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May 29, 2015

Mr. Alan Bittner, Manager
U.S. Bureau of Land Management
Anchorage Field Office
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Anchorage, AK 99507
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Dear Mr. Bittner:

Thank you for the opportunity to provide comments and insight during the preliminary alternatives phase and evaluation for areas of critical environmental concern in the Bering Sea-Western Interior Resource Management Planning process.

The Pew Charitable Trusts is a non-profit organization working globally to apply a rigorous, analytical approach to improve public policy, inform the public and stimulate civic life. In Pew's U.S. Public Lands work in Alaska, Pew advocates balanced planning outcomes that protect public lands through various conservation allocations. In addition, we support protection of traditional landscapes and lands that support subsistence resources, quiet recreational opportunities, and ecologically significant areas through the land planning process.

The Bureau of Land Management's resource management planning job in the vast roadless regions of Alaska is an arduous one. In addition to managing its land and undertaking a major outreach effort, BLM is obligated to meet requirements of a substantial and to some extent, uniquely Alaskan legal framework in resource management planning.

Approximately 60 federally recognized tribes within the Bering Sea-Western Interior planning area possess government-to-government consultation privileges with agencies of the United States. The Anchorage Field Office is already demonstrating good progress encouraging public involvement and even taking an additional step to ask for input at the preliminary alternatives phase. Consultation with federally recognized tribes, however, is more than public involvement. Because this is the last time the Bureau will accept formal comment before the Draft Resource Management Plan is issued, and because communities of the region obtain a very high percentage of consumed food from the near-community habitat, it is important that the agency excels in communication and consultation with planning area tribal communities. We've included suggestions about ways BLM could improve outreach and consultation.

Appreciating that the BLM's vision for the Bering Sea-Western Interior planning efforts is to "sustain the diverse and intact ecosystems that support traditional subsistence lifestyles while recognizing the importance of BLM lands to rural economies," we commend your office on this overall approach and look forward to continued communication in the development of a draft plan that achieves this vision.

Wholesale lifting of ANCSA (d)(1) or other similar planning area withdrawals does not ensure balanced resource management. Retention and strengthening these withdrawals or creating layered allocations in areas deserving of protections would provide key safeguards for local community and ecological values.

Significant challenges exist in our ability to accurately predict impacts from the changing climate. Prudence and active conservation is essential for the future management of public lands, especially in the Bering Sea-Western Interior, an area already experiencing serious impacts from climate change.

Our organization recommends strong protections for Areas of Critical Environmental Concern (ACEC) and Riparian Conservation Areas (RCA), which encompass culturally important traditional landscapes, key habitats, water sources and other important natural values. Prioritizing and protecting sensitive areas such as critical areas and important watersheds will help preserve the character and biodiversity of the Bering Sea-Western Interior planning area while still allowing for development in suitable areas.

In conclusion, we urge the Bureau to provide strong protections for the culturally-important, traditional landscapes of the Bering Sea-Western Interior planning area. This can be accomplished by the creation of enduring layered protections for the nominated ACECs and RCAs to maintain landscape productivity and sustain the diverse and intact ecosystems supporting traditional subsistence lifestyles.

We look forward to continuing our positive working relationship with the Bureau through the issuance of the Draft Resource Management Plan and the eventual Record of Decision with the goal of creating the best possible management for the Bering Sea-Western Interior planning area for the long term. Our substantive comments follow.

Sincerely,



Ken Rait, Director
U.S. Public Lands
The Pew Charitable Trusts

**Bering Sea-Western Interior Resource Management Plan
Comments on Preliminary Alternative Concepts and Area of Critical Environmental Concern Review**

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The following is our response to the Bureau's request for input for the *Preliminary Alternative Concepts* phase and the *Areas of Critical Environmental Concern, Report on the Application of the Relevance and Importance Criteria* about how BLM lands in the Bering Sea-Western Interior planning area should be managed in the future.

THE PLANNING AREA

The Bureau of Land Management (BLM) is responsible for the management of approximately 13.4 million acres (21.6%) of the Bering Sea-Western Interior planning area covering 62.3 million acres. Not only is this region impressive in sheer size but also for the highly-productive ecosystems and abundant wildlife. Bordered on the north by the central Yukon River watershed, this planning area extends to the southern boundary of the Kuskokwim River watershed, spans from Denali National Park on the East to the Bering Sea in the West and includes remarkable habitat supporting fish, wildlife, and culturally significant Alaska Native subsistence livelihoods.

THE LEGAL FRAMEWORK

BLM is obligated to manage the public lands in accordance with its multiple-use mandate. The definition of "multiple use"¹ compels BLM to prioritize the national public interest in our public lands for long-term and short-term needs. The following points of enabling laws will be central as the Bureau develops the plan alternatives for the Draft Resource Management Plan for the Bering Sea-Western Interior region.

Federal Land Policy Management Act or FLPMA provides the general framework for BLM's land management decisions. FLPMA directs the Bureau to manage lands for multiple uses, but one of Congress's goals in promulgating the statute was that public lands would be "managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values . . ." as well as to "preserve and protect certain public lands in their natural condition" and provide "food and habitat for fish and wildlife."² Section 202 of FLPMA,³ directs the BLM to develop resource management plans and requires that in developing plans, the agency will:

- Use and observe the principles of multiple use and sustained yield and recognize that multiple use does not mean all uses in every place;
- Give priority to designating and protecting areas of critical environmental concern;
- Weigh long-term benefits to the public against short-term benefits; and
- Rely, to every extent possible, on an inventory of public lands, their resources, and other values.

