the Service has conducted no studies to determine the traditional methods of access and traditional activities that are protected by ANILCA sections 1110(a) and 811(b). We continue to request that such studies be cooperatively conducted, and thus document, for example, any use of airboats as an ORV prior to ANILCA which is protected by ANILCA Section 811(b) for subsistence transportation. We would welcome opportunities to participate in the design and conduct of such studies, such as we completed for the Wrangell-St. Elias National Park and Preserve (copies are available from our office).

These statutory provisions constrain the Service's ability to limit traditional activities on refuge lands. At a minimum, all use limitations must be justified by a specific finding of resource damage. Mere speculation that public use will increase or that damage may occur is insufficient to justify the multitude of use and access restrictions imposed by the plan. Currently the plan is replete with instances where speculative and anticipated impacts are used to justify access restrictions. Examples include the use of speculative increases in visitor numbers, guiding and sportfishing activity, combined with a speculation that such activity will adversely affect land and water resources, to justify significant management restrictions. Rather than identify specific problems on the refuge, the plan draws upon speculative impacts and worst case scenarios to justify its restrictions.

Furthermore, where valid problems are identified, the plan consistently invokes the most restrictive management tool available to address a stated problem, completely overlooking other less restrictive options to abate the problem. For example, in addressing Alternative B, the plan identifies the disposal of human waste as an impact on both water quality and the wilderness expectations of visitors. Rather than discuss the available management tools (requiring waste to be packed out or installation of pit toilets), the problem is used to justify access restrictions. Similarly, the plan uses potential bear encounters as a justification for the rejection of Alternative B. Again, the problem is used to reject this alternative and makes no attempt to discuss the multitude of other management tools (food storage regulations, seasonal restrictions, location restrictions) that could alleviate any problem.

COOPERATION CONCERNING FISH AND WILDLIFE MANAGEMENT

The extensive public and agency involvement in this plan revision has resulted in a document that is more closely grounded in real public and resource issues than past planning efforts, in part because of contributions from DFG staff provided early in the planning phases. In turn, there are fewer fish and wildlife data interpretation errors and more accurate representations of agency authorities than in most plans. We commend the Service's acknowledgment of DFG's management authority for fish resources and willingness to defer to the Board of Fisheries process to pursue modified sport fishing regulations which better align with refuge goals. The alternatives also rely on the state's population assessment to predict management impacts to fish populations. In this respect, the plan demonstrates a quantitative approach to management that alleviates the appearance of arbitrary management decisions. We believe the document and eventual final management decisions will have significantly benefited from this extensive involvement process and hope that other units incorporate similar procedures.

SUBSISTENCE RELATED CONCERNS

DFG's Division of Subsistence is interested in understanding how subsistence uses by refuge area communities might be affected by this plan and supporting actions which are intended to minimize or eliminate user group conflicts. The descriptions of subsistence activities presented for the affected refuge management units clearly demonstrate the importance of fish and-wildlife resources to local residents. However, the coverage of subsistence issues would be strengthened if the plan responded to questions and concerns raised by local residents in village public meetings. Although some of these local issues are summarized in the ANILCA Section 810 Subsistence Evaluation, we request presentation of more evidence to support the conclusion that none of the planning alternatives would significantly restrict subsistence uses on the Togiak Refuge.

Differing perceptions of impacts are another important consideration in this plan. We support measures to ensure that public access to fish and wildlife resources is maintained. However, it is also important to acknowledge that the nature and extent of public use in the refuge area have changed and that public uses continue to expand and increase in southwestern Alaska. Subsistence data are essential to identify issues and to understand how user conflicts on the refuge might be minimized. Since adoption of the original plan in 1991, little new subsistence

information has been collected, especially for Quinhagak, Goodnews Bay, and Platinum. Efforts to assess the potential cumulative effects of increased public use on subsistence activities of local residents require that additional studies be initiated. If such studies are not conducted before the revised plan is implemented, then we request provisions in the plan to monitor non-subsistence public uses and determine if they are impacting local subsistence activities.

WATER QUALITY

The objectives for managing the refuge under this plan omit one of the four purposes of the refuge listed in ANILCA Section 303(6)—to ensure water quality. This is a primary issue of residents as reflected in public meetings and comments on earlier planning efforts. We suggest this objective be located on the list (pages iii and I-19) as high as number 2. Management actions in cooperation with the state and local governments which would address water quality need to be appropriately developed and included in all alternatives.

