

STATE OF ALASKA

OFFICE OF THE GOVERNOR

DIVISION OF GOVERNMENTAL COORDINATION

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March 15, 1989

Mr. Richard J. Stenmark
Deputy Regional Director
Alaska Regional Office
National Park Service
2525 Gambell Street, Room 17
Anchorage, AK 99503-3892

Dear Mr. ~~Stenmark~~: *Dick*

On behalf of the State of Alaska, thank you for your letter of December 8, 1988, summarizing the October 10 meeting between yourself and state representatives regarding finalization of the National Park and Preserve boundary descriptions for Alaska. Thanks also for your outline of the latest National Park Service (NPS) positions on the remaining questions.

As we near the culmination of your effort to identify and describe legal boundaries for Alaska's park units, we wish to express appreciation for your time and patience involved in refining these boundaries. The state is pleased that, over the last few years, a great many corrections and improvements have been made which will help ease state and federal management and enhance the public's ability to locate boundaries in the field. This letter addresses two remaining issues: the Copper River boundary in the Wrangell-St. Elias National Park and Preserve and coastal boundaries as they relate to state-owned submerged lands and tidelands.

Wrangell-St. Elias/Copper River Boundary

According to your letter of December 8, the NPS maintains that the Wrangell-St. Elias Park and Preserve boundary above the Chitina River confluence should follow the left bank of the Copper River's main channel. The rationale stated is that "the main channel is well-defined throughout the year, and the main river channel is the most easily distinguishable feature of the river and riverbed and readily noted by hunters and trappers." The state cannot support this position for the following reasons. First, the state does not believe that the main river channel is necessarily the easiest feature of the river to recognize in the field. Second, the NPS position needlessly creates additional inholdings which can only serve to complicate management of the

area. Creation of these inholdings does not make sense in light of the Alaska National Interest Lands Conservation Act (ANILCA) Section 103(c), which states:

"Only those lands within the boundaries of any conservation system unit which are public lands (as such term is defined in this Act) shall be deemed to be included as a portion of such unit."

Since the lands between the Copper River main channel mean high water mark and the interconnecting waterways and sloughs mean high water mark are not federally-owned public lands, they should not be included in this conservation system unit (CSU). Third, the NPS definition of "navigable" is inconsistent with the Department of the Interior's definition of a navigable river. This definition includes interconnecting waterways and sloughs, thus placing the outer edge of the state-owned river at the edge of these interconnecting waterways and sloughs, and not along a line that bisects the river bed. Such a boundary would place numerous slivers of state-owned land within the boundaries of the unit. Locating the boundary to eliminate these slivers by excluding the entire state-owned river bed would, in the state's view, increase ease of management for all agencies, minimize public confusion regarding ownership and management authorities, and be consistent with the statute.

Coastal Boundaries

As your letter states, NPS maintains that "seaward," as used in Section 103(a) of ANILCA, means seaward of the general run of the coastline. On the contrary, the Act says that "the boundaries in coastal areas shall not extend seaward beyond the mean high tide line to include lands owned by the State of Alaska." (Emphasis added.) ANILCA makes no statement about seaward of the general run of the coastline. Also, Section 2(a)(2) of the Submerged Lands Act defines "lands beneath navigable waters" as "all lands permanently or periodically covered by tidal waters up to but not above the line of mean high tide and seaward to a line three geographical miles distant from the coastline."

It is obvious that mean high tide often travels inland from the general coastline to form intertidal and coastal lagoons. Since this mean high tide line is one of the parameters defining tidally influenced navigable waters, the state-owned beds of navigable waters also extend inland with the mean high tide line. As for the other parameter--three geographic miles seaward from the coastline--it is quite conceivable that the coastline, which is by definition mean low tide, may not closely correspond with the mean high tide. This, of course, accounts for the formation of tidal lagoons that run dry at low tide. In essence, the mean low tide line, or coastline, follows the general coastline and

the outer parameter would be three geographic miles seaward therefrom. So, in this case, we would have state-owned beds three geographic miles seaward and also some distance inland to the mean high tide line. (See attached diagram.)

This diagram is representative of a considerable amount of state-owned tidally influenced land that has been illustrated and described to be within various CSUs. One very good example is along the west coast of Cape Krusenstern National Monument, where the NPS has attempted to include numerous tidally influenced bays and lagoons within the monument.

