

**State of Alaska
General Comments
on the Bering Sea - Western Interior
Draft Resource Management Plan and
Environmental Impact Statement
June 12, 2019**

Plan Complexity & Inconsistencies

As with the Eastern Interior Resource Management Plan (RMP) and environmental Impact Statement (EIS), we are concerned with the overall length and complexity of the Bering Sea – Western Interior (BSWI) RMP. Unfortunately, we found the RMP/EIS to be cumbersome and often incomprehensible, which is very concerning considering the far-reaching implications that this plan may have on subsistence use, public access, and the everyday activities of private citizens and local residents. We recognize the expansiveness of the planning area and the intrinsic challenges associated with planning for an area of this magnitude; however, it is overly difficult to comprehend, or have the foresight, to consider, how the proposed management actions and designations may overlap in the Bureau of Land Management’s (BLM) final RMP/EIS.

The language in the draft RMP/EIS vacillates between discussing the need to prevent unnecessary or undue degradation of the land, resources, and the environment versus describing the planning area as “pristine” and “untouched.” If the planning area has remained in pristine condition under Alternative A, the No Action alternative, it is hard to understand why new management beyond what is required by existing laws, regulations and/or policies is necessary. However, with little to no explanation or justification, the RMP/EIS unsparingly applied designations and special management prescriptions, even though most of the planning area remains untouched and unimpacted by human activity. Many of the designations and special management prescriptions are applied based on perceived future threats rather than observable adverse impacts or scientific information.

The balance provided in the Alaska National Interest Lands Conservation Act (ANILCA) Section 101(d) speaks directly to the reserved lands in conservation system units (CSUs) designated by ANILCA (e.g., wildlife refuges) and public lands necessary and appropriate for more intensive use and disposition (BLM managed federal lands). Under all of BLM’s action alternatives, designations such as Right-of-Way (ROW) exclusion and avoidance areas, High-Value Watersheds (HVWs), Areas of Critical Environmental Concern (ACECs), and Community Focus Zones (CFZs) include management direction and Standard Operating Procedures (SOPs) that result in the restriction of uses or activities on lands that are specifically intended for more intensive use and disposition.

We also noted numerous inconsistencies throughout the document. We are providing some examples of these within our comments, but our comment applies to every instance. Two prime examples are:

1. The way culvert installation is treated within the document; there are eight different and conflicting SOP/BMPs that address how culverts will be installed – SOP/BMPs Water-2 and 41; SOP/BMPs Soils-2, 21, 22, 25, and 26; and SOP/BMP TTM-4; and

2. The way the “existing BLM route inventory” is addressed in the planning document. In some instances, discussion of the route inventory (which to our knowledge does not exist at this point in time) is qualified with the statement – “once implementation planning occurs,” but in other instances, it is treated as an existing document – “Summer casual would be limited to existing roads ... (as shown in existing BLM route inventory) by ATV.”

Cooperation and Coordination

The State values its role as a cooperating agency; however, based on our understanding of BLM’s [A] Desk Guide to Cooperating Agency Relationships (2012), we had the expectation that we would work collaboratively with BLM to identify and resolve issues during the planning process. While we do not expect to resolve all issues, we should be able to resolve many, and for any outstanding issues, we should at least have a common understanding of the basis for any disagreements. Although we were given multiple opportunities to review and comment on draft documents during this planning process, the review timeframes were extremely short. That coupled with the amount of time necessary to reach out to various State staff with subject matter expertise in order to develop comments, made it difficult for the State to meaningfully participate. We did not receive feedback on the comments we provided and, as we found in subsequent reviews, very little change to the document occurred as a result of our comments.

The Cooperating Agency Memorandum of Understanding (MOU) the State signed with BLM was in part based on the Alaska Department of Fish and Game’s (ADF&G) expertise and role as the primary agency responsible for management of fish and wildlife on all lands in Alaska regardless of ownership. Clarification of this role and a commitment to cooperate with BLM in related matters is also addressed in the Master MOU between the BLM and ADF&G. ADF&G has been involved throughout the planning process but the agency’s efforts are not reflected in the proposed actions in the RMP/EIS as they relate to fish and wildlife. We have tried to inform the plan through internal review and supplying resource information, and by identifying RMP actions, such as ACEC and HVW actions, which BLM has not supported with enough information. We also identified early on the potential issues with the RMP actions which appear to be fish and wildlife allocative decisions related to subsistence and non-subsistence use and competition—decisions which are appropriately made through the Alaska Boards of Game and Fisheries and the Federal Subsistence Board, not an RMP. Given ADF&G’s fish and wildlife management authority and expertise, we are disappointed with the lack of deference and the absence of meaningful back-and-forth resolution of issues during the RMP development process.

ANILCA Protected Access

The importance of the ANILCA access provisions to residents of the BSWI planning area is immense. There are sixty-four villages in the planning area, whose residents primarily live a subsistence way of life, unconnected by roads. The purpose of Section 2.3.1 *Alaska National Interest Lands Conservation Act (ANILCA)-Implementing Sections 811 and 1110(a)* in the draft plan is to identify how BLM will implement closures and restrictions that impact ANILCA-protected methods of access for subsistence and general public use. This includes following the procedures codified in Department of Interior (DOI) and agency specific regulations (e.g. ANILCA Title XI regulations at 43 CFR 36), which limit the reasons under which access can be restricted or closed and require a separate public process to ensure federal agencies meaningfully

consider input from the affected public. ANILCA states specific methods of access authorized in Sections 811 and 1110(a) of the Act “shall be allowed, subject to reasonable regulation.” This means the applicable federal lands are open until closed and any restrictions on ANILCA protected access must include site specific justification and be based on actual or reasonably likely resource concerns, rather than general statements like those found in this plan (e.g., off-highway vehicles generally cause resource damage). While it is not necessary to wait for damage to occur, if restrictions focused only on the potential for resource impacts or user conflicts at a hyperlocal scale, the access provisions of ANILCA would be rendered meaningless as all modes of access and uses have the potential to cause resource impacts or result in user conflicts.

To ensure the intent in ANILCA is followed and the needs of rural residents and the general public are appropriately accommodated, we request all proposed travel management restrictions on ANILCA protected access (ANILCA Sections 1110(a) and 811) be removed in the final plan. If BLM has adequate justification to address site-specific resource concerns, we request BLM initiate a separate public process, as identified in Section 2.3.1 of the draft RMP/EIS and DOI regulations at 43 CFR 36, *after* the plan is finalized.

Lands with Wilderness Characteristics

Section 2.5.1 indicates that the plan did not conduct a detailed analysis of Lands with Wilderness Characteristics (LWC) because of the prohibition in ANILCA Section 1326(b). This statement is perplexing for several reasons. As detailed in the plan (Chapters 2 and 3, and Appendix M), BLM conducted a detailed analysis of LWC, including an LWC inventory, which concluded that 99.3 percent of BLM lands in the planning area contained wilderness characteristics. The plan alternatives also propose varying options for managing LWC, consistent with BLM Manuals 6310 and 6320. This includes managing 277,489 acres of LWC to protect wilderness characteristics as a priority in Alternative B. Lastly, the plan analyzes impacts to LWC for each of the alternatives.

We reiterate our long-standing objection to implementing LWC policy direction in Alaska. While ANILCA section 1320 granted BLM authority to conduct formal wilderness reviews in Alaska periodically, the purpose of BLM’s LWC policy is inconsistent with the limits of that authority, which prohibits the presumptive management of land for its wilderness characteristics without Congressional action.¹ Therefore, protecting LWC administratively through a land use planning decision, with or without a recommendation for designation before Congress, circumvents this Congressional intent for Alaska. This intent is reinforced by ANILCA Section 1326(b), which prohibits studies that consider recommending new CSUs or other designations for related or similar purposes, unless authorized by ANILCA or a future act of Congress. Designated wilderness is defined by ANILCA as a CSU.

In addition, ANILCA includes numerous provisions applicable to Congressionally designated Wilderness that protect access for traditional activities and to resources that are essential to the Alaska economy.² Most of these statutory allowances do not apply to BLM lands managed to

¹ “...In the absence of congressional action relating to any such recommendation of the Secretary, the Bureau of Land Management shall manage all such areas which are within its jurisdiction in accordance with the applicable land use plans and applicable provisions of law.”

² Including but not limited to: ANILCA sections 1102, 1110(a) and (b), 1111, 1310, 1313, 1314(c), 1315(c) and(d).

protect LWC. Therefore, LWC have the potential to be managed more restrictively than designated Wilderness in Alaska. BLM initially developed Alaska policy (IM 2011-154, expired 9/30/12) that recognized some ANILCA allowances in the inventory process. While we appreciate the efforts in the plan to clarify that methods of access and uses allowed under ANILCA will be allowed on lands managed to protect LWC, the management direction in Table 2-10(b) does not encompass all ANILCA allowed uses in designated Wilderness, nor does it fully capture ANILCA implementation intent, which in many cases is codified in DOI or agency-specific regulation, such as the DOI ANILCA Title XI regulations at 43 CFR 36 or US Fish and Wildlife or National Park Service regulations that implement the subsistence access provisions in ANILCA Section 811 (50 CFR 36 and 36 CFR 13, respectively).

Lastly, ANILCA Section 101 addresses the balance struck by Congress in ANILCA to satisfy both the national conservation interests and the social and economic needs of Alaska. ANILCA designated over 100 million acres of conservation system units, which included doubling the size of the National Wilderness Preservation System. The remaining un-designated federally managed lands were considered appropriate for more intensive use and disposition. Implementing BLM's LWC policy to administratively protect LWC is inconsistent with that Congressional intent.

We therefore support the direction in Alternative D to manage 100 percent of LWC within the planning area to emphasize other resource values and multiple uses as a priority over protecting wilderness characteristics.

Wild and Scenic River Study

We reiterate our long-standing objection to BLM national policy that does not exempt Alaska from the requirement to conduct Wild and Scenic River (WSR) studies in conjunction with the land use planning process. While BLM Manual 6400 *Wild and Scenic Rivers – Policy and Program Direction for Identification, Evaluation, Planning, and Management (Public)* lists ANILCA under relevant authorities, the policy ignores Section 1326(b), a key provision in ANILCA that prohibits studies in Alaska that consider recommending new CSUs or other designations for related or similar purposes, unless authorized by ANILCA or a future act of Congress. WSRs are defined in ANILCA as CSUs; therefore, the policy and the WSR study conducted in conjunction with this plan, which is an agency-directed and not a Congressionally authorized study, are both inconsistent with Congressional direction in ANILCA.

Further, Alternative A, which is the “no action” alternative under the National Environmental Policy Act (NEPA), includes all river segments determined eligible for consideration as a WSR in this study process. While counterintuitive, we understand that BLM includes eligible rivers under the “no action” alternative because BLM policy requires consideration of protective measures for “eligible” rivers until such time as a suitability determination is made (BLM Manual 6400, #5, page 1-8). However, in accordance with BLM policy, that consideration occurs through a “project-level review,” not a management plan. Further, once suitability is determined, interim protections on eligible rivers are no longer necessary, and since this is an agency directed study, the Wild and Scenic Rivers Act does not address or require interim protections for rivers found suitable.

The Wild and Scenic River Manual 6400 requires BLM to consider the views of the State when making a final suitability decision. We therefore do not support recommending any rivers found eligible and/or suitable in this study to Congress for designation as WSRs and further request BLM remove all interim protections applicable to “eligible” and “suitable” river segments in the draft plan, as well as river segments determined “not suitable” in the final plan and Record of Decision.

We note that for Wild and Scenic Rivers in the Summary of Effects Table in the Executive Summary, indicates that: “the majority of the acreage suitable for WSR acreage under Alternative B would be managed as HVW under Alternatives C and D.” Please see our more detailed comment on HVWs, but we question the placement of this additional management layer over the acreage without a better understanding of the justification and management intent behind it. As mentioned above the State was not supportive of additional conservation designations on these rivers.

ANILCA 810 Analysis

The State understands the importance of subsistence to local rural residents who live in remote communities across the state. ANILCA Section 810 requires federal agencies conduct an analysis of impacts to subsistence resources, use and access when determining whether to “withdraw, reserve, lease, or otherwise permit the use, occupancy, or disposition of public lands.” Management plans, such as BSWI, evaluate potential impacts associated with proposed management direction. The analyses are broad and speculative so it is important for decision makers to also recognize that subsequent 810 analyses will be conducted on a project-specific basis to ensure that impacts to subsistence will continue to be addressed whenever development is proposed in the planning area, including mining and other development, which the analysis cites as two activities that have the most potential to significantly restrict subsistence abundance, availability, or access to resources.

It is also important for the analysis to recognize that in addition to the 810 analysis, there is an existing regulatory framework in place to protect subsistence resources, which includes the Clean Water Act, the Clean Air Act, and other agency authorities, such as ADF&G Title 16 Fish Habitat Permitting Authority, and BLM regulations that address mining and other resource development activities. Further, the planning area includes numerous expansive federal CSUs, which are subject to the same regulatory framework, and ANILCA Title VIII, including the requirement to conduct an 810 analysis for any future development proposals. The State also provides for subsistence on state-owned lands and under most development scenarios involving state land, the same regulatory framework would apply to development proposals because of the extensive wetlands in rural Alaska, triggering permitting requirements under the Clean Water Act and other authorities. Absent any of the proposed planning direction in the draft plan, this regulatory framework and the requirement to conduct an 810 analysis still applies.

Overall, the 810 Analysis appears to depict a “worse-case scenario,” in large part because the above described regulatory framework is not considered in the analysis. This also applies to the multiple references to the Donlin Gold Project, without recognition that the Environmental Impact Statement for the project, which included an 810 analysis, has already been completed. There are also statements in the 810 Analysis that conflict with statements in related sections of

the plan. For example, under Alternative A, the analysis predicts “Under the continuation of current management, there would be a potential for user conflicts, especially in popular recreational areas, such as along the Iditarod National Historic Trail (INHT) and Unalakleet Wild River Corridor” (Appendix O, page 9). However, in the effects analysis, the opposite is predicted for the Unalakleet Wild River “The levels of activity and demand for access within the designated Unalakleet Wild River Corridor are expected to remain stable” (Cumulative Effects, page 3-151).

It also appears that the 810 Analysis too broadly equates access and use restrictions and prohibitions with resource protection. While the analysis identifies situations where subsistence users may be impacted by access restrictions, it does not identify other use restrictions and prohibitions that could potentially impact subsistence users. For example, there is no discussion of how prohibiting the cutting of trees will impact subsistence trappers, nor what effect the prohibition on house log harvesting within riparian areas would have on local subsistence users in Alternative B. Given the multiple layers of proposed management restrictions in the draft plan, particularly in Alternative B, and this overly broad analysis, there are likely other undisclosed effects to subsistence uses and resources.

Lastly, we disagree with the direction in BLM’s 810 Analysis guidance (IM-AK-2011-008), which directs BLM to evaluate all land use actions on BLM lands, including state-selected lands. As acknowledged in the guidance, doing so is not legally required in ANILCA (II. Applicability of Section 810 to BLM Actions, page 2). ANILCA Section 810 applies to public lands, and “public lands” as defined in ANILCA, do not include “land selections of the State of Alaska which have been tentatively approved or validly selected under the Alaska Statehood Act...” For the purposes of land planning, BLM can write management intent for state-selected lands under the premise that these selected lands may remain in Federal ownership during the lifetime of the plan; however, including these lands without qualification in the 810 Analysis, could result in inaccurate or misleading findings because of the exaggerated acreages.

We request the final 810 Analysis 1) factor in the existing regulatory framework, including the requirement that subsequent 810 analyses be conducted on any future proposed development; 2) consider whether other proposed management actions identified as “resource protections” could potentially interfere with subsistence users’ ability to conduct subsistence activities or otherwise limit rural communities’ economic opportunities; and 3) remove management direction that applies to state-selected lands from the analysis.

Trapping Restrictions

Although the alternatives in Chapter 2 do not include trapping restrictions, references to trapping restrictions elsewhere in the RMP indicate BLM had at one time proposed extensive trapping restrictions. These restrictions appear to close BLM lands under every action alternative to trapping techniques including pole sets, lynx cubbies, and many wolf snare sets by using language such as, “*cutting or otherwise disturbing trees used for trapping would be prohibited.*” We find this very concerning. References to trapping restrictions are in the 810 Analysis (e.g. pages 13, 17, 2) and in Chapter 3 (e.g. page 3-170) and may be elsewhere. We request that the final RMP/EIS clarify that cutting or disturbing trees for trapping is allowed and remove all references to the contrary.

Conservation System Units in the Planning Area

Iditarod National Historic Trail

The Iditarod National Historic Trail (INHT) was designated under the National Trails Act in 1978 and as a CSU under ANILCA in 1980. As a result, all provisions in ANILCA that apply to CSUs, apply to the INHT, including the public and subsistence access provisions in Section 811 and 1110(a) and the Title XI Transportation and Utility Process in Sections 1101-1108. Statements in ANILCA legislative history confirm the importance of access in the National Trails Act and ANILCA.

*MR. GRAVEL. This bill includes among the definitions of conservation system units of the National Trails System. Thus, **the transportation title would apply to such units as the Iditarod National Historic Trail** which I secured into law 2 years ago. With the creation of the historic trails category and the Iditarod Trail we set out specific legislative provisions and legislative history regarding access across such units. Thus, I would hope that it is **the intent that this legislation not impose any additional barriers or restrictions on access or involving National Historic Trails, but that the previous legislation and legislative history for the National Historic Trails would generally prevail** except in the case of the application process itself.*

*MR. JOHNSON. The Senator is **correct** in his understanding.* [Emphasis added, CR_S11187 p 98 Aug 19_80]

The cooperatively developed Iditarod National Historic Trail Comprehensive Management Plan (ICMP) was completed in 1986. This plan recognized the importance of having a cooperative management philosophy given the extensive length and the variety of land ownership that encompasses the trail. While the ICMP clarifies that only federally administered lands are part of the National Trail System, it also quotes the Section 7(a) of the National Trails System Act, which states:

*...Provided, that in selecting rights-of-way, full considerations shall be given to **minimizing the adverse effects upon the adjacent landowner or user and his operation.** Development and management of each segment of the National Trails System shall be designed to **harmonize with and complement any established multiple use plans** for that specific area in order to **ensure continued maximum benefits from the land.** (Emphasis added, ICMP, page 77)*

We are concerned that the numerous administrative designations and proposed management under all alternatives in the draft RMP/EIS for an expanded INHT National Trail Management Corridor (NTMC) are unwarranted given the limited use and current conditions of the trail. The affected environment section of the draft plan describes the INHT as generally unprotected, except where it is co-located with the Unalakleet Wild River Corridor. As a result, despite protections and intent in the National Trails Act, ANILCA and the ICMP, the RMP applies layers of administrative designations and restrictions, including travel management restrictions, recreation management designations, lighting restrictions, visual resource management (VRM) classifications, and ROW exclusion and avoidance designations. The effects analysis in Chapter 3 only considers the protective effect of these designations and restrictions on the INHT and completely ignores the potential negative effects to resource development, including salable

material needed for the Donlin Gold Project, and other state and local community infrastructure needs.

As noted previously, Congress mandated that ANILCA-protected access “shall be allowed, subject to reasonable regulation” (ANILCA Sections 811 and 1110(a)) and cannot be restricted or closed without site specific justification that meets the criteria identified in implementing regulations. The draft plan does not consider whether these restrictions could effectively block access to and from adjacent trail segments managed by other landowners, including the State. Title XI of ANILCA requires federal agencies to meaningfully consider proposed transportation and utility projects that affect CSUs. Administrative ROW avoidance and exclusion areas, both within and between CSUs, frustrates that Congressional intent. Inserting “subject to Title XI” in the description does not remedy the designation’s conflicting intent. VRM classification in all three action alternatives have a 7.5 mile to 15-mile offset and all these restrictions and administrative designations are applied to an expanded NTMC, which far exceeds the size and management intent contemplated by Congress or the cooperatively developed ICMP.

We request the final plan significantly scale back on the layers of proposed restrictions and administrative designations for the NTMC commensurate with a realistic estimate of the amount and type of use expected over the life of the plan and existing congressional protections afforded the INHT, including but not limited to the Trails Act, ANILCA, and the National Historic Preservation Act. The BSWI Analysis of the Management Situation indicates most use is attributed to race-related events, intervillage travel, and subsistence activities, and forecasts wildfire and other weather-related impacts as the greatest threats to trail use (page 165-170). Additionally, where applicable, the plan needs to defer to ANILCA and existing ANILCA implementing regulations, as it relates to travel management, the Title XI process, and other allowances applicable to CSUs (see also ANILCA-protected access general comment). Regarding casual off-highway-vehicle use, BLM should ensure seamless access for trail users between ownerships by applying guidance consistent with the State’s generally allowed uses (11 AAC 96.020) to BLM managed segments of the trail.

Unalakleet Wild and Scenic River

ANILCA designated the Unalakleet Wild and Scenic River (WSR) as a CSU. As with the INHT, all provisions in ANILCA that apply to CSUs, apply to the Unalakleet WSR, including but not limited to the public and subsistence access provisions in Section 811 and 1110(a) and the Title XI Transportation and Utility Process in Sections 1101-1108. Also, like the INHT, the plan states the river is unprotected and applies multiple layers of restrictions and administrative designations even though ... *use is low due to remoteness and limited demand* (Affected Environment, Section 3.3.7, page 3-116) and the river is protected as a Congressionally designated CSU. Proposed restrictions and designations across all alternatives include travel management closures and restrictions, ROW exclusion and avoidance designations, and VRM classifications. Further, VRM management is applied 15 miles beyond the centerline of the Unalakleet Wild River corridor (page 2-40) even though ANILCA specifically designated the boundaries of the wild river to be approximately one-half mile on both sides of the centerline, excluding state and private lands.

We request the final plan remove the layers of proposed restrictions and administrative designations for the Unalakleet Wild River and instead commit to reviewing and updating the 1983 Unalakleet National Wild River Plan, as needed, to address actual management and resource-related issues, consistent with ANILCA. In the interim, where applicable, the plan needs to defer to ANILCA and existing ANILCA implementing regulations, as it relates to travel management, the Title XI process, and other allowances applicable to CSUs. As mentioned above for the INHT, inserting “subject to Title XI” in the ROW exclusion and avoidance description does not remedy the administrative designation’s conflicting intent. See also ANILCA-protected access general comment.

