

Eenayarak River and Eek Lake

HUC 30502, Zone 2, Kuskokwim River Region

FINAL INTERIM SUMMARY REPORT

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PREFACE

The research and writing of this study is funded by the U.S. Department of the Interior, Bureau of Land Management (BLM) through the Navigability Assistance Agreement (Cooperative Agreement # LO9AC15466). The State of Alaska (State) and the BLM established an assistance agreement in 2004 to facilitate the preparation of navigability reports that could be used for a variety of purposes, including the process for determining who owns title to the land under inland water bodies. Under the Statehood Compact, land under navigable waterways is reserved to the State. Navigability is based on historic use of water bodies for travel, trade and commerce up to the time of Statehood (1959), or recent use of the water bodies that demonstrates susceptibility to travel, trade and commerce in 1959.

The Navigability Assistance Agreement began as a pilot project focused on researching the history of use of water bodies in the Kuskokwim River region. The scope of work for the Assistance Agreement calls for identifying potentially navigable water bodies where the United States is an upland landowner or may otherwise have a potential interest in the submerged lands; gathering information from BLM records and a 1985 regional history of the Kuskokwim River region; writing narrative histories of each water body summarizing land status, land conveyance decisions, past navigability determinations, physical character of the water body, and a history of use on the water body. These reports are prepared in stages. The first stage (Phase I-A) consists of land status. An interim summary report (Phase II-B) is generally limited to information in the files of the U.S. Department of Interior and a regional history of the Kuskokwim River region written by C. Michael Brown in 1985. A final summary report (Phase IV) incorporates expanded research in materials located in other state and federal agency files, the holdings of various libraries and archives in Alaska, and interviews with people who have knowledge of use of the water body.

The present report represents work at the Phase II-B level. The research and writing of this report was conducted by State employees working under the guidance of an Assistance Agreement Management Team composed of representatives of BLM and the State. The management team sets priorities, reviews the reports on water bodies at various stages, and decides at what point enough research, analyses and writing has been completed on each specific water body. The management team directed the authors of these reports to refrain from drawing conclusions about the water body's navigability or susceptibility to navigability. Rather, the management team directed the authors to provide an overview at the end of the report summarizing the types of evidence of historic and contemporary use and highlighting those areas (such as portions of the water body) where gaps in knowledge remain and additional research might be warranted.

Documents that are key to understanding agency decision making or the point of view of an interested party are indicated as Attachment 1, Attachment 2, etc., which appear after the corresponding endnotes. These documents are listed in the Table of Attachments and can be viewed in their entirety in a separate PDF file that supplements this report.

Table of Contents

Preface.....	i
Table of Contents	ii
Table of Figures.....	ii
Table of Tables	ii
Attachments (in PDF format)	iii
I. Introduction	1
II. Land Status.....	2
III. BLM Navigability Determinations	6
<i>Oscarville Selection</i>	<i>6</i>
<i>Napaskiak Selection</i>	<i>7</i>
<i>Eek Village Selection</i>	<i>9</i>
<i>Other Navigability Determinations.....</i>	<i>11</i>
IV. Physical Character of the Waterway.....	17
V. Evidence of Use.....	19
<i>Native Use of the Eenayarak River and Eek Lake Prior to Statehood</i>	<i>19</i>
<i>Native Use of the Eenayarak River Documented in Native Allotment Files.....</i>	<i>19</i>
<i>Other Natives Traveling on the Eenayarak River and Eek Lake since Statehood.....</i>	<i>29</i>
<i>Government Studies and Use of the Eenayarak River and Eek Lake since 1959.....</i>	<i>30</i>
<i>Commercial Use on the Eenayarak River and Eek Lake</i>	<i>30</i>
VI. Summary	33
Endnotes.....	34

Table of Figures

Figure 1. Map showing the location of the Eenayarak River and Eek Lake within Zone 2 of HUC-30502 of the Kuskokwim River Region.....	1
Figure 2. The lower portion of the Eenayarak River showing land selected by Native corporations and for Native allotments.....	3
Figure 3. The middle portion of the Eenayarak River showing land selected by Native corporations and for Native allotments.....	4
Figure 4. The upper portion of the Eenayarak River and Eek Lake showing land selected by Native corporations and for Native allotments.....	5
Figure 5. Map showing the portage route connecting the Eenayarak River and the Kuskokwim River.....	8
Figure 6. Map showing BLM determinations of navigability on the lower Eenayarak River....	14
Figure 7. Map showing BLM determinations of navigability on the middle Eenayarak River...	15
Figure 8. Map showing BLM determinations of navigability on the upper Eenayarak River....	16
Figure 9. The Eenayarak River at Native allotment (FF-25315), river mile 49.....	17