Section 103(a) of ANILCA further states that the coastal boundaries should not extend beyond the mean high tide line "unless the State shall have concurred in such extension and such extension is accomplished under the notice and reporting requirement of the Act." The State of Alaska does not concur that the park/preserve boundaries should include such tidal areas within any units.

In light of these concerns, the state continues to urge that the legal descriptions explicitly follow the mean high tide line in coastal areas. In instances where the mean high tide line intersects a major navigable river, the state may be willing to identify an alternative boundary on a case-by-case basis. Until and unless such modifications are made, the state remains on record that we cannot support the proposed coastal boundaries.

Recognition of Land Status

Despite the difficulties noted above, the state is very pleased that the NPS has expressed willingness to add the following language to each park boundary description as supplemental information:

Within the boundaries of this unit, the lands beneath navigable rivers and lakes and marine waters are owned by the State of Alaska as provided by the "Submerged Lands Act" of 1952 excepting any lands beneath navigable waters retained by the United States at the time of Alaska Statehood.

Such language will help clarify that, regardless of boundary placement, state ownership of tide and submerged lands is retained. We would, however, suggest the following refinement to clarify the source of the state's authority:

Located within the exterior boundaries of these units are lands beneath navigable waters and/or tidally influenced waters owned by the State of Alaska under the constitutional doctrine of equal footing and confirmed by the Submerged Lands Act of May 22, 1953, and the Alaska Statehood Act of

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July 7, 1958, excepting submerged lands, if any, retained in federal ownership at the time of Alaska Statehood.

In closing, the state is encouraged by your intentions to develop a memorandum of understanding (MOU) for each park/preserve unit. We understand that these MOUs will identify any enclosed state tide and submerged lands and provide a mechanism to protect the values of the water columns and the underlying beds within the area of state and national responsibilities and concerns. We look forward to assisting in the formulation of these agreements at the earliest opportunity.

Your continued attention to the state's position on these issues is appreciated.