Connectivity Corridors

The concept of connectivity corridors, as presented in the draft RMP/EIS, is unclear and contradictory in that the associated management actions diverge from the stated purposes of the connectivity corridors and the impacts analysis relies on flawed assumptions regarding connectivity corridors. Therefore, while we support habitat connectivity, consideration of landscape scale management, and avoiding habitat fragmentation in general, we cannot support the connectivity corridors in the draft RMP and request they not be incorporated in the final RMP. We support Alternative D, which does not propose the inclusion of connectivity corridors. Based on the definition of connectivity corridor in the RMP³ as well as extensive discussions with both BLM and FWS, our understanding is that the identification of the two connectivity corridors was based on a least-cost path analysis of abiotic land features between the two National Wildlife Refuges (NWRs) within the planning area boundary, and that the connectivity corridors’ purpose is to preserve a relatively undeveloped corridor between the two refuges that would be resilient to climate change. However, there are many competing concepts for preserving landscape connectivity and improving resilience to climate change, and the RMP does not explain the benefits of choosing the connectivity corridors concept as the mechanism, why those two refuges were chosen as the features to be linked, or how the corridors were identified. Throughout the planning process, we have asked the primary question of why the two refuges were chosen as the landscape features to be linked, yet the RMP does not explain this choice. If the purpose is simply to link federally protected areas within the administrative boundaries of the planning area, there are an additional three NWRs and two National Parks directly adjacent to the planning area. A designation which potentially affects almost 850,000 acres should have a clear basis.

According to BLM, the identification of the proposed connectivity corridors was unrelated to wildlife movements or migration routes. Our information and that of BLM and FWS indicates that the North and South Connectivity Corridors are not wildlife migration routes or especially important for wildlife movements. However, the RMP repeatedly muddles this concept by determining *wildlife* actions for connectivity corridors. Unsurprisingly, the fact that the proposed connectivity corridors are used to determine wildlife actions is concerning for several reasons. First, the model does not incorporate an animal component, and its usefulness independent of

³ “Connectivity corridors were developed by modeling landform features to design a climate resilient connection between the Yukon Delta National Wildlife Refuge and the Innoko National Wildlife Refuge. The analysis takes a geodiversity approach by using topography, soil, and hydrologic features because those characteristics are less dynamic and more enduring than species composition or land cover. This approach assumes that similar ecosystem types and functions will occur in similar topographic conditions; that similar topographic niches (steep, high elevation, sunny slopes) can host similar ecological assemblages.” (Appendix B, page 3)

actual animal inputs has not been empirically established. Second, the least-cost pathways method has been demonstrated as an inferior method to models such as CircuitScape for wildlife purposes. Third, the presupposition that the two refuges are the most important points of origin or points of destination is flawed and could specifically lead to deflection of attention away from the areas of true concern for a given population. Fourth, identification of wildlife movement corridors should be based on biologically identified populations and not on political boundaries. The RMP does not identify the goals of the connectivity corridors, but if they are in fact intended to include species conservation as indicated by the wildlife actions in the RMP, we would have expected to see goals related to the levels of biodiversity for which the connectivity corridors are planned (i.e., individual, deme, species, community, landscape), spatial scale of linkage, and potential goals for animal movement, dispersal, and habitat.

The following are examples of wildlife actions for connectivity corridors. Restrictions in “caribou connectivity corridors” are a wildlife action common to all alternatives⁴ and a lands and realty action common to all alternatives⁵, but are not explained or mapped. No “caribou connectivity corridors” are described on maps or in the RMP. The only “known caribou migration route” listed on Map 2-10 Caribou Habitat is on the far southeast edge of the planning area and does not appear to include BLM land. Connectivity corridors are a wildlife action under Alternatives B and C⁶ as well as a resource indicator for wildlife and Special Status Species (SSS)-related values (Appendix M, 2-81). Similarly, high-value wildlife habitat is described in the Innoko Bottoms as providing important connectivity corridors between the Innoko and Yukon Delta NWRs (page 3-39, 3-42). The effects analysis evaluates the connectivity corridors as being important wildlife and SSS habitat (page 3-39, 3-42) and specifically characterizes the environmental effects of connectivity corridors in terms of wildlife movements⁷.

Further confusing the connectivity corridors concept is their use as a mechanism to reduce impacts to wildlife species used for subsistence and to reduce conflicts between recreational and

⁴ Page 2-25, 2.7.5 Wildlife, “The Plan of Development for linear project ROWs must address caribou passage in all known caribou connectivity corridors. To support the site-specific NEPA, applicants must provide scientifically defensible information to demonstrate that their proposed linear facility would not impede caribou migration”; Page 3-167

“Additionally, the BLM would attempt to co-locate linear projects within existing ROWs and would require ROWs to provide for unimpeded caribou passage in all caribou connectivity corridors or where essential winter habitat exists.”

⁵ Page 2-60, 2.7.16 Lands and Realty, “ROWs for linear projects would be required to provide for unimpeded caribou passage in all caribou connectivity corridors or where essential winter habitat exists. Applicants for ROW must provide scientifically defensible information to demonstrate that their proposed linear facility would not impede caribou migration.”

⁶ Page 2-28, Table 2-6 includes the following wildlife actions for connectivity corridors under Alternatives B and C: pursue withdrawal from locatable mineral entry, NSO for leasable development, closed to salable development, NSO for surface-disturbing BLM-permitted activities, ROW exclusion (Alternative B) or avoidance (Alternative C) areas, travel management restrictions.

⁷ Page 3-42, “no consideration of wildlife movements through the establishment of connectivity corridors,” “Therefore, this alternative could have a long-term impact on migration and other species movement across the landscape if future development occurs in areas where it could fragment species ranges and reduce habitat connectivity.”; Page 3-43 “Additionally, the BLM would manage one connectivity corridor, the South Connectivity Corridor, rather than the two proposed under Alternative B. This alternative would maintain the same long-term benefits to wildlife movement in the Innoko Bottoms area as Alternative B...”; Page 3-43 “Similar to Alternative A, the BLM would not manage connectivity corridors, but because the connectivity corridors proposed under Alternatives B and C occur in areas that do not have medium or high LMP, future mineral development would have a low impact on wildlife movement under this alternative even without the corridors.”; Appendix N, 3-67 “Management to create connectivity corridors to facilitate wildlife movement across the landscape would also have a high potential to affect wildlife and SSS.”

subsistence users⁸. Prohibiting the use of airboats and hovercraft appears to have very little to do with maintaining a climate resilient connection between the two refuges. Also, connectivity corridors are considered to be “management actions that target key wildlife habitat important for subsistence” (page 3-164) and are considered to be an indicator of subsistence impacts.

In the environmental effects analysis, connectivity corridors are assumed to have a special value for wildlife habitat and wildlife movement which, for the reasons already described, is not accurate. The environmental consequences of activity in the connectivity corridors as related to wildlife are repeatedly overstated. For example, connectivity corridors are used as a measure of wildlife habitat for important subsistence game species to determine the effects to non-market economic values from wildlife (Appendix N, page 3-266). The effects of connectivity corridors on migration and species movement is described as mitigated by the relatively low locatable mineral potential (page 3-166), but not in terms of actual habitat value or actual wildlife migration corridors, which are inexplicably assumed to be higher inside the connectivity corridors than outside. The final RMP/EIS should correct these assumptions and the resulting effects analysis.

Innoko Bottoms Priority Wildlife Habitat Area

The area that BLM is proposing to designate as the as the 236,556-acre Innoko Bottoms Priority Wildlife Habitat Area is already part of the ADF&G Paradise Controlled Use Area. The State Board of Game public process established the Paradise Controlled Use Area which prohibits the use of airplanes for hunter access. In order to reduce conflicts between subsistence users and general hunters in this area, BLM is proposing the prohibition of airboats and hovercraft from non-navigable waters on BLM land. This prohibition is unnecessary because the use of airboats and hovercraft is extremely limited in the planning area and ADF&G area staff are not aware of any use in the Innoko Bottoms. We also question the reasoning behind this action as it would make any airboat or hovercraft users hunt along the same waterways as subsistence users utilizing boats with outboard props. This could minimally increase subsistence conflict instead of decreasing conflicts, since hunters utilizing calling techniques can use airboats and hovercraft to spatially separate themselves from other hunters utilizing spot and stalk methods on the river corridors.

We support Alternative D which proposes no restrictions on motorized watercraft on non-navigable waterways on BLM-managed public lands in the proposed Innoko Bottoms Priority Wildlife Habitat Area. If BLM believes a change in the management of motorized watercrafts in this area is necessary, we recommend the agency bring a proposal forward to the Board of Game for consideration.

Migratory Birds and Raptors

Section 2.7.5 of the draft RMP/EIS states that “priority raptor species are defined as peregrine falcon, gyrfalcons, golden eagle, and bald eagle. Nesting seasons are defined as: From April 15-August 15 for bald eagles, golden eagles, and peregrine falcons; and from March 15-July 20 for gyrfalcons.” Executive Order 13186 – Responsibilities of Federal Agencies To Protect Migratory Birds (January 2001) defines the term “migratory bird” to mean any bird listed in 50 CFR 10.13.

⁸ Page 2-74, and 3-171 “To minimize impacts to subsistence resources and reduce subsistence conflict, casual use airboats and hovercraft would not be allowed on non-navigable waterways on BLM-managed public lands in these corridors.”

All four of the species (peregrine falcon, gyrfalcons, golden eagle, and bald eagle) that BLM identifies as priority raptors in the RMP/EIS are listed under 50 CFR 10.13, meaning that these species are considered both migratory birds and priority raptors. As such, the information and management actions provided in the draft RMP/EIS for migratory birds and priority raptors is inconsistent and difficult to understand.

Migratory Birds

Designating all riparian areas (defined in the RMP as areas within 300 feet of streams) in the planning area as ROW avoidance areas in Alternatives B and C is not necessary for the protection of migratory birds. Given the low level of existing and potential road infrastructure in the planning area, this restriction is unlikely to benefit migratory birds in any measurable way. The planning area includes many streams and rivers; therefore, it would be impractical to avoid stream crossings.

The “Surface-Disturbing Activity” action under Alternatives B and C prohibits certain activities in “migratory bird habitat,” but this habitat does not appear to be defined or mapped. We also note that the timeframe for this restriction encompasses most of the summer construction season. We request more information about the location and extent of the “migratory bird habitat referenced in Alternatives B and C.” We also request that BLM reference *USFWS Land Clearing Timing Guidance for Alaska*, as this document provides commonly used timing restrictions for construction activities in the State

In Table 2-6, Alternative D lists dates for certain nesting seasons, but there does not appear to be a management action tied to nesting season. We are confused as to why, if peregrine falcons, gyrfalcons, golden eagles, and bald eagles are considered priority raptors in the draft RMP/EIS, the species are listed under Alternative D for Migratory Birds. If these species will be managed according to the criteria provided for Raptors in Table 2-6, we request that the specific reference to these four species be removed from Alternative D for Migratory Birds.

Raptors

The draft RMP/EIS considers peregrine falcons, gyrfalcons, golden eagles, and bald eagles priority raptors. We question to inclusion of peregrine falcons and bald eagles as priority raptor species. If inclusion is based on conservation need, we do not believe inclusion of these two species is warranted due to their abundance in Alaska and their resiliency to some disturbance.

Section 2.7.5 states that the nesting season for priority raptors “is from April 15 - August 15 for bald eagles, golden eagles, and peregrine falcons; and from March 15 - July 20 for gyrfalcons.” SOP/BMP Wildlife-17 in Appendix K states that human instruction within a defined distance of bald eagle nests is prohibited from April 1 to August 31. There is a discrepancy between the nesting season listed in Section 2.7.5 and Wildlife-17, we request that BLM clarify the dates of priority raptor nesting. Additional discrepancies exist regarding raptors in the draft RMP/EIS. In Table 2-6, Alternatives B and C the criteria for campsite buffers, aircraft use buffers, and human activity buffers are different than the criteria found in the SOPs/BMPs in Appendix K. We request that BLM identify the appropriate criteria and apply them consistently for priority raptors throughout the plan. The criteria listed for Raptors in Table 2-6 that conflict with the criteria

found in the SOPs/BMPs for Appendix K that need to be revised are as follows (emphasis added for bold items):

Campsite Buffers

- Table 2-6 (page 2-30) – “To reduce disturbance to nesting priority raptors, campsites authorized by the BLM, including short-and long-term camps and agency work camps, must be located **1 mile** from any known priority raptor nesting sites during nesting season.” {Emphasis added}
- Wildlife-24 (Appendix K, page 16) - “To reduce disturbance to nesting priority raptors, campsites authorized by the BLM, including short-and long-term camps and agency work camps, must be located at least **500 meters** from any known priority raptor nesting sites during nesting season.” {Emphasis added}

Aircraft Use Buffers

- Table 2-6 (page 2-30) – “To minimize disturbance to nesting priority raptors, aircraft authorized by the BLM are required to maintain an altitude of at least **1,500 feet** above ground level when within one-half mile of priority raptor nesting sites during nesting season.” {Emphasis added}
- Wildlife-19 (Appendix K, page 16) – “Aircrafts associated with permitted activities must maintain an altitude of **1,000 feet** within one-half mile of documented eagle nests.” {Emphasis added}
- Wildlife-24 (Appendix K, page 17) - “To minimize disturbance to nesting priority raptors, aircraft authorized by the BLM are required to maintain an altitude of at least **1,500 feet** above ground level when within one-half mile of priority raptor nesting sites during nesting season.” {Emphasis added}

Human Activity Buffers

- Table 2-6 (page 2-30) – “BLM permittees will minimize human activity within **1 mile** of priority raptor nest sites during the nesting season. The cumulative number of authorized visits (defined as each day in which work is done within **1 mile** of a nest site) to any nest site per nesting season, by all authorized users, must be limited to three visits per nest site.” {Emphasis added}
- Wildlife-17 (Appendix K, page 16) - “From April 1 to August 31, human intrusion within **200 meters** (656 feet) of bald eagle nests is prohibited absent written approval from the USFWS.” {Emphasis added}
- Wildlife-24 (Appendix K, page 17) - “Authorized human activity within **500 meters** of priority raptor nest sites will be minimized during the nesting season. The cumulative number of authorized visits (defined as each day in which work is done within **500 meters** of a nest site) to any nest site per nesting season, by all authorized users, must be limited to three visits per nest site.” {Emphasis added}

The year-round NSO and no-surface disturbing activities restriction around active priority raptor nests is a restriction we have not seen before in other Alaska RMPs for general BLM public land and exceeds USFWS’ *Land Clearing Timing Guidance for Alaska*. Our staff also indicate that the 1-mile buffer is unnecessary for some species, especially peregrine falcons, as the species is highly resilient to mild disturbance. The 1-mile buffer would also likely preclude floating of many rivers that are lined with raptor nests. Raptors are unphased by boats floating and/or

driving by them on the large rivers in this area; there are few apparent or significant documented adverse effects on the species. We request BLM provide its justification for this action.

The distances within which restrictions apply for Alternatives B and C are significantly greater than the distances for similar restrictions on general BLM land in the Eastern Interior RMP. For example, permitted camps and human activity is 1-mile in BSWI, 500 meters (0.3-mile) in Eastern Interior, and made on a site-specific basis in the draft Haines Block Amendment to the Ring of Fire RMP. We request BLM provide justification for this 1-mile buffer. We request nest buffer distances remain consistent with USFWS standard construction SOPs.

Areas of Critical Environmental Concern

We recognize that Section 202 of FLPMA requires BLM to “*give priority to the designation and protection of ACECs* [Areas of Critical Environmental Concern]:” however, it is also necessary that any special designation be scientifically supported and justified, fill a gap in the regulatory framework, and provide meaningful protections that can be reasonably implemented.

As we have commented previously, the majority of the ACECs carried forward in the draft plan fail to meet the relevance and importance criteria needed for ACEC designation, nor is the need for special management adequately demonstrated. We are aware there is strong local support for ACEC designations and that these areas are locally very important to the people who use them. However, BLM regulations and policy provide specific criteria that areas must meet to qualify for ACEC designation. In addition to meeting the “Relevance and Importance” criteria, an ACEC must need special management attention, beyond existing authorities, to protect the important and relevant values.

BLM Planning Manual, Section 1613, identifies that the objective for ACEC designation is to:

“highlight areas where special management attention is needed to protect, and prevent irreparable damage to, important historic, cultural, and scenic values, fish, or wildlife resources or other natural systems or processes; or to protect human life and safety from natural hazards.”

Further, the Manual states “The ACEC designation indicates to the public *that the BLM recognizes that an area has significant values **and has established special management measures** to protect those values...*” (1613.02 Objectives). Section 1613.12 Special Management Attention, reiterates that:

“to be designated as an ACEC, an area must require special management attention... [and that] A management prescription is considered to be special if it is unique to the area involved and includes terms and conditions specifically to protect the important and relevant value(s) occurring on that area... Management prescriptions providing special management attention should include more detail than prescriptions for other areas and should establish priority for implementation.”

Appendix J of the draft RMP/EIS outlines the special management provisions for each ACEC. However, we note few examples of special management requirements designed specifically to protect site specific ACEC resources. Rather, blanket limitations on surface-disturbing activities are applied across vast areas, with no discussion of how these special management prescriptions will serve to protect the relevant and important resource(s). The remote and rugged nature of the

planning area preclude both recreational and commercial activities lacking substantial planning and forethought, as evidenced by the low number of BLM-permitted activities under existing management. As best represented in Alternatives C and D, case-by-case management is better suited to this low number of permitted activities than blanket restrictions.

For example, residents of Kaltag told BLM, at both the scoping and DEIS public meetings, about their goal/initial plans for a road from Kaltag to Unalakleet through the Unalakleet River valley, yet Alternative B proposes a ROW exclusion area for the entire Unalakleet River valley, preventing construction of this road, even though Title XI of ANILCA sets out the process by which a road and bridge could be approved across the Unalakleet Wild and Scenic River.

The ROW exclusion/avoidance designation is one of the most commonly used blanket restrictions associated with ACECs. In the draft RMP/EIS, all the ACECs in Alternative B propose ROW avoidance areas as a special management action to protect relevant and important resources. This management action is proposed to protect ACECs that are each made up of hundreds of thousands of acres, in a remote, nearly roadless, planning area that has less than 100 communities in it. None of the ROW avoidance areas are associated with specific resource protections or concerns, rather they apply across entire ACECs. Considering the limited infrastructure in the area, the overapplication of ROW avoidance areas limits opportunities for growth in an economically challenged region of the state.

We recognize that BLM is primarily proposing ROW avoidance areas within the ACECs as opposed to the even more restrictive ROW exclusion areas, but while the ROW avoidance designation allows the BLM to selectively approve infrastructure development, it also creates the situation where high value and low value habitat contained within the large ACEC boundaries are deemed equally higher value as compared to areas outside the ACEC. We are concerned that this blanket approach could inadvertently lead to the situation where infrastructure development is unnecessarily displaced to discrete high value habitat outside of an ACEC from low value habitat that happens to be within the borders of a large ACEC.

For any ACECs carried forward into the final plan, we request that the Record of Decision describe how, in accordance with BLM Manual 1613.12 – Special Management Attention, the special management prescriptions are unique to each ACEC and how they are only able to be prescribed through the ACEC designation. For example, since ROW avoidance areas are also prescribed under the HVW designation, and many of them overlay the same areas, are they a valid ACEC special management prescription?

We also request that ACEC management be targeted to the conservation of the resource for which an ACEC is designated. ACECs designated for multiple unrelated resources should have special management which only applies to the areas in which the relevant resource is located; special management for a particular resource should not be applied to land within the ACEC that contains none of the applicable resources. Special management to protect historic or cultural resources is inherently different from management to protect fisheries. Therefore, we object to appending areas that contain cultural resources, already adequately protected by the Section 106 consultation process, to adjacent areas that were nominated for fisheries resources, particularly

when doing so incorporates adjacent lands that contain neither cultural nor special fisheries resources.

ACEC Size

We have significant concerns with the overall size of many of the ACECs carried forward in the plan, some of which encompass hundreds of thousands of acres. Considering that most of the ACECs are designated for fisheries values, we would expect the ACECs to be narrow and follow river corridors. Instead, many of the fish based ACECs encompass entire hydrologic units and watersheds, with no explanation as to why entire watersheds require protection when the actual resource or important habitat area may be very small. State planning efforts have identified some of these important habitat areas and have management intent adopted for their protection, however as noted in more detail in the Sheefish ACEC in the following comments, these areas tend to be much smaller and protect the actual areas of spawning versus the entire hydrologic unit. For example, we are fully supportive of the intent of the Sheefish Spawning ACEC to protect spawning habitat in the 15.5 mile stretch of river where 80 percent of the Kuskokwim sheefish are known to spawn. However, the Sheefish Spawning ACEC is proposed to cover almost 700,000 acres. We are not supportive of the area of the Sheefish Spawning ACEC that does not protect actual spawning habitat. Other ACECs where size and identified protections are not justified in the ACEC report include:

- Unalakleet River Watershed ACEC -- BLM has carried forward ACECs totaling 703,000 acres to protect INHT trail segments, which are already protected under the National Trails Act, ANILCA and the National Historic Preservation Act (NHPA), and fisheries resources that by BLM's own assessment were not considered important in the 2016 ACEC report (page 91). Despite these conclusions, the 2018 Report deleted the Unalakleet ACEC as a separate ACEC and instead incorporated it into the Unalakleet River Watershed ACEC to protect fisheries and cultural values.
- Tagagawik ACEC -- The State Historic and Preservation Office 2016 cultural finding for the Tagagawik area advises that the area be managed through the Section 106 process of the NHPA, and recommends the area be evaluated under National Register Bulletin 15 & 36 for eligibility to the National Register of Historic Places before considering ACEC designations for the area. The area has not yet been systematically inventoried, and the Section 106 would incorporate measures to mitigate before allowing an undertaking to proceed.

We request that ACECs carried forward to the final RMP/EIS be appropriately sized in a manner that protects the relevant and important resource values, while also allowing BLM to meet its multiple use mandate. BLM Manual 1613.22B2. specifies that "...the size of a proposed ACEC shall be as necessary to protect... the important and relevant values within the context of the set of management prescriptions for the public lands..."

ACECs Relying on Existing Statutory Designations

Several proposed ACECs rely heavily on existing statutory designations, such as National Trails System and Wild and Scenic River (WSR) designations, as justification for the designation, in some cases as the sole reason (e.g. Sheefish, Anvik Traditional Trapping Area, Unalakleet River

Watershed ACEC). We recognize that situations exist where it is appropriate to place ACECs over existing statutory designations, however, in accordance with BLM ACEC Manual 1613.51 Congressional Designations: “A potential ACEC may be contained within or overlap one of the [Congressional Designations] provided that the ACEC designation is necessary to protect a resource or value. ... If, however, the management attention provided under the Congressional designation is adequate to protect a resource or value, it is not necessary or appropriate to designate it as an ACEC.” The layering of multiple designations is duplicative and unnecessary when the resource the ACEC is intended to protect is already protected under other authorities. Regarding ANILCA CSUs, the ACEC designation has resulted in management direction that is inconsistent with the statutory allowances in ANILCA, the enabling legislation for the CSU (e.g., ROW Exclusion and Avoidance designations and access restrictions).