The Alaska National Interest Lands Conservation Act or ANILCA provides direction on how BLM must undertake the planning process, especially regarding subsistence and Wild and Scenic Rivers. Alaska National Interest Lands Conservation Act Section 810 recognizes that subsistence uses are a critical public interest and provides a framework to consider and protect subsistence uses in BLM's decision making process. Section 810 does not "prohibit all federal land use actions which would adversely affect subsistence resources but sets forth a procedure through which such effects must be considered and provides that actions which would significantly restrict subsistence uses **can only be undertaken if they are necessary and if the adverse effects are minimized.**"⁴ (Emphasis added.)

¹ 43 U.S.C. 1702 (c)

² 43 U.S.C. § 1701(a)(8)

³ 43 U.S.C. § 1712

⁴ *Amoco Production Co. v. Village of Gambell, Alaska*, 480 U.S. 531, 544 (1987).

The National Wild and Scenic Rivers Act or WSRA, as Amended by ANILCA, imposes constraints on BLM’s management of designated rivers. Congress enacted the WSRA in 1968 to identify and protect certain rivers “which, with their immediate environments, possess outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values.”⁵ The WSRA establishes that its component rivers “shall be preserved in free-flowing condition, and that they and their immediate environments shall be protected for the benefit and enjoyment of present and future generations.”⁶

The National Environmental Policy Act or NEPA requires the BLM to consider environmental impacts of proposed actions and to inform the public environmental concerns were considered in their decision making process. To this end, NEPA imposes a duty on the Bureau to take a ‘hard look’ at environmental consequences. An EIS must take a “hard look” at the ***environmental consequences*** of a proposed action, which includes a “thorough analysis of the potential environmental impacts,”⁷ including “all foreseeable direct and indirect impacts,”⁸ The goal of the NEPA process is to help federal agencies make decisions that are based on understanding environmental consequences, and to help agencies take actions that protect, restore, and enhance the environment.⁹ The continuing overarching environmental policy of the BLM is “to create and maintain conditions under which people and nature can exist in productive harmony and fulfill the social, economic, and other requirements of present and future generations of Americans.”¹⁰ This requires accumulating and evaluating all relevant data, and using that data to make the best and most sustainable plan for the public lands under the agency’s jurisdiction.

OVERVIEW PRELIMINARY ALTERNATIVE CONCEPTS VISION

Nearly all of the communities in within the Bering Sea-Western Interior planning area are federally recognized tribal communities with government-to-government consultation privileges with agencies of the United States. These planning area communities substantially rely on subsistence resources for the majority of food consumed. The BLM’s vision for the Bering Sea-Western Interior planning efforts is to “sustain the diverse and intact ecosystems that support traditional subsistence lifestyles while recognizing the importance of BLM lands to rural economies.” We commend your office on this overall approach.

Because this is the last time the Bureau will accept formal comment before the Draft Resource Management Plan is issued, and because communities of the region obtain a very high percentage of consumed food from the near-community habitat, much of which is managed by the Bureau, it is important that the agency excels in communication and consultation with planning area communities. The following are suggestions about ways BLM could improve outreach and consultation.

GOVERNMENT-TO-GOVERNMENT CONSULTATION

Under Executive Order 13,175, the federal government is required to consult with federally recognized tribal governments when making decisions that may affect tribal interests. Consultation is essential for sustainable and just management of public land traditionally used by tribes. Especially important in the

⁵ 16 U.S.C. § 1271

⁶ *Id.*

⁷ *Klamath-Siskiyou Wildlands Ctr.*, 387 F.3d at 993

⁸ *Idaho Sporting Cong. v. Rittenhouse*, 305 F.3d 957, 973 (9th Cir. 2002)

⁹ *See*, BLM NEPA Handbook, H-1790-1, § IX; *see also* 40 C.F.R. § 1500.1 (c)

¹⁰ BLM NEPA Handbook, H-1790-1, § 1.1

Bering Sea-Western Interior planning area, consultation is required with approximately 60 federally recognized tribes and tribally authorized bodies. A vast majority of Bering Sea-Western Interior planning area residents are members of federally recognized tribes.

Through a provision in a 2010 omnibus bill, the requirement to consult with tribes was explicitly extended to include Alaska Native corporations. The federal guidance states that all federal agencies must consult with Alaska Native corporations “on the same basis as Indian tribes.”¹¹

BLM Alaska is required to engage in consultation but, to our knowledge, does not receive additional resources supporting these efforts even though 229 federally recognized tribes are located in Alaska; over 100 tribes are in the agency’s active planning areas; and, more BLM land exists in Alaska than in any other state. Likewise, tribal governments that wish to engage in consultation must find the personnel, time, and funding to effectively participate in numerous meetings. These difficulties are exacerbated in Alaska, a state characterized by its tremendous size, high cost of transportation, almost double the number of tribes of any state in the lower 48, remote populations, extreme weather, and complex social and community structures.