Figure 10. The Eenayarak River at Native allotment (FF-51118-A), river mile 23.....	18
Figure 11. The Eenayarak River at Native allotment (FF-15785-B), river mile 17	20
Figure 12. The Eenayarak River at Native allotment (FF-15778-D), river mile 35.....	21
Figure 13. The Eenayarak River at Native allotment (FF-15627-A), river mile 37.....	22
Figure 14. The Eenayarak River at Native allotment (FF-15661-C), river mile 39.....	23
Figure 15. The Eenayarak River at Native allotment (FF-15686-B), river mile 42.....	24
Figure 16. The Eenayarak River at Native allotment (FF-119113-C), river mile 43.....	25
Figure 17. The Eenayarak River at Native allotment (FF-119026), river mile 45-46.....	26
Figure 18. The Eenayarak River at Native allotment (FF-51116-B), river mile 48.....	27
Figure 19. The Eenayarak River at Native allotment (FF-25349-B), river mile 48.....	28

Table of Tables

Table 1. Eenayarak River and Eek Lake Navigability Determinations.....	12
Table 2. Commercial Catch of Whitefish in the Kuskokwim River and its Tributaries.....	31
Table 3. Commercial Catch of Whitefish in the Kuskokwim River and its Tributaries, 1977-2002.....	32

Attachments (in PDF format)

- Attachment 1.** Curtis V. McVee, Notice of Proposed Easement Recommendations for the Village of Oscarville, December 23, 1976, BLM files, FF-14916-A.
- Attachment 2.** Letter from Robert D. Arnold, Assistant to the State Director for Conveyance Management, to Mr. Nicholia M. Steven, President, Oscarville Native Corporation, January 26, 1982, BLM files, FF-14916-EE.
- Attachment 3.** Fred Wolf, Final Easements for the Village of Oscarville, February 2, 1982, BLM Files, F-14902-EE.
- Attachment 4.** Ruth Stockie, Decision to Interim Convey for Oscarville Native Corporation, March 31, 1982, BLM files, FF-14916-EE.
- Attachment 5.** Robert W. Faithful, Interim Conveyance No. 675, June 27, 1983, BLM files, FF-14916-A.
- Attachment 6.** Robert L. Lloyd, Chief, Land Transfer Adjudication, BLM, Interim Conveyance Nos. 2107 and 2108, May 7, 2008, BLM Files, F-14916-A.
- Attachment 7.** Horace D. Sanders, Memorandum on Task Force Meeting on Napaskiak, April 21, 1976, BLM files, FF-14902-EE.
- Attachment 8.** Walter B. Parker, Co-Chairman, Federal-State Land Use Planning Commission for Alaska, Letter to Curtis McVee, March 28, 1977, BLM files, F-14902-EE
- Attachment 9.** Garold D. McWilliams, Realty Specialist, McGrath Resource Area, Transmittal of Draft SD Memo of Section 17 (b) Easement Recommendations Conformed to the “New Regulations,” July 21, 1980, BLM files, F-14902-EE.

- Attachment 10.** Fred Wolf, Final Easements for the Village of Napaskiak, February 2, 1982, BLM files, F-14902-EE.
- Attachment 11.** Ruth Stockie, Decision to Interim Convey for Napaskiak Incorporated, March 31, 1982, BLM files, FF-14902-A2.
- Attachment 12.** Robert W. Faithful, Interim Conveyance Nos. 633 and 634, April 11, 1983, BLM files, FF-14902-A.
- Attachment 13.** Stanley H. Bronczyk, Easement Task Force Meeting on Eek, January 27, 1977, BLM files, F-14854-EE.
- Attachment 14.** Letter from Frank A. Stefanich, to F-SLUPC, May 5, 1977, BLM files, F-14854-EE.
- Attachment 15.** Letter from Walter B. Parker to Curtis V. McVee, F-SLUPC Revision to Proposed Easements for Lands Selected by the Village of Eek, June 17, 1977, BLM files, F-14854-A.
- Attachment 16.** No author, Conformance Meeting Memo for Eek, November 7, 1979, BLM files, F-14854-EE.
- Attachment 17.** Cliff D. Ells, Realty Specialist, McGrath Resource Area. Transmittal of Draft SD Memo of Section 17 (b) Easement Recommendations Conformed to the “New Regulations,” December 21, 1979, BLM files, F-14854-EE.
- Attachment 18.** Robert E. Hiller, Trip Report for the Village Meeting Held with Iqfijouaq Company Concerning Lands in the Vicinity of Eek, April 5, 1983, BLM files, F-14854-EE.
- Attachment 19.** Robert W. Faithful, Memorandum on the Final Easements for Iqfijouaq Company for the Village of Eek, June 9, 1983, BLM files, FF-14854-EE.
- Attachment 20.** Robert A. Faithful, Final Navigability Determination for the Village of Eek, July 22, 1983, BLM Files, F-14854-EE.
- Attachment 21.** Ruth Stockie, Decision to Interim Convey for Iqfijouaq Company, September 29, 1983, BLM files, FF-14854-A.
- Attachment 22.** Ann Johnson, Interim Conveyance Nos. 799 and 800, February 29, 1984, BLM files, FF-14854-A.
- Attachment 23.** Ann Johnson, Interim Conveyance Nos. 1032 and 1033, April 19, 1985, BLM files, FF-14854-A.
- Attachment 24.** Robert W. Andorfer, Memorandum on Navigable Waters in Group Survey 253 (Window 1837), August 12, 1988, BLM files, FF-14854.
- Attachment 25.** Dominica VanKoten, Memorandum on Navigable Waters within ANCSA-Selected and Interim-Conveyed lands in the Eek Village Project Area, January 12, 2006, BLM files, FF-14854-EE.
- Attachment 26.** Krissell Crandall, Corrected Interim Conveyance Nos. 1980 and 1981, May 15, 2006, BLM files, FF-14854-A.
- Attachment 27.** K.J. Mushovic, Memorandum on Final Easement Review for Lands to be Patented to Iqfijouaq Company on behalf of the Native village of Eek, June 13, 2006, BLM files, FF-14854-EE.
- Attachment 28.** Charmain McMillan, Decision to Interim Convey for Iqfijouaq Company, August 20, 2008, BLM Files, FF-14854-EE/3.
- Attachment 29.** Richard Thwaites, Interim Conveyance Nos. 2154 and 2155, October 8, 2008, BLM Files, FF-14854-EE.