For all ACECs carried forward into the final plan that rely on a congressional designation as justification, we request that, in accordance with BLM ACEC Guidance (i.e., 1613.22A6 Relationship to non-BLM designations and 1613.53 Relationship of ACECs to Other BLM Designations), BLM explain why existing protections under ANILCA, the National Trails System Act, the Wild and Scenic Rivers Act, and other regulatory authorities do not afford sufficient protection of the resource values identified for protection.

ACECs Designated for Fisheries Values

ADF&G staff were involved in collecting information for the Sheefish ACEC, and we support this ACEC as far as it protects spawning habitat. ADF&G staff conducted a radio telemetry project on sheefish in the Kuskokwim River drainage. Sheefish were captured and implanted with radio transmitters between Johnson River (below Bethel) up to the Tatlawiksuk River during mid-May to mid-June 2008. Of these, approximately 80% of radio-tagged sheefish travelled to the Big River spawning location during the fall spawning period with lesser numbers travelling to other spawning locations such as the Middle Fork Kuskokwim River and Tonzona River. Tagging efforts during August and September 2007 and 2012-2014 occurred from the Katlitna River upriver to the East Fork Kuskokwim River and due to timing and proximity, most of these fish travelled to the Tonzona River and a few to the South Fork Kuskokwim River to spawn. Combining these two tagging efforts ADF&G noted approximately 60% of radio-tagged sheefish travelled to the Big River Spawning area during 2007-2016. Because the 2008 transmitters were distributed well below the Big River and during early spring and summer, we believe the 80% estimate BLM states in the draft RMP/EIS may be more representative. Because the majority of radio-tagged sheefish travelled to the Big River to spawn, sonar was used at the mouth of Big River to enumerate post-spawning, out-migrating sheefish during mid-October 2016-2018. ADF&G visited the Big River sheefish spawning location during late September to collect fin clips for genetic analysis, ascertain spawning readiness, and document sheefish spawning habitat characteristics. While visiting the sheefish spawning location, staff also captured spawning humpback whitefish, least cisco, and round whitefish. Pre-spawning broad whitefish have been netted near the sonar site at the mouth of Big River and it was speculated these fish were probably travelling up the Big River (they spawn later than sheefish, least cisco, and humpback whitefish) or Middle Fork Kuskokwim River (of which Big River is a tributary) to spawn.

U.S. Fish and Wildlife staff conducted the primary research supporting the Swift River Whitefish Spawning ACEC. Their results identified “[t]he Swift River spawning area as probably the most important area thus far identified for humpback whitefish in the Kuskokwim River drainage based upon the spawning destination of radiotagged fish” (Broad and Humpback Whitefish Migratory Patterns in the Kuskokwim River_Harper, K.C., p. 70). Harper et al. also indicated that spawning areas for Kuskokwim River broad whitefish and humpback whitefish are substantially restricted. ADF&G staff supported the conclusions of Harper et al, indicating that protection of white fish spawning locations warranted protection.

However, the proposed area for both the Sheefish Spawning and the Swift River Whitefish Spawning ACECs are excessive and should be reduced to apply only to those areas necessary to protect the fisheries resource. BLM needs to outline the nexus it has used to include the tributaries of the Big River in the Sheefish Spawning ACEC. We agree that the tributaries of the Big River are important, but BLM has not provided justification for their inclusion. We also request an explanation summarizing the reasoning behind having a single ACEC covering portions of two different watersheds for separate purposes (fisheries for one watershed, cultural resources for the other).

The Sheefish Spawning ACEC also includes cultural resources as a resource value to be protected. When an ACEC includes two unrelated resources from protection, e.g., fisheries and cultural resources, it becomes difficult to apply appropriate special management measures, particularly in this situation where the management prescriptions commonly selected to protect fisheries are very different from special management selected to protect cultural resources. ACEC management should be targeted to the conservation of the resource for which an ACEC is designated. ACECs designated for multiple unrelated resources should have special management which only applies to the areas in which the relevant resource is located; special management for a particular resource should not be applied to land within the ACEC that contains none of the applicable resources (e.g., measures to protect INHT-related cultural resources should not apply to areas that are not in proximity to the INHT).

ADF&G supports special management for discrete habitat within two of the ACECs proposed for designation based upon fisheries values – the Sheefish Spawning ACEC and the Swift River Whitefish Spawning ACEC. We believe these two ACECs are scientifically supported and justified in the discrete areas of spawning habitat and request that the final RMP/EIS appropriately size the ACECs to the river corridors and the lands alongside those corridors necessary for special management to conserve the spawning habitat, in accordance with BLM Manual 1613.22B2, which specifies that “...the size of a proposed ACEC shall be as necessary to protect... the important and relevant values within the context of the set of management prescriptions for the public lands...”

ACECs Not Supported

We concur with BLM’s decision to not carry forward the following ACECs for the following reasons:

- Kuskokwim River Raptor Nesting Habitat – We agree that raptor nests are already protected under the federal Migratory Bird Treaty Act and additional protections can be granted through land use authorization permit terms and conditions that provide

- buffers around active nests. We request the final RMP/EIS address other cliff nesting raptors (gyrfalcons, golden eagles, bald eagles, osprey and other rough-legged hawks) and not just peregrine falcons. We also believe the rationale to not carry this ACEC forward should include a statement that special management prescriptions assigned in the original 1981 designation were never implemented.
- Peregrine Falcon Nesting Habitat – We agree that raptor nests are already protected under the federal Migratory Bird Treaty Act and additional protections can be granted through land use authorization permit terms and conditions that provide buffers around active nests. We also believe the rationale to not carry this ACEC forward should include a statement that special management prescriptions assigned in the original 1981 designation were never implemented and that peregrine falcon numbers have increased or remained steady since their delisting from the Endangered Species List in 1999.
 - Box River Treeline Research Natural Area – We agree that wildlife, soil, fisheries, ecological and geological resources in the Box River Treeline RNA are not unique to the Planning Area or regionally within Alaska.

Additionally, we do not agree that any of the other ACECs recommended for fisheries values meet the ACEC criteria, and therefore do not support their proposed designation. As requested in our comments on the 2016 ACEC Report, the final RMP/EIS document should only carry forward fishery related ACECs that have substantial significance and values when compared to typical conditions (water quality, fisheries, productivity, escapement, etc.) throughout the BSWI planning area. Some of the proposed ACECs have escapement data for certain fish species, but there is no comparison with fisheries in other river systems regarding species composition/diversity or escapement. Such a comparison is crucial in justifying the fisheries resource as unique, important, and/or significant either locally or more than locally. The wildlife resource evaluations generally state that the wildlife species are common locally and exist throughout the region and state, but similar comparison statements are lacking for the fisheries descriptions.

We request that BLM re-evaluate the remaining proposed ACECs to determine whether special management is needed; we believe that the existing state and federal laws already in place, in most instances, adequately protect the fisheries and cultural resources in question. Alternatively, BLM could include monitoring plans in the final RMP to assure the existing regulatory framework adequately protects resources from threats, to identify those threats, and identify when unique special management prescriptions may become necessary to protect threatened resources.

We request the following existing ACECs not be carried forward into the final plan for the following reasons:

- Inglutalik, Ungalik, Gisasa River, and Shaktoolik – These four ACECs have been carried forward exactly as they existed in previous planning documents, the same acreage and the same relevant and important values. No impairment to resources has been identified in the draft RMP, the Analysis of the Management Situation (AMS), or any of the other supporting information for the draft RMP/EIS. We do not question the value of the areas for fisheries; however, we do question the need for special management in these remote

areas. The relevant and important values these pre-existing ACECs are being re-designated for are the same original designation values despite either no special management occurring (Gisasa River), or areas being open to permits, leases, rights of way or easements on case by case bases (Inglutalik, Gisasa River, Shaktoolik, Ungalik), while the areas remain pristine.

It is unclear why the Gisasa River ACEC also references ANILCA Section 302 in its background discussion of relevance and importance criteria; the direction in ANILCA Section 302 for management of national wildlife refuges does not apply to BLM managed lands.

- Kateel River ACEC – the draft RMP/EIS proposes to increase this existing ACEC roughly 18 percent in size (the existing Kateel River ACEC is 568,083 acres and the newly proposed Kateel River ACEC is 692,659 acres) in Alternative B, yet the special management prescriptions were either never implemented or were open to permits, leases, rights of way or easements on case by case bases. The ACEC report does not indicate any negative impacts nor impairment of resources has occurred in this area. The ACEC report references ANILCA Section 302 as a reason for the expanded size. We again clarify that the direction in ANILCA Section 302 for management of national wildlife refuges does not apply to BLM managed lands.
- Anvik River Watershed ACEC and the Unalakleet River Watershed ACEC – These two newly proposed ACECs are primarily made up of acreage from previously existing ACECs (Anvik River ACEC and Drainages of the Unalakleet ACEC). The relevant and important values remain the same as the original ACECs and again, the ACEC report does not indicate any negative impacts nor impairment of resources has occurred in this area, despite it being open to permits, leases, rights-of-way, or easements on case by case bases.
 - Anvik River Watershed -- Eighty eight percent of the existing Anvik River ACEC (100,948 acres) is proposed to be incorporated into the new Anvik River Watershed ACEC (248,867 acres). Previously designated to protect “spawning habitat for the largest population of chum salmon in the Yukon River system...” the new ACEC is carried forward because of “[l]ocally and regional significant summer chum salmon that spawn in the area of identified ACEC.” The Southwest Management Framework Plan specified that a habitat management plan be prepared to determine the life history and habitat needs for chum salmon. No such plan was ever prepared, yet the area continues to be “the largest single wild stock producer of summer chum salmon in the Yukon River Drainage” (pg. 15, BLM ACEC Report, 2018). We also do not agree that “the Anvik River produces many of the fish that escape into the Yukon River, contributing to an internationally significant fisheries resource.” (p. 12) The fish that escape from the Anvik do not contribute to the escapement of fish into Canada.
 - Unalakleet River Watershed– The ACEC report states that: “*The cultural resources located along the Unalakleet River, particularly the INHT and its associated sites, are of national significance, as is indicated by its designation by Congress as a National Historic Trail and a Wild and Scenic River.* We believe that the NHT and WSR designations are enough protection for the cultural resources of the Unalakleet River Watershed ACEC and that maintaining this extra layer of protection is unnecessary.

The ACEC report states that the fishery resource is more than locally significant because fish from the Unalakleet River are caught in the Norton Sound commercial fishery and are processed and shipped to markets in Anchorage and the entire United States. However, these facts are most likely true of every salmon river in the state. BLM's rationale is largely that fish are important to the people of the region and the fish populations move throughout the region, therefore, they are relevant and important. When almost every watershed qualifies as an ACEC, ACECs lose their meaning. Also, when special management becomes ubiquitous, it is no longer "special management." Where discrete habitat is identified and where special management is necessary, we support ACECs, but this justification is lacking in the ACEC Report and the draft RMP/EIS.

Conclusion

In summary, we support special management for discrete habitat within two of the ACECs proposed for designation based upon fisheries values – the Sheefish Spawning ACEC and the Swift River Whitefish Spawning ACEC. We concur with BLM's decision to not carry forward the Kuskokwim River Raptor Nesting Habitat ACEC, the Peregrine Falcon Nesting Habitat ACEC and the Box River Treeline Research Natural Area; however, we do not agree that any of the other ACECs recommended for fisheries values meet the ACEC criteria, and therefore do not support their designation. We also do not support retention or expansion of ACECs that rely on the area's existing statutory designation as justification or do not take the existing regulatory framework into consideration (e.g., cultural resource protection under the National Historic Preservation Act), including the Unalakleet River Watershed ACEC, Tagagawik ACEC, Inglutalik ACEC, Ungalik ACEC, Gisasa River ACEC, Shaktoolik ACEC, Kateel River ACEC, Anvik River ACEC, and the Anvik River Watershed ACEC.

For any ACECs carried forward into the final plan, we request that the Record of Decision 1) explain how management prescriptions are unique to each ACEC and why they are necessary beyond the existing regulatory framework; 2) ensure management is targeted to the conservation of the resource for which an ACEC is designated; and 3) be appropriately sized in a manner that protects the targeted relevant and important resource values, while also allowing BLM to meet its multiple use mandate. For all ACECs carried forward into the final plan that rely on a congressional designation as justification, we request that BLM explain why existing protections under ANILCA, the National Trails System Act, the Wild and Scenic Rivers Act, and the existing regulatory framework do not already provide sufficient protection of the resource values identified for protection. Lastly, if carried forward, we request BLM meaningfully consult with ADF&G on the Sheefish Spawning and Swift River Whitefish Spawning ACECs to determine the appropriate boundaries for the final plan.

High-Value Watersheds

The action alternatives include a minimum of 195 watersheds (or 14,888 stream miles) and a maximum of 397 watersheds (or 21,382 stream miles) to be designated as HVWs for special management of varying degrees. Given the HVWs' immense geographic scale, we expected a commensurate level of justification in the RMP. Instead, the RMP merely lists the criteria for identifying HVWs as including "resource value" ranging from high, medium-high, to medium and "Aquatic Resource Value" (ARV). Because ARV is by definition a quantification of

resource value, and the watershed value scale provided in the Watershed Analysis Framework includes an additional “very high” category of resource value which does not appear in the RMP, it is unclear to what extent the application of the Aquatic Resource Value (ARV) Model is different in the RMP than it was earlier in the process. The Watershed Analysis Framework is the only supplied supporting information, but it is from the Preliminary Alternative Concepts phase; some of the differences may be simply due to the change in nomenclature from “Riparian Conservation Area” to “High-Value Watershed,” but there is no explanation. The RMP does not explain why watersheds which were ranked as “medium-high” during the Preliminary Alternatives Concept phase are now being ranked as “high” and subject to special management even in Alternative D.

The restoration priority for watersheds is also unclear; in some places the RMP refers to “High Priority Restoration Watersheds” but overall it seems this concept as a management category is absent. For example, restoration priority is described in the alternatives common to all⁹, and High Priority Restoration Watersheds are referenced in the Goals and Objectives in Appendix G¹⁰ and the Mitigations Standards in Appendix I¹¹, but we cannot discern whether these are the watersheds identified per the Watershed Analysis Framework using the ARV Model, or whether this is a more general management category to be developed in the future.

We note that a multitude of existing State and federal laws and regulations already exist to protect the fishery and watershed resources within the planning area. Many of the watersheds considered for this designation contain state-owned navigable waterways, the addition of this designation would only serve to confuse the public concerning management authority and allowable uses. Furthermore, there are very few activities, current or proposed, of notable scale to warrant the consideration and implementation of this new plan designation. In the absence of enough supporting information, the State opposes the HVW designation and requests that BLM remove it from the final RMP/EIS.

Navigable Waters

Ownership of lands below the ordinary high water mark of all navigable water bodies (which were not reserved prior to statehood) transferred to the State of Alaska at the time of statehood under the authority of the United States Constitution, the Alaska Statehood Act of 1959, the Submerged Lands Act of 1953, and under the Equal Footing Doctrine. We are appreciative of BLM’s efforts to clearly state that the management actions proposed in this RMP/EIS would not apply to State-owned navigable waterways. The State owns numerous navigable waterways in the planning area. The submerged lands under all navigable-in fact waters within the planning area belong to the State except in the rare instance where a valid pre-statehood withdrawal exists. All navigable waters belonging to the State should clearly be identified in the planning area.

⁹ Page 2-17, “Watersheds prioritized for restoration would be those watersheds with Medium-High or High aquatic resource value and Low watershed condition.”

¹⁰ Page 3, “Develop measures to protect watershed health and function in the following areas: Nulato watershed, HVWs, ACECs, WSRs, and High Priority Restoration Watersheds. Management in these areas should include the maintenance of water quality/quantity and timing of runoff.”

¹¹ Page 1, “However, potential recovery opportunities to offset net loss include the following: Restoration of identified Restoration Watersheds. These would include watersheds prioritized for restoration with medium-high or high aquatic resource value and low watershed condition.”

Please see the attached list of some waterbodies whose navigability-in fact is undisputed. This list is in no way comprehensive or complete. It is very likely that the navigable reach of many of these rivers may extend a significant distance upstream of the BLM determinations; therefore, further research may be necessary.

Mineral Development

The State is concerned about the effect that ACECs and other protective measures would have on mineral exploration and development within the planning area. Of the four alternatives, Alternatives A and B recommend moving forward with ACEC designations while Alternatives C and D do not. It is our understanding that all new and existing ACECs in Alternatives A and B would be recommended for withdrawal from locatable mineral development, closed to salable mineral development, and open to no-surface-occupancy leasable mineral development. Although Alternatives C and D do not propose moving forward with any ACECs, they do include a restrictive management provisions that would apply some of the same restrictions that an ACEC would – including mineral closing orders and other prohibitions or excessive restrictions on mining exploration and development.

We request that BLM recognize the importance of mineral development and the State’s need and intent to allow for the exploration and development of mineral resources within the planning area. There are many leasable and salable mineral prospects within the planning area that benefit the State and communities throughout the region. Leasable mineral prospects, like the Donlin Gold prospect, are essential to the State’s economy while salable minerals are necessary to the construction of roads and other infrastructure. Due to the importance of the mineral prospects within the planning area, we request that access for transportation and utility infrastructure to these mineralized areas be fully considered and that all ROW exclusion or avoidance areas be removed from the RMP/EIS. It is imperative that lands along and adjacent to the proposed Donlin pipeline corridor, which is part of an already permitted project, must remain open and easily accessible for salable minerals for the entire route, as salable materials will be needed during construction. Year-round access within the RMP, utilizing existing access trails as much as possible, will reduce the need for large helicopters to move supporting equipment and materials as exploration and development activities progress.

	LMP on All Lands (all land managers)	LMP on BLM- Lands	LMP on Non-BLM Lands
Low LMP	60,271,387 acres	12,900,406 acres	43,730,981
Medium LMP	4,071,147 acres	522,825 acres	3,548,322
High LMP	627,985 acres	42,663 acres	585,322

The above table provides the acreages for areas of low, medium, and high locatable mineral potential (LMP) within the BSWI planning area. The first column provides the LMP acreages for all lands within the planning area, regardless of land manager, the second column provides the LMP acreages for only BLM lands within the planning area, and the third column provides the LMP acreages for all non-BLM lands within the planning area. The information provided in the third column is very telling as it clearly depicts the number of acres for each LMP category that are within the BSWI planning area but are managed by entities other than BLM. Considering the significant acreages of lands with LMP that are not managed by BLM, we recommend that all

planning efforts (including the BSWI RMP/EIS) for BLM lands located near or adjacent to mineralized areas take into consideration the unique challenges associated with providing access to mineralized areas across various land ownership patterns. Flexibility is necessary in order to effectively plan for access and supporting infrastructure based on land ownership and the physical characteristics of the terrain.

Within the BSWI planning area, there are numerous areas of BLM land with mineral resource exploration and development potential that are surrounded by Native Corporation Land. The process for the adjudication of 17(b) easements across Native Corporation Land for the purpose of resource development would likely be complex. The State requests that the importance of mineral resource exploration and development be considered when adjudicating these easements. At the time that these easements are adjudicated, we ask that BLM consult with the State.

We ask that BLM consider removing the word “protection” when posing questions about resource development in this RMP, as it implies that mitigation measures and reclamation requirements would not be stipulated to and enforced. Nonetheless, we are supportive of BLM’s intent to make mining regulations and expectations more open and transparent for users through this plan.

Locatable and Salable Minerals

We are very concerned with the changes to mining bonding proposed in Alternative B. In Section 3.3.3 - Locatable and Salable Minerals, the following language is provided for Alternative B “*All existing and new mining operations would be bonded using an individual financial guarantee or other acceptable means as defined in 43 CFR 3809.500. Use of the Alaska Statewide Bond Pool would be restricted to operations that have a record of 5 or more years of successful reclamation of mined lands with no substantial compliance issues. Application of this requirement would be contingent on changes, modification, or supersedence of the 2015 and 2016 Reclamation Instruction Manuals. Bonding type/action would remain fully at the discretion of the AO*” (Chapter 3, page 3-96 to 97). Not only would the significant costs associated with this proposed practice deter new operators from conducting business in this area, it is inconsistent with BLM’s Alaska-specific *Reclamation Cost Estimates Instructional Memorandum*, which was vetted by industry and other government agencies. It is inappropriate to suggest that a regional plan can supersede a nationwide manual, especially considering the remoteness and overall lack of multiple use in this part of the state. We concur with the mining bonding language provided under Alternatives C and D because it is consistent with current management practices as found in the *Instructional Memorandum 2015-001, Guidance on Reclamation Bonding for Plans and Notices on BLM Managed Lands in Alaska*. If BLM selects Alternative B, we request that this change not be implemented.

Lands and Realty

Consistency with State Plans and State Management Intent

Considering a significant portion of the non-federal land within the planning area is State-owned, tentatively approved, or selected, it is important that BLM strive for consistency and compatibility between the BSWI RMP and State or local land use plans. Consistency and compatibility between various land use plans encourages better land and resource management practices and promotes a seamless management transition upon conveyance of lands to the State,

as provided in 43 CFR 1610.3-2. Furthermore, maintaining consistency in land and resource management actions regardless of ownership boundaries is in the best interest of the public.

The State would like to remind BLM that the following State land use plans apply to the State lands within the BSWI RMP/EIS boundary:

- Kuskokwim Area Plan (1988) and Amendment (2019)
- Northwest Area Plan (2008)
- Bristol Bay Area Plan (2005) and Amendment (2013)
- Yukon Tanana Area Plan (2014)
- Wood-Tikchik State Park Management Plan (2002)

Most notable among the State Plans is the Kuskokwim Area Plan (KUAP), as it covers the most applicable acreage within the RMP/EIS boundary. As previously noted in our ACEC comments, the KUAP provides management intent that is contrary to the proposed Sheefish Spawning ACEC, in that it identifies and designates areas of important habitat for Sheefish spawning that are significantly smaller than those in the proposed ACEC. The recommendation in Alternative B to move forward with the Sheefish Spawning ACEC, as currently proposed, is inconsistent with the Kuskokwim Area Plan.