BLM Alaska has no Alaska-specific consultation policy and the agency’s National Consultation Policy is being rewritten with little involvement by tribes nationally and no involvement from tribes in Alaska. It seems inconsistent to develop a policy intended to encourage two-way conversation with an entity without involving that entity in the development of the policy. Especially given that Alaska has nearly twice the number of tribes and nearly twice the acreage of agency land than in any other state, one could conclude the agency is not taking its consultation responsibilities seriously or that its efforts in consultation are misdirected.

Challenges to Government-to-Government Consultation in Alaska

- **Communicating in Alaska.** Alaska is an enormous state with extreme weather, and communities have both overlapping and distinct interests.
- **Travel in Alaska.** Many communities in Alaska are extremely remote and most are reachable in person only by airplane when weather permits.
- **Knowing what counts as consultation.** Given the complexity of the legal consultation framework, it is not always clear when an activity is part of the consultation process or another element of the engagement framework.
- **Giving adequate notice.** Alaska’s federal agencies lack a consistent approach and process for consultation.
- **Ensuring all appropriate parties participate.** There is a lack of consistency among agencies as to who participates in consultation meetings, a lack of clarity in federal agencies about who to contact within the tribes and varying views on the role of tribally-authorized organizations in the consultation process.
- **Exchanging the right information at the right time.** Core to effective consultation is information exchange, which can be hampered by form, timing, and content.
- **Consulting at the right time.** Mismatches between subsistence calendars and agency action calendars can lead to agency initiation of consultation when Alaska Native experts are not available to participate.

¹¹ OMB Guidance, *supra* note 20. The memorandum state that, “pursuant to Pub. L. 108-199, 118 Stat. 452, as amended by Pub. L. 108-447, 118 Stat. 3267, OMB and all Federal agencies are required to ‘consult with Alaska Native corporations on the same basis as Indian tribes under Executive order No. 13175.’”

- **Establishing a flexible and collaborative process.** The consultation process is often viewed as more focused on information sharing rather than collaborative decision-making.
- **Ensuring accountability and transparency.** Agencies often fail to inform communities about how consultation informs decision-making, leading to a lack of transparency and fewer mechanisms to ensure accountability.
- **Operating with limited capacity and resources.** In many instances, both Alaska Native communities and federal agencies lack the capacity, training, and resources needed to effectively engage in robust consultation.
- **Coordinating consultation.** Due to various limitations, agencies rarely work collaboratively across agencies to engage with communities, which can create inefficiency, confusion, and repetitive information sharing.
- **Establishing trust.** Trust is an overarching concern that cuts across other challenges, from communicating effectively to ensuring accountability.

Recommendations on Government-to-Government Consultation: We recommend the Bureau:

- Commit additional staff resources to consultation for purposes of Resource Management Planning in Alaska:
 - Consider establishing a staff position in each Field Office to coordinate consultation efforts with tribes and the planning manager;
 - Consider establishing local agency positions in key communities to build long-term relationships, possibly by co-funding positions with other federal agencies employing tribal individuals in remote communities (EPA IGAP);
 - Expand the tribal liaison staff at the State office level to provide hands-on support for tribal outreach in Field Offices; and
 - Establish a third-party ombudsman to help facilitate the consultation process.
- Commit resources to developing and adopting an Alaska-specific consultation policy, in consultation with Alaska tribes, that identifies best practices for engaging tribes in consultation and establishes consultation standards to be followed by agency staff; [Federal agencies are required to develop written procedures to ensure they have accountable consultation processes.]¹²
- Create an Alaska-specific chapter in the National BLM Consultation policy to account for the unique Alaskan circumstances (see challenges above) and number of federally recognized tribes in the state;
- If it has not yet done so, notify BSWI planning area tribal authorities of the active planning effort and offer tribes the opportunity for consultation with the Bureau on a government to government basis; and
- Create a link for tribes on the BSWI website where information can be obtained about consultation and identifying the Tribal Liaison Officer (or their designee) for the planning effort.

OPTIONS FOR IMPROVING THE PUBLIC PROCESS FOR BLM RESOURCE MANAGEMENT PLANS

Public outreach is different from federally-mandated government-to-government consultation. Throughout the planning process, public outreach allows the general public to be aware of the planning process and have the opportunity to provide useful information or bring concerns to the Bureau's attention. The Anchorage Field Office has already shown a commitment to encouraging public

¹² Exec. Order 13175, *supra* note 1, 1(b) (definition of 'Indian tribe')

participation by hosting meetings in the planning area, and has gone beyond legal requirements to hold preliminary alternative concepts outreach meetings.

In remote rural Alaska, public meetings must be conducted at a time and in a manner that recognizes cultural differences in communication styles. Agency staff are usually conversant in Bureau terminology and western-style conversation. Communication in a remote rural community must happen in a manner conducive to local culture and custom to be most effective.

Recommendations on Staff Training: Agency staff need training in cultural differences for presentations in Alaska native communities. For example, persons accustomed to the western culture are often unaccustomed to silence in conversations, but silent breaks in conversation is often the norm in remote rural Alaskan communities. Agency staff making presentations in remote rural communities should understand this practice and allow time for input from meeting attendees. In some cultures, silence may signify respect, thoughtfulness or seriousness or may be needed to process translation from the native language before comment. At a recent meeting in Grayling, few of the 35 attendees spoke to address the proposed concepts because the presenter allowed almost no time for others to speak in the two-hour presentation.

