

Management Intent for Navigable Waterbodies

Background

The intent of the plan is to designate and provide management intent for the shorelands under all navigable waterbodies and their waters. There are so many navigable rivers and lakes in the planning area that it is not practical to state the individual management intent for each and every waterbody. Therefore, the plan identifies several general types of waterbodies that are assigned common unit numbers, management intents, and designations.

Waterbodies in the units below are not always indicated with a unit number on the KAP maps. The 1993 DNR Kenai Easement Atlas assists with locating navigable waterbodies in the planning area. This atlas reflects only those rivers for which state or federal agencies have issued written determinations of navigability at the time the atlas was developed. Additional waterbodies are likely to be determined navigable by these agencies in the future. In the near future, DNR will publish a map of all the navigable waters under the navigability listing at the following website: <http://www.dnr.state.ak.us/land/nav.htm>

The term “shorelands” used below is defined as land belonging to the state which is covered by nontidal water that is navigable under the laws of the United States up to the ordinary high water mark as modified by accretion, erosion, or reliction [AS 38.05.965]. See Figure 1-1 at the beginning of Chapter 1 for a diagram that illustrates the difference between shorelands, submerged lands, tidelands, and uplands.

Public Trust Doctrine

The Public Trust Doctrine provides that public trust lands, waters and living resources in a state are held by the state in trust for the benefit of all the people, and establishes the right of the public to fully utilize the public trust lands, waters, and resources for a wide variety of public uses. Each state has the authority and responsibility for managing these public trust assets to assure the public rights are upheld.

The Public Trust Doctrine applies whenever navigable waters or the lands beneath those waters are altered, developed, conveyed, or otherwise managed. It also applies whether the trust lands are publicly or privately owned. Public trust lands are generally those lands below navigable waters, with the upper boundary being the ordinary high water mark. Tidelands, shorelands of navigable lakes and rivers, as well as the land beneath oceans, lakes and rivers are usually considered public trust lands.

The Alaska Constitution contains numerous provisions embracing principles of the Public Trust Doctrine that require the state to exercise authority to ensure that the right of the public to use navigable waters for navigation, commerce, recreation, and related purposes is protected. In Alaska, the Public Trust Doctrine extends beyond those submerged lands in which the state holds title to include all waters that are navigable. The state's waters are themselves reserved to the people for common use. The state has enacted laws that provide similar protections as those provided by the Public Trust Doctrine and apply to broader areas, but they do not provide automatic state ownership of submerged lands and may protect uses different than those of the public trust doctrine.

The Alaska Constitution (Article VIII, Sections 1, 2, 3, 6, 13, and 14) and Alaska Statutes (38.05.127 and 38.05.128) contain some of the provisions, which are the legal basis for applying the Public Trust Doctrine in Alaska. In Alaska, this doctrine guarantees the public's right to engage in activities such as commerce, navigation, fishing, hunting, trapping, and swimming, while also providing for the protection of areas for ecological study.

The Alaska Constitution provides that "free access to the navigable or public waters of the state, as defined by the legislature, shall not be denied any citizen of the United States or resident of the state, except that the legislature may by general law regulate and limit such access for other beneficial uses or public purposes." The Alaska Supreme Court has concluded that "the provisions in article VIII [of the Constitution] were intended to permit the broadest possible access to and use of state waters by the general public." *Wernberg v. State*, 516 P. 2d 1191, 1198-9 (Alaska 1973). The Alaska legislature has broadly defined the navigable and public waters available for public use in AS 38.05.965. Moreover, the legislature has endorsed a broad interpretation of the Public Trust Doctrine constitutionalized in article VIII in finding that:

Ownership of land bordering navigable or public waters does not grant an exclusive right to the use of the water and any rights of title to the land below the ordinary high water mark are subject to the rights of the people of the state to use and have access to the water for recreational purposes or any other public purposes for which the water is used or capable of being used consistent with the public trust. (sec. 1, ch. 82, SLA 1985)

The legislature has also declared that the right to use state waters does not include the right to enter or trespass upon private lands. Nevertheless, with 99 percent of Alaska in public ownership at statehood, state laws providing that the transfer of land to private parties also provide for public access to navigable waters have had broad effect. For instance, AS 38.05.127 implements the state constitutional guarantee of access to navigable waters under Article VIII, Section 14. Under the statute, the Commissioner of the Alaska Department of Natural Resources must "provide for the specific easements or rights-of-way necessary to ensure free access to and along the body of water, unless the Commissioner finds that regulating or eliminating access is necessary for other beneficial uses or public purposes."