The fish and wildlife habitat designations used in the KUAP in the resource inventory were developed by ADF&G. The KUAP defines A-1 Habitat lands as “a discrete habitat needed to sustain a species within a region. These are highly sensitive fish and wildlife habitat and human use areas. A-1 Habitat lands include the only two areas in the Kuskokwim drainage (Highpower Creek and Big River) where sheefish are known to spawn. ADF&G recommends wildlife be the primary use of these areas with possible limited seasonal entry of some uses” (KUAP Appendix A, page 2). In total, the KUAP designates less than 1,000 acres as A-1 Habitat, requiring discrete habitat protection. Rather than designating massive swaths of land as important habitat and spawning areas, we identified small areas of discrete habitat and spawning areas in the KUAP. In order to be consistent with the KUAP we request that the Sheefish Spawning ACEC be reduced in size to more accurately reflect an acreage similar to that identified in the 1988 KUAP and consistent with recent sheefish spawning data from the ADF&G.

Furthermore, it should be noted that the already permitted Donlin pipeline right-of-way crosses through the southeast corner of the proposed Sheefish Spawning ACEC. Whether or not BLM chooses to reduce the size of the proposed Sheefish Spawning ACEC, we request that known and future developments, such as the Donlin pipeline (which may need to be repositioned as on-the-ground decisions are made) be considered. This consideration would be consistent with the State Generally Allowed Use policy and by reducing the size of the ACEC and the associated ROW avoidance areas would not limit opportunities for growth in this economically challenged region of the State.

As mandated by 43 CFR 1610.3-2, BLM’s plans must strive to be consistent with State land use plans. In order to fulfill this mandate, BLM must be aware of the State’s current and ongoing efforts to revise applicable State land use plans. We provide the following new information for BLM’s review and consideration for the Final RMP/EIS. Recently, the State reviewed the KUAP

and decided a full revision of the plan is not necessary at this time because there was no overriding call from the public or other agencies to do so and much of the information in the existing plan is still applicable today. Instead of a full revision, the State chose to move forward with a targeted amendment to the plan to address previously unclassified lands related to the Donlin Gold project permitting process. In this targeted amendment DNR is adding an additional 387,000 acres of unclassified state-owned and state-selected land to the planning area and re-classifying approximately 116,000 acres of State lands within the KUAP boundary (See the attached map). The lands addressed by this amendment were selected for potential conveyance to the State to fulfill its outstanding land entitlement. Subsequently, following the adoption of the KUAP in 1988, some of these selected lands were conveyed to the State; as such, the original KUAP does not currently classify or provide management intent for any of the lands or waters described in the targeted amendment.

The 2019 amendment proposes to classify currently unclassified state-owned lands that were not in state ownership at the time that the KUAP was adopted, as well as state-selected lands and state-owned riverbeds and shorelands within the amendment area. The area of the proposed plan amendment includes blocks of state-owned and state-selected lands and navigable waters within Management Units 10 and 11 of the KUAP. Most of these blocks will be incorporated into existing Subunits 10b – Horn Mountains-Upper George River and 11a – Swift-Babel-Tatlawiksuk. One block will comprise a new subunit, to be identified as Subunit 10d – Moose Creek. This amendment will also classify a portion of the state-owned riverbeds and shorelands of the Kuskokwim River, which will be identified as Subunit 10c – Kuskokwim River. Additionally, this amendment will clarify the classification and management intent for navigable waterbodies that cross or are surrounded by non-state-owned land.

Most of the lands addressed by the KUAP amendment are within the KUAP planning boundary; however, approximately 67,832 acres of land are located outside but immediately west of the KUAP boundary. This land will be incorporated into Subunit 10b and the KUAP boundary will be adjusted to include these lands. See attached KUAP Amendment Map.

DNR proposes designating approximately 270,849 acres of land with a primary designation of Minerals and a secondary designation of Wildlife Habitat (Subunit 10b). This acreage includes the lands that currently lie outside the planning boundary but will be incorporated into and designated according to Subunit 10b through the boundary adjustment proposed by this amendment. DNR also proposes designating approximately 83,077 acres Resource Management (new Subunit 10d), approximately 50 acres Waterfront Development (new Subunit 10c), and approximately 116,160 acres Wildlife Habitat (Subunit 11a).

Adjacent and nearby KUAP Subunits 10b - Horn Mountain-Upper George River and 11a - Swift-Babel-Tatlawiksuk provide management intent that is appropriate for most of the unclassified blocks of land affected by this amendment. Therefore, these lands will be incorporated into the existing subunits, thus increasing the overall acreage of these subunits. Approximately 270,849 acres of newly designated Minerals and Wildlife Habitat land will be added to Subunit 10b and approximately 116,160 acres of newly designated Wildlife Habitat land will be added to Subunit 11a. The management intent for Subunits 10b and 11a will remain unchanged. Subunit 10b will continue to be retained in state ownership and managed for multiple uses, with an emphasis on

mining, wildlife habitat, harvest, and recreation. Subunit 11a will continue to be managed for fish and wildlife habitat and harvest.

All the lands and resources evaluated by the State during the KUAP amendment process are within the BSWI planning area. The findings of our assessment are inconsistent with those of BLM. Based on our assessment, there is very little activity within the planning area and little to no need to expand upon the existing regulatory framework. For example, across the 13.7 million acres of land managed by BLM, there are only six placer claims, one lode claim (Nixon Fork), and 18 SRPs. This, coupled with the fact that a full revision of the KUAP was not necessary because much of the information from 1988 is still applicable today, makes it clear that the broad, far-reaching restrictions and overlapping designations proposed by BLM are unnecessary. Furthermore, the BLM fails to provide adequate justification for the far-reaching restrictions and overlapping designations proposed in the draft RMP/EIS. We request that BLM consider the above information in the Final RMP/EIS and re-evaluate the extensive restrictions proposed across an area of the state with little activity and few identifiable adverse impacts from those activities and uses.

In addition to the inconsistencies with the KUAP and the 2019 KUAP amendment, there are numerous other inconsistencies with state management intent as well. These inconsistencies are mentioned throughout this comment letter, and include, but are not limited to, management of State owned RS 2477s, potential limitations to the public's use of State-owned navigable waters, availability of public access routes and travel management in general, consistency with State Generally Allowed Uses, and areas that should remain open for multiple uses including mineral exploration and potential development.

Public Land Orders

Section 207 of the Alaska Land Transfer Acceleration Act (Public Law 108-452) directed the Secretary of the Interior to provide Congress with a report reviewing all the Public Land Orders (PLOs) pursuant to Section 17(d)(1) of the Alaska Native Claims Settlement Act (ANCSA). The 2006 report recommended that BLM's land use planning process serve as the means to review the (d)(1) withdrawals and make determinations regarding opening lands to other uses and activities. The 2006 BLM Report to Congress regarding ANCSA 17(d)(1) withdrawals recommended that much of the land within the BSWI RMP be removed from the domain of (d)(1). Portions of the BSWI RMP are located within Areas 5, 6, and 9 of the 2006 report. The report recommends that 98%, 97%, and 100% (respectively) of the (d)(1) withdrawals in Areas 5, 6, and 9 should be lifted. The State has long supported BLM's 2006 recommendation to Congress.

Of the four Alternatives presented in this draft RMP/EIS, only Alternatives C and D are consistent with BLM's 2006 Report and recommend that all existing ANCSA 17(d)(1) withdrawals within the planning area be lifted. We are supportive of BLM's efforts in Alternatives C and D to lift all existing ANCSA 17(d)(1) withdrawals. The purpose for these withdrawals is outdated and lifting them will allow landowners to receive entitlement to their selections and top-filings, and it will allow for a better use of public land. Alternative A would retain all existing 17(d)(1) withdrawals, while Alternative B would retain some withdrawals until new withdrawals are in place. We do not support either Alternative A or B, as both Alternatives

are inconsistent with the recommendation in the 2006 Report to Congress. Furthermore, we do not support Alternative B as it is disingenuous to the public to suggest that Congress would act on such a recommendation in a timely manner. If BLM selects Alternative A or B, the State asks that the plan clearly identify the reasons why, and that the state be consulted on the matter.

Revised Statute 2477s

The State of Alaska claims numerous rights-of-way across federal land under RS 2477, including rights-of-way identified in AS 19.303.400. There are numerous valid RS 2477 rights-of-way owned by the State of Alaska that fall within the boundaries of the BSWI planning area, including the Iditarod Trail that is comprised of numerous segments. Most, if not all, of these valid state-owned easements are not included in the draft RMP/EIS that is currently being reviewed. The failure to delineate these property interests owned by the State of Alaska is arbitrary and capricious; creates needless confusion and misunderstanding; represents an unconstitutional taking; and clouds clear state title to these lawful state property interests. See 28 U.S.C. § 2904a; Sturgeon v. Frost, No 17-949, 587 U.S. ___ (Mar. 26, 2019); Mark Patrick Heath 181 IBLA 114 (2011).

Revised Statute 2477 is found in Section 8 of the Mining Law of 1866. See 43 U.S.C. § 932 (1970). It granted—through a self-effectuating acceptance process--states and territories rights-of-way over unreserved federal lands. Although repealed in 1976, no RS 2477 right-of-way that had been validly accepted was extinguished by that congressional action. See 43 U.S.C. § 1701 note (a) (2006). Stated differently, all RS 2477 rights-of-way accepted prior to repeal of the relevant statute were preserved and remain valid state-owned rights-of-way in perpetuity, and the repeal of the statute had no effect on the validity of such previously accepted rights-of-way. The text of Revised Statute 2477 is quite simple and the process for acceptance was very straightforward. The statute provides: “The right of way for the construction of highways over public lands, not reserved for public uses, is hereby granted.” Acceptance of the land grant occurred either (1) when there was some positive act on the part of appropriate public authorities of the state manifesting an intention to accept the land grant or (2) when public use evidenced an intent to accept the land grant.

Absolutely no court action is required to establish a valid RS 2477, and indeed, court action is not envisioned as a means for accepting the RS 2477 land grant. Acceptance occurs, rather, and a valid state-owned right-of-way is created when one of two things happens: (1) sufficient “use” by the public or (2) the state expresses its intention to create a right-of-way.

The sole role that that the federal court system plays is in adjudicating disputes where the State of Alaska, for example, files suit to remove unlawful clouds from its clear title to a contested right-of-way or other property interest. See, e.g., Alaska v. United States, No. 3:12-cv-00114-SLG (D. Alaska May 3, 2016) (Mosquito Fork Bad Faith Opinion). The absence of any federal court adjudication pursuant to the Federal Quiet Title Act or otherwise does not abrogate the federal duty to recognize administratively in the planning process valid RS 2477 rights-of-way owned by the State of Alaska. To do otherwise (as stated above) is arbitrary and capricious; creates needless confusion and misunderstanding; places an unlawful cloud on state title to valid RS 2477 rights-of-way; and represents an unconstitutional taking of state property.

As indicated above and as we requested in our 2014 scoping comments, we reiterate our request that the BSWI RMP/EIS clearly recognize, delineate and identify all RS 2477 rights-of-way claimed by the State of Alaska within the Bering Sea- Western Interior planning area.

The Department of Natural Resource's Public Access Assertion and Defense (PAAD) Unit is available to work with BLM to address this matter. If BLM chooses not to identify State asserted rights-of-way in the RMP, we request that BLM provide justification for this decision. To further supplement our request, see the attached map which provides a map of known access and travel routes in the planning area, including known RS 2477 routes.

It is crucial that all known and asserted easements, trails, and RS 2477 rights-of-way be delineated in the RMP/EIS because BLM is including travel management zones in this plan and designating more restrictive land use designations over large amounts of land. Failure to identify all easements, trails, and RS 2477 rights-of-way is a disservice to the public and will make protecting the use of those access routes more bureaucratic and is inconsistent with State land use plans. Given the sheer size of Alaska and limited connectivity between communities and resources, these rights-of-way are crucial to the livelihood of Alaska residents. In the development of travel management implementation, we request that BLM work closely with the State so that all known travel routes can be identified, and so that future routes are considered based on the State's management objectives for the area.

Travel and Transportation Management

In Section 2.7.18 Travel and Transportation Management, BLM indicates that all lands in the planning area will be designated as "Limited" to motorized travel, with exceptions noted in Table 2-17. This section makes no reference to the access provisions or closure requirements of ANILCA. At a minimum, this section should include a reference to Section 2.3.1 Alaska National Interest Lands Conservation Act (ANILCA) Access – Implementing Sections 811 and 1110(a) of ANILCA. Many of the closures identified in Table 2-17 are closures under ANILCA Section 811 or 1110(a), however, those are not identified either in this Section or in Table 2-17.

The primary users of the planning area are local residents conducting subsistence activities allowed in ANILCA Section 811. However, Alternatives B and C close much of the planning area to the casual summer (i.e., not for subsistence purposes) use of OHVs beyond existing roads and trails on BLM's current route inventory, without explaining how this small proportion of overall OHV use affects the planning area. We question whether the existing amount of casual summer OHV use occurring in the planning area warrants the closures proposed in the draft RMP. The limited casual summer OHV use that does occur in the planning area is primarily related to hunting and fishing activities. We are concerned the draft RMP, with its proposed travel restrictions to casual summer OHV use, will unnecessarily limit the public's ability to access BLM lands for hunting and fishing both within the planning area and on adjacent state and private lands into the future. The expectation in the RMP appears to be that no new OHV use should be allowed to occur over the life of the plan, which is contrary to the direction in IM 2014-014 which states:

In areas where summer OHV routes don't exist and OHV use is predominantly dispersed cross-country winter travel, there may not be a need to limit any OHV use to designated routes, but other limitations may be necessary to meet RMP goals and objectives (e.g., vehicle weight limitations, track tread depth maximums, snow depth minimums to protect

vegetation). Where a "limited" area has no designated routes, the TTMP should define a process that allows for future route designations should the need arise.

In areas where there are few summer OHV routes and summer OHV use is infrequent, the BLM may designate routes as an asset in the BLM Facility Asset Management System (FAMS), but not require summer OHV use to be limited to those FAMS designated routes. In this case, the BLM will provide sound rationale for not limiting summer OHV use to designated routes (e.g., concentrating use will cause more resource damage than occasional dispersed use).

Our concerns are particularly related to Alternative B where ACECs are applied to roughly 30% of the planning area, and Alternative C where the same restrictions apply despite Alternative C not including any ACEC designations. The draft RMP/EIS does not document how the special travel management provisions within the ACECs are necessary to protect the specified important resources for which the ACECs would be designated – particularly when the majority of the planning area is currently described as “pristine” even with the existing levels of use OHV use. The plan is riddled with general statements which provide no discussion as to what impacts are being seen from OHVs to either vegetation or fish and wildlife in the planning area; no discussion of the gains that will come from restricting OHV use to existing trails; no discussion of specific areas where resources have been determined to be damaged by OHV use; and no acknowledgement that casual summer OHV use is a very small proportion of overall OHV use in the planning area.

Limiting summer OHV use to existing roads and trails identified in the BLM Road Inventory (which currently does not exist) is inappropriate as no road and/or trail maps are provided within the draft RMP/EIS. Without being able to refer to this Road Inventory readers cannot adequately evaluate what impacts the restrictions proposed in this draft RMP/EIS will have to current and potential future use.

The draft RMP/EIS uses the terms “existing trails,” “existing routes,” “designated routes,” “temporary routes/trails,” “primitive trails,” and “existing trails, primitive routes and roads” interchangeably throughout the document. Please clarify what the intended differences are between these various terms. The term “sensitive resource areas” should be defined—not all of the special designations are for “sensitive resources” which causes confusion as to which lands this category encompasses.

We are most supportive of Alternative D for Travel and Transportation Management, though we object to the limitations assigned to OHV use on the INHT and within the Unalakleet WSR corridor for the reasons explained in the *ANILCA Protected Access* comments. We understand BLM’s rationale for designating the planning area as “Limited;” however, we request travel management be addressed more specifically in a travel management plan. Given current use levels and the overall condition of the planning area, applying a “Limited” designation can be done without limiting use in the RMP without interim restrictions, until such a time as a step-down travel management plan is completed. Travel management planning should not occur until BLM can release its current route inventory and identify any trail issues. Without the route inventory available for review, the public is not able to assess the impacts proposed restrictions will have on existing routes and uses. We also request that the BLM provide their rationale and process for deciding which current routes are accepted on their inventory. Further, we

recommend using vehicle width and weight restrictions if necessary, rather than route limitations, and monitoring areas of known OHV use in order to act when necessary to address areas where there are actual or reasonably likely resource impacts. Casual (recreation) and subsistence travel should be allowed to continue consistent with the State's generally allowed uses, and any trail restrictions need to allow for off-trail game retrieval.

For any proposed restrictions that are carried forward into the final RMP/EIS (and in subsequent travel management plans), the plan needs to identify where OHV use is currently causing resource concerns, and why other measures are not sufficient to address the issue at this time.

Community Focus Zones

According to the draft RMP/EIS, CFZs would be “managed to reduce competition for subsistence fish and wildlife resources within an established radius around remote Alaskan villages,” to “provide opportunities for BSWI communities to conduct subsistence harvest activities free from the impacts of permitted sport and commercial harvest on BLM-managed lands adjacent to BSWI communities” (Appendix L, page 8). More simply stated, BLM is proposing to implement restrictions on guided sport hunting activities within either a 5 or 10-mile buffer around each community, on the basis that this will protect local residents' subsistence use. If BLM's raison d'être truly is to protect subsistence resources and use for local residents by prohibiting or restricting use by non-local residents and members of the public, the logic behind the CFZ proposal is flawed because most hunters are not interested in hunting within such a proximity to communities.

We fully support and concur with BLM's recognition of the importance of subsistence to the residents in the BSWI planning area; however, we are concerned about the CFZ component of Alternatives B and C for two main reasons. First, we are concerned that the proposed CFZ element creates a private interest by restricting general public use, and only allowing local residents that ability to access public lands near communities. Second, in addition to limiting public access, we are concerned that, as described, it appears BLM is moving into fish and wildlife allocation, an authority that BLM does not have, as is clear in 43 CFR 24. We are concerned that the stated purpose of CFZs circumvents the allocative authorities of the Alaska Boards of Game and Fish, and the Federal Subsistence Board. Furthermore, the proposed intent circumvents existing allocation processes by placing buffers around communities and former communities (Flat, Iditarod) to prohibit transporters, outfitters, and guided hunters and sport fishers.

The objectives in Section 1.17.4 of Appendix G state that the CFZs “would provide opportunities for village residents to conduct subsistence harvest activities free from the impacts of permitted sport and commercial harvests in areas immediately adjacent to their villages.” It is unclear which resources “sport and commercial harvests” refer to. We would like to emphasize that there is no commercial harvest of wildlife in Alaska. Guided hunters follow the same regulations as non-guided hunters hunting under state regulations. If this objective applies to commercial fisheries, all allocative decisions are made by the Alaska Board of Fisheries and the Federal Subsistence Board, not BLM.

Special Recreation Permits (SRPs) that are neither noncommercial nor for hunting guide/outfitters are not specifically addressed in the alternatives, but the implication is that other recreational guides, including sport fishing guides, would not be permitted in the CFZs. The 'Management Actions and Allowable Use Decisions' table on page 11 of Appendix L states that SRPs issued by BLM "for outfitter-guide activities will be limited to lands outside the CFZ. Specifically, BLM will not authorize the guiding of paying clients conducting sport hunting and sport fishing within the CFZs." Section 2.7.17 of the draft RMP/EIS indicates that non-commercial SRPs would only be permitted when determined to be consistent with the objectives for CFZs but does not describe or identify the criteria that will be used to make these determinations.

Section 2.7.17 states that "exceptions could be made to allow permitting of SRPs and commercial special forest product permits based upon concurrence from the affected CFZ village for a particular use by a resident or other concern." It is not clear what entity the term "village" refers to in this statement. Does the term "village" refer to the individual members of the community, the municipal government, the tribal government, some other organized group/entity of individuals in the community, or a combination of all of these? We question whether BLM can rely on concurrence from the affected CFZ village to justify allowing exceptions to SRPs and special forest product permits for particular residents or other concerns. We are concerned that allowing exceptions for particular residents or concerns based on concurrence from the village may encourage favoritism, improper influence, and unfair or unjust treatment of certain individuals or groups. BLM's existing permitting guidance was specifically contrived to prevent that behavior or circumstance. We request that this statement be revised, or language be added to the textual portion of the RMP/EIS to clarify what or who the term "village" refers to and what mechanisms BLM will employ/implement to avoid exploitation and mistreatment of the permit exemption process.

The issue of local access to resources has been addressed through the Alaska Native Claims Settlement Act (ANCSA), which provided for native corporations to select the lands most important to their members, and ANILCA, which provided for a subsistence priority on public lands for rural residents under Title VIII of the Act. The subsistence priority is overseen by the Federal Subsistence Board (of which BLM is a voting member) which, *in consultation with state managers*, is responsible for evaluating all requests for additional consumptive subsistence opportunities for qualified rural residents through an open and active public process while maintaining healthy populations of fish and wildlife. The CFZ concept is in direct conflict with the intent of ANCSA and ANILCA, as well as existing processes to settle local land ownership and subsistence priorities on federal lands.

We are appreciative of BLM's efforts to try to address concerns identified by residents within the planning area; however, we request that the proposal to establish CFZs under Alternatives B and C be removed. Managing fish and wildlife resources for subsistence and general hunting is the domain of the Federal Subsistence Board and the Alaska Boards of Fisheries and Game. We believe that a better solution altogether is to seek out a regional-based objective, which could include the development of a multi-agency guide use allocation program. Such a program would provide a better understanding of user conflicts and the number of guides for each game management unit. This would be especially helpful, as the lands surrounding these communities

have fragmented ownership, and BLM only has the authority to manage BLM lands. Appropriate actions could be taken to address any problems that may arise. We welcome continued collaboration to effectively address user concerns and develop a guide use allocation program.

Support for BSWI Communities

According to the draft RMP/EIS, the *Support for BSWI Communities* theme was developed to allow “everyone to see, in one place, the measures designed to maintain and improve the quality of life in rural BSWI communities” and as a mechanism to “allow the BLM to identify the net effects, beneficial and adverse, of each alternative on BSWI communities” (Chapter 2, page 2-90). However, by listing *Support for BSWI Communities* as a resource in the plan, the implication is that the local communities fall under BLM management. For example, the plan states “BLM would regularly monitor rural communities...to ensure collaboration and coordination efforts are being effectively implemented.” Further, presented as a “resource” the plan attempts to apply BLM mitigation and climate change policy (Appendix H and I) to this community focused “theme.” The results of this approach are confusing.

BLM is required to coordinate with tribal governments and provide strategies for the protection of recognized traditional uses in the process, as well as to coordinate with local governments and to strive for consistency with existing resource-related plans and policies of both local and tribal government (as well as State government). These processes are the appropriate processes for local and tribal government interaction with BLM. Including this type of guidance in a planning document is unnecessary and confusing. This also applies to the SOPs/BMPs in Table K-20 in Appendix K. We request that *Support for BSWI Communities* be removed as a resource in the BSWI Planning Area. The following comments highlight other concerns related to proposed actions in the alternatives section of the draft plan.