Recommendations on Appropriate Meeting Notice: We recommend meetings be scheduled and published on-line and through local radio public service announcements at least 20 days in advance of the meeting. Several meetings were scheduled during the Preliminary Alternative Concept stage with short notice.

Recommendations on Communicating about a Complex Plan: In the past, rural residents have testified that due to the document size and complexity, it was very difficult to develop an understanding of a 3,000-page draft plan, despite the residents' best efforts to squeeze learning about the plan into busy lives. In the roll-out of the Draft Bering Sea-Western Interior Resource Management Plan, we recommend a series of teleconference meetings or webinars, if connectivity is reliable, to introduce complex information a section at a time.

AREAS OF CRITICAL ENVIRONMENTAL CONCERN

Both FLPMA and the BLM's ACEC Manual 1613 emphasize the BLM's important duty to administratively designate and protect Areas of Critical Environmental Concern (ACECs). For example, FLPMA states:

*The Congress declares that it is the policy of the United States that – ...regulations and plans for the protection of public land areas of critical environmental concern be promptly developed.¹³
The Secretary shall prepare and maintain on a continuing basis an inventory of all public lands and their resource and other values (including, but not limited to, outdoor recreation and scenic values), giving priority to areas of critical environmental concern.¹⁴ In the development and revision of land use plans, the Secretary shall – ...give priority to the designation and protection of areas of critical environmental concern.¹⁵*

¹³ FLPMA Title I Sec. 102(a) [43 USC 1701]

¹⁴ FLPMA Title II Sec. 201(a) [43 USC 1711]

¹⁵ FLPMA Title II Sec. 202(c) [43 USC 1712]

The BLM has ample authority in existing law and policy¹⁶ to actively manage Bureau lands for conservation purposes,¹⁷ and can effectively protect a wide array of wildlife and other resources as long as it utilizes authorized management tools that will endure over time. The Federal Land Policy Management Act (FLPMA) prioritizes ACECs and their role as a tool to protect ecosystem attributes at a landscape scale. FLPMA states that the agency must “give priority to the designation and protection of areas of critical environmental concern.”¹⁸ ACECs are areas “where special management is required (when such areas are developed or used or where no development is required) to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources, or other natural systems or processes.”¹⁹

ACEC creation and protective management are clearly intended to be a high priority within the Bureau’s mission. ACECs provide an important mechanism for the BLM to actively conserve and recover imperiled species, amongst a broad array of other conservation objectives.

In addition, the Bureau’s manual directs that, for ACECs proposed in at least one alternative, management prescriptions are to be “fully developed” in the RMP.²⁰ BLM should include specific management prescriptions for each ACEC that will protect the highlighted values, such as habitat for subsistence resources, mineral withdrawal or route designations.²¹ Setting out real protections and detailed management prescriptions in the RMP will ensure security of the ACEC values.

Previous ACEC Recommendations

In our scoping comments for the Bering Sea-Western Interior plan, we suggested that BLM consider ACEC designations on BLM land adjacent to anadromous streams in the planning area to provide landscape scale / watershed based protections for near shore riverine habitat supporting salmon species. The recommendations were as follows:

“Proposed Kuskokwim River King Salmon ACEC

The Kuskokwim River has experienced poor Chinook salmon returns since 2010. With salmon the staple of the traditional and customary lifestyle of communities in the Bering Sea-Western Interior area, the Bureau should create an ACEC on BLM land adjacent to the Kuskokwim River to protect Chinook salmon runs as this declining trend over time is of a conservation concern.

Healthy and abundant Chinook salmon are essential to the cultural, nutritional, and economic well-being and way of life on the Kuskokwim River. The subsistence salmon fishery in the Kuskokwim is one of the largest and most important subsistence fisheries in North America. The Kuskokwim River has experienced below average Chinook salmon returns, missed escapement goals, and subsistence restrictions since 2010. Late subsistence restrictions were imposed to protect tributaries of concern. In 2011, the Kuskokwim River experienced the second lowest estimated total run and spawning escapement of Chinook salmon. The Kwethluk and Tuluksak rivers did not meet Chinook salmon sustainable escapement goals for the fourth and fifth consecutive years, respectively. The George River

¹⁶ See, e.g., Federal Land Policy and Management Act of 1976 (FLPMA), 43 USC, 1701 et seq.; BLM Manual Special Status Species Management, 6840 (July 2008); BLM Manual, Wildlife and Fisheries Management, 6500.

¹⁷ Active management of public lands for conservation includes actions to improve the status quo for impacted resources, including wildlife (rehabilitating land with illegal off-road vehicle trails) as well as the removal of threats to resources and wildlife (eg, withdrawal from mining laws).

¹⁸ 43 U.S.C. § 1712(c)(3) (emphasis added).

¹⁹ *Id.* § 1702(a).

²⁰ Manual 1613, Section .22 (Develop Management Prescriptions for Potential ACECs)

²¹ *Id.* and Section .33.C (Provision for Special Management Attention)

did not meet its escapement goal in 2011, nor had the escapement goal been met in three of the previous four years. Only one tributary (of four with weir based escapement goals), achieved the escapement goal in 2011.