The State’s responsibilities to implement the Public Trust Doctrine are considered and used throughout this plan. Any management actions will be consistent with the Public Trust Doctrine as defined by the Alaska Constitution, statutes, court decisions, and public involvement.

On a related issue, the Director's Policy File 91-03 *Shorelands Adjacent to Non-State Land* outlines DNR’s policy for consulting with adjacent landowners and considering their concerns when uses on adjacent state-owned shorelands are proposed.

For more information on state policies on navigable waters see the following website: <http://www.dnr.state.ak.us/land/nav.htm>

Management Intent for Specific Rivers and River Types

Unit 600 Other shorelands and waters

Management Intent

The management intent for the waterbody segments in this unit are designated General Use and will be retained in state ownership.

Which Waterbodies are Included

Waterbodies in this unit are not labeled with the “Unit 600” annotation on the region maps. This unit includes navigable waterbodies (including their waters and shorelands) crossing or surrounded by non-state-owned, -selected, or -topfiled lands in the planning area. Sometimes these waterbodies include just river or lake segments, sometimes they include the entire navigable waterbody, depending on adjacent ownership. These shorelands cross or are surrounded by lands in non-state ownerships including federal, private, Native, municipal, university, and Mental Health Trust. Compare the land status maps in this plan and the state navigability maps (which are available from DNR and on the DNR website) to determine the waterbodies that are in this unit.

Waterbodies that cross or are surrounded by state-owned, -selected and -topfiled lands are depicted as being within boundary of the surrounding upland unit and are therefore not part of Unit 600. Management intent for waterbody segments depicted as within adjacent upland units is the same as for the remainder of the unit.

The shorelands in this unit do not include shorelands and waters in the following:

- Management units (including state-owned, selected and topfiled lands) that include both sides of a river
- Units of the State Park System that are legislatively designated
- Lower peninsula high public use rivers (Unit 601)
- Waterbodies within national parks, preserves and wildlife refuges (Unit 602)
- Kenai River watershed (Unit 603)
- Main stem of the Kasilof River (Units 604A and 604B)

Main stem of the Resurrection River (Unit 605)
Sixmile Creek (Unit 606)
Trail River and Trail Lakes (Unit 608)
Snow River (Unit 609)

Unit 601 Lower peninsula high public use rivers

Management Intent

This unit is co-designated Public Recreation and Tourism-Dispersed Use, and Fish and Wildlife Habitat and Harvest and will be retained in state ownership. The state-owned river beds and adjacent uplands are proposed to be subject to a leasehold location order. They are also proposed for mineral closure by the legislature.

Which Waterbodies are Included

This unit includes the navigable waterbodies (including their waters and shorelands) of Anchor River (including North Fork); Deep Creek (including North Fork); Stariski Creek; and the Ninilchik River that are not in existing units shown on the region maps.

Mineral Orders

Proposed Mineral Closing Order #738 closes the lower Russian River to new mineral location. Under Leasehold Location Order #21, rights to locatable minerals in the land covered by this order may be acquired only under the leasehold location system. This order applies to river corridors along the Upper Russian River, Kasilof River, Stariski Creek, Deep Creek, and Anchor River. The riverbeds only for the segments of rivers addressed by the Leasehold Location Order are also recommended to the legislature for closure to new mineral entry. If the legislature acts on this recommendation, the riverbeds would be closed to new mineral entry while the leasehold location order would still apply to the adjacent upland 200-foot wide buffers. See Appendix B for a copy of these orders and the *Mineral Resources* section in Chapter 2 for a further description of these proposed actions.

Unit 602 Shorelands and waters in federal Conservation System Units (parks, preserves, and refuges)

Management Intent

Designate Public Recreation-Dispersed Use, Fish and Wildlife Habitat and Harvest. Retain in state ownership.