- Attachment 30.** Sherman F. Berg, Memorandum on Navigability Determinations, November 26, 1979, BLM files, FF-14902-EE.
- Attachment 31.** Paul O. Johnson, Memorandum on Eek Lake Susceptibility to Navigation, December 22, 1981, BLM files, FF-14916-EE.
- Attachment 32.** Master Title Plats (MTPs) for Eenayarak River.
- Attachment 33.** Dominica VanKoten, Memorandum on Navigable Waters within Survey Group Nos. 140, 268, and 284, March 16, 2007, BLM files, FF-14835-A.
- Attachment 34.** Robert E. Huer, Telephone Conversation with Steve Durkee, December 23, 1981, BLM files, FF-14916-EE.
- Attachment 35.** Robert E. Huer, Telephone Conversation with Jim Culbertson, December 23, 1981, BLM files, FF-14916-EE.
- Attachment 36.** Robert E. Huer, Telephone Conversation with Bill of Bush Air and Jerry Drake, December 24 1981, BLM files, FF-14916-EE.
- Attachment 37.** Rae Baxter, *Whitefish Investigations, A-Y-K Region, Alaska*. Alaska Department of Fish and Game, Bethel, January 1975.

The Eskimo name of Eenayarak River was reported in 1910 by A. G. Maddren, United States Geological Survey (USGS).¹ Eek Lake's local name was reported in 1949 by the USGS.² The river drains Eek Lake and the surrounding wetlands in the southcentral portion of the Yukon Delta National Wildlife Refuge (Yukon Delta NWR). Bethel is the nearest regional hub.

The Eenayarak River, Eek Lake and the two smaller unnamed lakes southwest of Eek Lake comprise ten townships in the Seward Meridian (SM):

TRM: Township (T.), Range (R.), (SM):

T. 5 N., R. 71W., SM	T. 3 N., R. 73W., SM
T. 5 N., R. 72W., SM	T. 3 N., R. 74W., SM
T. 4 N., R. 72W., SM	T. 3 N., R. 75W., SM
T. 3 N., R. 72W., SM	T. 2 N., R. 75W., SM
T. 4 N., R. 73W., SM	T. 1 N., R. 75W., SM

II. Land Status

Federal, Native village, regional corporation, and Native allotment lands surround the Eenayarak River and Eek Lake (Figures 2-4). Native lands surround the upper, middle and lower portions of the Eenayarak River and Eek Lake, and Yukon Delta NWR lands surround the lower middle portion of the river. Thirty-two Native allotments are inholdings within federal and Native lands along the river.

Portions of the upper, middle and lower Eenayarak River and Eek Lake are located within lands which were selected by Native villages in the 1970's under the Alaska Native Claims Settlement Act (ANCSA) of 1971 (Figure 2-4). The BLM conveyed land abutting the northern and eastern portions of Eek Lake to Oscarville Native Corporation in Interim Conveyance (IC) No. 675; the subsurface estate was conveyed to Calista Corporation in IC No. 676 in 1983. Land abutting portions of the upper Eenayarak River and southern portions of Eek Lake was conveyed to Napaskiak Corporation by IC No. 633 in 1983. The subsurface estate for these lands was conveyed to Calista Corporation in IC No. 634. Land abutting portions of the lower, middle and upper Eenayarak River was conveyed to Iqfijouaq Company, the village corporation for Eek village, by IC No. 799 in 1984 and IC No. 1032 in 1985. The subsurface estate for these lands was conveyed to Calista Corporation in IC No. 800 and IC No. 1033. The BLM issued IC Nos. 1980 and 1981 in 2006 which corrected IC Nos. 799 and 800.