In 2013, Chinook salmon escapement could very well be by far the lowest Chinook salmon escapement on record. The Bethel Test Fishery was by far the lowest on record. Not a single weir based tributary escapement goal was met for Chinook salmon nor is it likely that the drainage-wide escapement goal will have been met. Furthermore, all but one tributary had the lowest return on record.

Low returns of Chinook salmon had a drastic effect on upriver Kuskokwim communities that had a difficult time catching Chinook salmon and meeting their subsistence needs. This is not the first year where middle and upriver communities have suffered.

Proposed Yukon River King Salmon ACEC

The State of Alaska's Yukon Salmon Management Area encompasses the largest river in Alaska. The Yukon River and its tributaries drain an area of approximately 220,000 square miles within Alaska, while the Canadian portion of the river accounts for another 110,000 square miles. The river flows 2,300 miles from its origin through the Bering Sea-Western Interior planning area to its terminus in the Bering Sea.

King salmon or 'Chinook' and pink or 'Chum' salmon, both summer and fall, are of the most importance to the Yukon River area. Chinook salmon have been in a prolonged period of low productivity and this has resulted in much hardship to the residents of the Yukon River drainage. Chum salmon returns, while better than Chinook returns, have been erratic since 1993, with some very poor returns that restricted both commercial and subsistence fishing.

ACEC Recommendations: The RMP should identify key habitat for rare and imperiled species in the field office, and create Areas of Critical Environmental Concern to protect their critical habitat. Consideration should be given to ACEC designation on BLM land adjacent to anadromous streams in the planning area to protect the Kuskokwim and Yukon River drainages as they intersect with BLM land. Such ACEC protections on the BLM land adjacent to the Kuskokwim and Yukon Rivers and their tributaries could help king salmon runs as this declining population trend over time is of a serious conservation concern. Areas of Critical Environmental Concern should be established to provide real protections for near-shore rearing habitat for fingerling and smolt. Given the importance of subsistence resource to the region, Areas of Critical Environmental Concern should be established to protect anadromous fish habitat, as well as caribou calving, wintering, foraging and migration habitat. Pew will submit additional information to BLM between now and the release of the draft RMP to nominate specific areas for protection."

Despite the significance and sensitivity of this issue, there is nothing in BLM's *Areas of Critical Environmental Concern, Report on the Application of the Relevance and Importance Criteria* to explain why the above recommendations were not considered.

Recommendation on Previous Submittal: BLM should consider ACEC designation on BLM land adjacent to anadromous streams in the planning area to protect near shore habitat important to salmonids.

BSWI Areas of Critical Environmental Concern Report on the Relevance and Importance Criteria
The *Bering Sea-Western Interior Resource Management Plan, Areas of Critical Environmental Concern Report on the Application of the Relevance and Importance Criteria, April 2015* reviewed existing and

nominated Areas of Critical Environmental Concern to recommend areas to be carried forward for consideration in the Draft Resource Management Plan. Six of the eleven existing ACECs in the Bering Sea-Western Interior planning area have been carried forward for consideration in the draft plan. Sixteen new ACECs were nominated and ten were found to meet the relevance and importance criteria meriting consideration in the draft plan. In total, the acreage of existing and nominated ACECs in the BSWI planning area appears to be between 4 million and 5.9 million acres with an overlap of some acreage in nominated areas. The overlap acreage for ACECs being carried forward into the draft plan has not been identified by BLM.

Several Areas of Critical Environmental Concern were nominated by tribal communities but were not recommended for consideration in the draft plan. These areas are:

- Grayling Area Habitat ACEC, nominated by the Grayling IRA Tribal Council totaling 98,682 acres was not accepted by BLM, given its determination the nominated area had no cultural significance under 'importance values';
- Old Anvik Village Area ACEC, nominated by the Anvik Tribal Council totaling 60,259 acres was not accepted by BLM, given its determination the nominated area had no cultural significance under 'importance values';
- Egavik Creek Watershed ACEC, nominated by the Native Village of Unalakleet totaling 60,052 acres was not accepted by BLM, given its determination the nominated area had no cultural significance under 'importance values';
- Golsovia River Watershed ACEC, nominated by the Native Village of Unalakleet totaling 21,771 acres was not accepted by BLM, given its determination the nominated area had no cultural significance under 'importance values'; and
- Honhosa River ACEC, nominated by the Koyukuk Tribal Council totaling 93,412 acres which was not accepted by BLM, given its determination the nominated area had no cultural significance under 'relevance values' or cultural significance under 'importance values'.

Recommendation on Rejected Tribally Nominated ACECs: BLM should dedicate staff time to visit the tribal council of each nominating tribe to make sure information provided in the nomination paperwork sufficiently described the nominated area's local significance and values, especially for cultural values.

One Area of Critical Environmental Concern nominated by Pew for the Tagagawik River was not recommended for consideration in the draft plan.

Recommendation on Tagagawik ACEC: BLM should allow a refined submittal on the Tagagawik nomination by Pew within 60-days for further consideration by BLM.

ACECs to Protect Historic and Cultural Values

Cultural and historical values on BLM-managed lands can be protected through establishment of ACECs. In addition to protecting historical or cultural resources, ACECs can be designated to protect culturally important subsistence resources. BLM's own publication about the Fortymile ACEC in the Eastern Interior Field Office states the following: "The Fortymile Caribou herd is one of the most important subsistence resources in east-central Alaska. Once estimated to number more than 500,000 animals, the herd is also an international resource, with a considerable portion of the historical range occurring in

Canada...”²² BLM should consider areas where traditional subsistence activities occur in Alaska as eligible for designation as an ACEC.