Which Waterbodies are Included

This unit includes the navigable waterbodies (including their waters and shorelands) in Federal Conservation System Units (Parks, Preserves, Wilderness and Refuges). The waterbodies in this unit are not labeled with a “Unit 602” annotation on the region maps. This unit includes navigable waterbodies within federal conservation system units in Kenai Fjords National Park and Preserve, Katmai National Park and Preserve, Lake Clark National Park and Preserve, and the Kenai National Wildlife Refuge that are in the planning area. Shorelands in the Alaska

Maritime National Wildlife Refuge are also included in this unit (although it's not clear whether or not there are any waterbodies large enough to be determined navigable on the islands in this refuge). This unit does not include shorelands and waters in the Chugach National Forest, Kenai River drainage, and in the main stem of the Kasilof, Resurrection, Trail and Snow rivers; and Sixmile Creek and Trail Lakes (Units 600, 603, 604A, 604B, 605, 606, 608 and 609).

Unit 603 Shorelands and waters in the Kenai River drainage

Management Intent

Many of the lakes and creeks have popular well-maintained recreation trails that provide access and many have public use cabins and campsites on them. The higher lakes provide fishing opportunities for rainbow trout and Arctic Grayling and the lower elevation lakes also support salmon. In addition, all of the navigable rivers in the Kenai River watershed also support salmon and some of these are popular for fishing, particularly at their confluences with the Kenai River.

Designate Public Recreation and Tourism - Dispersed Use, Fish and Wildlife Habitat Harvest. Retain in state ownership. Also see the *Kenai River Guidelines* section Under Region 4 in this chapter.

Which Waterbodies are Included

The waterbodies (including shorelands and waters) in this unit are not labeled with a “Unit 603” annotation on the region maps. This unit does include many of the navigable tributaries of the Kenai River such as the Russian River, Moose River, Funny River, Killey River, and Trail Creek (surrounded by National Forest and National Wildlife Refuge) and large and small lakes such as Upper Russian, Lower Russian, Cooper, Crescent, Ptarmigan, Grant, Carter, Lost, Meridian, Grayling, Juneau, Swan, Trout, and Paradise lakes. In addition this unit includes navigable lakes in the Kenai National Wildlife Refuge in the Kenai watershed that are too numerous to mention here.

This unit does not include the portions of the Kenai River system that are legislatively designated, waterbodies that are proposed additions to KRSMA, the Trail Lakes and River (which are in Unit 608), the Snow River (unit 609), or the waters starting from one mile below the Warren Ames Bridge (Unit 506B).

Unit 604A Lower Kasilof River shorelands, tidelands and islands

Management Intent

Designate for Public Recreation and Tourism – Dispersed Use, Waterfront Development, and Fish and Wildlife Habitat. Retain in state ownership. The lower river and its islands are recommended for addition to the State Park System as part of a proposed Kasilof River Special Management Area. These recommended designations are intended to accommodate existing and additional developments on the tidelands and shorelands that support the fishing industry, fisheries management, and other types of water-dependent uses. Until this unit is added to the State Park System, manage it consistent with these designations and a Site Specific Plan developed in 1996 by the DNR Division of Mining, Land and Water, South Central Regional Office. Note that the KAP plan classifications supersede the Site Specific Plan classifications. See the Section *Proposed Kasilof River Special Management Area* section under Region 6 in this chapter for additional management intent.

Background

This unit encompasses the shorelands, tidelands, and waters along the lower Kasilof River, which support most of development that has taken place along the entire river. More applications for development are expected. Applications and authorizations on the lower river are primarily related to seafood processing, including anchors for mooring barges, docks, outfall lines, floating walkways, and off-loading facilities.¹ In addition, there is a fisheries enhancement facility authorized near the mouth of Coal Creek. The middle river (adjacent to the Crooked Creek State Recreation Site) is under ILMA to DPOR and is in Unit 119 rather than this unit. The upper river is in Unit 604B where there are no authorizations for development or pending applications for use of the river's shorelands.

The mouth of the river has intense activity during the summer including boat mooring, personal use fishery, and recreational use. The river supports sockeye salmon (May through August), chinook salmon, coho salmon, and pink salmon. The river has the second-largest escapement of salmon among rivers on the Kenai Peninsula. Adjacent wetlands support snow geese, Canada geese, sandhill cranes, trumpeter swans, whistling swans, and several species of waterfowl.

Which Waterbodies are Included

This unit includes the water, shorelands, tidelands, islands, and water in this unit within: T3N R12W Sections 1, 2, 11, 12, and 13; T4N R12W Section 35. This unit is shown on Map 6A in this chapter.

¹ The tidelands upon which the Kasilof River small boat harbor is located (on the north bank near the mouth) are in private ownership.