Section 2.7.23 Support for BSWI Communities, Actions Common to All Action Alternatives for Support for BSWI Communities, Item 1, page 2-91

- *When making decisions about hunting guide/outfitter SSRPs, include community interests and impacts in the selection criteria and capacity determinations for issuing commercial hunting guide permits.*

ANILCA Title VIII provides rural residents with a subsistence priority for the taking of fish and wildlife on public lands. FLPMA and ANILCA provide that nothing within the Act shall enlarge or diminish the responsibility and authority of the State for management of fish and resident wildlife. We strongly support considering public input. However, the requirement to include community interests in the selection criteria and capacity determinations for issuing commercial hunting guide/outfitter special recreation permits raises issues of fairness and the level of control other communities adjacent to public lands will expect to wield over permitting decisions. Access to public lands should be open to all people, not subject to local veto. Similarly, decisions about who profits from public lands in a competitive permitting process should not be opened to potential favoritism. BLM Handbook 2930-1 states:

(3) In some situations, commercial or competitive SRPs may be issued on a competitive basis. Use allocation systems and use limits are generally determined in resource management plans or activity plans. When new opportunities for obtaining a permit become available and the AO determines there is enough interest, interested parties may

be invited to submit proposals for obtaining the available permits. Field offices should develop their own SRP authorization criteria by which to award the permit to the applicant best serving the public's needs (including improved access for people with disabilities and the needs of other underserved populations) and meeting resource management objectives.

Section 2.7.23 Support for BSWI Communities, Actions Common to All Action Alternatives for Support for BSWI Communities, Item 13, page 2-92

- *Support community-lead development and maintenance of emergency shelter cabins in areas used for subsistence. Though the development could increase the size of the route network to provide access to these cabins, this management action would also provide additional safety for subsistence users.*

While we recommend eliminating *Support for BSWI Communities* as a separate resource in the plan, we strongly support BLM's commitment in item 13 to support community-led development and maintenance of emergency shelter cabins, particularly as river ice is freezing later, and is thinner, and rotting and opening up earlier each year. Community members at public meetings in the planning area noted that conditions on the river deteriorate much more rapidly now. Travel on frozen rivers is becoming much riskier. However, this action also implies that increasing the size of the route network is not desirable. As communities grow and subsistence resource locations change over time, it is reasonable to expect that access routes would also grow and shift. The final plan should support such change.

Section 2.7.23 Support for BSWI Communities, Actions Common to All Action Alternatives for Support for BSWI Communities, Item 18, page 2-91

- *The BLM would work cooperatively with residents from rural communities to maintain existing trail systems on BLM land to be compatible with those on adjacent private lands.*

We support BLM working to maintain existing trail systems on BLM land to be compatible with those on all neighboring lands; however, not only on private lands. The final plan should commit to maintaining existing trail systems across all land ownerships, including private, state, and other federally managed public lands.

Page-Specific Comments & Recommended Revisions

Executive Summary

Page viii, paragraph 4

The draft RMP/EIS never specifically outlines what “substantial alterations in resources, circumstances” have occurred in the planning area since 1981. BLM's failure to identify the substantial alterations in resources and circumstances in this draft document makes it challenging for reviewers to identify the appropriateness of the proposed special management practices, best management practices (BMPs) and standard operating procedures (SOPs).

Table ES-1 Summary of Effects – Impact Summary of Various Resources, page x

The impacts outlined here fail to provide any quantification to the amount of effects expected in the planning area. (e.g., What specific areas are impacted by OHV use currently? Is there any indication that OHV use is expected to grow beyond speculation? Commercial woodland harvest

currently is on a negligible scale but that is not discussed. Most of the planning area is deemed to be of low mineral potential, yet this Table does not provide that quantification.)

Wildlife (page xi)

- Sentence 2 - The term “livestock grazing” is used; however, the appropriate term is reindeer grazing. We request that the table be revised to reflect that.
- Sentence 3 – Refers to management actions focusing on Endangered Species Act (ESA) —listed species and BLM sensitive species. To our knowledge there are no ESA listed species in the planning area, and the only BLM listed sensitive species is the Arctic Hare, please delete ESA listed species from this summary and identify that there is only one BLM listed sensitive species in the planning area.

Cultural Resources – This summary fails to take into consideration the fact that any development, including locatable mineral development or commercial woodland harvest, would be required to undertake a Section 106 Consultation prior to development.

Lands with Wilderness Characteristics – Lands with wilderness characteristics have been dismissed from detailed analysis in the draft RMP/EIS. Please remove lands with wilderness characteristics from the resource list.

Forestry and Woodland Products – This impact summary, while recognizing that management actions could have impacts to subsistence collection of forestry (e.g., berries) and woodland products, fails to clearly identify the impacts these management practices could have on subsistence users. Please specify the impacts to subsistence users clearly under each alternative.

Grazing – This summary is directed at livestock grazing. Please clarify that it is discussing reindeer grazing. Also, please clarify whether chemical vegetation treatments will be approved in lichen rich areas.

Recreation & Visitor Services – This summary needs to identify what INHT administrative protections will result in impacts to recreation and visitor services. As stated earlier, we believe the appropriate avenue for dealing with conflicts between subsistence users and general hunters is through the FSB and the State Boards of Game and Fish. We request BLM address those avenues in this summary.

Renewable Energy –Based on the limited number of renewable energy projects going on in the planning area, please delete this as a resource.

Wild and Scenic Rivers – We object to the determination that 18 rivers in Alternative B are determined to be eligible for inclusion in the National WSR System. See General Comment.

Hazardous Materials and Health and Human Safety – We request the deletion of this as a resource. Hazardous materials and safety standards can be addressed through project specific BMPs and SOPs.

Chapter 1. Introduction

Section 1.2.2 Land Uses, Pages 1-4

Forest resources have historically provided wood for sheltering and heating. BLM could play a long-term role in supplying wood to local communities, particularly near rivers; however, the RMP/EIS proposes use restrictions on forest resource/woodland harvesting.

Section 1.5.1 Other Related Plans, page 1-6

The Comprehensive Management Plan for the Iditarod National Historic Trail is referred to inconsistently throughout the document. On page 1-6, under Subsection 1.5.1, the RMP refers to the “*Iditarod National Historic Trail Comprehensive Management Plan* (BLM 1986b),” while Table 2-19: National Trails Actions by Alternative (page 2-81), the language under Alternative A refers to *The Iditarod National Historic Trail, Seward to Nome Route: A Comprehensive Management Plan* (BLM 1986b). The title on page 2-81 is correct, we recommend that the language on page 1-6 be revised to use the proper name of the document.

Section 1.6 Implementation and Monitoring of the Resource Management Plan, page 1-7

Please include one table in the final RMP/EIS that clearly outlines all the management decisions that will be implemented based on the selected Alternative.

Section 1.6.1 Compliance with NEPA, page 1-7

The plan fails to clearly identify what goals BLM hopes to achieve with this RMP. There are so many goals in Appendix G, it is hard determining the overall intent of the RMP.

Section 1.6.2 Adaptive Management and Regional Mitigation Strategies, page 1-7

Despite BLM’s stated intent here that they are seeking clearly identified outcomes, the draft RMP/EIS fails to identify what the outcomes will be. The draft RMP/EIS talks extensively about monitoring resources over the lifetime of the plan; we fully support this intent and recommend that monitoring be added as a primary goal common to all Alternatives in the final RMP/EIS.

Chapter 2. Alternatives

Section 2.3 Management Common to All Alternatives, page 2-1

The actions listed under this Section do not seem to be driven by specific needs in the planning area, rather they are primarily existing laws and regulations that anyone would need to comply with.

Section 2.3 Management Common to All Alternatives, Bullet 7, page 2-2

This identifies the mitigation hierarchy as identified by the CEQ and BLM’s Manual Section 1794, *Regional Mitigation* (BLM 2016a). Both sources identify compensation as a component of the mitigation hierarchy, which the statement “*Except where the law specifically requires or as described in this IM, the BLM must not require compensatory mitigation from public land users*” in BLM Instruction Memo No. 2019-018 appears to refute. Please outline the Mitigation Hierarchy BLM will follow in the Final RMP/EIS and identify existing mandatory compensatory mitigation programs.

Section 2.3.2 Mitigation, Bullet 1, page 2-3

Please provide the map reference so individuals can visually see what areas have been identified as low-functioning and in need of mitigation.

Table 2-1: Comparative Summary of Alternatives, pages 2-6 to 9

While the acreage is useful for comparison purposes, without being able to see where the acreage is located, it is difficult to assess the impacts from management prescriptions that will be brought into effect. Please reference applicable map(s).

Section 2.7.2 Soils General Performance Standards for All BLM Permitted Surface-Disturbing Activities, Bullet 2, page 2-13

In a number of Sections, the draft RMP/EIS indicates that surface disturbing activities would be required to implement mitigation measures specified by the BLM to protect public lands. In Appendix I, there are specific requirements under soil resources, soil and vegetation reclamation, riparian and stream disturbance/reclamation and Locatable and Salable Minerals; however, the Appendix I does not list mitigation measures specific to surface disturbing activities. We request that BLM consolidate these requirements into one location in the final RMP/EIS that specifies what these mitigation measures are required for common development projects are.

Section 2.7.3, Water Resources and Fisheries, 1. Water Resources Actions Common to All Action Alternatives, Bullet 9, page 2-16

This bullet discusses using riparian buffer distances as proxies for the 100-year floodplain. Management prescriptions tied to the 100-year floodplain are a major component of this document yet the link to riparian buffer distances is often not mentioned. We are concerned that as the general public reviewed this document, they failed to notice the riparian buffer distances called out only in the 100-year flood plain definition in Appendix B – Glossary. This discussion needs to occur in a more clear and concise way in one location within in the document, it should also clarify the relationship of 100-year floodplains to HVWs in the RMP.

Section 2.7.3, Water Resources and Fisheries, 1. Water Resources Actions Common to All Action Alternatives, Locatable Mining, Bullet 10, Sub-bullet 2, page 2-16

The plan states “Operator is required to obtain a permit from the State of Alaska for any anadromous stream crossing.” This description is too narrow—any activity below the ordinary high-water mark of an anadromous stream could require a fish habitat permit, not only stream crossings.

Section 2.7.3 Water Resources and Fisheries, Description of Water Resources and Fisheries Actions by Alternative, Table 2-4a, HVW (HVW) Criteria, page 2-18

Please modify the HVW (HVW) Criteria heading under Alternative A to define what the acronym HVW stands for. We suggest:

“High-Value Watershed ~~HVW~~ (HVW) Criteria”

Section 2.7.3 Water Resources and Fisheries, Description of Water Resources and Fisheries Actions by Alternative, Table 2-4b, Surface-Disturbing Activities, page 2-18 to 2-19

While we certainly support the conservation of fish habitat, we are concerned that, in some cases, requiring no surface-disturbing activities or permanent structures within the 100-year floodplain of fish-bearing streams could, by displacing structures a long distance from rivers, cause a larger project footprint and potentially greater project impacts to fish habitat than sensibly designed structures within the 100-year floodplain. We recommend that these restrictions include the flexibility of the cited Executive Orders 11998 and 11988 which acknowledge that there may be no practicable alternative to floodplain development. While this is listed as a page-specific comment, it applies to similar statements throughout the document.

Section 2.7.3 Water Resources and Fisheries, Description of Water Resources and Fisheries Actions by Alternative, Table 2-4b, Fish Passage Design Requirement/Standard, page 2-20

Alternative B states that “*At least three years of hydrologic and fish data shall be collected prior to construction of any proposed stream crossing whose structure is designed to occur, wholly or partially, below the streams OHWM.*” This requirement is unnecessary because guaranteeing fish passage is required under state law (AS 16.05.841-871) and generally, fish habitat biologists and project engineers work collaboratively to determine culvert and bridge design using their professional expertise and experience. Collecting three years of data is not necessary to successfully design for fish passage. We are concerned that this requirement would not materially improve fish passage over the current process via state permitting.

We recommend that BLM adopt one set of SOP/BMPs for stream crossings to be used at all sites in the Final RMP/EIS. As written, the draft RMP/EIS includes multiple separate SOP/BMPs standards, some of which are internally inconsistent. The single set of SOP/BMPs standards for stream crossings should be based upon the SOP/BMP Water-2 standard, as it is the most internally consistent and best reflects the most up to date understanding of fish passage, impacts to streams from road crossings and impacts from flood flows to stream crossings.

Accommodating a 100-year flow is becoming a standard requirement and has been shown to significantly reduce replacement and maintenance costs for a modest increase in construction cost. Maintaining fish passage is required under state law and maintaining passage for other aquatic organisms is highly desirable in order to maintain stream connectivity. Maintaining channel integrity and bankfull widths is critical to both sediment transport, reducing icing and providing flood control at crossings but is also critical to long-term maintenance of fish passage. Most fish passage problems are due to channel changes that occur after an undersized culvert is installed, causing disruption to sediment transport and hydrology and consequent bank and channel scour and aggradation. The installation of grade or water control structures is not an adequate long-term solution to changes caused to the channel by crossings. The restoration of areas disturbed during construction is also required by regulation and should be incorporated into the final SOP/ BMP.

We recommend BLM add a new SOP/BMP to Table K-3: Water Resources and Fisheries for stream crossings at all sites. We suggest:

<i>SOP/BMP Number</i>	<i>SOP/BMP</i>
<u>Water-47</u>	<p><u>The following provisions apply to stream crossings:</u></p> <ul style="list-style-type: none"> • <u>Project proponents must first consider a bridge, stream simulation culvert or other spanning structure with a continuous natural channel before considering other options.</u> • <u>The holder would construct low-water crossings in a manner that will prevent any blockage or restriction of the existing channel, and the creation of a downstream perch or lip. Material removed shall be stockpiled for use in rehabilitation of the crossings.</u> • <u>Bridges and culverts will be designed to avoid altering the direction and velocity of stream flow or interfering with migrating, rearing, or spawning activities of fish and wildlife.</u> • <u>Bridges and culverts should span the entire non-vegetated stream channel at a minimum.</u> • <u>No road crossings shall be permitted in crucial spawning habitat, unless no feasible alternative exists, and it can be demonstrated to the satisfaction of the AO that no long-term adverse effects will occur.</u> • <u>Roads will cross riparian zones and water courses perpendicular to the main channel.</u>

	<ul style="list-style-type: none"> • <u>Wherever possible, design and install bridges or stream simulation type culverts wherever possible to ensure aquatic organism passage and sediment transport. Stream simulation culverts incorporate the placement of a stream bed through the construed area including the culvert and are the preferred method of providing passage through culverted crossings. Stream simulation culverts can be built in almost any situation.</u> • <u>A Title 16 permit is required for culvert installation in any fish bearing stream from the Alaska Department of Fish & Game Habitat Division.</u> • <u>Consider the addition of flood plain relief crossings in unconfined valleys and where there are extensive overland flows during high water events or snow runoff.</u> <p><u>New, replacement, and reconstructed stream crossing structures (such as bridges and culverts) will be designed to:</u></p> <ul style="list-style-type: none"> • <u>Accommodate a 100-year flood event, including bedload and debris;</u> • <u>Maintain fish and aquatic organism passage;</u> • <u>Maintain channel integrity;</u> • <u>Accommodate mean bankfull channel widths; and</u> • <u>Incorporate adjacent reclamation (such as willow cuttings, wattles, brush layering) on the disturbed areas up and downstream of the abutments.</u>
--	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

BLM should clarify whether the intent in the SOP/BMP is to provide design criteria, design guidelines, or installation criteria or guidelines as they are intermixed in the current proposed SOP/ BMPs. For the purpose of this RMP/EIS we believe that design criteria are more appropriate and widely applicable than guidelines; therefore, we recommend that the information in the final RMP be considered design criteria and structured as such. If guidance for installation/construction is desired, a separate set of SOP/BMPs should be created and clearly labeled as such in the final RMP/EIS. Finally, we request that the following language be added to the Fish Passage Design Requirement/Standard under all the Alternatives in Table 2-4b:

“For culvert installation in any fish bearing stream, a Title 16 permit is required from the ADF&G Habitat Division.”

“Consult with the ADF&G Fish Passage Improvement Program.”

Section 2.7.3 Water Resources and Fisheries, Description of Water Resources and Fisheries Actions by Alternative, Table 2-4b, River Crossings BMPs, page 2-21

We request that the following language be added under all Alternatives:

“For work below ordinary high water in anadromous streams and all stream crossings, a Title 16 permit from the ADF&G Habitat Division is required, regardless of the AO’s determination.”

Section 2.7.5 Wildlife, Actions Common to All Action Alternatives for Wildlife, 2. Adaptive Management, Bullet 3, page 2-25

As written, this bullet does not appear to be relevant to wildlife because the example given from the AC is Wild and Scenic Rivers, not a certain area of wildlife habitat. We request this bullet be removed from this section and moved to Section 2.7.21 Wild and Scenic Rivers Section.

Section 2.7.5 Wildlife, Actions Common to All Action Alternatives for Wildlife, 3. Caribou, Moose, Muskox, Dall Sheep, and Mountain Goats, Bullet 2, page 2-25

If the pack animals listed in this bullet are used as transportation for traditional activities, then limiting their use through application requirements would constitute a closure under ANILCA 1110(a) and the appropriate closure process would need to be followed. Please add reference to this in Section 2.3.1 Alaska National Interest Lands Conservation Act (ANILCA) Access – Implementing Sections 811 and 1110(a) of ANILCA. We suggest the reference read as follows:

“Pack animals are a protected form of non-motorized surface transportation under ANILCA Section 1110(a), 43 CFR 36.11(h) includes requirements for a finding that such use would be detrimental to the resource values of the area, a notice and hearing process, and time limits for temporary restrictions.”

Section 2.7.5 Wildlife, Description of Wildlife Actions by Alternative, Table 2-6, Caribou and Moose, page 2-27

This Table should use the same terminology as is used in Maps 2-9 to 2-12. It is unclear whether “known winter concentrations” are the same as “essential winter habitat areas”. Please ensure that the terminology used is consistent on all maps.

Due to the large size of the areas for caribou wintering habitat (which is primarily only the WACH Unalakleet drainage and north), we question if the proposed NSO restriction is justified. Considering the limited development in the planning area, we think it would be more appropriate if projects were reviewed on a case-by-case basis.

Section 2.7.5: Wildlife, Table 2-6, Alternative C, Connectivity Corridors, page 2-28

To maintain consistency with the headings in the remainder of the Table, the phrase “Travel Management Decisions” should be underlined, rather than bold.

Section 2.7.10 Visual Resources Management. Actions Common to All Action Alternatives for Visual Resource Management (VRM), 4. Subsistence Use Areas, page 2-40

This section should reference the location and definition of the “Subsistence Use Areas.” No map is referenced. We request BLM explain its rationale for assigning VRM classes by Subsistence Use Areas—what is the management goal?

Section 2.7.10 Visual Resources Management, Description of Visual Resources Actions by Alternative, Table 2-9a, INHT (Main Trail) and Old Woman Mountain, page 2-41

Congress designated the Iditarod National Historic Trail as part of the National Trails System; notably Congress chose the “Historic Trail” rather than the “Scenic Trail” designation. Congress did not designate the surrounding lands as any type of special designation. The area surrounding the INHT does not meet the BLM criteria for VRM Class I, “Class I is assigned to those areas where a management decision has been made previously to maintain a natural landscape. This includes areas such as national wilderness areas, the wild section of national wild and scenic rivers, and other congressionally and administratively designated areas where decisions have been made to preserve a natural landscape.” We do not support the 7.5/15-mile VRM Class II and Class III buffers as they are excessive for the INHT. Similarly, Old Woman Mountain does not meet the VRM Class I criteria assigned in Alternative B. We request that BLM re-evaluate the VRM designations assigned in the draft RMP/EIS, keeping in mind the low numbers of public viewers in the area and the large amount of Congressionally designated CSUs in the planning area.

Section 2.7.13 Reindeer Grazing, Actions Common to All Action Alternatives for Reindeer Grazing, Number 9, page 2-50

The statement “Range improvements including, but not limited to, line cabins, corrals, and water improvements would not be allowed in areas managed as NSO for permanent structures associated with surface-disturbing activities” appears to be written for grazing areas outside of Alaska. Please revise to address reindeer grazing methods.

Section 2.7.16 Lands and Realty, Description of Lands and Realty Actions by Alternative, Table 2-15, Permits and Leases, page 2-66

BLM proposes to eliminate trapping cabins (both existing and new) within a 300-foot setback of riparian areas under Alternative B and to exclude trapping cabins within 30 trail miles of the “*exterior boundary of any municipal boundary of a city organized under State law and a radius of 30 miles from the 14c(3) lands held in trust under ANCSA by the State Municipal Trustee.*” Trapping cabins are often located on waterways and are used primarily in the winter. The proposed 300-foot restriction in Alternative B is unnecessary and overly burdensome. Furthermore, the 30 trail-mile restriction on trapping cabins from the exterior boundary of a city or 14c(3) lands is excessive and a health and safety concern. We also point out the adverse impact that a 30 trail-mile restriction will have on the use of dog teams. We support Alternative D for trapping cabins as the locations and distance between trapping cabins would be determined on a case-by-case basis based on documented conflict.

Section 2.7.16 Lands and Realty, Description of Lands and Realty Actions by Alternative, Table 2-15, Permits and Leases, page 2-66

Please modify the stipulation “Occupancy leases or trapping/subsistence cabin permits would not be allowed within 300 feet of riparian areas (OHWM of perennial streams)” under Alternative B to be consistent with the setback stipulations found in existing Alaska Department of Natural Resources land management plans. We suggest:

“Occupancy leases or trapping/subsistence cabin permits would not be allowed within 300 feet of riparian areas (OHWM of perennial streams) 50 feet for streams and lakes, 100 feet from anadromous streams, and 300 feet for High Value Waters.”

Section 2.7.16 Lands and Realty, Description of Lands and Realty Actions by Alternative, Table 2-15, Permits and Leases, page 2-66

Both Alternatives C and D propose granting permits and leases for cabins in CSUs “based on the compatibility of the permits and leases with management goals of these areas and the requirements of ANILCA” Our suggested revision would include allowing cabins in areas being managed for wilderness characteristics. We request that the above language be revised as follows:

“...based on the compatibility of the permits and leases with management goals of these areas and ~~the requirements~~ in accord with the ~~of~~ANILCA allowances.”

Section 2.7.17 Recreation and Visitor Services, Actions Common to All Action Alternatives, 1. Extensive Recreation Management Areas (ERMAs) and Undesignated Recreation Land General Management Actions, Bullet 6, page 2-67

This decision appears to change BLM's trapper cabin policy by adding cost recovery, see Instruction Manual (IM) 2012-022. We request that winter trapping cabins be exempted from this decision.

