



United States
Department of
Agriculture

Forest
Service

Chugach
National
Forest

3301 C Street
Suite 300
Anchorage, AK 99503

File Code: 1920-2

Date: August 5, 1999

Route To:

Subject: Planning Direction for the ANILCA 501(b) Area of the Forest

To: Forest Plan Revision ID Team

This letter replaces and supersedes the letter of April 2, 1999, with respect to ANILCA 501(b) planning direction for revision of the Forest Plan. The question has arisen during the Forest Plan revision process that given the unique management direction established in Section 501(b) of ANILCA for the Copper River-Rude River addition and the Copper River-Bering River portion of the Chugach National Forest, what Management Prescriptions, and Standards and Guidelines are appropriate for the area?

This memo: 1. Summarizes the legal and regulatory background with respect to the subject area, 2. Documents the decision space in plan revision regarding the 501(b) area, 3. Provides planning direction regarding the use of Management Prescriptions and Standards and Guidelines, and 4. Directs the team to develop and document a process to determine if alternatives are consistent with the 501 (b) primary purpose.

Background - ANILCA 1980

Section 501(a)(1) of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 539) added four areas totaling 1,900,000 acres of public lands to the Chugach National Forest in Alaska. Section 501(b) of the Act provides that, subject to valid existing rights, the lands added are to be administered by the Secretary of Agriculture in accordance with the Act and the laws, rules, and regulations applicable to the National Forest System: *Provided*, That the conservation of fish and wildlife and their habitat shall be the primary purpose for the management of the Copper River-Rude River addition and the Copper River-Bering River portion of the existing Chugach National Forest, as generally depicted on the map appropriately referenced and dated October 1978: *Provided*, That the taking of fish and wildlife shall be permitted within zones established by this subsection pursuant to the provisions of this Act and other applicable State and Federal law. Multiple-use activities shall be permitted in a manner consistent with the conservation of fish and wildlife and their habitat as set forth in special regulations which shall be promulgated by the Secretary.

In December of 1991, special rules were set forth in 36 CFR 241 as directed by Section 501(b) and are summarized as follows:

36 CFR 241 SUMMARY: This final rule adopts management direction for the conservation of fish and wildlife and their habitat within the Copper River-Rude River, and Copper River-Bering River areas of the Chugach National Forest in Alaska. The intended effect is to establish a standard by which multiple-use activities can be evaluated for consistency with the conservation of fish and wildlife and their habitat.

36 CFR 241 Supplementary information: National Forest System lands are managed for multiple uses and the sustained yield of products and services. As provided by the National Forest Management Act (16 U.S.C. 1600 et seq.) and implementing rules at 36 CFR part 219, the mix of uses and outputs from National Forest System lands is determined through the execution of a land management plan. The Copper River-Rude



River and Copper River-Bering River areas remain subject to multiple-use, sustained-yield management and the land management planning process, but section 501(b) of ANILCA requires that in these two areas, conservation of fish and wildlife resources be given primacy in determining the management direction.

Section 501(b) further specifies that the primary purpose for the management of the Copper River-Rude River addition and the Copper River-Bering River portion of the existing Chugach National Forest "*** shall be *** the conservation of fish and wildlife and their habitat." The Act permits the taking of fish and wildlife pursuant to the Act and other applicable State and Federal law, and specifies that multiple-use activities shall be permitted only in a manner consistent with the conservation of fish and wildlife and their habitat.

Sec. 241.22 Consistency determinations.

(a) Subject to valid existing rights, a multiple-use activity may be permitted or authorized within the areas of the Chugach National Forest subject to this subpart only after a determination by the responsible Forest Officer that such activity is consistent with the conservation of fish, wildlife, and their habitat. A use or activity may be determined to be consistent if it will not materially interfere with or detract from the conservation of fish, wildlife and their habitat.

(b) Where an evaluation is made pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4321) for a proposed multiple-use activity, and the responsible Forest Officer prepares an environmental impact statement (EIS) or environmental assessment (EA) or categorically excludes an activity from documentation in an EA or EIS, the consistency determination required by this section for the use or activity shall be included as a part of the decision document.