Portions of Eek Lake and the upper, middle and lower sections of the Eenayarak River are located within the Yukon Delta NWR (Figures 2-4). The Yukon Delta NWR was withdrawn from unreserved public lands managed by the BLM in 1972 (Public Land Order 5184, March 9, 1972) and transferred to the federal refuge system under the Alaska National Interest Lands Conservation Act (ANILCA), PL 96-487 of 1980. Title to federal refuge lands in Alaska is held by the United States, and the U.S. Fish and Wildlife Service (USF&WS) is the manager of the Yukon Delta NWR.

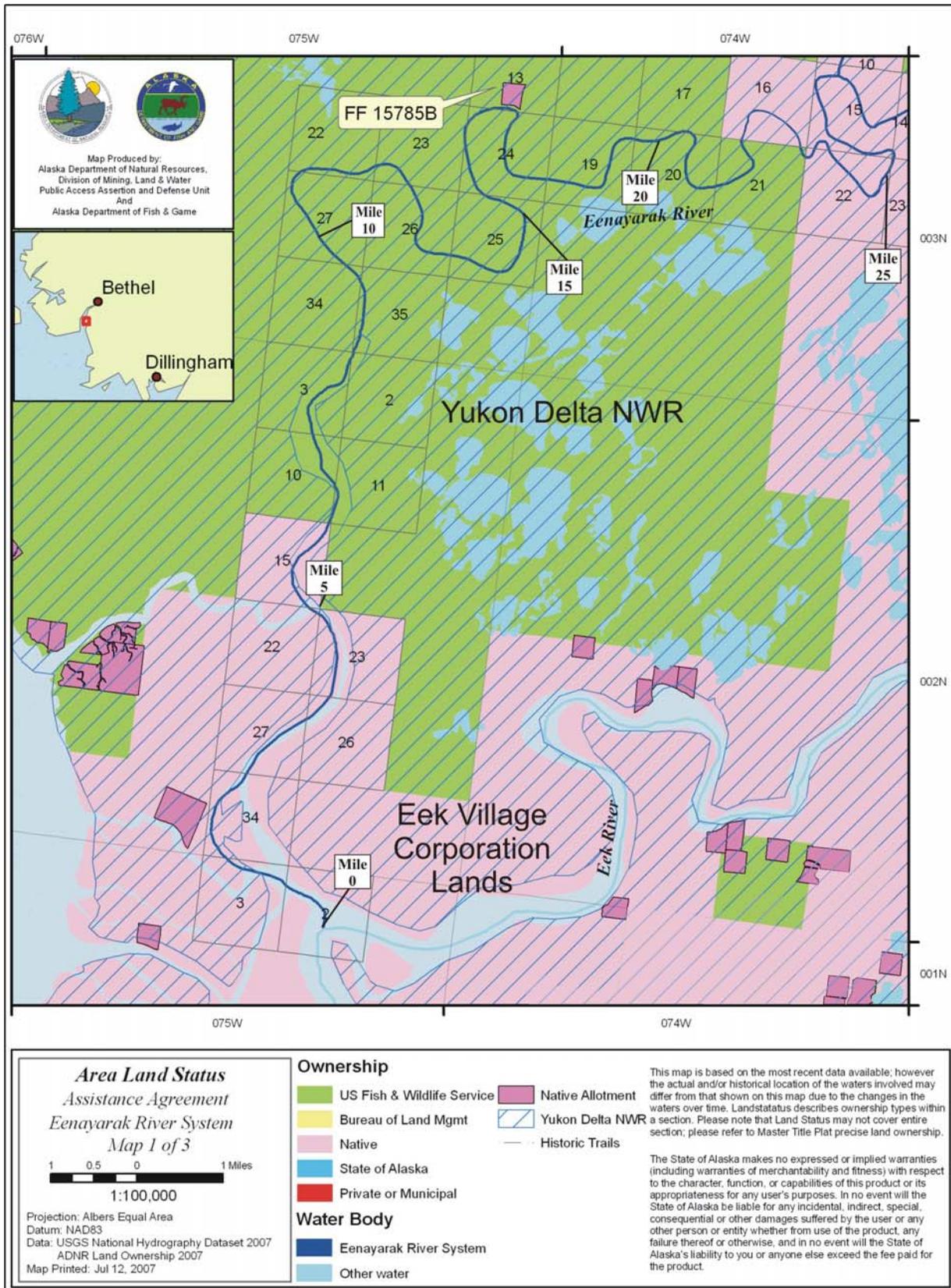


Figure 2. The lower portion of Eenayarak River showing land selected by Native corporations and for Native allotments.