Section 2.7.17 Recreation and Visitor Services, Actions Common to All Action Alternatives for Recreation and Visitor Services, 1. Extensive Recreation Management Areas (ERMAs) and Undesignated Recreation Land General Management Actions, Bullet 6, page 2-67

ANILCA Section 1316(a) states that: *On all public lands where the taking of fish and wildlife is permitted in accordance with the provisions of this Act or other applicable State and Federal law the Secretary shall permit subject to reasonable regulation to insure compatibility, the continuance of existing uses, and the future establishment, and use, of temporary campsites, tent platforms, shelters, and other temporary facilities and equipment directly and necessarily related to such activities.* Section 1316 applies to *all* taking of fish and wildlife, including guided hunting and sport fishing, unguided general hunting and sport fishing, subsistence hunting and fishing, and commercial fishing. This bullet needs to clearly specify that it does not apply to ANILCA

Section 2.7.17 Recreation and Visitor Services, Actions Common to All Action Alternatives for Recreation and Visitor Services, 1. Extensive Recreation Management Areas (ERMAs) and Undesignated Recreation Land General Management Actions, Bullet 8, page 2-67

As written, the activities of hunting and dispersed camping are considered primary to snowmobiling and fishing. We strongly disagree with this statement because it suggests that hunting is a more desirable activity than fishing. Secretarial Order (SO) 3356 directs DOI agencies to improve opportunities for hunting *and* fishing. Moreover, hunting and fishing are generally not in conflict with each other. We request this action be removed entirely and SRPs considered on a case-by-case basis.

Section 2.7.17 Recreation and Visitor Services, Actions Common to All Action Alternatives for Recreation and Visitor Services, 1. Extensive Recreation Management Areas (ERMAs) and Undesignated Recreation Land General Management Actions, Bullet 10, page 2-67

This action is not specific enough. There are multiple strategies for reducing conflicts between users, many of which are allocative actions appropriately taken by the Alaska Board of Game and the Federal Subsistence Board, not BLM. We request this action be replaced by actions which are clearly within BLM's authority.

Section 2.7.17 Recreation and Visitor Services, Actions Common to All Action Alternatives for Recreation and Visitor Services, 4. Rohn Recreation Management Zone, Bullet 3, page 2-68

Please provide the rationale for the 14-day limit proposed under Alternatives B and C, in this bullet and in Appendix N. Considering the remote nature of the planning area, the opportunity for a longer stay could be warranted on a case-by-case basis.

Section 2.7.17 Recreation and Visitor Services, Description of Recreation and Visitor Services Actions by Alternative, Table 2-16b, BLM INHT Public Shelter Cabin Use, page 2-70

We could support the 14-day stay limit for casual use in Alternative D, though considering the remote nature of the planning area, the opportunity for a longer stay could be warranted on a case-by-case basis. We object to the 3-day stay limit in Alternatives B and C, particularly during

hunting season, because such a short stay limit would be both uneconomical and impractical. Please provide the rationale for this limit for our consideration.

Section 2.7.18 Travel and Transportation Management, Actions Common to All Action Alternatives for Travel and Transportation Management, 1. General Transportation Management Actions, Bullet 3, page 2-71

This bullet should clearly state that any interim guidance related to ANILCA Section 811 and 1110 restrictions is *not* in effect until the closure process is followed after the RMP/EIS is finalized.

Section 2.7.18 Travel and Transportation Management, Actions Common to All Action Alternatives for Travel and Transportation Management, 2. Criteria for Implementation-Level Travel Planning, Bullet 3, page 2-71

The BSWI planning area is over 13 million acres, includes numerous communities, and has existing summer OHV use. Yet this bullet implies that BLM may not identify *any* summer use routes during implementation-level travel management planning. This is not practical. The existing routes Map 2-46 referenced here only includes the Iditarod Trail (including its connecting routes) and selected roads; the omission of the existing on-the-ground trails from this map is misleading. BLM should include a map with all known existing trails.

Section 2.7.18 Travel and Transportation Management, Travel Management Definitions, page 2-72

We request that these definitions match the definitions found in the Eastern Interior RMP for consistency throughout the state.

Section 2.7.18 Travel and Transportation Management, Travel Management Definitions, Seasons and Types of OHV Access, Bullet 3, page 2-73

This bullet should only reference ANILCA Section 811, not 1110, because 1110 includes use of aircraft, which are not allowed for subsistence use in the BSWI planning area.

Section 2.7.18 Travel and Transportation Management, Description of Travel and Transportation Management Actions by Alternative, Table 2-17, Vegetation and Wildlife Travel Management, Connectivity Corridors, page 2-74

Under Alternatives B and C, the proposed action to restrict airboats and hovercraft on non-navigable waterways has no relationship to the purpose of the connectivity corridors, which is to preserve a climate resilient connection between the National Wildlife Refuges in the event that future development or climate change isolate the refuges ecologically. We request that this restriction be removed.

Section 2.7.18 Travel and Transportation Management, Description of Travel and Transportation Management Actions by Alternative, Table 2-17, Vegetation and Wildlife Travel Management, Raptors, page 2-74

Under Alternatives B and C, we request that ground vehicle and aircraft buffers for raptor nesting sites match the buffers proposed in the Eastern Interior RMP to maintain consistency throughout the State.

Section 2.7.18 Travel and Transportation Management, Description of Travel and Transportation Management Actions by Alternative, Table 2-17, INHT NTMC TMA, page 2-75

Please clearly explain how BLM anticipates winter snowmobile access under Alternatives B, C, and D could result in “degradation of the resources or prevents trail management that meets requirements of the National Trails Act.” Snowmobiles routinely travel along the Iditarod NHT and are used to maintain the trail for nonmotorized users, including for the Iditarod Sled Dog Race and Iditarod Trail Invitational; it is unclear how snowmobile use would impact the requirements of the National Trails System Act.

Section 2.7.18 Travel and Transportation Management, Description of Travel and Transportation Management Actions by Alternative, Table 2-17, Lands Managed for Wilderness Characteristics TMA, page 2-75.

We strongly disagree with subsistence OHV restrictions based on this administratively developed management category. Please see LWC comment.

Section 2.7.21 Wild and Scenic Rivers, Actions Common to All Action Alternatives for Wild and Scenic Rivers, 1. WSR Corridor Management, Bullet 2, page 2-84

Please specify which withdrawal would be maintained; we interpret this to refer to the ANILCA withdrawal for the Unalakleet Wild River.

Section 2.7.21 Wild and Scenic Rivers, Actions Common to All Action Alternatives for Wild and Scenic Rivers, 1. WSR Corridor Management, Bullet 4, page 2-84

ANILCA Section 1316 provides for the establishment and use of temporary campsites, tent platforms, shelters, and other temporary facilities and equipment directly and necessarily related to the taking of fish and wildlife. This includes all manner of taking, whether general, subsistence, or accompanied by commercial guides. We request this action clearly exempt temporary facilities related to the taking of fish and wildlife.

Section 2.7.21 Wild and Scenic Rivers, Actions Common to All Action Alternatives for Wild and Scenic Rivers, 1. WSR Corridor Management, page 2-84

We request the following language be added as a new bullet under 1. WSR Corridor Management:

“Per Federal Aviation Administration (FAA) Advisory Circular AC 91-36, Visual Flight Rules Flight Near Noise-Sensitive Areas, pilots would be requested to maintain a minimum altitude of 2,000 feet AGL over special areas designated in the AC, such as WSRs. The BLM will modify these requests as needed based on updated FAA recommendations or requests.”

Section 2.7.21 Wild and Scenic Rivers, Actions Common to All Action Alternatives for Wild and Scenic Rivers, 2. Travel-Related Decisions, Bullet 2, page 2-84

This action states restrictions on motorized transportation apply to “all river users,” which conflicts with action page 2-90, action 4 that says restrictions on the Unalakleet River would not apply to subsistence users. We request that the bullet in this section be changed to match the language on page 2-90, as follows:

“The proposed restriction on ~~inboard motorboats~~, airboats, and hovercraft on BLM-

managed public lands and waters within the Unalakleet Wild River Corridor would not apply to subsistence users, and restrictions on summer OHV use are more lenient for subsistence uses than for casual uses.”

Section 2.7.21 Wild and Scenic Rivers, Actions Common to All Action Alternatives for Wild and Scenic Rivers, 2. Travel-Related Decisions, Bullet 3, page 2-84

ANILCA Section 1110(a) and implementing regulations at 43 CFR 36 provides for airplane access. This bullet could be interpreted as conflicting with the eighth bullet, “The landing and takeoff of fixed winged aircraft with minimal clearing [of] rocks, downed [logs], and brush is allowed.” We request BLM clarify that improvement and maintenance enough to fulfill the intent of Section 1110(a) be clearly allowed.

Section 2.7.21 Wild and Scenic Rivers, Actions Common to All Action Alternatives for Wild and Scenic Rivers, 2. Travel-Related Decisions, Bullet 4, page 2-84

ANILCA Section 1110(a) and implementing regulations at 43 CFR 26 provides for the use of motorboats within the Wild and Scenic River corridor and does not differentiate between outboard and inboard motors. BLM has not provided any justification for this restriction. We request that BLM not place restrictions on motorboats. We also note that prohibiting motorboats would require BLM follow the Section 1110(a) closure process to implement the plan’s decision.

Section 2.7.21 Wild and Scenic Rivers, Description of Wild and Scenic Rivers Actions by Alternatives, Table 2-20, Improvements within Unalakleet Wild River Corridor, page 2-88

We request BLM leave open the opportunity to construct improvements such as campsites, interpretive sites, and toilets where they are needed to minimize public use impacts to resources, as provided for in Alternatives C and D.

Section 2.7.22 Hazardous Materials and Health and Human Safety, Actions Common to All Action Alternatives for Hazardous Materials and Health and Human Safety, 1. Hazardous Materials, Bullet 5, page 2-89

We agree with the intent to prevent spills and contamination from hazardous materials, but we are concerned that the 0.25-mile restriction around the Wild and Scenic River may unnecessarily curtail the ability to conduct fisheries and wildlife management and research work. We request that the exceptions allowed under Bullet 6 (e.g., refueling) also be allowed for the WSR.

Section 2.7.22 Hazardous Materials and Health and Human Safety, Actions Common to All Action Alternatives for Hazardous Materials and Health and Human Safety, 2. Health and Human Safety, Bullet 2, page 2-90

Please clarify whether this includes the use of motorized vehicles on snow; 43 CFR 8343.1(c) states, “A spark arrestor is not required when an off-road vehicle is being operated in an area which has 3 or more inches of snow on the ground.”

Section 2.7.22 Hazardous Materials and Health and Human Safety, Actions Common to All Action Alternatives for Hazardous Materials and Health and Human Safety. 1. Hazardous Materials, Bullet 4, page 2-89

Please modify the bullet “For BLM-permitted activities, no storage of hazardous materials allowed within 100 feet of OHWM of surface water (rivers, streams, lakes, and springs) and

wetlands” to include the term “pond” to maintain consistency between this bullet and Bullet 5 which reads “...surface waters not in a 100-year floodplain, such as lakes, ponds, springs, and wetlands.”. We suggest:

“For BLM-permitted activities, no storage of hazardous materials allowed within 100 feet of OHWM of surface water (rivers, streams, lakes, ponds, and springs) and wetlands.”

Section 2.7.22 Hazardous Materials and Health and Human Safety, Actions Common to All Action Alternatives for Hazardous Materials and Health and Human Safety. 1, Hazardous Materials, Bullets 4 and 5, page 2-89

Bullet 4 indicates that the term “surface water” refers to rivers, streams, lakes, and springs, but not to wetlands. Bullet 5 indicates that the term “surface water” includes lakes, ponds, springs, and wetlands. Bullet 4 suggests that wetlands are not considered surface water while Bullet 5 suggests the opposite. Regardless of whether the surface water is within the 100-year floodplain or not, the hydrologic features considered surface water need to be clarified. Please clarify whether wetlands are considered surface water.

Section 2.7.22 Hazardous Materials and Health and Human Safety, Actions Common to All Action Alternatives for Hazardous Materials and Health and Human Safety. 1. Hazardous Materials, Bullet 6, page 2-89

Please modify the bullet “For BLM-permitted activities, no storage of hazardous materials would be allowed within the 100-year floodplain of rivers or streams or within 100 feet of high the water mark of surface waters not in a 100-year floodplain, such as lakes, ponds, springs, and wetlands.... Although fuels could be off-loaded from aircraft on ice, fuels shall not be stored on lake or river ice” to be consistent with the language used in SOP/BMP Hazmat-12 (Appendix K, Table K-22, page 44). The SOP/BMP Hazmat-12 reads “... the storage of hazardous material will not occur within riparian zones (from the ordinary high water mark to the outer edge of riparian vegetation), within 100 feet of a waterbody, within 500 feet of the active floodplain of any fish-bearing waterbody, or on frozen bodies of water.” We suggest Bullet 6 be revised to read as:

“For BLM-permitted activities, no storage of hazardous materials would be allowed within the 100-year floodplain of rivers or streams or within 100 feet of the ordinary high ~~the~~ water mark of surface areas not in a 100-year floodplain, such as lakes, ponds, springs, and wetlands, occur within riparian zones (from the ordinary high-water mark to the outer edge of riparian vegetation), within 100 feet of a waterbody, within 500 feet of the active floodplain of any fish-bearing waterbody, or on ~~lake or river ice~~ frozen bodies of water.”

Section 2.7.23 Support for BSWI Communities, Actions Common to All Action Alternatives for Support for BSWI Communities, Item 18, page 2-92

We support BLM working to maintain existing trail systems on BLM land to be compatible with those on all neighboring lands, not only private lands. Please revise this item to include other neighboring lands. We suggest:

“The BLM would work cooperatively with residents from rural communities to maintain existing trail systems on BLM land to be compatible with those on adjacent private ~~lands~~, state, and other non-BLM public lands.”

Chapter 3. Affected Environment and Environmental Consequences

Section 3.2.8 Nonnative Invasive Species (Wildlife and Plant) Trends and Forecasts: Past and Present Actions, NNIS, page 3-51

This section discusses Nonnative Invasive Species and how the Donlin Gold Project could increase impacts if BMPs are not followed. We request that this section be removed as it is based purely on speculation.

Section 3.2.13 Lands with Wilderness Characteristics, Direct and Indirect Effects, Effects Common to All Action Alternatives, page 3-80

Under all Alternatives BLM proposes prohibiting new cabins, and removing existing trespass cabins, on lands managed for wilderness characteristics. We request that this management practice be eliminated in the Final RMP/EIS. In Alaska, there is a longstanding tradition of keeping privately owned, remote cabins unlocked in case they are needed in emergency situations. Other agencies, including USFWS, have maintained the spirit of this tradition by making public use cabins in ANILCA conservation system units available on a first come, first served basis. We support continuing this type of use. The Wilderness Act includes provisions to provide for health and safety in times of emergency and Section 1315 of ANILCA specifically allows for maintenance and replacement of existing cabins in designated wilderness for the purposes of public health and safety.

Section 3.3.3. Locatable and Salable Minerals, Direct and Indirect Effects, Effects from Alternative B, page 3-96 to 97

The paragraph about the effects of Alternative B on locatable and salable minerals refers to the “2015 and 2016 Reclamation Instruction Manuals.” This reference is incorrect for two reasons. First, the word “manual” should be replaced with “memorandum” because according to the reference list in Appendix D and the BLM webpage, the document being referred to is an Instructional Memorandum. Second, there is not a 2016 Instructional Memorandum. If there is a 2016 Memorandum, it needs to be added to Appendix D for reference. We request that this language be revised to accurately reflect the title of the document and remove the reference to the 2016 document.

Section 3.3.3. Locatable and Salable Minerals, Direct and Indirect Effects, Effects from Alternatives C and D, page 3-97

The paragraph about the effects of Alternatives C and D on locatable and salable minerals states “...the 2015 RCE IM (BLM 2015d) would comply with all conditions in the manual.” As per the reference in Appendix D, statement is incorrect in that it refers to the conditions in the “manual.” The word should be replaced with “memorandum” as the document being referenced is *Instructional Memorandum 2015-001, Guidance on Reclamation Bonding for Plans and Notices on BLM Managed Lands in Alaska*. We request that this language be revised to accurately reflect the document title.

Section 3.3.7 Travel and Transportation Management, Affected Environment, page 3-116

17(b) easements provide access across private Native corporation lands to BLM lands. Since most of the vehicle use in the area are ATVs and UTVs, this section should identify the allowed

uses on the smallest and most prevalent 17(b) easements, 43 CFR 2550.4-7(b)(2)(i) and (ii), in the BSWI area.

*The width of a trail easement shall be no more than 25 feet if the uses to be accommodated are for travel by foot, dogsleds, animals, snowmobiles, two and three-wheel vehicles, and **small all-terrain vehicles (less than 3,000 lbs. G.V.W.)**; {Emphasis added}*

*The width of a trail easement shall be no more than 50 feet if the uses to be accommodated are for travel by **large all-terrain vehicles (more than 3,000 lbs. G.V.W.)**, **track vehicles and 4-wheel drive vehicles**, in addition to the uses included under paragraph (b)(2)(i) of this section; {Emphasis added}*

While we note that the allowed uses on 17(b) easements to BLM lands allow for heavier vehicles than those generally allowed on State lands, we recommend, due to the checkerboard pattern of land ownership in Alaska, that the allowed use of ATVs and UTVs on BLM lands match those of State lands. It would be particularly confusing for users to have 3 different weight limits for private, BLM, and state lands along the same trail.

Section 3.5.1, Support for BSWI Communities, Affected Environment, Socioeconomic Conditions, page 3-153

We suggest the following language be inserted at the end of the first full paragraph on page 3-153

“... yet informed by informal institutions and local traditions. The Unalakleet River drainage and nearshore marine waters of the Unalakleet Subdistrict support the largest subsistence, commercial, and sport fisheries in the Norton Sound region. In addition, Unalakleet has the only fish buying operation in southern Norton Sound. In addition, there are two private sport fishing lodges on the Unalakleet River, upstream of the North River, which provide guided fishing trips for salmon, Dolly Varden, and Arctic grayling.”

Section 3.5.2 Subsistence, Direct and Indirect Effects, Effects from Alternative B, page 3-170

BLM proposes to eliminate “casual use airboats and hovercraft on non-navigable waterways on BLM-managed land within the designated connectivity corridors (845,670 acres [6 percent]) or Innoko Bottoms Priority Wildlife Habitat Area” to minimize impacts to subsistence resources and reduce subsistence conflict. We request this language be deleted because the proposed elimination has no relationship to the purpose of the connectivity corridors and if conflicts exist the matter should be addressed by either the Federal Subsistence Board and/or the Board of Game.

Appendix B: Glossary

Please include a definition of “riparian buffers.”

Please include a definition of “snowmachine.” In this definition, clarify that snowmachine also covers the term “snowmobile.”

Please include a definition of “surface water.”

Please include a definition of “waterbody.”

Appendix E: Management Regulations, Policy, and Program Guidance

Select Provisions from the Alaska National Interest Lands Conservation Act (ANILCA), Existing and New Cabins, page 8

We support the inclusion of this section.

Appendix I: Mitigation Standards

BLM has an obligation under 43 USC 1732(b) to ensure that its projects do not result in any unnecessary or undue degradation. Preventing unnecessary and undue degradation does not mean preventing all adverse impacts upon the land. BLM’s obligation requires project proponents to avoid, minimize, rectify, and/or reduce anticipated harms as necessary and appropriate. It does not require compensatory mitigation, which can only be accepted if it is voluntarily offered, or in compliance with state or other federal requirements. (BLM IM 2019-018 “Compensatory Mitigation”)

Item 3, Water Resources and Fisheries, line 6, page 1

Lists compensation for remaining impacts. Items 4, 8, 19, and 20 all refer to the mitigation hierarchy, though Items 8 and 20 refer only to avoidance and then minimization of impacts that cannot be avoided.

BLM should clarify the mitigation process it will use in the RMP as the above referenced documents indicates BLM will not require compensatory mitigation in any situation and BLM 2016a Regional Mitigation, BLM Interim Policy MS – 1794, referenced in the Appendix indicates that BLM will include compensatory mitigation in its mitigation hierarchy.

Appendix K: Best Management Practices (BMPs) and Standard Operating Procedures (SOPs)

Table K-3: Water Resources and Fisheries, Water-4, page 9

Please modify the SOP/BMP “When feasible, all water intakes in fish-bearing waters will be screened and designed to prevent fish intake” to include ADF&G permit requirements. We suggest:

“~~When feasible~~, All water intakes in fish-bearing waters will be screened and designed to avoid injury to fish ~~prevent fish intake~~, in accordance with ADF&G permit requirements . Typically screen openings may not exceed 0.25 inches (0.10 inches or less in areas with sensitive fish species or life stages), and water velocity at the screen/water interface may not exceed 0.5 feet per second when the pump is operating.”

Table K-3: Water Resources and Fisheries, Water-17, page 10

Please modify the SOP/BMP “Projects requiring the withdrawal of water will be designed to maintain sufficient quantities of surface water and contributing groundwater to support fish, wildlife, and other beneficial uses. Minimal flows will be monitored to assure aquatic life forms are not impacted by withdrawals (such as strandings or freeze out)” to include language about the ADF&G permit necessary to withdrawal water from a fish bearing waterbody. We suggest:

“Projects requiring the withdrawal of water will be designed to maintain sufficient quantities of surface water and contributing groundwater to support fish, wildlife, and other beneficial uses. Minimal flows will be monitored to assure aquatic life forms are not impacted by withdrawals (such as strandings or freeze out). Withdrawing water from a fish bearing waterbody requires an ADF&G Fish Habitat Permit.”

Table K-3: Water Resources and Fisheries, Water-19, page 11

Please modify the SOP/BMP “Rivers and streams will be crossed by vehicles at shallow riffles from point bar to point bar, where possible, to minimize impacts to stream banks and riparian vegetation” to include language about the ADF&G permit necessary to cross anadromous fish bearing streams or rivers. We suggest:

“Rivers and streams will be crossed by vehicles at shallow riffles from point bar to point bar, where possible, to minimize impacts to stream banks and riparian vegetation. Crossing rivers or streams that support anadromous fish require an ADF&G Fish Habitat Permit.”

