

## Navigable Rivers and Lakes

### Management Intent of Navigable Waterbodies

The intent of the plan is to designate and provide management intent for the shorelands under all navigable waterbodies.<sup>11</sup> There are so many navigable rivers and lakes in the planning area that it is not practical to state the management intent for each individual waterbody. Therefore the plan identifies general management intent and designations for most of the waterbodies within the planning area. In some cases, however, specific designations are identified for a particular waterbody because of the size, uniqueness, or particular values and functions of a river or lake.

The term “shorelands” is defined as land belonging to the state which is covered by non-tidal 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 differences between shorelands, submerged lands, and uplands.

Shorelands are not identified on the preceding plan designation maps within this Chapter. Identification of all such waterbodies is impractical on maps of the scale used in this plan. The DNR records on navigability and hydrology must be consulted in order to determine whether a specific stream or lake is likely to be navigable. These records are available in the Division of Mining, Land and Water in Anchorage.

For further information on the state’s navigability policy, go to [http://www.dnr.state.ak.us/mlw/nav/nav\\_policy.htm](http://www.dnr.state.ak.us/mlw/nav/nav_policy.htm)

### Public Trust Doctrine

The Public Trust Doctrine provides that public trust lands, waters and living natural 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. Shorelands below the ordinary high water mark are considered public trust lands. In summary, all submerged lands – including tidelands out

---

<sup>11</sup> The state and federal government do not agree on the ownership of some shorelands, tidelands, and submerged lands within and adjacent to the Kodiak National Wildlife Refuge. Because of these differing interpretations of ownership, the public is advised to consult with both DNR and the U.S. Fish and Wildlife Service prior to undertaking projects or activities that might require a permit or lease from either agency. This is especially important for activities or projects adjacent to Afognak Island, Womens Bay on Kodiak Island, and areas that adjoin the Kodiak or Alaska Maritime National Wildlife Refuges.

to the three-mile-limit and the beds of navigable lakes, streams and rivers – are all 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 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 to 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 “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 in Article VIII of Alaska's Constitution 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 except in limited circumstances relating to safe portage described in AS 38.05.128(e). Nevertheless, with 99 percent of Alaska in public ownership at statehood, state laws regarding the transfer of land to private parties say the transfers must provide for public access to navigable waters. For instance, AS 38.05.127 implements the state's 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.

### **Management Intent: Specific Rivers and Lakes**

Because of their importance for recreation, commerce and habitat, certain rivers and lakes are given specific use designations. The plan designations applied to shorelands are identical to those used for uplands, tidelands, and submerged lands.

#### Navigable Rivers and Lakes within the Kodiak National Wildlife Refuge

Certain rivers and lakes within the Refuge are considered significant for their habitat and recreational values. For example, streams with high bear concentrations are important for their habitat value and as popular viewing areas. The navigable portions of these waterbodies are co-designated Habitat and Public Recreation - Dispersed. The Habitat designation converts to the land use classification of Wildlife Habitat Land and the designation of Public Recreation - Dispersed, to Public Recreation Land.

Rivers: Karluk, Ayakulik, Red Creek, Falls Creek, O'Malley, Uganik, and Sturgeon.

Lakes: Karluk, Frazer, and Red.

Because Terror Lake, within the Kodiak National Wildlife Refuge, is a source of hydroelectric power for the City of Kodiak, it is co-designated Public Facilities with Public Recreation - Dispersed. The Public Facilities designation converts to the classification of Reserved Use Land.

#### Navigable Rivers within Katmai National Park and Preserve

The navigable portions of Katmai River are designated Public Recreation - Dispersed because of the river's size and importance within the National Park and Preserve.

### **Management Intent: Other Rivers and Lakes**

#### Navigable Rivers and Lakes within the Kodiak National Wildlife Refuge, Alaska Peninsula National Wildlife Refuge, Becharof National Wildlife Refuge, and Katmai National Park

All other anadromous lakes or streams within the Refuges or Katmai National Park with anadromous or high resident value fish are co-designated Public Recreation - Dispersed and Habitat. Navigable lakes and streams that are not anadromous are designated Public Recreation - Dispersed.

#### All other Navigable Rivers and Lakes

The designation and management intent for navigable waterbodies that cross or are surrounded by state-owned and state-selected lands not within the Refuges, National Park, State Parks, or State Critical Habitat Areas are the same as those of the upland unit, except that those portions of navigable streams where spawning and rearing of anadromous or high value resident fish occur are designated Habitat (Ha).

Navigable rivers and lakes that are not within State Parks, National Wildlife Refuges or Katmai National Park, and are not within state-owned, state-selected, or state-topfiled upland units, are designated General Use, except that those portions of navigable streams where spawning and rearing of anadromous or high value resident fish occur are designated Habitat (Ha). These waterbodies are to be managed to allow a diversity of uses consistent with the uses authorized on adjoining uplands in federal, private, or other state entity ownership. Upland uses are usually designated in an adopted land use or resource management plan, or can be inferred from the actual or planned use of the unit.