

16 August 2007

Marcia Blaszak  
Alaska Regional Director  
National Park Service  
240 West 5<sup>th</sup> Avenue  
Anchorage, AK 99501

Re: Katmai Preserve brown bear harvest

Dear Marcia,

Katmai National Preserve, as part of the larger McNeil/Katmai region, has historically hosted some very large concentrations of brown bears. In recent years, changes to the hunting patterns and regulations in the area have doubled the number of bears taken from Katmai Preserve while at the same time the numbers of bears observed by local bear viewing guides has dropped significantly. Given these observable shifts in the number of bears harvested and the number of bears observed and the Congressional mandate to manage Katmai's brown bear population for "high concentrations," we are asking that you review the data presented in this letter and take action to reduce the level of brown bear harvest beginning with the hunt scheduled to begin on October 1, 2007.

This issue we are presenting you is not a regional biological problem. There are plenty of brown bears on the Alaska Peninsula. The issue we have identified is a localized population problem that is negatively impacting the number of bears that can regularly be viewed by park visitors in Katmai Preserve. In this conflict between bears to watch and bears to hunt, we feel the current situation favors hunters and is contrary to the Congressional mandate for Katmai's bear management.

### **Our request for NPS action**

This localized reduction in brown bear populations in Katmai National Preserve demands your immediate attention in order to resolve the conflict in a manner that balances both bear viewing and hunting. We are seeking both a short term solution by reducing the number of bears harvested in the 2007/2008 regulatory year and a long term solution by encouraging the National Park Service to work the Alaska Department of Fish & Game on a management plan for the area that balances bear hunting and bear viewing.

The short-term solution relies on your ability to act quickly to embrace the precautionary rule to prevent long-term or permanent damage to park resources. We believe there is sufficient evidence that localized brown bear populations in Katmai Preserve are dropping. The Park Service must have also been concerned by this drop in population numbers as it requested the Alaska Board of Game in its February 16, 2007 comments submitted for consideration at the March 2007 meeting to reduce the brown bear season

by one week with the season beginning on October 7 instead of October 1. We are asking the Park Service to implement what it already determined was a reasonable position with regard to the length of the fall 2007 brown bear hunting season with the resulting positive impact that change would have for brown bear populations. In your 2/16 letter, the Park Service recognized exactly the case we are outlining here:

*The NPS is concerned that the current trend of increasing harvest rates for brown bears in Katmai National Preserve cannot be maintained over the long term. This may lead to violation of our Congressional directive in ANILCA to manage for "...high concentrations of brown/grizzly bears and their denning areas..."*<sup>1</sup>

Implementing your position by opening the season on October 7 allows a fall bear hunting season to occur, but its reduction in length, we feel, will reduce the harvest level and prevent any further depletion of the localized brown bear stocks while a long range management plan is developed with the state.

Reduction in the length of the season could occur at two levels. First, the Park Service could use its authority in 36CFR 13.21 (d) to protect park resources from conflicting state regulations by not allowing the state harvest to begin until October 7. Additionally, the Park Service could impose such a restriction on its own park concessionaire. From our review of park concession harvest numbers, it appears that guided concession hunts over the past 10 years have resulted in 60% of the total bears harvested in the preserve.

In the long-term, we are also asking for the same thing you requested of the Board of Game in March: a comprehensive brown bear management plan for Katmai Preserve brown bears that allows for both high concentrations of brown bears for park visitors to enjoy and a quality brown bear hunt. In support of such a plan, you wrote on February 16, 2007 supporting the same position we are arguing for here:

*... that a more conservative harvest limit within the historic range of 14-19 bears would be appropriate **until a comprehensive brown bear study and planning for management in the Preserve can be completed.** The NPS would be happy to work with ADF&G on such a study."*

We are not asking the Park Service to do anything more than it already requested of the state of Alaska. In response to the state of Alaska ignoring your very reasonable request, we are asking that you take immediate action to reduce the impact of the hunt this fall.