Table K-3: Water Resources and Fisheries, Water-20, page 11

Please modify the SOP/BMP “When a stream must be crossed, the crossing will be as close to possible to a 90-degree angle to the stream. Stream crossings will be made at stable sections in the stream channel (which have low sensitivities to disturbance and low streambank erosion potential), based on Rosgen channel type evaluations” to include language about the ADF&G permit necessary to cross anadromous fish bearing streams or rivers. We suggest:

“When a stream must be crossed, the crossing will be as close to possible to a 90 degree angle to the stream. Stream crossings will be made at stable sections in the stream channel (which have low sensitivities to disturbance and low streambank erosion potential), based on Rosgen channel type evaluations. Crossing rivers or streams that support anadromous fish require an ADF&G Fish Habitat Permit.”

Table K-3: Water Resources and Fisheries, Water-31, page 11

Please modify the SOP/BMP “... Water withdrawal, diversion and de-watering regimes are subject to constraints developed through project-specific National Environmental Policy Act (NEPA) analysis” to include language about the ADF&G permit necessary to withdrawal water from a fish bearing waterbody. We suggest:

“... Water withdrawal, diversion and de-watering regimes are subject to constraints developed through project-specific National Environmental Policy Act (NEPA) analysis. Withdrawing water from a fish bearing waterbody requires an ADF&G Fish Habitat Permit.”

Table K-3: Water Resources and Fisheries, Water-32, page 11

Modify the SOP/BMP “Water withdrawal from lakes may be authorized on a site-specific basis depending on size, water, volume, depth, fish population, and species diversification” to include language about the ADF&G permit necessary to withdrawal water from a fish bearing waterbody. We suggest:

“Water withdrawal from lakes may be authorized on a site-specific basis depending on size, water, volume, depth, fish population, and species diversification. Withdrawing water from a fish bearing waterbody requires an ADF&G Fish Habitat Permit.”

Table K-3: Water Resources and Fisheries, Water-34, page 11

This SOP/BMP reads: “Where appropriate, maintain appropriate vegetation and riparian buffers around waterbodies to protect water quality and ensure wildlife habitat suitability is maintained. Manage riparian areas to provide adequate shade, sediment control, bank stability, and

recruitment of wood into stream channels.” Please clarify the types of water features (e.g. lakes, rivers, streams, pond, etc.) that are considered in the definition of “waterbodies.” The way riparian buffers are defined in Appendix B is included in the definition of 100-year floodplains, and only applies to rivers and streams. Also, please clarify how this SOP/BMP will apply to lakes and tundra ponds.

Table K-3: Water Resources and Fisheries, Water-41, Bullet 1, page 13

Please modify the SOP/BMP “Bridge or culvert construction shall comply with specifications provided by BLM engineering, hydrology, and fisheries staff, the Alaska Department of Natural Resources and other appropriate agencies” to include the Alaska Department of Fish and Game. We suggest:

“Bridge or culvert construction shall comply with specifications provided by BLM engineering, hydrology, and fisheries staff, the Alaska Department of Natural Resources, the Alaska Department of Fish and Game, and other appropriate agencies.”

Table K-20: Support for BSWI Communities, Socioecon-1, Bullet 5, page 41

The SOP/BMP reads “*When setting deadlines for public participation, recognize and provide for the extra time it takes mail to reach people in rural Alaska...*” We support this objective but are concerned about BLM’s ability to meet this SOP/BMP due to the remoteness of the communities within the planning area and the overall lack of high speed internet access. As many agencies do, during the review period for this document, BLM depended heavily on people accessing the draft RMP/EIS and associated documents over the internet; although this is a common practice in today’s technology dependent world, it is not always the most appropriate or effective option. The limited availability of high speed internet access coupled with the limited number of paper copies made available to communities and cooperating agencies made it difficult for members of the public and cooperating agencies in some portions of the planning area to review the draft RMP/EIS in the allotted amount of time. Considering the concerns raised by the public and cooperating agencies, we recommend BLM revise this SOP/BMP to consider factors other than the extra time it takes mail to reach rural Alaska. We suggest:

“When setting deadlines for public participation, recognize and provide for the lack of high speed internet access and the extra time it takes mail to reach people in rural Alaska.”

Table K-20: Support of BSWI Communities, Socioecon-2, Bullet 3, page 42

Please delete the bullet “*To the extent practicable, ensure that any actions likely to affect any land or water or natural resource of the coastal zone be consistent with the enforceable policies of the Alaska Coastal Management Program*” because the Alaska Coastal Management Program no longer exists.

Table K-22: Hazardous Materials and Health and Human Safety, Hazmat-3, page 43

Please modify the SOP/BMP “Wastewater should be managed in accordance with 8 AAC 72, Wastewater disposal...” to correct the regulatory reference in the first sentence. The incorrect regulation is listed and should be corrected to read:

“Wastewater should be managed in accordance with 18 AAC 72, Wastewater disposal...”

Table K-22: Hazardous Materials and Health and Human Safety Hazmat-12, page 44

Please modify the SOP/BMP "...the storage of hazardous material will not occur within riparian zones (from the ordinary high water mark to the outer edge of riparian vegetation), within 100 feet of a waterbody, within 500 feet of the active floodplain of any fish-bearing waterbody, or on frozen bodies of water" to be consistent with the recommended language for Section 2.7.22 Hazardous Materials and Health and Human Safety, Actions Common to All Action Alternatives for Hazardous Materials and Health and Human Safety. #1 Hazardous Materials, Bullet 6 (page 2-89). We suggest:

"... and the storage of hazardous material will not occur within the 100-year floodplain of rivers or streams or within 100 feet of the ordinary high-water mark of surface areas not in a 100-year floodplain, such as lakes, ponds, springs, and wetlands, occur within riparian zones (from the ordinary high-water mark to the outer edge of riparian vegetation), within 100 feet of a waterbody, within 500 feet of the active floodplain of any fish-bearing waterbody, or on frozen bodies of water."

Appendix M: Affected Environment Report

Section 2.6.5 Resource Changes: Trends and Forecasts, page 2-76

Vegetative communities in this large and relatively inaccessible planning area are largely undisturbed by human activities. Vegetative Communities within the planning area are trending favorably and maintaining proper functioning conditions. Active management has been minimal since the drafting of the SWMFP

Placer mining has caused local disturbance of riparian vegetation in a small portion of the planning area. New metrics for determining when to release mining reclamation bonds were adopted in 2017.

Section 2.7.3 Resource Indicators, page 2-81

Given the size of this undeveloped planning area and the size of the adjacent Wildlife Refuges, "acres of habitat type" does not seem to be the best "primary indicator" to assess impacts for each alternative. This section discusses that "Because monitoring is typically limited in scope for any given species or habitat, few quantitative indicators are possible. This paragraph supports our request that, due to the limited information on the planning area, BLM focus this RMP on monitoring the planning area. This will allow BLM to collect the science to support future habitat protection designations.

Section 2.7.5 Current Conditions – Wildlife Habitat, Innoko Bottoms, Land Use Plan Decisions, page 2-114

This section outlines the reasoning behind designating the Innoko Bottoms Priority Wildlife Habitat Area. While one of the reasons listed is "*The establishment of the Innoko Bottoms Priority Wildlife Habitat Area also supports Secretarial Order 3362 by working with the State wildlife agency,*" we are unaware of any cooperative efforts between BLM and our agency on this designation despite the fact that it overlaps the State Paradise Controlled Use Area. As explained in our general comments, we do not agree with the proposed management for the Innoko Bottoms Priority Wildlife Habitat Area, and we do not agree that it supports the intent of Secretarial Order 3356 to increase public access to hunting or to improve collaboration with the states. No other Wildlife Land Use Plan decisions are outlined within this section, though there

are connectivity corridors, caribou and moose calving and wintering areas designations within management prescriptions in the draft RMP. We request clarification on these decisions.

Appendix N: Supplemental Impact Analysis Information

Section 3.3 Wildlife and Special Status Species, Table 3.3.2.1: Summary of Effects to Wildlife by Management Action, rows one and five, page 3-68

The language in rows one and five link connectivity corridors to wildlife habitat and migration patterns. Based on the definition of connectivity corridors provided in Appendix B and the language throughout the draft RMP/EIS, connectivity corridors are not directly related to wildlife habitat and migration patterns. Furthermore, the RMP/EIS indicates that the purpose of a connectivity corridor is to “design a climate resilient connection” between certain areas, not to protect wildlife habitat and migration patterns. Please clarify the purpose of connectivity corridors and explain the relationship, or lack thereof, with wildlife habitat and migration patterns.

Section 3.3 Wildlife and Special Status Species, Assumptions, Bullet 2, page 3-70

The Alaska Constitution clearly states that the State of Alaska maintains management for all fish and wildlife within the state through the regulatory powers of the Alaska Boards of Fisheries and Game. Congress reaffirmed the State’s traditional role as manager of fish and wildlife in Section 1314 of ANILCA, which states that “[n]othing in [ANILCA] is intended to enlarge or diminish the responsibility and authority of the State of Alaska for management of fish and wildlife on the public lands....” 43 CFR 24 affirms the States’ authority, and the Secretary of Interior’s directive memorandum dated September 10, 2018, reaffirmed the States as the primary managers of fish and wildlife. Please revise the sentence “State and federal wildlife management agencies (e.g., ADF&G, USFWS) oversee management of wildlife species,…” to clarify that the State of Alaska maintains primary management for all fish and wildlife within the state. We suggest:

“The BLM is primarily responsible for managing habitats. State and federal wildlife management agencies (e.g., ADF&G, USFWS) oversee management of wildlife species, although the BLM is the season manager for wildlife populations on federal lands for a subsistence priority. This analysis focuses on impacts to wildlife habitats. Alaska Department of Fish and Game is responsible for the sustainability of all fish and wildlife in the State of Alaska, regardless of land ownership or designation, and has the authority, jurisdiction, and responsibility to manage, control, and regulate fish and wildlife populations – including for subsistence purposes – unless specifically preempted by federal law (e.g., USFWS manages wildlife according to the Endangered Species Act or Migratory Bird Treaty Act).”

Section 3.3 Wildlife and Special Status Species, Assumptions, Bullet 5, page 3-70

Please remove the bullet “Wildlife is currently using the proposed connectivity corridors for movement and would continue to do so” because it inappropriately indicates that that connectivity corridors are for wildlife movement purposes, which is not consistent with the purpose of connectivity corridors stated in the RMP/EIS.

Appendix O: Alaska National Interest Lands Conservation Act (ANILCA) Preliminary Section 810 Evaluation

Section 3.2 Evaluation and Findings for Alternative B, Paragraph 4, page 12

Under Alternative B, the harvest of house logs will be effectively limited to winter and by snowmachine, if the riparian area along streams is closed. House logs are usually harvested along river corridors and floated to the site. We request the deletion of the restrictions on house log harvest and the requirement for subsistence firewood collection permits because the draft RMP/EIS does not adequately demonstrate resource issues associated with house log harvest or firewood gathering. Please delete the following sentences:

~~“Under this alternative, in personal use and subsistence woodland harvest areas, house log harvesting would not be allowed within the riparian zone of perennial streams.”~~

~~“A pilot project would be instituted to hire a local in a targeted area to issues permits and collect use information and/or include maps or questions in local subsistence surveys. This would apply to all areas within 15 miles of a river area that are open for subsistence and personal use woodland harvest; all areas within 25 miles of a community that are open for subsistence and personal use woodland harvest; and all burned areas outside of the areas above that are open for subsistence and personal use woodland harvest.”~~

Section 3.4 Evaluation and Findings for Alternative D, page 31

The sawmill in Chuathbaluk was sold to Napaimute Corporation several years ago and has been used a few miles downriver of Lower Kalskag for firewood, lumber, and cabin package production. We recommend the following revision:

“Most villages have portable sawmills to produce building materials or repair materials locally, and one full sawmill just south of Lower Kalskag in Chuathbaluk has produced building materials for use in the Kuskokwim Basin.”

Section 3.5. Past, Present and Reasonably Foreseeable Land Use and Activities, State Lands, page 29.

Please revise the sentence “State lands in the planning area are managed under guidelines outlined in Alaska Department of Natural Resources (ADNR) area plans, such as the Kuskokwim Area Plan (ADNR 1988) and Tanana Basin Area Plan (ADNR 1991)” to clarify that the Tanana Basin Area Plan has been superseded and the area it encompassed has been split into two planning areas, the Yukon Tanana and Eastern Tanana. The BSWI boundary is adjacent to the Yukon Tanana Area Plan boundary. We suggest:

“State lands in the planning are managed under guidelines outlined in Alaska Department of Natural Resources (ADNR) area plans, such as the Kuskokwim Area Plan (ADNR 1988) and Yukon Tanana Area Plan (ADNR 2014).”

Navigable-in fact Waterbodies within the Bering Sea – Western Interior RMP/EIS Planning Area (June 2019)

Below is a list of some waterbodies whose navigability-in fact is undisputed. This list is in no way comprehensive or complete. It is very likely that the navigable reach of many of these rivers may extend a significant distance upstream of the BLM determinations; therefore, further research may be necessary.

- **Anvik River.** The State file on the Anvik River indicates that the State considers this river to be navigable. In the August 27, 1992 Notice of Quiet Title, the State lists the Anvik River without upstream limit. A BLM February 13, 1993 memorandum, 'Navigable Waters on IC Lands' determined the Anvik River navigable from its confluence with the Yukon River upstream through T. 30 N., R. 60 W., SM. An April 11, 1985 memo 'Final Navigability Determination for Church Lands at Anvik' indicates that the Anvik River was a historical route from inland Alaska to Norton Sound. Although this memo indicates that the Anvik River was conveyed in IC, the 1993 navigable waters memo determines the river navigable prior to patent and the river is meandered on the BLM MTP. Alaska Native Veterans Allotment Act Parcel BLM Case AA-83173-A (Section 30, T. 23 S., R. 8 W., KRM) is located just upstream of the confluence of McDonald Creek and the Anvik River. Notes in the navigability file for review of this Native Allotment indicate that the applicant accessed his parcel by airboat in 1963. The State considers airboats to be a traditional mode of transportation as they were invented during the 1920s and utilized on the Gulkana River prior to the date of statehood. The current State record indicates that the Anvik River is navigable up to this Native Allotment within Section 30, T. 23 S., R. 8 W., KRM.
- **Bear Creek (Nikolai)** Tributary to Pitka Fork Middle Fork Kuskokwim River, confluence in Section 20, T. 32 N., R. 28 W., SM. No navigability records in State or BLM databases.
- **Big River.** Tributary to the main stem of the Kuskokwim River. In a June 27, 1990 letter to DNR, C. Michael Brown, Chief of BLM's Navigability Section indicated that DNR provided a list of navigable water bodies and that the Big River was navigable to Lyman Fork within T. 21 N., R. 28 W., SM. BLM records show the Big River is navigable 38 miles upstream to Section 19, T. 31 N., R. 29 W., SM., while State records indicate the river may be navigable upstream to approximately river mile 137 in Section 26, T. 21 N., R. 28 W., SM.
- **Black Water Creek.** Tributary to the Middle Fork of the Kuskokwim River, confluence with the Middle Fork in Section 11, T. 33 N., R. 30 W., SM. In an August 11, 1981 determination, the Black Water Creek was determined navigable upstream to NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 32, T. 33 N. R. 30 W. SM.
- **Canyon Creek.** Tributary to the Anvik River, confluence in Section 12, T. 26 S., R. 11 W., KRM. No navigability records are available in State or BLM databases. The BLM

has made no land conveyances along the length of the Swift River under ANCSA; therefore, no navigability determinations have been made.

- **Khuchaynik Creek.** Tributary to the Middle Fork of the Kuskokwim River. Confluence with the Middle Fork in Section 33, T. 29 N., R. 28 W., SM. There was no navigability determination for Khuchaynik Creek in the SDMS database.
- **Kuskokwim River.** The entire length of the Kuskokwim River is navigable from its mouth upstream to Medfra where it splits into the North, South, and East Forks. The State has received a RDI, clearing title to the main stem of the river from its source at the confluence of the North and South Forks to its mouth at the confluence with Kuskokwim Bay, withholding ½ river width to a short 14 mile section near McGrath that was withdrawn by PLO 255.
 - The North, South, and East Forks of the Kuskokwim are also navigable. The BLM has determined the North Fork navigable up to Section 28, T. 11 S., R. 26 W., FM.; the South Fork was determined navigable up to the Tatina River in Section 32, T. 25 N., R. 22 W., SM. (November 8, 1984) and to the Hartman River (August 11, 1981); and the East Fork was determined navigable up to Section 32, T. 26 S., 27 E.,KRM. A May 9, 2002 memo, Navigable Waters for MTNT, Ltd. and Doyon, Ltd. reverts back to the limits established in the “Alaska’s Kuskokwim Region a History” (1985); North Fork of the Kuskokwim River to the Minchumina Portage, South Fork to the bluffs in T. 31 N., R. 24 E., SM., East fork to the mouth of Slow Fork.
- **McDonald Creek.** Tributary to the Anvik River, confluence in Section 30, T. 23 S., R. 8 W., KRM. No state or BLM navigability data. The BLM has made no land conveyances along the length of the Swift River under ANCSA; therefore, no navigability determinations have been made.
- **Middle Fork of the Kuskokwim River.** Determined by the BLM to be navigable up to the mouth of the Pitka Fork in Section 22, T. 33 N., R. 29 W., SM. based on “Alaska’s Kuskokwim Region a History”¹. In an August 11, 1981 determination, the Middle Fork was determined navigable upstream to its “Juncture with the Windy Fork”. A March 30, 1992 memo addressing “Navigable Waters on State Patented Lands” references an excel file titled “STATNAV.XSL”. This file indicates that the State believed that the Windy Fork and Middle Fork of the Kuskokwim River and the North Fork of the Big River were navigable. No determination from that point upstream has been made; however, the State considers the Windy Fork of the Kuskokwim, which is a tributary to the Middle Fork, to be navigable. The confluence of the Windy Fork and the Middle Fork is approximately 40 river miles upstream of the confluence of the Middle and Pitka Forks in Section 24, T. 31 N., R. 29 W., SM - this leaves an orphaned segment of the Middle Fork between the mouth of the Pitka Fork and the mouth of the Windy Fork. A determination for State land conveyance in the Alaska Range (a 2002 BLM determination) again references the 1985 report.






¹ C. Michael Brown, Alaska’s Kuskokwim River Region: A History, Anchorage, Alaska: Bureau of Land Management State Office, 1985.

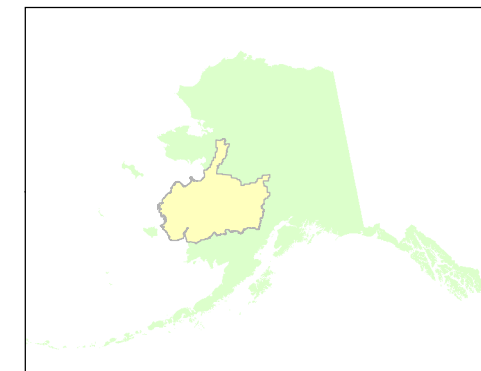
- **North Fork Unalakleet River.** Currently designated a Wild and Scenic River Corridor (WSRC). Administratively determined navigable within the WSRC from its confluence with the Unalakleet River upstream to the northern boundary of Section 26, T. 17 N., R. 7 W., KRM.
- **Otter Creek (Aniak).** An Otter Creek was not located within the Aniak River drainage. There is however an Otter Creek that is a tributary to the Tuluksak River. The confluence of Otter Creek and the Tuluksak River is in Section 15, T. 10N., R. 63W., SM. Native Allotment AA-084025 is located at the confluence of Otter Creek with the Tuluksak River. There is no mention of use of Otter Creek in the Otter Creek file or within the “Tuluksak River System, HUC 30502, Zone 3, Phase II B Interim Summary Report,” by Rolfe Buzzell of ADNR, DPOR, OHA. The Tuluksak River is navigable upstream of the confluence with Otter Creek but there is no navigability data for Otter Creek.
- **Otter Creek (Anvik).** Tributary to the Anvik River, confluence in Section 13, T. 26 S., R. 11 W., KRM. The BLM has made no land conveyances along the length of the Otter Creek under ANCSA; therefore, no navigability determinations have been made.
- **Pitka Fork Middle Fork Kuskokwim River.** Tributary to the Middle Fork of the Kuskokwim River. In an August 11, 1981 BLM determination, the Pitka Fork was determined navigable from its confluence with the Middle Fork upstream to its “Juncture with Sheep Creek” within Section 14, T. 31 N., R. 28 W., SM.
- **Salmon River (Nikolai).** Tributary to the Pitka Fork of the Kuskokwim River, confluence in Section 5, T. 32 N., R. 28 W., SM. In an August 11, 1981 determination, the Salmon River was determined navigable upstream to SW¼ Section 3, T. 32 N. R. 28 W. SM at the first fork.
- **Sheep Creek.** Tributary to the Pitka Fork Middle Fork Kuskokwim River, confluence in Section 14, T. 31 N., R. 28 W., SM. No navigability records are available in State or BLM databases.
- **Sullivan Creek.** Tributary to the Pitka Fork of the Kuskokwim River, confluence with Pitka Fork in Section 3, T. 31 N., R. 28 W., SM. No navigability records are available in State or BLM databases
- **Swift River (Anvik).** The confluence of the Swift and Anvik Rivers is located within Section 11, T. 28 S., R. 11 W., KRM. There are no navigability records in the BLM SDMS. The State does not currently have a file for this river. The BLM has made no land conveyances along the length of the Swift River under ANCSA; therefore, no navigability determinations have been made.
- **Tatlawiksuk River.** The Tatlawiksuk River is a tributary to the main stem of the Kuskokwim River. The confluence is located in Section 9, T. 21 N., R. 38 W., SM. The BLM has reviewed the Tatlawiksuk River for navigability multiple times for transfer to Stony River Limited, the State, and native allotments. In a September 3, 1981 report it was stated that the river is used for hunting, trapping, and fishing. In this same report, the Tatlawiksuk River was administratively determined navigable to Section 35, T. 25 N., R. 33 W., SM. This determination was then reiterated in a July 14, 1982 Navigability Recommendations for State Selections for FY82. On August 17, 1982, this navigability determination was reversed within T. 24 N., R.33 W., SM. for conveyance to the state.

In an August 25, 1982 memo, "Final Easements for The Kuskokwim Corporation," the Tatlawiksuk River was determined to be both a major waterway and navigable. On August 18, 1988 the BLM determined the lower reaches within T. 21 N., R. 38 W., SM to be navigable.