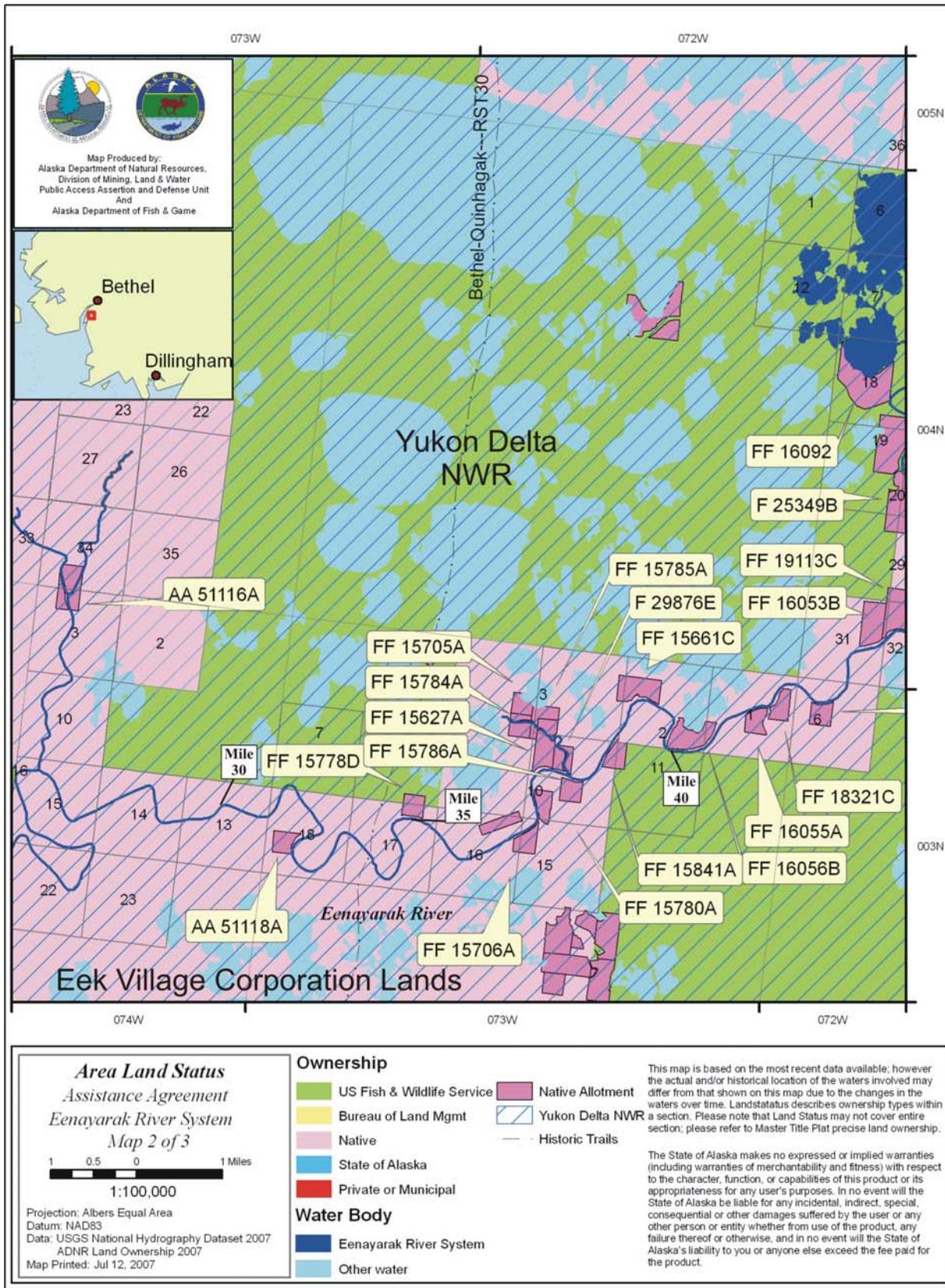


Figure 3. The middle portion of Eenayarak River showing land selected by Native corporations and for Native allotments.