### **Congressional Purpose of Katmai Preserve.**

Congress recognized that sport hunting should continue in this area by virtue of it being established as a national preserve. No one is questioning whether hunting can occur or not. Yet, at the same time, Congress also charged the National Park Service

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<sup>1</sup> ANILCA section 202(2)

*“To protect habitats for, and populations of, fish and wildlife including, but not limited to, high concentrations of brown/grizzly bears and their denning areas...”*  
ANILCA at 202(2)

We believe the issue here is the number of bears that can be hunted while still meeting the “high concentration” standard. Complicating this issue is the fact that the Park Service has not defined a “high concentration” of brown bears. As you work towards a long-term solution to this issue, we ask that the Park Service develop a definition of “high concentrations” as part of a cooperative management plan with the state.

### **How many bears are there?**

We understand that bears are difficult to count and are known to travel over large distances in search of food and hibernation opportunities. While there have been several studies of populations on the Alaska Peninsula, there appears to be only a few fairly rigorous studies made on bears more localized to Katmai Preserve.

ADF&G Area Habitat Biologist Dick Sellers made a population count within the Preserve in May 1993. Using numbers gathered in this survey and a subsequent complicated survey analysis, containing sight ability and the capture/recapture of bears, he came out with a population range of 131 ó 184 bears/1000 sq. kilometers. Based on this data and another survey Sellers participated in that was done elsewhere in Katmai, he estimated a population range of 120 ó 168 bears/1000 sq. kilometers.

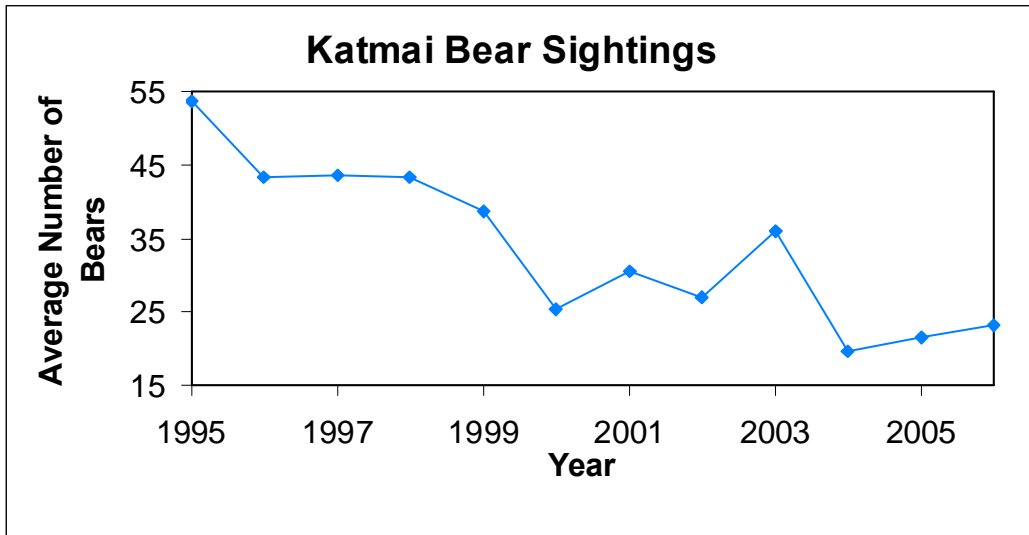
In a personal communication to Derek Stonorov in 2006, Earl Becker, research coordinator for ADF&G, using the new line transect/double count survey method estimated about 140 bears/1000 sq. kilometers in Unit 9C, which includes Katmai Preserve. This was based on work the state did in 2004 and 2005 with the National Park Service where the Park Service reported bear density at 156 bears/1000 sq. kilometers. This closely parallels the work done by Dick Sellers. In three base population studies (1991, 1993, 2004/5), biologists agreed at a population level of about 140 ó 156 bears/1000 sq. kilometers.