The discussion of rationale for selecting alternatives on page II-18 addresses Litter and Human Waste, describing how those river areas which have been subject to combined public education and cleanup efforts have reduced impacts. For all alternatives we request the Service call for a cooperative water quality monitoring program with the state and local governments and better programs related to proper human waste disposal which are now included only in Preferred Alternative P. This reduces an inappropriate bias among alternatives and better reflects ANILCA's purposes for management of the refuge.

References are made throughout the document to "...digging a hole and burying human waste at least 100 feet from surface water". This should be changed throughout the document to more accurately reflect state law. We suggest "...100 feet from the ordinary high water mark of any surface water." This will help assure the buried material will not be washed away by high water.

WILDERNESS MANAGEMENT

We request the discussion of Wilderness (page I-22) more accurately reflect that wilderness designations in Alaska are managed under ANILCA, which effectively amends many provisions of the Wilderness Act for Alaska units. It currently implies ANILCA is just one of many considerations rather than the actual enabling and directive legislation. The discussion should also explain that state and private lands are also exempt from such designation. It now acknowledges the access guarantees provided under ANILCA 1110(a) but should also acknowledge the access provisions for wilderness addressed in ANILCA 1110(b) and 811(b).

We object to the statement (page I-22 last paragraph) that "motorized equipment, such as generators, chain saws (except for subsistence purposes), and water pumps, are not permitted in wilderness areas in accordance with wilderness policy guidelines", citing the Alaska Policy Manual. Such a prohibition is in direct conflict with ANILCA's Section 1316(a) statutory protection for such uses necessary for hunting and fishing activities, Service regulations, and the policy adopted by all members of the Alaska Land Use Council, including the Service, in overseeing the original implementation of ANILCA.

MAPS

The maps in the draft are poor and do not reflect current navigability status or land ownership patterns. We request, at a minimum, that maps reflect waterbodies for which navigability has been determined and for which navigability has been asserted by the state. With regard to land ownership patterns, the status of selections should be revisited and corrected. For example, the state has selected the BLM block at Goodnews Bay, which does not appear on the maps.

MINERAL RESOURCES

On federal refuge lands, the mineral resources appear to be a non-issue since ANILCA closed the refuge to new mineral entry. Within State managed navigable waterbodies, the minerals, other than gravel, are unknown and not likely to be an issue within the 3 to 5 year time frame of the plan. Outside the refuge, mineral resources are an important resource base and the state requests removal of the inference in some of the alternatives that these lands are subject to refuge management policies/goals.

PAGE-SPECIFIC COMMENTS

Pages i paragraph 4 and I-1: Rewrite to more accurately reflect ANILCA 303(6)(B) purposes are neither "major" nor all inclusive; e.g., "establishes the purposes for which the Refuge is established and shall be managed include...."

Page i paragraph 5: ANILCA Title I has several significant paragraphs beyond the one paraphrased here. Many other provisions of ANILCA have significant weight in management decisions including providing opportunities for subsistence to guaranteeing access for fishing and other pre-ANILCA activities. Because some of these are described later in the plan and the inclusion of only one piece here could be misleading, we suggest dropping this paragraph.

Pages iii and I-19: Objectives 2 and 5 are duplicative and problematic concerning wilderness provisions in ANILCA.

Page iv definitions: "Angler day" and "Angler hour" specify use of sport fish gear such as rod and reel. The latter gear has been included as legal gear for subsistence under federal regulations. Depending upon the use of the related data and possible inability to separate subsistence from sport fishing in counting anglers, perhaps the definition should exclude those gear types which are not used for sport fishing such as set nets.

Page I-23. In a discussion of the State's notice of intent to quiet title to the Arolik, Goodnews, Kanektok and Togiak rivers, the Service states that the courts are the only place to make a determination of navigability and that it will take years to resolve this issue. That statement is not true. Federal agencies routinely determine the navigability status of water bodies throughout the state without using the judicial process. Where, rivers are large and support commercial guiding operations (such as rivers on the Togiak refuge) it would be relatively simple for the

agency to determine navigability. The Service itself notes this fact in footnote 1 on page II-1 of the plan. It is disingenuous for the Service to suggest that interim federal management is necessary when resolution of the underlying issue is needlessly burdensome.