Sec. 241.21 Definitions. For the purpose of this **subpart**, the terms listed in this section shall be defined as follows:

Multiple-use activity is a specific management or permitted activity, use, measure, course of action, or treatment of National Forest System lands carried out under the statutory charter of the Multiple-Use Sustained-Yield Act of 1960 (16 U.S.C. 528 et seq.) and the National Forest Management Act (16 U.S.C. 1600 et seq.).

The following two documents serve as background information:

Background: Copper/Rude addition and Copper River-Bering River Management.
Schenck 1/19/99.

Analysis of the Management Situation, 501(b) ANILCA Direction in the 1984 Chugach Forest Plan. Kesti, 1996.

In summary, the following direction applies:

The primary purpose for the management of the Copper River-Rude River addition and the Copper River-Bering River portion of the existing Chugach National Forest "***

shall be *** the conservation of fish and wildlife and their habitat", (ANILCA Sect. 501(b)).

The Copper River-Rude River and Copper River-Bering River areas remain subject to multiple-use, sustained-yield management and the land management planning process, but section 501(b) of ANILCA requires that in these two areas conservation of fish and wildlife resources be given primacy in determining the management direction, (36 CFR 241 Supplementary information).

The consistency determination for the [multiple] use or activity shall be included as a part of the Record of Decision in the Forest Plan EIS.

General Discussion

Given the specific congressional direction for the 501(b) area, it is clear that the areas are subject to multiple-use, sustained-yield management and the land management planning process, but section 501(b) of ANILCA requires the conservation of fish and wildlife resources be given primacy in determining the management direction.

Multiple use activities such as, off-road vehicle (ORV) use, free use timber harvesting, limited heli-ski operations and recreation developments already occur within the 501(b) area. These are multiple use activities that are permitted. The fact that these activities occur, or may increase should not drive the development of management prescriptions and alternatives for the 501(b) area. The location, magnitude, and extent of such activities can vary by alternative, providing they are in the final analysis, consistent with the 501(b) and other ANILCA direction.

If this area is considered for Wilderness, or for Wild or Scenic Rivers designation through the Forest Plan revision, this will carry with them direction to manage the recommended areas to maintain their eligibility for congressional designation. Such recommendation shall include with it the 501(b) direction "that the conservation of fish and wildlife and their habitat shall be the primary purpose for the management of the area".

In the case of potential Wild or Scenic Rivers, much of the eligibility criteria is based on fisheries values. If Wild or Scenic Rivers are recommended within the 501(b) area, the recommending language should include the existing language in 501(b) for fish and wildlife habitat conservation and provide for the existing uses currently allowed by ANILCA within the river corridors.

Planning Direction:

1. The 501(b) area will be designated on planning maps in a definitive manner. Make the area visually dominating for the reader and include the following statement:

The conservation of fish and wildlife and their habitat shall be the primary purpose for the management of the Copper River-Rude River addition and the Copper River-Bering River portion of the area.

2. Within the Forestwide standards and guidelines, develop specific standards and guidelines for the 501(b) area for further direction on the conservation of fish and wildlife and their habitats, and providing for multiple use activities in a manner consistent with the conservation of fish and wildlife and their habitat.

3. Develop specific prescriptions for the 501(b) area that: (1) are consistent with the ANILCA direction of conservation of fish and wildlife and their habitats; (2) do not diminish our ability to manage fish and wildlife and their habitats; (3) permit multiple use activities consistent with the conservation of fish, wildlife and their habitat, (4) are responsive to the public and agency issues and concerns for the management of the 501(b) area. Additional prescriptions may be needed in response to public issues and concerns.

4. Apply prescriptions to the area, which can vary by alternative, in response to public and agency issues and concerns.

5. Prescriptions that require congressional approval or Washington Office approval may be applied within the 501(b) and vary between alternatives. Show clearly the 501(b) direction on recommended lands while awaiting congressional action. These prescriptions include:

- Recommended Wilderness
- Wild River
- Scenic River
- Recreational River
- Research Natural Area

6. The consistency determination (36 CFR 241.22) for the [multiple] use or activity shall be included as a part of the Record of Decision in the Forest Plan EIS. At this time start developing the consistency determination process.