We estimate that Katmai Preserve ó minus the water bodies ó is about 1000 sq. kilometers. So a 6% harvest guideline, which is the rate used by ADF&G and USFWS in its successful Kodiak Bear Management Plan, would be 8 or 9 bears a year or 14 to 18 in a regulatory year. This is the number Dick Sellers used in his estimate for harvest (see Appendix A). Our concern is the 12% harvest of this population level in the past two regulatory years resulting in 34 and 35 bears being killed.

We are aware of a single aerial survey done by ADF&G biologist Lem Butler in 2006 that estimated 470 bears/1000 sq. kilometer. We would point out that this number was developed to show bear trends, NOT bear density numbers. We understand that Kodiak no longer uses aerial surveys for bear population density work as the data it provides is not very meaningful. Aerial surveys are used now primarily to identify sow/cub ratios and trends.

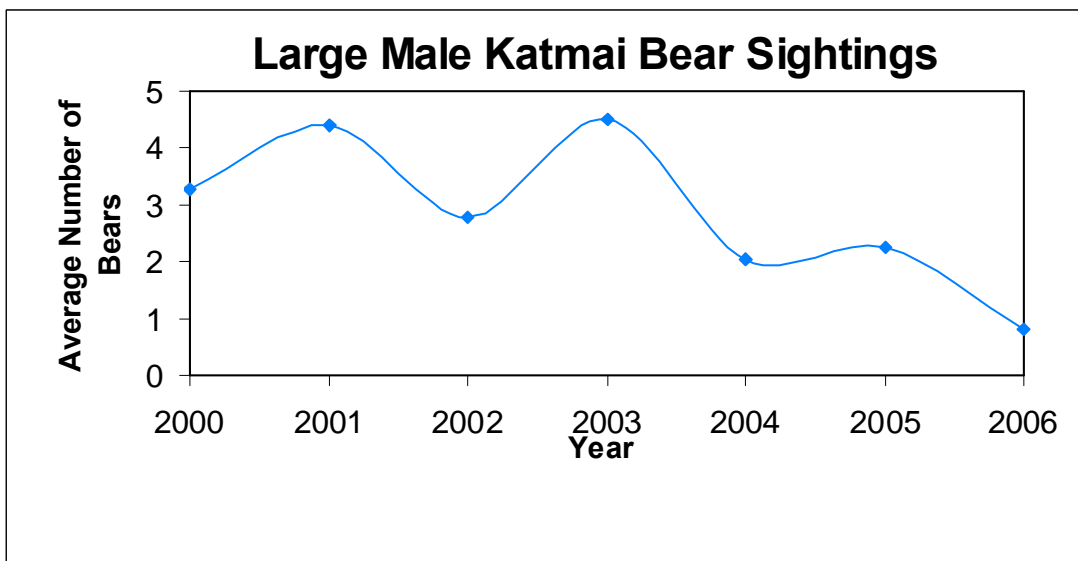
### Concentrations declining over time

Ken and Chris Day, owners of Emerald Air Service, have been taking visitors to view brown bears in the Funnel, Moraine, and Battle creek drainages of Katmai Preserve since 1995. In the past 12 years, they regularly logged observations of total numbers of bears seen, as well as notations on sex ratio, cubs, etc. on those days they were able to fly. We all recognize these statistics were not collected under the rigors of a scientific sampling regime. But they nonetheless do point out a decline in the number of observable bears that cannot be disputed. Twelve years ago, it was not uncommon to see 35 to 60 bears on a trip. In 2006, those same guides report a daily count of one-third that number of bears.



Source: Ken & Chris Day/Emerald Air Service

In addition, Ken and Chris have observed that the total number of large adult male bears has similarly decreased.