Page I-24, last full paragraph: We request this paragraph be modified slightly to more accurately reflect that the state retains fish and wildlife management authority on ALL lands and waters in Alaska including federal lands. The federal authority for allocation of subsistence opportunities on federal lands and nonnavigable waters impacts the state's harvest regulations but does not eliminate the state's overall management authority and responsibility.

Page II-2: The plan states "to implement parts of some alternatives, regulations would be required." The plan should be more specific about which actions require regulations, and should include a more complete explanation of the ANILCA requirements (including citations) for promulgating such regulations.

Page II-2. Alternative A General Policies, guided/non-guided use. This discussion does not appear to be incorporated in the preferred alternative. If it does apply to the preferred alternative, the last sentence should be changed as follows: Should monitoring identify problems or should non-guided use increase to the 50 percent level, *an analysis will be conducted to determine if further management actions are appropriate.*

Pages II-2 and II-4, Alternative A: We do not believe the Service has the authority to require a special use permit of air taxi operators landing on navigable waterbodies under state jurisdiction. We also do not believe the Service can prohibit people from landing airplanes on lakes "if other parties are visible on the lake or lake shore". ANILCA Section 1110(a) protects access via aircraft except where there is a finding and resource damage and subsequent hearings and regulatory closure. Making such a restriction a stipulation of a sport fish guide permit seems to be inconsistent with congressional protections of access, especially since it appears to be basing the restriction on arbitrary values. Furthermore, where the landing is occurring below the ordinary high water of a navigable waterway, the Service has no jurisdiction.

We also object to the prohibition of "fuel, equipment, and boat storage" included in numerous of the alternatives. ANILCA Section 1316 specifically protects, subject to reasonable regulation to ensure compatibility, the use of temporary facilities, e.g., meat and fuel caches, where necessary for the taking of fish and wildlife and includes provisions for applying any restrictions. We urge this unilateral prohibition be deleted, otherwise it effectively preempts activities specifically protected by ANILCA. While the prohibition applies only to commercial operators, these operators are frequently the only means for the public to access the area to hunt and fish.

Page II-4, Alternative B. first paragraph: Delete "during most of the summer use season". The Service's authorities and permit conditions do not apply to state lands and waters regardless of the season.

Page II-12, Non-guided Use: Delete the statement "Air taxis may be limited as a method of limiting of non-guided float trips". Authority to prohibit aircraft is limited to refuge lands (not

applicable on state waters) and can only be implemented under the strict provisions of ANILCA Section 1110(a) where there is a finding of resource damage and appropriate rulemaking.

Page II-14- Preferred Alternative P, General Policies: Clarification is needed regarding the statement that the refuge manager may authorize exceptions to the proposed group size limits (similar statements are found under the other alternatives). It appears there are no non-guided use group size limits under this alternative, although the above statement implies otherwise.

Page II-18. The "Comparison of Alternatives and Rationale for Selecting the Preferred Alternative" states that Alternative B (which appropriately limits the Service authorities to its uplands) "potentially would have the greatest effects on fish and wildlife due to the greatest amounts of use" and that the "effects on fisheries under all alternatives would largely be mitigated by fishing regulations adopted by the Alaska Board of Fisheries" The same mitigation would occur for wildlife through actions of the Board of Game and state land management restrictions. The protective actions thus void the conclusion of this alternative having "the greatest effects", and we request this unsubstantiated and biased discussion be removed.

Page II-19. The discussion of differences in alternatives regarding guiding is inaccurate. The State of Alaska does regulate use of State waters and/or adjacent lands as evidenced by the special land designation for the waterways in the Togiak Refuge. It is true that the State of Alaska currently does not restrict guided use of its navigable waterways. However, the actual impact of unregulated guiding within the waterways may be exaggerated. Given the long floats and weather, guides are still going to prefer to operate from established camps on the uplands, which will still fall under the limits placed by the refuge and private upland managers. We urge these evaluations of the alternatives be carefully and realistically reevaluated.

Page II-21. The Table which summarizes comparison of management actions for the alternatives needs to be revised to delete the motorboat, fly-in, group size, and other limits retained under Alternative B which only involve state lands and waters, except as addressed in the current state land management program.