PROTECTION OF SPECIAL AREAS

Under FLPMA, the Bureau is obligated to “give priority to the designation and protection of areas of critical environmental concern [ACEC].”²³ Additionally, the BLM has a variety of tools for protecting natural values. We applaud the Bureau’s study of aquatic resource values and proposed use of special management designation of Riparian Conservation Areas (RCAs). Key tribal communities of the planning area, without exception, are most concerned about continued health of watersheds that provide drinking water for the community and sustain fish and wildlife resources upon which communities depend. To achieve the stated objective for subsistence in the Preliminary Alternatives Tables, to “Manage habitat to contribute to sustainable subsistence opportunities as well as ecosystem health” special management of watersheds nominated for ACECs will need to be employed to limit development intrusions and protect natural values.

Layering Administrative Designations

Nothing prevents the BLM from overlapping administrative designations, such as Riparian Conservation Areas and Areas of Critical Environmental Concern or Riparian Conservation Areas and Wild and Scenic River segments with mineral withdrawals. These overlapping administrative designations ensure that BLM protects both the relevant and important values associated with the ACECs while maintaining the health of the watershed. In addressing objections to overlapping of administrative designations (through “establishment of ACECs and Wild and Scenic Rivers”) raised in connection with the Monticello, Utah RMP, the BLM responded, appropriately:

“Layering” is planning. Under FLPMA’s multiple use mandate, BLM manages many different resource values and uses on public lands. Through land use planning BLM sets goals and objectives for each of those values and uses, and prescribes actions to accomplish those objectives. Under the multiple use concept, BLM doesn’t necessarily manage every value and use on every acre, but routinely manages many different values and uses on the same areas of public lands. The process of applying many individual program goals, objectives, and actions to the same area of public lands may be perceived as “layering”. BLM strives to ensure that the goals and objectives of each program (representing resource values and uses) are consistent and compatible for a particular land area. Inconsistent goals and objectives can lead to resource conflicts, failure to achieve the desired outcomes of a land use plan, and litigation. Whether or not a particular form of management is restrictive depends upon a personal interest or desire to see that public lands are managed in a particular manner. All uses and values cannot be provided for on every acre. That is why land use plans are developed through a public and interdisciplinary process. The interdisciplinary process helps ensure that all resource values and uses can be considered together to determine what mix of values and uses is responsive to the issues identified for resolution in the land use plan. Layering of program decisions is not optional for BLM, but is required by the FLPMA and National BLM planning and program specific regulations.²⁴

²² https://www.blm.gov/epl-front-office/projects/lup/1100/53028/57720/2014-01-02_MF_FM_ACEC_summary_final.pdf

²³ 43 U.S.C. § 1712(c)(3).

²⁴ http://www.blm.gov/pgdata/etc/medialib/blm/ut/price_fo/Planning.Par.47167.File.dat/Appendix_24-Multiple_Use_and_Multiple_Management.pdf

Recommendation on Layering Protections: To achieve management goals identified in the Preliminary Alternatives Concepts for Bering Sea-Western Interior, BLM should create management allocations and consider layering these designations to conserve important habitats and subsistence values, especially within ACECs.

Special Areas and Mineral Withdrawals

BLM's ACEC Manual explicitly provides for and recognizes mineral withdrawal as an appropriate management prescription for protecting ACEC values.²⁵ For example, the Heritage Sites ACEC is recommended for mineral withdrawal in the Price RMP. Once BLM makes the recommendation in an RMP, DOI can move forward with a formal withdrawal process, which begins with a Federal Register notice that "segregates" (puts immediately off limits) the lands recommended for withdrawal until the process is completed.

There are six major public land orders in the Bering Sea-Western Interior planning area withdrawing land from locatable mining, mining leasing or oil and gas development. Generally referred to as ANCSA 17 (d)(1) withdrawals, public land orders 5180, 5184, 5172, 5173, 5179, and 5186 all exist in the planning area and each have different withdrawal directives. For instance, PLO 5180 prohibits location and entry under the mining laws except for location of metalliferous minerals, and leasing under the Minerals Leasing Act, meaning that the land covered under this (d)(1) withdrawal is open to mining. Because of the different effects of each public land order, we will keep our comments here general in nature. The resources in the Bering Sea-Western Interior planning area include many values that merit protection. Protection of existing and proposed ACECs and RCAs by prohibiting mining, oil or gas development must be a priority in the Bering Sea-Western Interior planning process to achieve the vision and goals of the RMP.

Recommendation on Prohibiting Development: Subject to valid existing rights, the BLM should retain existing or institute new withdrawals to prohibit mining and oil and gas development within BSWI ACECs or RCAs to protect important values and proceed to 'segregate' the land recommended for withdrawal until the withdrawal process is complete.

PROTECTIONS OF LANDS WITH WILDERNESS CHARACTERISTICS

The total acreage of BLM-managed lands in the BSWI planning area is 13,458,006 acres. A total of 13,382,250 acres met the size criteria of at least 5,000 continuous acres. The total percentage of lands with wilderness characteristics (LWCs) in the planning area is 98.7 percent or 13,382,250 acres.