Source: Ken & Chris Day/Emerald Air Service

At nearly the same time at McNeil River, a similar drop in bear numbers was being observed. From ADF&G's 2006 report to the legislature on McNeil:

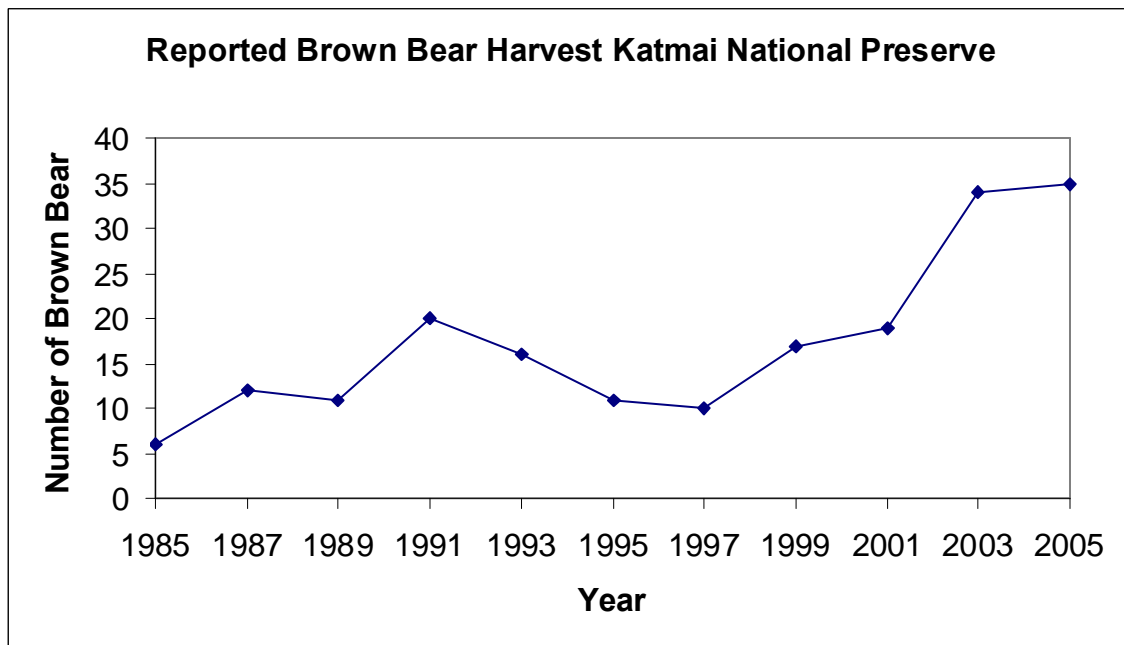
*“While the number of bears at McNeil River has increased over the past two years, it had declined significantly since 1998 and remains well below the level identified by sanctuary managers necessary to maintain the quality of the bear-viewing program.”*

Studies done by the Alaska Fish and Game and others show that McNeil bears travel to Funnel, Moraine, and Battle creeks in the late summer/early fall. A management plan for the bears at Katmai Preserve may very well include McNeil Sanctuary and Refuge, Kamishak Special Use Area, and other surrounding public lands. The extent of such a management plan needs to be developed as the relative ranges of bears utilizing Katmai Preserve are determined.

The reasons for this decline are complex and the answers are not simple. However, evaluating the harvest rates over time make it clear that increasing harvest is likely related to the declining numbers of bears observed in this area. The precautionary principle would argue for a conservative approach to bear harvest.

### Harvest rates over time

From 1985 to 2002, there were nine fall/spring hunts in Katmai Preserve with an average harvest of about seven bears per year. Based on population density studies, ADF&G biologists stated in 2003 that a “sustainable harvest from the Preserve (Katmai) is seven to nine bears per calendar year.” But from 2003 to 2006, the harvest level doubled to about 17-18 bears per year, or about 35 per regulatory year. These are the very same statistics the Park Service referenced in its request to the Board of Game for changes in the regulatory regime at Katmai Preserve. The bear harvest statistics for Katmai Preserve are:



Source: ADF&G

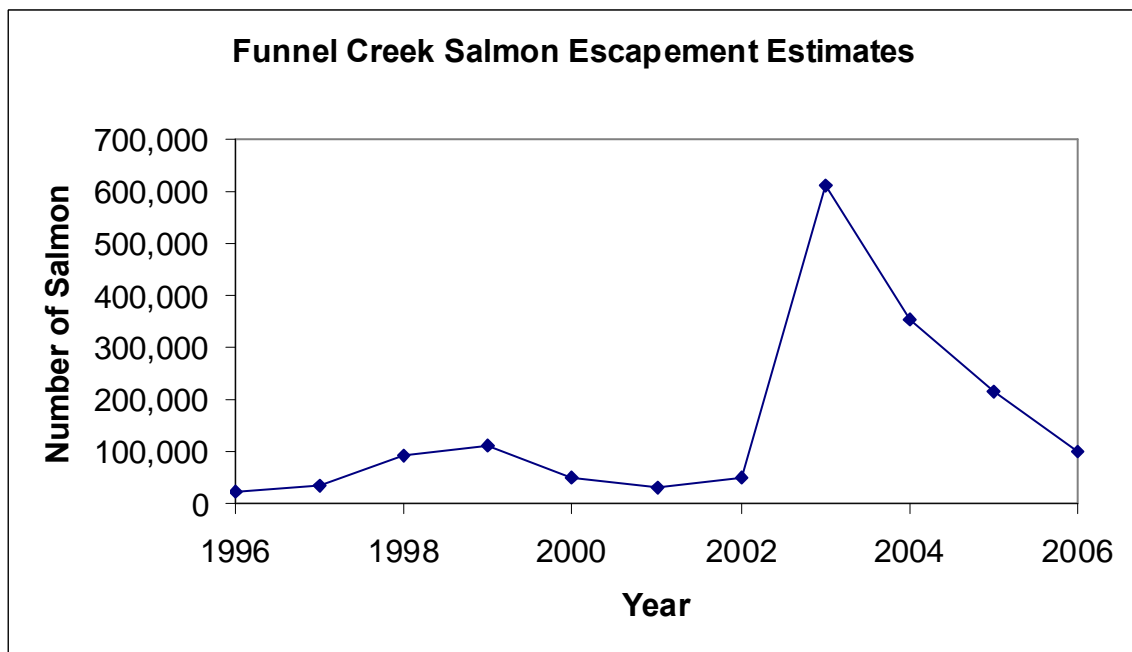
The ADF&G 2003 harvest level determination of 7 to 9 bears per calendar year is attachment A.

In the larger area around McNeil River, which includes Katmai Preserve, a similar increase in harvest level has occurred. The harvest level from 1985 to 1997 was about 61 bears a year and beginning in 1998 that increased by over 50% to an average of about 104 bears 1998 to 2005.

While we recognize that a direct link between an increase in bear harvest and decrease in bear sightings at both McNeil and Katmai Preserve cannot be scientifically advanced, we strongly feel there is sufficient evidence to show that negative trends are occurring. Prudent and precautionary management calls for a reduction in harvest levels pending further studies to determine how best to manage for high concentrations of brown bears that provide for a quality viewing and hunting experience. Perpetuating this balance is the purpose of the requested management plan to be developed by NPS and the state of Alaska.

### Role of salmon escapement

When this issue was brought before the Board of Game earlier this year, the Department assumed that the high harvest levels might have been a result of higher than normal fish runs that had attracted larger numbers of bears into the area and, therefore, provided for more hunter success. While 2003 did see an unusually high red salmon escapement into the Alagnak system, that number has decreased in the past couple years. Following the Department's logic, we should be even more concerned about the harvest of 35 bears in 2005/2006 when the overall population of bears should have been lower if we follow the logic that fewer fish mean fewer bears (and this harvest level would have been a higher percentage of total population).



Source: ADF&G

## **Park Service authority to take action**

We feel strongly that the Park Service must take action to prevent further decline in the brown bear population in Katmai Preserve. And we feel it has the authority to do so when it is presented with data that shows a reasonable chance that the state's actions threaten park resources.