Pages III-4 and 5, Units 1 and 2, All alternatives: We urge that all statements within this plan claiming motor boat caused erosion be deleted except where supported by empirical evidence. Statements that indicate "bank erosion will be minimized" imply erosion is a problem and that horsepower limits are a reasonable solution; these should also be deleted because they are highly speculative without available scientific evidence. There have been no studies on erosion caused by motorboats in the refuge and results from other locations cannot be used to make inferences on waters within Togiak due to many differences in conditions. Furthermore, most rivers on this refuge experience significant water level fluctuations every year – at levels likely to render as insignificant any erosion caused by motorboats. This was clearly explained in one of the Togiak planning meetings by Allen Miller, the Service's employee with considerable experience with erosion studies in other states.

Page III-4, Unit 1- Igushik/Snake Rivers, Alternative B. We note in Table II-1 comparing the Igushik and Snake Rivers under Alternative B, they project an increase in "guided" motorboat

traffic up to three trips per day. The village of Manokotak on the Igushik River accounts for probably 99% of the motorboat traffic on the river. We assume none of the alternatives will restrict village residents' access to the river, and due to the water clarity of the Igushik River, we don't foresee a drastic increase in sportfishing.

Page III-4, Unit 2- Kulukak River, Alternative B: We question the availability of data that support a projected two to three fold increase in motorboats. Also, the upper river, noted as the most vulnerable to increased human activity, is infrequently accessible by motorboat traffic from the mouth of the river. As written the reader is biased by representations of use in this area.

Page III-6, Unit 10- Arolik River: As noted in the general comments, BLM has determined the Arolik is navigable, and therefore state owned and managed. Moreover, paragraph 2 fails to acknowledge the public trust right to access and use the water regardless of river bed ownership.

Page III-14, Unit 1- Ongoke River. In 3 years of flying management and spawning ground surveys, a local DFG biologist has never seen a boat, individual or evidence of any human activity on the Ongoke River. Yet reading on to III-15 Alternative B, all wildlife in this drainage would be impacted by the "increased" usage of this area.

Page III-16, 17, 18, and 19: The repeated discussion under Alternative B regarding impacts to wildlife due to the projected number of users is largely speculative and without measure. Other areas of the state have far higher concentrations of fishermen without the predicted impacts on waterfowl and bears that is anticipated for this alternative.

Page III-20, last sentence of last paragraph: After "frequent communication with the Subsistence Division and Commercial Fisheries personnel in Bethel" add "and in Dillingham."

Page III-21, first paragraph: We question whether the objective to maintain "historical size and age distribution of fisheries" is an accurate reflection of the Fisheries Management Plan (FMP) and is realistically attainable in a naturally evolving world. We request that Service and DFG fisheries staff collaborate on alternate language that is more consistent with the FMP.

In the fourth sentence, the reference to "dropouts" should be deleted. While dropouts (fish lost out of nets and not counted as part of the commercial catch) occur, there has been no method or study devised to quantify this occurrence sufficiently to merit discussion in this plan.

Page III-21, Subsistence Fisheries: Paragraph 4 cites an increase in subsistence fishing permits due to greater compliance and population growth. The 1996 Bristol Bay Annual Management Report, Appendix Table 30, Togiak District, page 131 shows that the number of permits issued in 1996 was actually far less than the number issued in the early 1990's or the mid 1970's. Compliance and participation in the state's subsistence permitting and reporting program specifically in Togiak has decreased since the USFWS "Hagemeister reindeer" incident.

Page III-22: Paragraph 1 contains no mention of commercial herring fishing along the shores.

Page III-23, paragraph 2: Please change the second sentence to read: "The Sport Fish Division's mail survey is the primary tool used by the State of Alaska to monitor refuge sport fisheries. In addition, on-site creel and fishery survey projects are conducted on a rotating basis (every 3 to 7 years) on the most active sport fisheries such as the lower Kanektok and Togiak Rivers."

Page III-24: Under "Kuskokwim Bay . . .Special Regulations" add: "In the Kanektok and Goodnews drainages, sport fishing is not permitted within 300 feet of a legally operating subsistence set gill net downstream of the Togiak Refuge wilderness area boundary." Under "Bristol Bay Drainages" add: "Ungalikthluk Drainage (including Negukthlik River drainage) - only unbaited single-hook, artificial lures may be used year-round. Sport fishing is allowed from June 8 through April 9."

Page III-25 through III-52, all units: In each unit discussion under headings "Environmental Consequences, Alternative B" and sometimes in Alternative C & P, the following appears: "More restrictive sport fishing regulations may be required by the Board of Fisheries". We request the following more accurate statement be included in its place in each unit: "Significant growth of sport fishing impacts on fish populations resulting from this alternative are likely to cause the Board of Fisheries to adopt more restrictive regulations."