We recommend strong protections for important lands identified as having wilderness characteristics, especially those also considered for ACEC or RCA status. Examples of land use plan decisions that could protect lands with wilderness characteristics include, but are not limited to, the following:

- Recommend withdrawal from mineral entry;
- Close to leasing or allow leasing only with no surface occupancy with no exceptions, waivers, or modifications;
- Designate as right-of-way exclusion areas;
- Close to construction of new roads;
- Designate as limited to motor vehicle use on designated routes;
- Close to mineral material sales;

²⁵ See, Manual 1613, Section .33.C (Provision for Special Management Attention).

- Exclude or restrict with conditions certain commercial uses or other activities; and
- Retain public lands in federal ownership.

Wildlife Habitat and Riparian Areas

FLPMA acknowledges the value of wildlife habitat found on public lands and recognizes habitat as an important use.²⁶ Due to their unspoiled state, lands with wilderness characteristics provide valuable habitat for wildlife, thereby supporting resources and uses of the public lands. Many species are also dependent on riparian and other wetland habitats, especially during either seasonal migrations or seasons and years when area habitats are dry and unproductive. Wilderness quality lands support biodiversity, watershed protection and overall healthy ecosystems.

Cultural Resources

FLPMA also recognizes the importance of “historical values” as part of the resources of the public lands to be protected.²⁷ The lack of intensive human access and activity on lands with wilderness characteristics helps protect resources. Managing lands to protect wilderness characteristics will also protect culturally important traditional uses such as subsistence harvest from traditional landscapes now managed by the federal government.

Quality of Life

The undeveloped lands located within the Bering Sea-Western Interior planning area help define the character of this area and are an important component of the quality of life for local residents and future generations. Protection of lands with wilderness characteristics enables the customs, cultures, and the culturally important subsistence uses to be sustained.

Recommendation on Range of Alternatives: Provide a range of alternatives regarding the protection of lands with wilderness characteristics, including an alternative that protects all identified LWCs supporting important subsistence uses.

Recommendation on Protection of LWCs: For lands determined to be managed for protection of wilderness characteristics, apply strong management prescriptions, including layered administrative allocations to retain wilderness qualities and subsistence productivity.

CULTURAL AND HISTORIC RESOURCES

FLPMA obligates the BLM to protect cultural, geologic, and paleontological resource values.²⁸ In the context of historical and cultural resources, the National Historic Preservation Act of 1966 (NHPA) affords heightened protection to these resources, establishing a cooperative federal-state program for the protection of historic and cultural resources.²⁹ In particular, the review process set out in Section 106 obligates the BLM to consider the effects of management actions on historic and cultural resources listed or eligible for inclusion under NHPA.³⁰ Additionally, Section 106 requires the BLM to consider the effects of its management actions on all historic resources and to give the Advisory Council on Historic Preservation an opportunity to comment before the BLM takes action. Section 110 of the NHPA requires the BLM to assume responsibility for the preservation of historic properties it owns or controls, and to

²⁶ 43 U.S.C. § 1702(c)

²⁷ 43 U.S.C. § 1702(c)

²⁸ (43 U.S.C. §§ 1701(a)(8) 1702(c))

²⁹ (“NHPA”) (16 U.S.C. § 470 et seq.)

³⁰ (16 U.S.C. § 470f)

manage and maintain those resources in a way that gives “special consideration” to preserving their historic, archaeological, and cultural values.³¹ Section 110 also requires the BLM to ensure that all historic properties under the jurisdiction of the field office are identified, evaluated, and nominated to the National Register of Historic Places.³² The Anchorage Field Office must carefully consider the effects of all RMP decisions on the historical and cultural values located in the planning area.

Cultural and Traditional Landscapes

The National Historic Preservation Act (NHPA) requires BLM to take into account the effect of its actions on historic properties.³³ Regulations implementing the NHPA discuss “properties of traditional religious and cultural significance” and “properties of traditional religious and cultural importance.”³⁴ BLM designates such areas as “traditional cultural properties” (TCP). TCPs are given special management attention in order to ensure the protection of areas of traditional religious and cultural importance. Traditional cultural properties can include traditional subsistence landscapes used for hunting or gathering resources or places that traditionally have a wealth of resources for subsistence activities (e.g. caribou movement corridors, wood for fuel and construction, plants for ceremonial use, etc.).

TCPs can include large areas and a variety of culturally important activities, such as the Medicine Lakes Highlands Traditional Cultural Places District in California (approximately 24,000 acres, sacred sites and training areas for medicine men) and Mount Taylor Traditional Cultural Property in New Mexico (over 400,000 acres, pilgrimage sites, traditional cultural and religious activities, which include gathering items and hunting). In the case of these TCPs, the tribal entities petitioned for their recognition and then negotiated a role in their management.

Additionally, Section 106 of NHPA requires that BLM identify historic properties affected by federal “undertakings,” such as land use planning, and to develop measures to avoid, minimize, or mitigate any adverse effects on historic properties.³⁵ NHPA regulations provide that an agency “shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey.”³⁶ Historical properties may include traditional subsistence areas. Identifying traditional cultural and historical properties and seeking their protection could also protect subsistence activities.