DAVE R. GIBBONS
Forest Supervisor

Enclosure

Background Copper/Rude Addition and Copper River - Bering River Management

Summary:

1. The Copper River-Rude River addition to the Chugach has significant fish and wildlife resources. Federal, State, Municipal and Native corporations have recognized this fact and have agreed to manage significant portions of their respective lands for conservation of fish and wildlife and their habitats.
2. The existing agreements require coordination with other signatories for planning purposes.
3. The existing agreements have the statement that:
Nothing in the MOU's shall be construed to enlarge, alter, or diminish the authority or rights of any party with respect to use, development, exploration, occupation, disposition, or management of any lands, waters, or interests therein, or management or use, including subsistence, of fish and wildlife and their habitat which such party would otherwise exercise or have.
4. Direction exists (36.CFR.219) to consider alternatives, which represent ranges of development, which represent different ways to respond to major issues, and which may require a change in law or major policy.

ANILCA 501 (a) added the Copper/Rude River lands to the Chugach National Forest:

(1) Chugach National Forest by the addition of four areas, Nellie Juan, College Fjord, Copper/Rude River, and Controller Bay, containing approximately one million nine hundred thousand acres of public land, as generally depicted on the map entitled "Chugach National Forest additions proposed", and dated October 1978; and

ANILCA 501(b) specifies:

(b) Subject to valid existing rights, lands added to the Tongass and Chugach National Forests by this section shall be administered by the Secretary in accordance with the applicable provisions of this Act and the laws, rules, and regulations applicable to the national forest system: Provided, That the conservation of fish and wildlife and their habitat shall be the primary purpose for the management of the Copper/Rude River addition and the Copper River-Bering River portion of the existing Chugach National Forest, as generally depicted on the map appropriately referenced and dated October 1978: Provided, That the

taking of fish and wildlife shall be permitted within zones established by this subsection pursuant to the provisions of this Act and other applicable State and Federal law. Multiple use activities shall be permitted in a manner consistent with the conservation of fish and wildlife and their habitat as set forth in special regulations, which shall be promulgated by the Secretary.

Other Laws, Regulations, Agreements, and Memoranda:

The Code of Federal Regulations (CFR) has specific guidance regarding Conservation of Fish, Wildlife, and Their Habitat, Chugach National Forest, Alaska (36 CFR 241, Subpart B)

Subpart B--Conservation of Fish, Wildlife, and Their Habitat, Chugach National Forest, Alaska

Source: 56 FR 63463, Dec. 4, 1991, unless otherwise noted.

Sec. 241.20 Scope and applicability.

(a) The regulations in this subpart apply to management of the Copper River-Rude River addition and Copper River-Bering River portion of the Chugach National Forest, for the conservation of fish, wildlife and their habitat as required by the Alaska National Interest Lands Conservation Act (16 U.S.C. 539). These regulations supplement the general regulations governing use and occupancy of National Forest System lands nationwide in 36 CFR part 251--Land Uses.

(b) The rules of this subpart are applicable only on Federally owned lands within the boundaries of the Copper River-Rude River addition and the Copper River-Bering River portion of the Chugach National Forest, Alaska, known as the Copper River Management Area and as described and displayed in the Chugach National Forest Land and Resource Management Plan, July 1984.

(c) Nothing in these regulations is intended to enlarge or diminish the responsibility and authority of the State of Alaska for management of fish and wildlife.

(d) The primary purpose for the management of the Copper River-Rude River addition and the Copper River-Bering River portion of the Chugach National Forest, Alaska, is the conservation of fish and wildlife and their habitat. Consistent with the regulations at part 219 of this chapter, direction for managing the fish and wildlife resources of these units shall be documented in the land management plan for the Chugach National Forest.

Further direction found in 36 CFR 241.22

Sec. 241.22 Consistency determinations.

(a) Subject to valid existing rights, a multiple-use activity may be permitted or authorized within the areas of the Chugach National Forest subject to this subpart only after a determination by the responsible Forest Officer that such activity is consistent with the

conservation of fish, wildlife, and their habitat. A use or activity may be determined to be consistent if it will not materially interfere with or detract from the conservation of fish, wildlife and their habitat.

(b) Where an evaluation is made pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4321) for a proposed multiple-use activity, and the responsible Forest Officer prepares an environmental impact statement (EIS) or environmental assessment (EA) or categorically excludes an activity from documentation in an EA or EIS, the consistency determination required by this section for the use or activity shall be included as a part of the decision document.