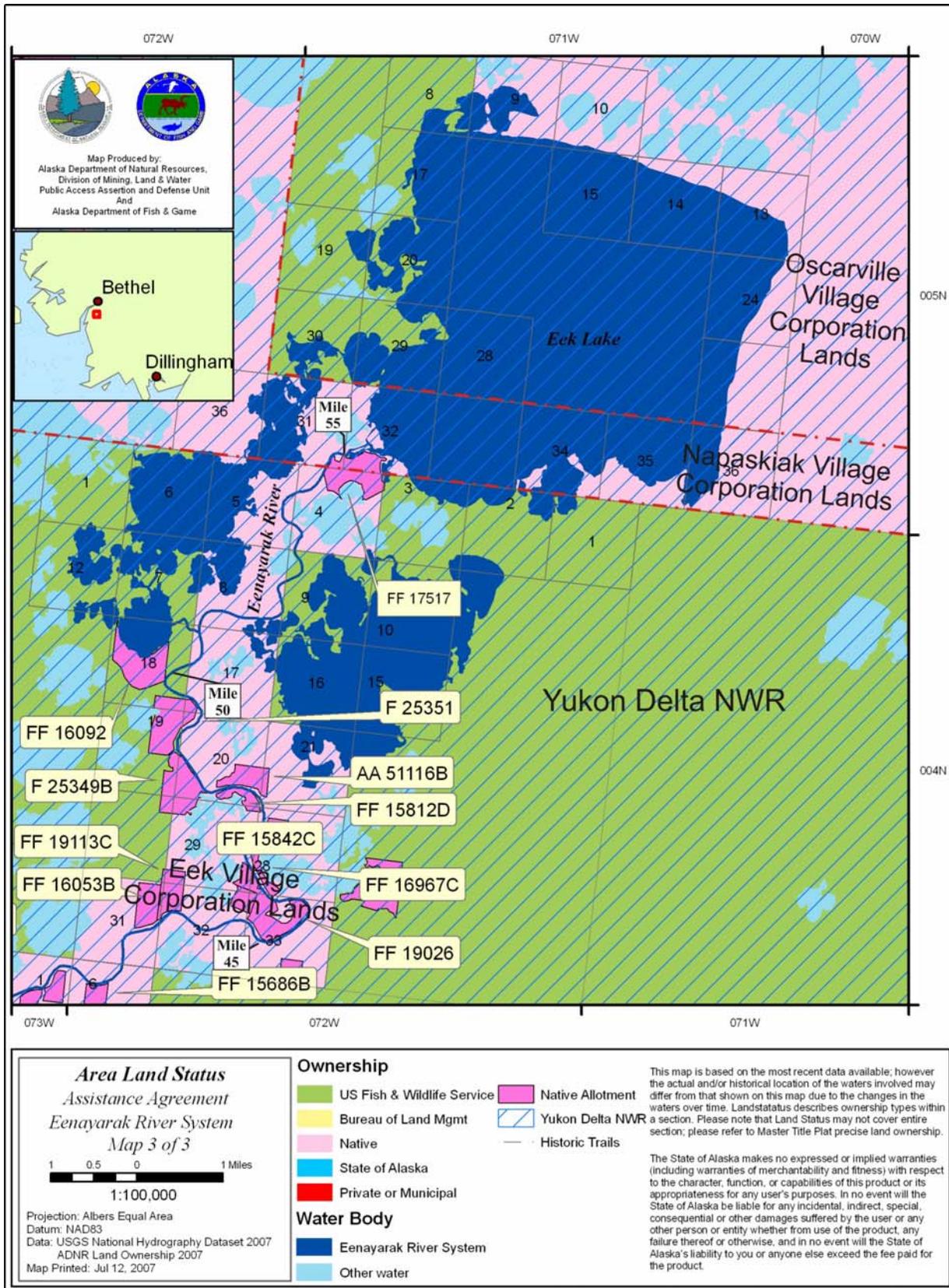


Figure 4. The upper portion of Eenayarak River and Eek Lake showing land selected by Native corporations and for Native Allotments

III. BLM Navigability Determinations

The Eenayarak River is located along lands selected by and conveyed to three different villages; Oscarville and Napaskiak selected and were conveyed lands surrounding Eek Lake, and Eek village selected and was conveyed lands along the lower reaches as well as the upper reaches of Eenayarak River. Three different sets of ANCSA conveyance documents and navigability determinations cover the Eenayarak River System.ⁱⁱⁱ

Oscarville Selection

The village of Oscarville selected lands along the northern and eastern shores of Eek Lake. The BLM determined Eek Lake non-navigable in a December 23, 1976 Notice of Proposed Easement Recommendations for Oscarville selections.³ (Attachment 1)

In a letter to Oscarville Native Corporation dated January 26, 1982, the BLM's Assistant to the State Director for Conveyance Management wrote that Eek Lake and the stream connecting Eek Lake to the Eenayarak River had been determined navigable and would be added to the BLM State Director's navigability statement.⁴ (Attachment 2)

The BLM added Eek Lake to the Final Easements memorandum for Oscarville on February 2, 1982. The memorandum stated that, within the village selection area, the Kuskokwim River, its interconnected sloughs, the Eenayarak River Portage in the Napaskiak selection area only (river miles 54-55), Eek Lake and the stream connecting the lake to the Eenayarak River were navigable "due to present and historic uses for travel in trade and commerce."⁵ The stream linking the Eenayarak River to Eek Lake was described in the memorandum as "the unnamed waterway commencing at Eek Lake in Sec. 32, T. 5 N., R. 71 W., Seward Meridian, southerly to Eenayarak River in Sec. 18, T. 4 N., R. 72 W., Seward Meridian." This unnamed waterway was shown on later maps as a part of the Eenayarak River, revising the unnamed waterway connecting Eek Lake to the Eenayarak River to be from Sec. 32, T. 5 N., R. 71 W., SM to Eek Lake.⁶ (Attachment 3)

The BLM issued a Decision to Interim Convey (DIC) for the first group of Oscarville lands on March 31, 1982. Those lands included Secs. 9 and 10, T. 5 N., R. 71 W., SM, on the north side of Eek Lake. The DIC excluded lands underlying tidal waters, which would be determined at the time of survey.⁷ (Attachment 4) The maps attached to the decision show the Eenayarak River as navigable in the Eek and Napaskiak selection areas from Sec. 17, T. 3 N., R. 73 W., SM, to its head in Eek Lake (river miles 34-55). The maps also show the lake as navigable throughout Secs. 13, 14, 24, 25, and 36, T. 5 N., R. 71 W., SM in the Oscarville selection area, but the BLM dealt with those lands at a later time in a separate DIC.