Page III-25, Management: "stence" should be "subsistence".

Page III-27, Unit 2 Kulukak River, Management, last paragraph: Although DFG does not have an official "biological escapement goal" for the Kulukak River for any species due to insufficient age structure and enumeration data, we have an escapement "guideline" for sockeye of 35,000 fish. No other guidelines, goals or objectives exist for any other species. DFG knows of no source for these numbers.

III-29 Alternative B: If you look on the previous page (III-28, last full paragraph), the Service has documented 300 client-use days in the 10-year period from 1986 through 1995, but the use is going to skyrocket to 500 to 800 use days per year (a 25 fold increase) under this alternative.

Page III-36, Char. This paragraph inaccurately declares that state catch estimates for char have declined from 1991 to 1995. We request sentences 3, 4, and 5 be replaced with the following: "Estimates of sport catch have been variable and range from about 4,000 to nearly 11,000 fish annually, though there may be declining trend since 1993. It is unclear whether this is a result of normal survey variability, angler preferences, or a decline in stock abundance."

Page III-25, Rainbow Trout, paragraph 1, sentence 3. This inaccurate statement should be deleted. Variability in annual state estimates of catch and the closeness of 4 of the 5 years (5,856; 4,106; 4,779; 3,046) for which estimates are available, do not support the contention of a "slight decline in the number of rainbow trout caught...". The estimates are much too similar to detect even slight trends. This is particularly true when DFG staff views its estimates of catch as intrinsically more variable and less reliable than estimates of harvest. Please also delete sentence 4 as it is unnecessary and confusing in light of the above information.

Page III-37, Arctic grayling: Sentence 2 is inaccurate and should be rewritten or deleted. The variability in the state's annual estimates of catch range from a low of 391 fish in 1992 up to 3,092 in 1991. In addition, subsequent annual estimates are less variable --1993 (2,727), 1994 (1,599) and 1995 (1,128) -- and confidence intervals are likely to show no significant difference between estimates. The great variability is likely due to survey methods and annual angler responses and do not adequately support the contention that "estimates show a declining trend in the number from 1991 and 1995 grayling caught..." This is particularly true when DFG views estimates of catch as intrinsically more variable and less reliable than estimates of harvest. Please also delete sentence 3 as it is unnecessary and confusing in light of the above information.

Page III-40, Rainbow Trout, paragraph 1: The last sentence of this paragraph is inaccurate and far too sweeping. Please rewrite according to the following information. Studies conducted to date on the Arolik may at best provide a benchmark for assessment of future work on the Arolik River rainbow trout population. Much more rigorous and extensive work will have to be done on this and all other rivers before it could be determined whether the Arolik River rainbow trout population is suitable as a benchmark for all or part of western Alaska rainbow trout populations.

Page III-99, Literature cited: Burkey et. Al *In Prep* has been published. The proper citation throughout the text should now be: Burkey et al. 1997


The proper citation in the Literature Cited section is: Burkey, C. Jr., C. Anderson, M. Coffing, M. Fogarty, D. Huttunen, D. Molyneaux, C. Uttermole. 1997. Annual management report for the subsistence and commercial fisheries of the Kuskokwim area 1995. Regional Information Report No. 3A97-22. Alaska Department of Fish and Game, Division of Commercial Fisheries Management and Development, AYK Region, Anchorage, Alaska.

The 3-page insert at the back of the plan entitled "State Shorelands within the Togiak National Wildlife Refuge and the lower Goodnews River" should be replaced with Chapter 3 of the original plan, or at a minimum Chapter 3 should be referenced as the state's present management intent. The PUMP should clarify that any changes to state management would take place in a separate process following the refuge PUMP.

CONCLUSION

Thank you for the opportunity to provide these comments. While we are critical of some important aspects of this internal draft, we appreciate the cooperation we have had with refuge and planning staff and look forward to continued dialogue on these very challenging issues.

Sincerely,



Sally Gibert
State CSU Coordinator

FOR YOUR INFORMATION

September 12, 1997

from Sally Gibert, DGC

cc: Diane Mayer, DGC-Jun
Tina Cunning, DFG-Anch
Terry Haynes, DFG-Fbx
Patty Bielawski, DNR-Anch
Myles Conway, AG's-Anch
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Elizabeth Barry, AG's-Anch
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(copies also mailed directly to Bob Stevens, Helen Clough and the Togiak Refuge)