(c) Guidelines that are consistent with this section may be developed for specific multiple-use activities as a part of the planning and implementation process required by the National Forest Management Act and the implementing regulations at 36 CFR part 219, National Forest System Land and Resource Management Planning.

(d) Subject to valid existing rights, the responsible Forest Officer may incorporate into any permit or other authorization issued pursuant to 36 CFR part 251 or other regulations of this chapter any reasonably practicable measures that are determined to be necessary to maintain consistency with the conservation of fish, wildlife, and their habitat as provided by this subpart.

(e) Subject to valid existing rights, the responsible Forest Officer may terminate, suspend, restrict, or require modification of any activity if it is determined that such measures are required to conserve wildlife, fish, or their habitat within the areas of the Chugach National Forest subject to this subpart. Prior to taking action to terminate, suspend, restrict, or require modification of an activity under this section, the responsible Forest Officer shall give affected parties reasonable prior notice and an opportunity to comment, unless it is determined that doing so would likely result in irreparable harm to conservation of fish, wildlife, and their habitat.

(f) Decisions made pursuant to this section are subject to appeal only as provided in 36 CFR parts 217 and 251, subpart C.

(g) Nothing in this section affects subsistence activities carried out in accordance with Sec. 241.23 of this subpart or other applicable law.

Sec. 241.23 Taking of fish and wildlife.

(a) The taking of fish and wildlife by hunting, trapping, or fishing from lands subject to the rules of this subpart is authorized in accordance with applicable State and Federal law.

(b) To the extent consistent with the conservation of fish and wildlife and their habitat in accordance with recognized scientific management principles, local rural residents who depend upon the Chugach National Forest for subsistence needs shall continue to have the opportunity to engage in a subsistence way of life on the lands to which this subpart applies pursuant to applicable State and Federal law.

(c) To the extent consistent with the conservation of fish and wildlife and their habitat, the continuation 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 the taking of fish and wildlife may be authorized in accordance with applicable law and regulations. However,

the Forest Supervisor may restrict or prohibit facilities or uses in the Copper River-Rude River addition or Copper River-Bering River area if it is determined, after adequate notice to the affected parties, that the continuation of such facilities or uses would materially interfere with or adversely affect the conservation of fish and wildlife and their habitat.

Planning for the area during Forest Plan Revision is governed by the direction found in 36 CFR 219. Information regarding the consideration of alternatives follows:

Sec. 219.12 Forest planning--process.

(f) Formulation of alternatives. The interdisciplinary team shall formulate a broad range of reasonable alternatives according to NEPA procedures. The primary goal in formulating alternatives, besides complying with NEPA procedures, is to provide an adequate basis for identifying the alternative that comes nearest to maximizing net public benefits, consistent with the resource integration and management requirements of Secs. 219.13 through 219.27.

And:

(1) Alternatives shall be distributed between the minimum resource potential and the maximum resource potential to reflect to the extent practicable the full range of major commodity and environmental resource uses and values that could be produced from the forest. Alternative shall reflect a range of resource outputs and expenditure levels.

(2) Alternatives shall be formulated to facilitate analysis of opportunity costs, of resource use and environmental trade-offs among alternatives, and between benchmarks and alternatives.

(3) Alternatives shall be formulated to facilitate evaluation of the effects on present net value, benefits, and costs of achieving various outputs and values that are not assigned monetary values, but that are provided at specified levels.

(4) Alternatives shall provide different ways to address and respond to the major public issues, management concerns, and resource opportunities identified during the planning process.

(5) Reasonable alternatives which may require a change in existing law or policy to implement shall be formulated if necessary to address a major public issue, management concern, or resource opportunity identified during the planning process (40 CFR 1501.7, 1502.14(c)).

The Alaska State Legislature has created AS 16.20.230(11) designating the Copper River Delta State Critical Habitat Area to protect and preserve habitat areas especially crucial to perpetuation of fish and wildlife.

The Alaska State Legislature has classified certain areas as being essential to the protection of fish and wildlife habitat. These areas are designated as a refuge, critical habitat area, or sanctuary. Management of these special areas is the responsibility of the Alaska

Department of Fish and Game (ADF&G). Legislation pertaining to these lands may be found in Alaska Statutes Title 16, Chapter 20. A special area permit is required for any habitat altering work, including any construction activity in a designated state refuge, critical habitat area, or sanctuary. A special area permit application form can be obtained from any Department of Fish and Game office and should be submitted to the Division of Habitat and Restoration office representing the area in which the proposed activity will occur.

