STATE OF ALASKA

SEAN PARNELL, Governor

CITIZENS' ADVISORY COMMISSION
ON FEDERAL AREAS

3700 AIRPORT WAY
FAIRBANKS, ALASKA 99709

PHONE: (907) 374-3737
FAX: (907) 451-2751

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Gary Wheeler, Refuge Manager
Kodiak National Wildlife Refuge
1390 Buskin River Road
Kodiak, AK 99615

Dear Mr. Wheeler:

The Citizens' Advisory Commission on Federal Areas has reviewed the Draft Commercial Fisheries Support Facilities Management Plan and revised Compatibility Determination for commercial fishing on the Kodiak National Wildlife Refuge. We offer the following for your consideration in developing a final plan.

In 1983, this Commission held a meeting in Kodiak to discuss and gather input on a number of management issues on the Kodiak refuge. The meeting was dominated by a discussion of what was seen by many commercial fishermen as an unreasonable and inflexible agency policy on the use and construction of shore based support facilities for commercial fishing. Major topics discussed during that meeting related to commercial fishing included: no established definition of what constitutes a "significant expansion" of commercial fishing activity, restrictions on the size and number of structures allowed at sites; use period for permits that did not allow adequate fishing time or time for maintenance either before or after the season; and the inability to convert tent frames to permanent structures. While some of these issues have been settled in the intervening years, it is disappointing to note that several key issues and concerns remain unresolved.

Significant Expansion

Particularly disappointing is the failure of the Fish and Wildlife Service Alaska Region and a succession of refuge managers to establish criteria for defining the term *significant expansion of commercial fishing activities* within Kodiak Refuge. Rather, the agency has chosen to respond to numerous entreaties from fishermen, the State of Alaska and others for a reasonable and

workable definition by adopting a policy that merely limits the number of permits to those issued in 1979. This policy is overly restrictive and is not consistent with ANILCA.

Section 304(d) of ANILCA states:

> *The Secretary shall permit within units of the National Wildlife Refuge System designated, established, or enlarged by this Act, the exercise of valid commercial fishing rights or privileges obtained pursuant to existing law and the use of Federal lands, subject to reasonable regulation, for campsites, cabins, motorized vehicles, and aircraft landings directly incident to the exercise of such rights or privileges: Provided that nothing in this section shall require the Secretary to permit the exercise of rights or privileges or uses of the federal lands directly incident to such exercise, which he determines, after conducting a public hearing in the affected locality, to be inconsistent with the purposes of a unit of the National Wildlife Refuge System as described in this section and to be a significant expansion of commercial fishing activities within such units beyond the level of such activities during 1979.*

As with many other terms scattered throughout ANILCA, Congress provided little guidance on what might constitute a "significant expansion," leaving that task to the agency. Unfortunately, it is a task that remains incomplete. Neither the original 1987 Comprehensive Conservation Plan (CCP) nor the 2006 revised CCP contain a definition of the term. While we do not have a copy available, the 1987 Commercial Fisheries Management Plan also is apparently silent on a definition. The current draft facilities management plan, in responding to public scoping comments chooses to sidestep the issue altogether by stating:

> *The concept of "significant expansion of commercial fishing activities" is a difficult concept to be clearly defined because there are a number of parameters that could contribute to an expansion. Factors such as number of fishing sites on the Refuge, size of fishing sites, and period of use or occupancy are the primary indicators. However, other factors may be considered, including the type and intensity of activities at the sites, number of individuals' present, new types of equipment or chemicals in use, a substantial increase in the volume of water used, or some yet unforeseen activity.* (pg. 11)

We readily concede that the term is not easily defined. Nevertheless, at the risk of sounding facetious, we believe that nearly 30 years after the passage of ANILCA, following the preparation and adoption of two CCPs with environmental impact statements, a commercial fishing management plan, along with scores of public meetings and hearings, we do not believe it is unreasonable to expect something more comprehensive than a policy that simply limits the number of permits to the same number issued in 1979. In the past, this Commission, Kodiak fishermen and the State of Alaska have all offered to work with the Service to craft an acceptable definition that provides for continuing opportunities for commercial fishing and also protects the resources and purposes of Kodiak NWR. We renew our offer, as we would expect both the fishermen and the State to do and encourage the Service to give it serious consideration.

The section of the plan quoted above lists factors that the Service considers primary indicators of what might constitute a significant expansion, but also points out other factors which may be

considered. However, the plan provides no explanation of how those factors are applied in the agency's decisions regarding number of sites which will be permitted, size and number of structures at each site, fishing season of use, restrictions on motorized vehicles and other permit provisions and stipulations. Additional explanation of the how these decisions are made should be provided in the final plan.

Fishing Season of Use

There is one example where the plan does make a determination using one of the factors listed above. The plan (pg. 4) states that extending the permitted season of cabin use beyond the standard May 15 to September 15 period to coincide with the October 31 end of the salmon season would constitute an increase in activities above the 1979 level and is therefore not allowed except on a case by case basis. No explanation is provided to support this determination. More importantly, an increase above the 1979 level is not prohibited under 304(d) unless it is both "inconsistent with refuge purposes" and represents a "significant expansion" beyond the 1979 level. This discrepancy and misinterpretation of the provisions in 304(d) emphasizes the need for a consistent and comprehensive definition.

Kodiak fishermen have long objected to the May 15 to September 15 permitted season of cabin use. While we appreciate that the Service is willing to consider exceptions to this permit limitation under special circumstances, the permitted season of cabin use should extend until the regular end of the fishing season, as set by ADF&G. Special exceptions for maintenance outside this time period should also be made on an as needed basis.

Additional permits

Under the heading "Justification," the compatibility determination states:

> *"Comments received from refuge set net site operators during revision of the comprehensive conservation plan and reevaluation of the 1987 plan indicated they strongly support this decision to not issue additional refuge special use permits for commercial fishing support facilities."*

We appreciate that some current permit holders might prefer less competition from other set net fishermen in the Kodiak area, but we are uncertain that is acceptable justification for the findings in the compatibility determination that additional permits would not be compatible. The decision on whether or not to issue additional permits should be based on a range of factors, including public comments.

Structures

We support the decision to allow construction of a generator/ice machine storage building. We also note that the allowable size of facilities, particularly the primary cabin, have been increased from the earlier fisheries management plan.

The Commission appreciates the opportunity to comment on this draft management plan. We would be happy to discuss any of our comments if you have questions. We are also available to provide any assistance we can in crafting a workable definition of what constitutes a "significant expansion" and a final plan.

Sincerely,

Stan Leaphart

Stan Leaphart
Executive Director