On June 27, 1983, the BLM conveyed the first lands of Oscarville selections in IC No. 675. The subsurface estate was conveyed to Calista Corporation in IC No. 676. The conveyed lands included Secs. 9 and 10, T. 5 N., R. 71 W., SM, on the north side of Eek Lake. The maps attached to the ICs show the upper Eenayarak River (river miles 54-55) and Eek Lake in T. 5 N., R. 75 W., SM, as navigable within conveyed lands.⁸ (Attachment 5) The maps also show Eek

ⁱⁱⁱ The files for these ANCSA selection applications are F-14916A, F-14916A2 and F-14916-EE for Oscarville, F-14902-A, F-14902-A2 and F14902-EE for Napaskiak, and F-14854A, F-14854A2 and F-14854-EE for Eek.

Lake navigable throughout Secs. 13, 14, 24, 25, and 36, T. 5 N., R. 71 W., SM in the Oscarville selection area, but those lands were conveyed later in another IC.

On May 7, 2008 the BLM conveyed additional lands to Oscarville Native Corporation in IC No. 2107. The subsurface estate for the lands was conveyed to Calista Corporation in IC No. 2108. The lands include Secs. 13, 14, 15, 24 and 25, T. 5 N., R. 71 W., SM, which are along the northeastern and eastern shores of Eek Lake. The maps attached to the ICs show Eek Lake navigable in the conveyance area.⁹ (Attachment 6)

Napaskiak Selection

The village of Napaskiak selected lands along the Eenayarak River between river miles 54 and 55. In an April 21, 1976 Task Force Meeting Memorandum for Napaskiak's selection, the BLM task force found that Eek Lake was non-navigable.¹⁰ (Attachment 7)

In a review of Napaskiak easements on March 28, 1977, the Federal-State Land Use Planning Commission (F-SLUPC) stated its opinion that the Eek-Eenayarak-Kuskokwim water route was navigable. The F-SLUPC recommended a streamside easement along both banks and the riverbed of "the Eenarayak[sic]-Kuskokwim water route... Flat bottom skifts [sic] of up to 32 feet in length travel this route. It is used by people for commercial fishing and subsistence hunting and fishing."¹¹ The F-SLUPC also proposed a streamside easement connecting the southwestern corner of Eek Lake to the Eenayarak-Kuskokwim water route.¹² (Attachment 8)

In a draft final easement memorandum for Napaskiak on July 21, 1980, the BLM stated: "The Eek-Eenarayak[sic]-Kuskokwim Portage was determined to be navigable by reason of susceptibility to travel, trade and commerce as an alternate route to the Kuskokwim River. The portage interconnects the Kuskokwim and Eek Rivers,"¹³ (Attachment 9) as shown in Figure 5.

The BLM added Eek Lake to the Final Easements memorandum for Napaskiak on February 2, 1982. The memorandum stated that, within the village selection area, the Kuskokwim River, its interconnected sloughs; the Eenayarak River Portage, in the Napaskiak selection area only (river miles 54-55); and Eek Lake with the stream connecting the lake to the Eenayarak River were navigable "due to present and historic uses for travel in trade and commerce."¹⁴ The stream linking the Eenayarak River to Eek River was described in both memoranda as "the unnamed waterway commencing at Eek Lake in Sec. 32, T. 5 N., R. 71 W., Seward Meridian, [extending] southerly to the Eenayarak River in Sec. 18, T. 4 N., R. 72 W., Seward Meridian."¹⁵ (Attachment 10)

The DIC for Napaskiak, dated March 31, 1982, excluded submerged lands beneath the Eenayarak River and the Eek Lake outlet throughout the Napaskiak selection area. The attached maps show the south shore of Eek Lake and its outlet into the upper Eenayarak River as navigable within the Napaskiak selection area in Secs. 31-36, T. 5 N., R. 71 W., SM. The DIC also included the decision to convey lands to Napaskiak in Tps. 5 and 6 N. and Rs. 72 and 73 W., SM. The attached maps show the upper reaches of the Eek-Eenayarak-Kuskokwim Portage route running through those townships and extending northwest to Lomavik Slough, as navigable. The maps indicate that determinations of tidal influence were pending.¹⁶ (Attachment 11)