Alaska Department of Fish and Game prepared a draft strategic management plan for the Copper River Delta State Critical Habitat Area. (December, 1983)

In 1986, a Memorandum of Understanding was agreed upon for cooperative management of the Copper River Delta Fish and Wildlife Management Area. This agreement was between the USDA Forest Service, USDI Bureau of Land Management, USDI Fish and Wildlife Service, The State of Alaska, Departments of Natural Resources and Fish and Game. (FS#85011, 1986)

The 1986 MOU identified an area where agreeing agencies would be cooperatively protecting, developing, maintaining, and managing the diverse fish and wildlife and their habitat in the Copper River Delta Fish and Wildlife Management Area for the best interest of the public of Alaska and the United States of America. This area which included State and other Federal agency lands was much larger than the ANILCA 501b addition to the Chugach National Forest.

The MOU parties also agreed that the Federal lands in the Copper River Fish and Wildlife Management Area will be managed primarily for the conservation for fish and wildlife and their habitat. All parties agreed to manage activities on lands administered by them within the Area to be consistent with conservation of fish and wildlife and their habitats.

The Forest Service agreed to provide leadership in the management of fish and wildlife habitat to maintain or enhance fish and wildlife carrying capacity on lands administered by the Forest Service within the copper River Delta Fish and Wildlife Management Area.

The Forest Service agreed to involve all MOU parties in formulation of Forest Plans.

In 1990, a portion of the Copper River Delta was identified as a designated unit of the Western Hemisphere Shorebird Reserve network (FS 89-417). The shorebird designation involved a MOU between USDA Forest Service, The Western Hemisphere Shorebird Reserve Network, a non-profit organization, State of Alaska-ADFG, State of Alaska-DNR, Chugach Alaska Corporation, Eyak Corporation, City of Cordova and the USDI Fish and Wildlife Service. This MOU recognizes the shorebird reserve of the Copper River for it's international importance to migratory shorebirds.

Native Corporations and City of Cordova were new partners in the Shorebird Reserve. The MOU applied to federal, state, municipal, and corporate lands that were defined.

Other history: Copper River Delta Game Management Area Cooperative Agreement, 15 Apr 62, Bering River-Controller Bay Trumpeter Swan Management Area Cooperative Agreement (FS 76007).

Biological Summary:

This approximately 2.262 million acre area includes wetlands that are essential nesting, rearing and staging habitat for a distinct subspecies of Canada Goose known as the dusky Canada goose (R10 Sensitive Species) which breeds almost exclusively on the west Copper River Delta. It also provides nesting and rearing habitat for one of the largest concentrations of Trumpeter swans in North America (R10 Sensitive Species).

The area's diverse habitats support a wide variety of other breeding water birds, and are a very important spring and fall staging area for large numbers of migrant shorebirds, Pacific flyway waterfowl, and sandhill cranes. Habitat for subsistence species such as: moose, black-tailed deer, brown and black bears wolves and other furbearers are abundant. Significant spawning and rearing waters are found for King, sockeye, coho, and pink salmon, resident and anadromous trout, char, whitefish and other fish resources.

Presently the dusky Canada geese are being managed under the provisions of an international management plan (Pacific Flyway Management Plan for Dusky Canada Goose, 1997) and a Memorandum of Understanding between the USDA Forest Service, USDI Fish and Wildlife Service, AK Department of Fish and Game,

Oregon Department of Fish and Wildlife, and Washington Department of Fish and Wildlife. (FS# 98MOU-10-00).

5.

Analysis of the Management Situation
Revision Topic:
Section 501 (b) ANILCA Direction in the 1984 Chugach Forest Plan

Introduction - On December 2, 1980, Public Law 96-487, the Alaska National Interest Lands Conservation Act (ANILCA) was signed. Section 501 (b) specifically addressed the Copper/Rude River addition and the Copper River - Bering River portion of the Chugach National Forest. It states:

"... That the conservation of fish and wildlife and their habitat shall be the primary purpose for the management of the Copper/Rude River addition and the Copper - Bering river portion of the existing Chugach National Forest Provided that the taking of fish and wildlife shall be permitted within zones established by this subsection pursuant to the provisions of this Act and other applicable State and Federal law. Multiple use activities shall be permitted in a manner consistent with the conservation of fish and wildlife and their habitat as set forth in special regulations which shall be promulgated by the Secretary."