The state of Alaska may apply its own hunting regulations on the National Preserves, but they can only do so up to the point where they conflict with federal mandates. The Property Clause of the U.S. Constitution ("Congress shall have the power to dispose of and make all needful rules and regulations respecting the Territory of other Property belonging to the United States, U.S. Const. art. IV, 3, cl. 2) provides the Park Service with the authority, and in fact the responsibility, to overrule state regulations that interfere with the designated purposes of the federal lands. *Hunt v. United States*, 278 U.S. 96 (1928) clarified that federal agencies could implement U.S. laws on federal lands in conflict with state hunting laws, and *Kleppe v. New Mexico*, 426 U.S. 529 (1975) firmly established that federal wildlife management laws on public lands were both valid exercises of the Property Clause power, and superceded conflicting state laws. This case has been upheld and cited in the intervening years, including in the 9<sup>th</sup> Circuit, and codified in Title 26, Section 2.2 Code of federal Regulations, Section 2.2(b)(4) which states that where hunting is authorized, it must be "conducted in accordance with Federal law and the laws of the state... *nonconflicting* State laws are adopted as a part of these regulations" (italics added for emphasis).

There is no question that harvesting brown bears beyond the mandated "high concentrations" population level is in conflict with federal law. The statutory purposes of the National Park System are spelled out in the Organic Act, 16 U.S.C. 1, which is to "conserve the scenery and the natural and historic objects and the wildlife therein and to provide for the enjoyment of the same in such a manner and by such means as will leave them unimpaired for future generations." Since the inception of the park Service, it has been interpreted to mean that "every activity of the Service is subordinated to the duties imposed upon it to faithfully preserve the parks for posterity in essentially their natural state" (Memo from Franklin K. Lane, Interior Sec. To Stephen P. Mather, NPS Director, 1918) and the mandate to conserve has been upheld in numerous court decisions (see, NPS Management Policies Sec. 1.4.3). The Alaska National Interest Lands Conservation Act refines this mandate as it applies to wildlife by requiring it to be managed to maintain natural and healthy populations (16 U.S.C. 3125). ANILCA also sets out purposes for each unit. Denali, Katmai, Gates of the Arctic, Yukon-Charley Rivers NP, Noatak, Lake Clark, Aniakchak, Bering Land Bridge and Wrangell-Saint Elias National Preserves were all established in part to protect habitats and populations of wildlife. (ANILCA §201-202, 16 U.S.C.S. § 410HH(2000)). Furthermore, there is the specific citation in ANILCA 202(2) calling for high concentrations of brown bears in Katmai.

Service wide resource protection regulations also add detail to the conservation mandate by prohibiting the "feeding, touching, feeding, teasing, frightening or intentional disturbing wildlife" (36 CFR 2.2(a)(2) and reinforcing the principle of maintaining

wildlife in their natural state, by allowing hunting only when specifically authorized, and only if the Superintendent determines that such activity is consistent with public safety and enjoyment, and sound resource management principles (36 CFR 2.2(b)(2)). The National Park Service has defined these management principles clearly as they relate to wildlife: managers are required that when hunting is statutorily allowed, it must only take place when "harvesting will not unacceptably impact park resources or natural processes, including the natural distributions, densities, age class, and distributions of harvested species (NPS management Policies, Sec. 4.4.3). Managers must act to meet specific park management objectives (MP Sec. 4.4.2) and disallow activities that would create and "unsafe or unhealthful environment" for visitors or employees (MP Sec. 8.2). NPS must ensure that Alaska hunting regulations are consistent with these requirements. This is not discretionary.

### **Summary**

This issue is not new to either the signatories to this letter or to the National Park Service. Some of us have been challenging this overharvest in Katmai Preserve for almost 10 years. In March 2005, the Board of Game told us that the high harvest level for the 2003/2004 regulatory year was a singular instance when the number had exceeded the 14 to 18 harvest target. Yet the 2005/2006 regulatory year produced another harvest that was similarly twice the recommended level. We are very concerned that yet a third harvest level at double the sustainable amount could severely cripple the localized bear population in Katmai Preserve with a resulting negative impact on both the legislated purpose of the Preserve and also on the quality of the visitor experience. We ask that you take both short-term and long-term actions to protect this unique bear population.

Sincerely,

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National Parks Conservation Association

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Emerald Air Service

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