Sincerely,

Robert L. Grogan,
Director

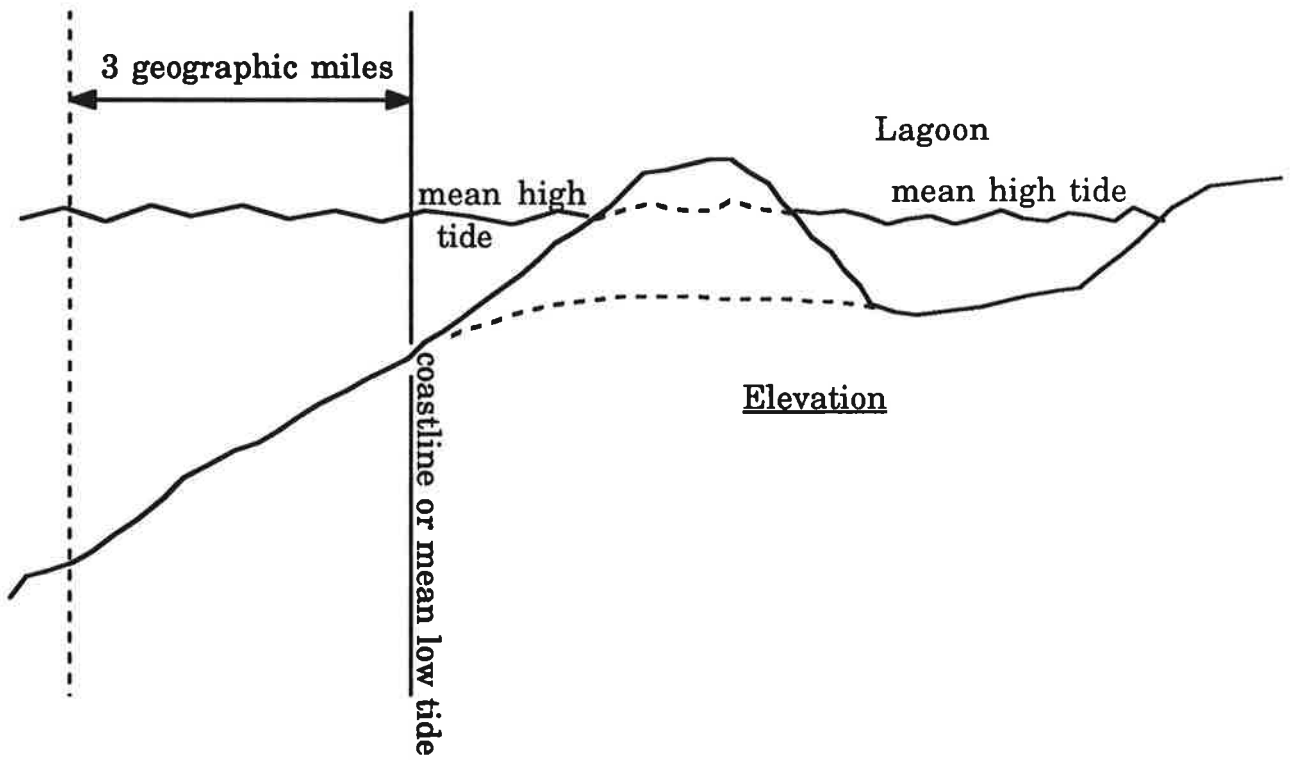
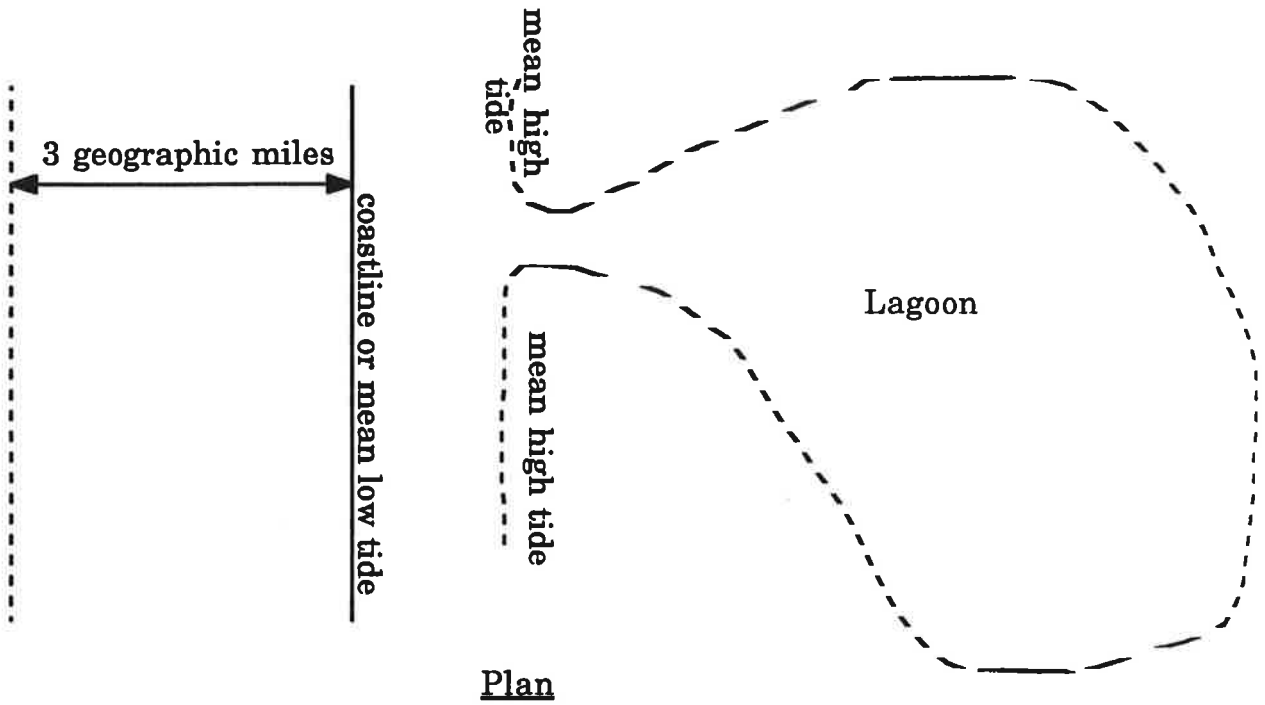


By: Sally Gibert
State CSU Coordinator

Attachment

cc: Boyd Evison, NPS
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Commissioner Gorsuch, DNR
Commissioner Hickey, DOTPF
Commissioner Kelso, DEC
Gary Gustafson, DNR
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LETTER DATED MARCH 15, 1989



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