Recommendation on Traditional Cultural Landscapes: We recommend the Bureau conduct a thorough review under Section 106 of the NHPA to afford protections of traditional landscapes used to sustain culture in subsistence activities. BLM’s goal should be to protect, conserve, and where appropriate restore cultural and historical sites and landscapes. To that end, BLM should:

- Consult with the local tribal government to determine whether there are sites or specific areas of particular concern, including landscapes supporting culturally important subsistence resources or sites of traditional religious and cultural significance.
- Determine the sites or areas that are most vulnerable to current and future impact and adopt management actions necessary to protect, conserve, and restore cultural sites and landscapes.

³¹ (16 U.S.C. § 470h-2(a)(1))

³² *Id.* § 470h-2(a)(2)(A)

³³ 16 U.S.C. § 470f.

³⁴ 36 C.F.R. § 800

³⁵ 16 U.S.C. § 470f; 36 C.F.R. §§ 800.4, 800.6.

³⁶ 36 C.F.R. § 800.4(b)(1).

- Complete a Cultural Resource Management Plan that coordinates with the objectives of the RMP and seeks to provide for an appropriate proactive process of inventorying for cultural resources (including landscapes supporting culturally important subsistence resources), making determinations of eligibility for the National Register, and seeking to nominate eligible properties to the National Register. The RMP should establish a timeline for completing the Cultural Resources Management Plan, and prioritize areas to be inventoried for cultural resources.
- Outline specific management actions, withdrawals or closures to protect, conserve, and where appropriate restore cultural resources.

WILD AND SCENIC RIVERS

BLM must undertake wild and scenic rivers eligibility and suitability studies as part of the Bering Sea-Western Interior plan. The Wild and Scenic Rivers Act requires agencies to address potential wild and scenic rivers in all planning efforts.³⁷ Rivers deemed eligible for inclusion in the Wild and Scenic Rivers System must be managed to protect their values until the suitability determination is made, and suitable rivers must be managed so as to protect their qualities until Congress has an opportunity to designate the river as part of the System.

Most tribally nominated ACECs included important river watersheds and water sources. Protective management prescriptions specific to a river segments' values that prompt findings of wild and scenic eligibility and suitability must include important cultural aspects of rivers to tribal communities. Consideration of management prescriptions or administrative designations that could help protect features that contribute to the segments' eligibility and suitability are helpful (wilderness study areas, areas of critical environmental concern, riparian conservation areas, visual resource management classes, mineral withdrawals, etc.).

Recommendation on Wild and Scenic Rivers: For the stream segments found to be suitable for Wild and Scenic River designation, BLM should consider the following management options protective allocations:

- Withdrawn from mineral entry;
- Visual Resource Management Class I or Class II areas;
- Right-of-way exclusion areas;
- Subject to remedial actions to ensure sensitive species habitat is maintained or enhanced;
- Subject to extensive and reliable no-surface-occupancy stipulations for all activities;
- With related ACECs closed to mining, oil and gas exploration and development; and
- Other appropriate measures.

SUBSISTENCE AND WILDLIFE VIABILITY

Because subsistence resources are the primary food source for communities in the region, great care is required in planning actions that affect these resources. Providing functioning habitat for wildlife and is part of the BLM's responsibilities in management of public lands for multiple use and sustained yield. FLPMA specifically directs that management of public lands "takes into account the long-term needs of future generations" for wildlife, as well as other resources, and is implemented toward "achievement

³⁷ (16 U.S.C. § 1276(d)(1)).

and maintenance in perpetuity”.³⁸ Achieving these goals for wildlife can best be realized by establishing well-defined, conservation allocations for habitat critical to wildlife populations.

Wildlife Corridors, Wintering and Calving Areas

The Bering Sea-Western Interior region contains multiple ecosystems that remain ecologically intact and biologically diverse; they are crucial for both subsistence economies and quality of life. Wildlife migration corridors, wintering and calving areas should be determined for moose and the caribou herds that use BLM land in the Bering Sea-Western Interior. These areas should be identified and provided protections in the Resource Management Plan with special consideration for the:

- Western Arctic Caribou Herd;
- Beaver Mountains Caribou Herd;
- Sunshine Mountains Caribou Herd;
- Farewell-Big River Caribou Herd;
- Mulchatna Caribou Herd;
- Nushagak Peninsula Caribou Herd;
- Nelchina Caribou Herd;
- Denali Caribou Herd; and
- Moose wintering habitat.

Recommendation on Wintering, Migration and Calving: BLM should protect critical caribou and moose migration, wintering and calving habitat in the Bering Sea-Western Interior RMP.

CONCLUSION

We encourage BLM to consider the above recommendations, especially those for improving government to government consultation and public involvement, as the agency proceeds toward development of the Draft Resource Management Plan for the Bering Sea-Western Interior planning area.

Creating real protections through withdrawals and layered administrative designations for lands with wilderness characteristics, areas of critical environmental concern, to preserve critical habitats and other important natural values will be a key to maintaining the landscape productivity for subsistence uses of the Bering Sea-Western Interior planning area while still allowing for development in suitable areas.

We commend BLM on meeting and even exceeding in some areas the many layers of regulatory requirements for resource management planning and look forward to continued and expanded communication in the development of the draft plan.

³⁸ 43 U.S.C. §§ 1712(c)(1); 1702(c) and (h).