Unit 604B Upper Kasilof River shorelands and islands²

Management Intent

Designate Public Recreation and Tourism - Dispersed Use and Fish and Wildlife Habitat. Retain in state ownership. This unit is proposed for addition to the State Park System, Kasilof River Special Management Area. One mile of the upper river in Section 25 (Unit 119) is already under Interagency Land Management Assignment to DPOR and is in the park system. Islands in the river are also proposed for park addition. Until these lands are added to the system, manage this unit consistent with plan designations and the Site Specific Plan developed in 1996 by the DNR DMLW Southcentral Region Office. The KAP classifications supersede the Site Specific Plan classifications. See the *Proposed Kasilof River Special Management Area* section under Region 6 in this chapter for additional management intent.

Which Waterbodies are Included

This unit includes the waters, shorelands, and islands (except islands in Sections 24 and 25) on the upper Kasilof River including: T3N R11W Sec. 30, 31, 32, and 33; T2N R11W Sec. 5 and 8; and T3N R12W Sec. 24. This unit is shown on Map 6A in this chapter.

Units 362, 363 and 605 Resurrection River

Management Intent

The shorelands in these units are designated Resource Management - High Value. Retain in state ownership. These units will be managed for materials, transportation, water resources, recreation, and wildlife habitat. Manage the area consistent with the Site Specific Plan developed by the DNR DMLW Southcentral Regional Office in 1993 except the following management intent from the Site Specific Plan has been deleted: “Mining gravel from active channels should be avoided to reduce detrimental effects on water quality, aquatic habitat, and biota. However, if hydraulic changes can be minimized, in channel sites will replenish more rapidly than other areas, and effects on the terrestrial biota of the floodplain will be avoided or greatly minimized.” This intent has been replaced with the following, “From time to time, flood control work will need to be done. These units will be managed for materials and flood control. The multi-agency Flood Mitigation Task Force (including ADFG and USFWS) will design the extractions to minimize damage to habitat.” Part of this river has been designated as Special Use Lands. See Appendix D for additional information on the Exit Glacier Road Special Use Land Designation.

Which Waterbodies are Included

The portions of the shorelands and waters that are in this unit are located downstream from the Exit Glacier Road Bridge near the Paradise Creek confluence and the Resurrection River’s mouth. These units are shown on Map 3A in this Chapter.

² Under the Tustumena Lake Court Decision, the lake and the upper portion of the river are under federal ownership.

Unit 606 Sixmile Creek

Management Intent

Designate Fish and Wildlife Habitat and Harvest and Public Recreation and Tourism – Dispersed Use. Recognize existing mining claims and mining activities. Sixmile Creek has become very popular for both commercial and private whitewater rafting and kayaking. Public access to the river for these users is an important issue and there is both the need and opportunity for providing additional access on state lands to this river. Additional access and parking for Sixmile Creek is needed for both commercial and private kayakers and rafters as well as for sport fishing, recreation, and other uses. Retain in state ownership.

Which Waterbodies are Included

The state-owned shorelands and waters in Sixmile Creek located between the mouth of the creek and its confluence with Granite Creek. The unit is shown on the Region 1 and 2 maps in this chapter.

Unit 608 Trail River, Upper and Lower Trail Lakes

Management Intent

This unit is proposed for addition to KRSMA by the *Kenai River Comprehensive Management Plan* (KRCMP). This unit is also subject to a Special Use Lands Designation (ADL 226527) and Leasehold Location Order #20 that were implemented as part of the KRCMP process. For more information, see the KRCMP. Also see the *Kenai River Drainage* guidelines section under Region 4 in this chapter for additional management intent.

Which Waterbodies are Included

All state-owned shorelands and water known as Trail River and Upper and Lower Trail lakes within: T4N R1E Sections 6, 7, 18, 19; T4N R1W Sections 1, 12, 13, 24 and 25; T5N R1E Sections 7, 18, 19, 31; T5N R1W Sections 13, 22 - 27, and 36. This unit is shown on Map 2B in this chapter.

Unit 609 Snow River

Management Intent

Designated Fish and Wildlife Habitat and Harvest and Public Recreation and Tourism-Dispersed Use. This unit is not proposed for addition to KRSMA by the *Kenai River Comprehensive Management Plan* (KRCMP).

Which Waterbodies are Included

All state-owned shorelands and water known as “Snow River” within: T2N R1E Sections 6, 7, and 18; T3N R1E Sections 19, 30, and 31; and T3N R1W Sections 24, 25 and 36.