On December 4, 1991, final rule C36 CFR Part 241 was issued pertaining to the conservation of fish and wildlife and their habitat. As stated in the summary of this final rule, "... (it) adopts management direction for the conservation of fish and wildlife and their habitat within the Chugach National Forest in Alaska. The (purpose) is to establish a standard by which multiple-use activities can be evaluated for consistency with the conservation of fish and wildlife and their habitat." It also stated that rule would have no effect on the established responsibility or authority of the State of Alaska with regards to management for multiple use in a manner consistent with the primary management goal of suggestion to restrict all multiple use activities other than fish and wildlife habitat management. It did make clear that the rule was applicable only on Federally-owned lands. It also gives direction, subject to valid existing rights to terminate any permit, activity or use if necessary to conserve wildlife, fish, or their habitat. Authorization is also given for the taking of fish and wildlife in section 214.23 in accordance with applicable State and Federal laws.

Due to its exceptional nature in terms of waterfowl, other wildlife, and fisheries habitat, the Copper River Delta has continued to hold people's interest at the local, State, and national level. Prior to the passage of ANILCA, there was discussion of establishing a refuge, a fish and wildlife preserve, or adding the area to Wrangell St. Elias National Park due to the high value of its fish and wildlife habitat. It is interesting to note that the wording in Section 501 (b) is very similar to the wording used in the establishment of refuges (Section 302 ANILCA). 36 CFR 214.22 also used wording very similar to that used in the regulations pertaining to refuge management.

Two Research Natural Areas are being considered on the Copper River Delta. The State has designated the Delta as a Critical Habitat Area (AS 16. 20. 230 (11)) and has developed a management plan to guide activities. In 1990, a Memorandum of Understanding (MOU) was signed which established the Copper River Delta Shorebird Unit as the first Alaska shorebird habitat to be included in the Western Hemisphere Shorebird Reserve Network. This MOU included the State of Alaska, the U.S. Fish and Wildlife Service, the Forest Service, the Chugach Alaska Corporation, the Eyak Corporation, and the City of Cordova. All parties recognized the international importance of the Copper River Delta to migratory shorebirds.

The Revision of the Forest Plan is an opportunity to evaluate the existing direction and improve how we incorporate ANILCA direction into our management of the Copper River Delta.

I. Existing Forest Plan Direction - A word search was conducted to find out how ANILCA direction was incorporated into the 1984 Plan. Reference to section 501 (b) ANILCA and the conservation of fish and wildlife resources occurs in section II pages 8, and 18 through 20. The need for guidelines to implement this act is mentioned on pages II - 19.

Section III pages 5, 29, 35, 81, and 82 give forest-wide direction with respect to section 501 (b) ANILCA. Section III pages 107, 109, 110, 113, 114, 116, and 117 outline outputs, management direction, primary management goals, standards and guidelines for Copper River Management Area, which includes Bering River. Section III pages 136, 137, 149 list management activities related to fish and wildlife resources on the Copper River Delta, Bering River and Rude River. The Plan restated the direction from section 501 (b) ANILCA, but was finalized before 36 CFR Part 241 was issued in 1991 and does not include specific guidelines.

II. Need to Evaluate Existing Direction - The existing direction is vague and can be interpreted in a number of ways. It does not elaborate how the direction in section 501 (b) ANILCA will be implemented in a clear manner nor what the conservation of fish and wildlife means in terms of overall management direction and priorities. The direction is also dated. For example, in the 1980's enhancement was the primary goal in terms of commercial fisheries. With the information gained from past projects and recognition of impact of the State hatcheries, the goal now might be to gain an understanding of this dynamic, intact system and how we might better conserve and protect it. Several items need to be evaluated including the Desired Future Condition description, forest-wide standards and guidelines, management prescriptions, and expected outputs.