- **Theodore Creek.** Tributary to the Anvik River; confluence in Section 28, T. 31 N., R. 61 W., SM. No navigability records in SDMS. The BLM has made no land conveyances along the length of the Swift River under ANCSA; therefore, no navigability determinations have been made.
- **Unalakleet River.** State records indicate the Unalakleet River is navigable up to the confluence with Tenmile Creek in Section 22, T. 16 S., R. 5 W., KR

Partial Display of Trails, Roads, and Routes Identified throughout the Bering Sea-Western Interior Resource Management Plan Area

-  Bering Sea-Western Interior Resource Management Plan Boundary
-  ANCSA 17(b) Easements
-  R.S. 2477
-  Roads
-  Trails



Alaska
Department of Natural Resources
 Division of Mining, Land & Water
 Resource Assessment & Development Section

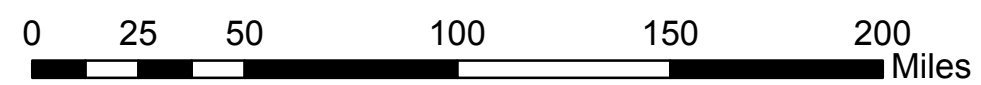
Revised:
12/14/2016

NAD 83
1:2,860,821

Disclaimer: This map is prepared by the Alaska Department of Natural Resources and is for graphic representation only. It is intended to be used as a guide and should be used in conjunction with the original survey/conveyance documents and land status records. Source documents remain the official record.

The State of Alaska makes no expressed or implied warranties (including warranties of merchantability and fitness) with respect to the character, function, or capabilities of this product or its appropriateness for any user's purposes. In no event will the State of Alaska be liable for any incidental, indirect, special, consequential or other damages suffered by the user or any other person or entity whether from use of the product, any failure thereof or otherwise, and in no event will the State of Alaska's liability to you or anyone else exceed the fee paid for the product.

Created on: December 14, 2016
 Created by: EEH, Resource Assessment & Development Section



Fact Sheet

Title: R.S. 2477 Rights-of-Way



Division of Mining, Land & Water
June 2013

This fact sheet explains the origin of a century-old mining law that has broad implications for Alaska's future. It is intended to illustrate the potential this law has in helping preserve Alaska's public access options for the future.

What is R.S. 2477?

Revised Statute 2477 is found in section 8 of the Mining Law of 1866. It granted states and territories rights-of-way over federal lands that had no existing reservations or private entries. The law remained in effect until Congress repealed it in 1976. In Alaska, the opportunity to establish new R.S. 2477 rights-of-way generally ended January 17, 1969, when the federal government issued PLO 4582 – the “land freeze” – to prepare for settlement of Alaska Native land claims. Though no new rights-of-way could be established after federal land was reserved or appropriated, or after the law was repealed in 1976, these actions did not extinguish pre-existing rights.

Revised Statute 2477 states: “The right of way for the construction of highways over public lands, not reserved for public uses, is hereby granted.”

What did Congress mean by “highways”?

It's important to distinguish the historical meaning of “highways” from the modern. The word “highway” was historically used to refer to foot trails, pack trails, sled dog trails, crudely built wagon roads, and other corridors for transportation. R.S. 2477 was included in the first comprehensive mining law and was used initially by miners and homesteaders on federal land. The broad wording of the law does not limit the type of right-of-way to which it applies.

Alaska Statute 19.45.001(9) defines a highway to include “a highway (whether included in primary or secondary systems), road, street, trail, walk, bridge, tunnel, drainage structure and other similar or related structure or facility, and right-of-way thereof...”

What does this mean for Alaskans?

R.S. 2477 rights-of-way could be established in Alaska from 1884 (the Organic Act, which extended general land laws to the new territory), to 1969 (PLO 4582). From its territorial origins to today, Alaska has consisted mainly of federally owned land. During its 84 years of application in this state, many rural mail routes, mining trails, and other

transportation routes became R.S. 2477's through use or acceptance. The State of Alaska, Department of Natural Resources has documented hundreds of historic routes that qualify as R.S. 2477 rights-of-way. Surface transportation between Alaska's rural communities and other resource destinations still relies heavily on our cross-country trails, used by snowmachines, dogsled teams, and four wheel all-terrain vehicles.

What are examples of R.S. 2477's?

Some examples include DeBarr Road in Anchorage and Farmer's Loop Road in Fairbanks. Other routes that the State believes to qualify as R.S. 2477's include the Stampede Trail in Denali National Park and Preserve, the Nabesna-Chisana Trail in Wrangell-St. Elias National Park, the Dalton Trail in the vicinity of Haines, the Eureka-Rampart Trail in the Interior, and the Chilkoot Trail near Skagway.

How many R.S. 2477 rights-of-way have been confirmed?

While thousands of R.S. 2477's exist within the western states, only a handful of routes have been acknowledged in Alaska by the Bureau of Land Management. During 1993-1995, the Department of Natural Resources' R.S. 2477 Project researched more than one thousand trails. The project found that some 600 of these qualified as R.S. 2477 rights-of-way under state standards. In 1998 the Legislature listed these trails in AS 19.30.400, stating that they had been accepted as R.S. 2477 rights-of-way. Many additional trails have been reported to the Legislature since then.

What if land has been conveyed without specifying that there is a valid R.S. 2477 right-of-way across it?

In Alaska, millions of acres once controlled by the federal government have been transferred to Native corporations or into other private ownership. Land conveyances are always subject to “valid existing rights”. Courts have ruled that where an R.S. 2477 right-of-way exists, the new landowner's title is subject to the right-of-way, which must still be honored. There are many Alaskan land owners

who want the assurance that their rights and interests will not be adversely affected in the process of R.S. 2477 identification and platting. The Alaska Legislature instructed in its 1998 law that, while providing for the public's right to use these historic access easements, "every effort" should be made to minimize the effect on the private property owners."

What is some of the R.S. 2477 case law?

One of the most frequently quoted cases affecting R.S. 2477 is Hamerly v Denton, decided in 1961. The court clearly explained that R.S. 2477 was one-half of a grant – an offer to dedicate an easement across unreserved, unappropriated federal land. That offer of a right-of-way grant could be accepted by either of two methods:

a) By "some positive act on the part of the appropriate public authorities of the state, clearly manifesting an intention" to accept it; or

b) By "public user for such a period of time and under such conditions as to prove that the grant has been accepted.

Additionally, Girves v. Kenai Peninsula Borough, 1975 established that some section-line easements are R.S. 2477's. Schultz v. Army, 1993, concerning a right-of-way claim across Fort Wainwright, established the public right-of-way between the origin and termini of the route need not be absolutely fixed, and upheld the broad definition of a highway found in State law. On rehearing, the 9th Circuit Court of Appeals reversed its original ruling in the Shultz case. However, the legal reasoning that produced that original decision has been cited favorably by other state and federal courts.

What are the rules for using R.S. 2477 rights-of-ways?

Some rights-of-way will likely be improved for access to valuable State resources, communities, and land. Others will be used as they have been in the past. Some might not be used at all, or might be developed only as foot trails. If you are not sure whether a trail you want to use is an R.S. 2477 right-of-way, check public land records and consult with each land owner or managing agency before crossing the property. Typically, R.S. 2477 rights-of-way are available for public use under DNR's regulations. DNR's management rules can be found in the DNR's recently revised chapter of public easement regulations, 11 AAC 51. However, the Department of Transportation and Public Facilities' regulations apply to R.S. 2477 rights-of-

way that are part of the Alaska Highway System or that DNR has otherwise transferred to that agency. In some cases, the State might transfer management of an R.S. 2477 right-of-way to a city or borough, but without giving it the right to "vacate" or officially erase the right-of-way. That is because municipalities are prohibited by law from vacating R.S. 2477 rights-of-way.

Where can I get more information?

For additional information on R.S. 2477 and to search case files, visit the web site located at: http://dnr.alaska.gov/mlw/trails/rs2477/rst_srch.cfm.

Additional information on trails is also available on the DNR's Alaska Mapper program at: <http://dnr.alaska.gov/mapper/>.

You can also call or visit one the following DNR Public Information Offices:

550 W 7th Ave., Suite 1260
Anchorage, AK 99501
907-269-8400

3700 Airport Way
Fairbanks, AK 99709
907-451-2705

400 Willoughby Ave., Suite 400
Juneau, AK 99801





MAP 1





Kuskokwim Area Plan Amendment SC-88-001A21

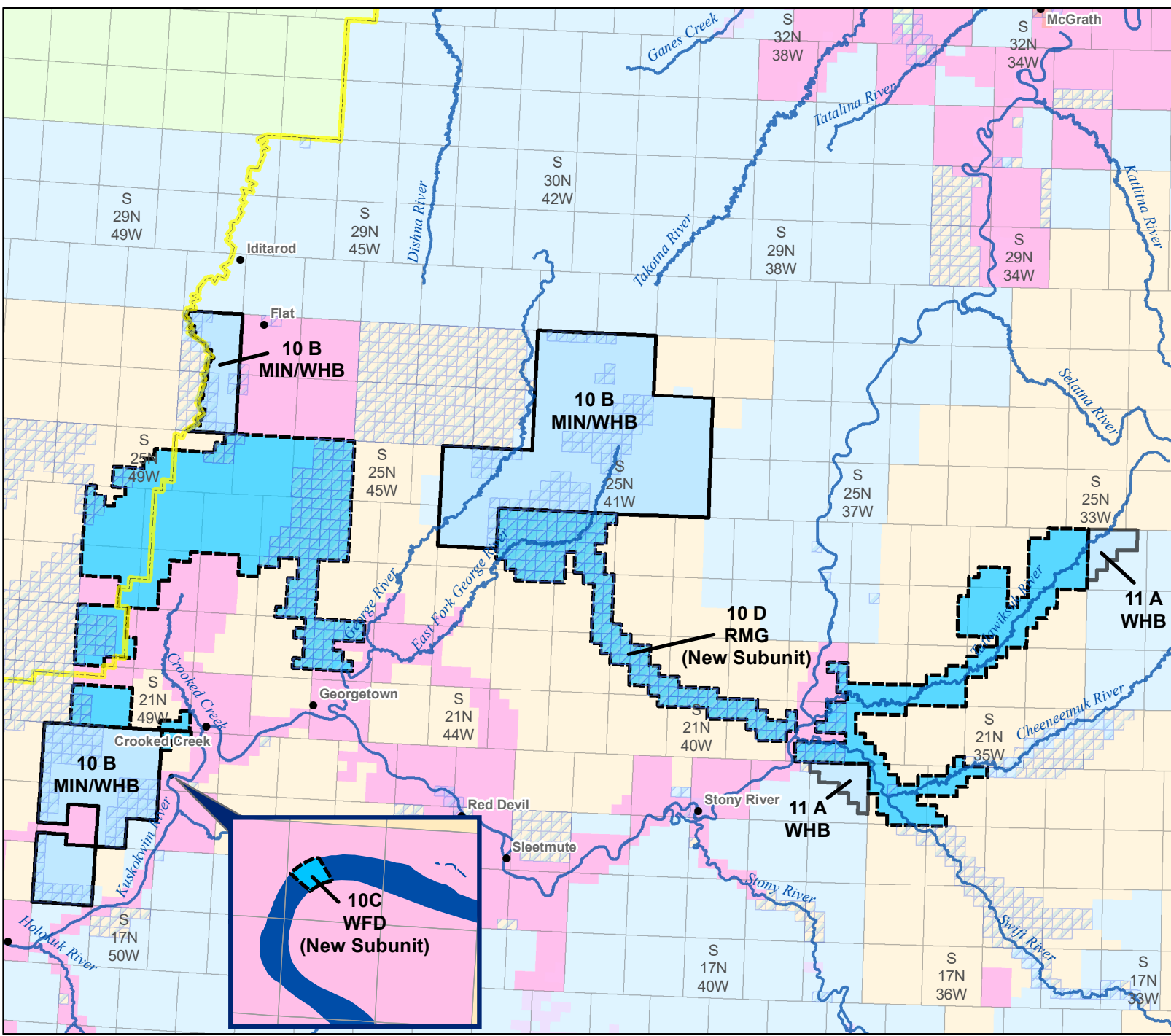
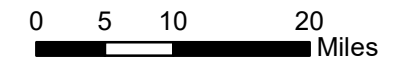
 KUAP Boundary 1988

Lands Affected by Amendment

 Existing Subunits
 Lands to be Classified

Other Land Status

 State Lands
 Native Lands
 BLM Lands
 USFWS Lands



This map is for graphic representation only. It is intended to be used as a guide only and may not show the exact location of existing surveyed parcels or show all easements and reservations. Source documents remain the official record.

Created By: SOA-DNR-DMLW-
Resource Assessment and Development
January 2019

Fact sheet:



Alaska Department of Natural Resources

Division of Mining, Land and Water • August 2011

GENERALLY ALLOWED USES ON STATE LAND

As provided in 11 AAC 96.020, the following **uses and activities are generally allowed on state land** managed by the **Division of Mining, Land and Water** (these uses and activities may be restricted in legislatively designated areas, or special management category or status as listed in 11 AAC 96.014¹). Uses listed as “Generally allowed” do not require a permit from the Division of Mining, Land and Water. 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, Alaska Mental Health Trust, Department of Transportation and Public Facilities, or the Alaska Railroad. **You may need other state, federal or borough permits for these uses or activities.** Permits can be required from the Army Corps of Engineers, Department of Environmental Conservation, the Environmental Protection Agency, Alaska Department of Fish and Game Habitat Division (ADF&G-Habitat). 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 highway vehicle with a curb weight of up to 10,000 pounds, including a four-wheel-drive vehicle and a pickup truck, **or using a recreational-type vehicle** off-road or all-terrain vehicle with a curb weight of up to 1,500 pounds, including a snowmobile (or other tracked vehicle), motorcycle or ATV, on or off an established road easement, if use off the road easement does not cause or contribute to water quality degradation, alteration of drainage systems, significant rutting, ground disturbance, or thermal erosion. (Curb weight means the weight of a vehicle with a full tank of fuel and all fluids topped off, but with no one sitting inside or on the vehicle and no cargo loaded. Most highway rated sport utility vehicles are within the weight limit as are most small ATVs, including a basic Argo.) Use of larger off-road vehicles over 1,500 pounds curb weight, and the off-road travel of construction and mining equipment requires a permit from DNR. An authorization is required from the ADF&G-Habitat for any motorized travel in fish bearing streams.

Landing an aircraft (such as a single-engine airplane or a helicopter), or using watercraft (such as a boat, jet-ski, raft, or canoe), without damaging the land, including shoreland, tideland, and submerged 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-held tools such as a chainsaw (making a trail does not create a property right or interest in the trail).

Anchoring a mooring buoy in a lake, river, or marine waters, or placing a **float, dock, boat haulout, floating breakwater, or boathouse** in a lake, river, or in marine waters, for the personal, noncommercial use of the upland owner, if the use does not interfere with public access or another public use, and if the improvement is placed within the projected sidelines of the contiguous upland owner's parcel or otherwise has the consent of the affected upland owner. A float or dock means 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, or other purposes. A boat haulout means either a rail system (at ground level or elevated with pilings) or a line attached from the uplands to an anchor or mooring buoy. A floating breakwater means a structure, such as a log bundle, designed to dissipate wave or swell action. A boathouse means a structure designed and used to protect a boat from the weather rather than for other storage, residential use or other purposes.

¹ These special use areas are listed in 11 AAC 96.014 and on the last page of this fact sheet. Maps of the areas are available online at: www.dnr.state.ak.us/mlw/sua/

REMOVING OR USING STATE RESOURCES:

Hunting, fishing, or trapping, or placement of a crab pot, shrimp pot, herring pound or fishwheel, that complies with applicable state and federal statutes and regulations on the taking of fish and game.

Harvesting a small number of **wild plants, mushrooms, berries, and other plant material** for personal, noncommercial use. The cutting of trees is not a generally allowed use except as it relates to brushing or cutting a trail as provided above. Commercial harvest of non-timber forest products requires a permit (11 AAC 96.035) and harvest practices must conform to the Alaska Non-Timber Forest Products Harvest Manual for Commercial Harvest on state-owned Lands. <http://dnr.alaska.gov/ag/NTFPRports.htm>

Using dead and down wood for a cooking or warming fire, unless the department has closed the area to fires during the fire season.

Grazing no more than five domesticated animals.

Recreational gold panning; hard-rock 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 suction dredge with a nozzle intake of six inches or less, powered by an engine of 18 horsepower or less, and pumping no more than 30,000 gallons of water per day. An authorization is required from ADF&G-Habitat prior to dredging in fish bearing streams.

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 entire 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 another non-permanent foundation. The camp must be removed immediately if the department determines that it interferes with public access or other public uses or interests.

Brushing or cutting a survey line less than five feet wide using only hand-held tools (such as a chainsaw), or **setting a survey marker** (setting a survey monument—a permanent, official marker—requires written survey instructions issued by the Division of Mining, Land and Water under 11 AAC 53).

Placing a residential **sewer outfall** into marine waters from a contiguous privately owned upland parcel, with the consent of the affected parcel owners, if the outfall is within the projected sidelines of the contiguous upland parcel and is buried to the extent possible or, where it crosses bedrock, is secured and covered with rocks to prevent damage. Any placement of a sewer outfall line must comply with state and federal statutes and regulations applicable to residential sewer outfalls.

Placing riprap or other suitable bank stabilization material to prevent erosion of a contiguous privately owned upland parcel if no more than one cubic yard of material per running foot is placed onto state shoreland and the project is otherwise within the scope of the U.S. Army Corps of Engineers nationwide permit on bank stabilization.

MISCELLANEOUS USES OF STATE LAND:

An event or assembly of 50 people or less, including events sponsored by non-profit organizations or a commercial event.

Entry for **commercial recreation** purposes **on a day-use basis** with no overnight camps or unoccupied facilities that remain overnight, as long as the use has been registered as required by 11 AAC 96.018.

Recreational or other use not listed above may occur on state land as long as that use

- * is not a commercial recreational camp or facility, (whether occupied or unoccupied) that remains overnight;
- * does not involve explosives or explosive devices (except firearms);

- * is not prospecting or mining using hydraulic equipment methods (i.e. the use of pumped or flowing water to remove overburden or move gravels);
- * does not include drilling in excess of 300 feet deep (including exploratory drilling or stratigraphic test wells on state land not under oil or gas lease);
- * is not for geophysical exploration for minerals subject to lease or an oil and gas exploration license or for seismic surveys involving the use of explosives;
- * does not cause or contribute to significant disturbance of vegetation, drainage, or soil stability;
- * does not interfere with public access or other public uses or interests; and
- * does not continue for more than 14 consecutive days at any site. Moving the use to another site at least two miles away starts a new 14-day period.
- * does not include exploration for coal (a notice of intent to conduct exploration for coal must be filed with the DNR)

Check for special conditions and exceptions!

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 the conditions set out in 11 AAC 96.025** (a copy of these conditions are attached to this fact sheet). A person who violates these conditions is subject to any action available to the department for enforcement and remedies, including civil action for forcible entry and detainer, ejectment, trespass, damages, and associated costs, or arrest and prosecution for criminal trespass in the second degree. The department may seek damages available under a civil action, including restoration damages, compensatory damages, and treble damages under AS 09.45.730 or AS 09.45.735 for violations involving injuring or removing trees or shrubs, gathering technical data, or taking mineral resources. (11 AAC 96.145)

Remember that this list does not apply to state parks, University of Alaska lands, or Alaska Mental Health Trust lands. In addition, some other areas managed by the Division of Mining, Land and Water 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). Special Use Areas are listed in 11 AAC 96.014; more information is available on the department’s website at <http://dnr.alaska.gov/mlw/sua/>. GAU’s have also been modified for the Knik River Public Use Area.

Also, be aware that this list does not exempt users from the permit requirements of other state, federal, or local agencies. For example, the ADF&G - Habitat may require a permit for a stream crossing or 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 Mining, Land and Water has granted to another person, or to pan for gold on somebody else’s state mining location.

Department 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.

For additional information, contact the Department of Natural Resources:

PUBLIC INFORMATION CENTER 550 W. 7 th Avenue, Suite 1260 Anchorage, AK 99501-3557 (907) 269-8400 TDD: (907) 269-8411	DIVISION OF MINING, LAND & WATER PUBLIC INFORMATION OFFICE 400 Willoughby Ave., Suite 400 P.O. Box 111020 Juneau, AK 99801-1021 (907) 465-3400 TDD: (907) 465-3888	PUBLIC INFORMATION CENTER 3700 Airport Way Fairbanks, AK 99709-4699 (907) 451-2705 TDD: (907) 451-2770
---------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------

CONDITIONS FOR GENERALLY ALLOWED USES
(11 AAC 96.025²)

A generally allowed use listed in 11 AAC 96.020 is subject to the following conditions:

- (1) activities employing wheeled or tracked vehicles must be conducted in a manner that minimizes surface damage;
- (2) vehicles must use existing roads and trails whenever possible;
- (3) activities must be conducted in a manner that minimizes
 - (A) disturbance of vegetation, soil stability, or drainage systems;
 - (B) changing the character of, polluting, or introducing silt and sediment into streams, lakes, ponds, water holes, seeps, and marshes; and
 - (C) disturbance of fish and wildlife resources;
- (4) cuts, fills, and other activities causing a disturbance listed in (3)(A)–(C) must be repaired immediately, and corrective action must be undertaken as may be required by the department;
- (5) trails and campsites must be kept clean; garbage and foreign debris must be removed; combustibles may be burned on site unless the department has closed the area to fires during the fire season;
- (6) survey monuments, witness corners, reference monuments, mining location posts, homestead entry corner posts, and bearing trees must be protected against destruction, obliteration, and damage; any damaged or obliterated markers must be reestablished as required by the department under AS 34.65.020 and AS 34.65.040;
- (7) every reasonable effort must be made to prevent, control, and suppress any fire in the operating area; uncontrolled fires must be immediately reported;
- (8) holes, pits, and excavations must be repaired as soon as possible; holes, pits, and excavations necessary to verify discovery on prospecting sites, mining claims, or mining leasehold locations may be left open but must be maintained in a manner that protects public safety;
- (9) on lands subject to a mineral or land estate property interest, entry by a person other than the holder of a property interest, or the holder's authorized representative, must be made in a manner that prevents unnecessary or unreasonable interference with the rights of the holder of the property interest.

List of Special Use Land Designations Excluded from Generally Allowed Uses

- Alyeska Ski Resort
- Baranof Lake Trail
- Caribou Hills
- Exit Glacier Road
- Glacier/Winner Creek
- Hatcher Pass Special Use Area
- Haines State Forest
- Indian Cove
- Kamishak Special Use Area
- Kenai Fjords Coastline
- Kenai River Special Management Area Proposed Additions
- Lake Clark Coastline
- Lower Goodnews River
- Lower Talarik Creek
- Marmot Island Special Use Area
- Nenana River Gorge and McKinley Village Subd.
- North Slope Area
- Northern Southeast Area, Tidelands
- Nushagak
- Poker Flat North
- Poker Flat South
- Resurrection Bay
- Tangle Lakes Archaeological District
- Thompson Pass
- Togiak National Wildlife Refuge
- Knik River Special Use Area

² Register 164, January 2003