The organization of the "Desired Future Condition" section and the descriptions for the various resources need to be evaluated with regard to the concept of having a primary purpose of conserving fish and wildlife resources and their habitats. The statement "The Copper River-Bering River will continue to be managed with primary emphasis on the conservation of fish and wildlife and their habitat, and with the emphasis strengthened." While reiterating the direction for the area, does not paint a picture of how management will change or the desired future condition for this resource. It is unclear what "emphasis

strengthened" means. The description of the fish and wildlife resources need to be evaluated using final rule 36 CFR Part 241. Section 241.21 defines Fish and Wildlife as: "... any member of the animal kingdom, including without limitation any mammal, fish, bird, amphibian, reptile, mollusk, crustacean arthropod, or other invertebrate, and includes any part, product, egg, or offspring thereof, or dead body or part thereof ... birds also include any migratory or endangered bird for which protection is afforded by treaty or other international agreement.

It may be more appropriate to describe the amounts/dispersal of vegetation types and successional stages, i.e. habitats desired for the various wildlife species present on the Copper River-Bering River portion of the Forest and include how the successional changes on the Copper River Delta fit into the desired future condition and ANILCA sec. 501 (b) direction.

The Fisheries description of desired future condition does not reference section 501 (b) ANILCA. The discussion of the fisheries resource needs to be evaluated in the same manner. What is the desired future condition from a biological standpoint? The human use standpoint appears to be addresses, i.e. commercial and sport fish demand, but not the habitat desired. This may be the appropriate place to express how we hope to gain a better understanding of the fisheries habitat relations on the Delta.

The standards, guidelines, goals, and objectives need to be evaluated with section 501 (b) ANILCA and 36 CFR Part 241 in mind. The goals and objectives need to be specific and tied to the desired future condition. For example, the goal of "enhance wildlife habitat" is not meaningful unless we know what type of wildlife habitat (and for what species) we are trying to "enhance". The definition provided in 36 CFR 241.21 is very broad. Section 36 CFR 214.22 included direction for consistency determinations and is the core of this rule. It requires that multiple use activities "... may be permitted or authorized ... after a determination ... (is made) that (the) activity is consistent with the conservation of fish, wildlife and their habitat." This means that it cannot "... materially interfere with or detract from the conservation of fish, wildlife and their habitat." This section also includes direction in subpart (c) that "Guidelines ... consistent with this section may be developed for specific multiple-use activities as a part of the planning and implementation process required by ..." NFMA and 36 CFR part 219 National Forest System Land and Resource Management Planning.

III. Options to Consider in Revision - As described in the previous section the Forest should consider revising the Forest Plan to better reflect the direction given in Section 501 (b) of ANILCA and final rule 36 CFR 241. A more descriptive picture of how fish and wildlife and their habitat will be conserved in the Copper, Bering, and Rude river areas would appear to be appropriate for the desired future condition. It may be appropriate to consider the changes in forested condition which have occurred on Native Corporation lands when developing the desired future condition. Trade-offs may need to be discussed. Due to the wide variety of species present and habitat being managed, providing habitat for one species may detract from the habitat available for another or increase predator populations. This direction would then need to be carrying through to objectives, standards

and guidelines, expected outputs, implementation, and monitoring plan. Guidelines can be included to address consistency determinations and permit and activity authorizations as outlines in 36 CFR 241.22. The MOU establishing the Copper River Delta Shorebird Unit and the State's Critical Wildlife Habitat Management Plan could also be reviewed so all are consistent and complimentary.

The Revision can address the impacts of the Bering River access road and potential recreation development on wildlife and fisheries habitats. We can explore potential changes in Recreation Opportunity Spectrum Class designations and kinds of opportunities provided keeping Section 501 (b) ANILCA in mind. Mitigation measures can be developed.

The Revision can provide the guidelines and more detailed site specific direction that the "management area analyses" were to provide.

IV. Possible Outcomes of Continuing Current Management - If the guidance put forth in the existing Forest Plan is not revised, it will continue to be difficult to determine what desired condition we are striving for on the Copper River - Bering River and Rude/Copper River addition areas. Since the existing desired future conditions and goals are so open to interpretation, we will be unable to determine whether planned activities are contributing to the achievement of a "unified" or "agreed upon" desired future condition or whether these activities foreclose an option to manage the area for a more desirable condition. Without having "emphasis on protection of fish and wildlife habitats" defined, we cannot monitor the plan to determine if the Desired Future Condition is being met.