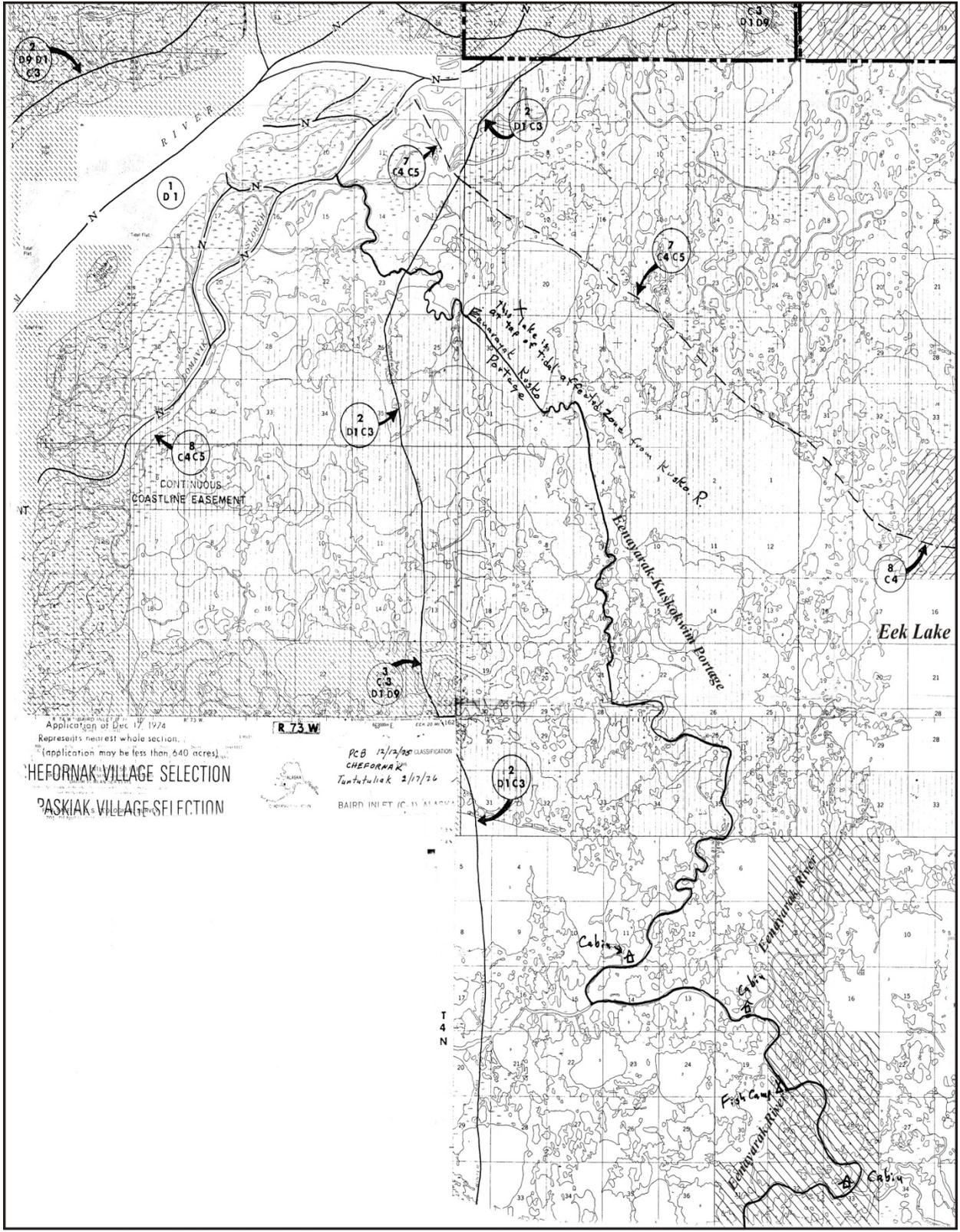


Figure 5. Map showing the portage route connecting the Eenayarak River and the Kuskokwim River.

The BLM conveyed the selected lands to Napaskiak in IC No. 633 and the subsurface estate to Calista in IC No. 634 on April 11, 1983. The navigable water bodies were identified on navigability maps attached to the ICs. The navigability maps showed Eek Lake in Secs. 31-36, T. 5 N., R. 71 W., SM, the upper Eenayarak River in Secs. 31 and 32 (river miles 54-55), and the Eek-Eenayarak-Kuskokwim Portage route running through Tps. 5 and 6 N. and Rs. 72 and 73 W., SM as navigable. The maps stated that determinations of tidal influence were pending.¹⁷ (Attachment 12)

Eek Village Selection

The village of Eek selected lands along the Eenayarak River from river miles 0 to 6 and 24 to 54. In a memorandum dated January 27, 1977, the BLM Easement Task Force, considering land selected by the village of Eek, determined that the Eenayarak River was navigable “from its mouth to section 19, T. 3 N., R. 74 W., SM [between river miles 19 and 20] by tidal influence.”¹⁸ (Attachment 13) On May 5, 1977, Frank Stefanich of the Alaska Department of Fish and Game (ADF&G) reported to the Easement Task Force that tidal influence on the Eenayarak River extended from the mouth of the river upstream and ends in approximately Sec. 1, T. 3 N., R. 73 W., SM (river mile 42).¹⁹ (Attachment 14)

In a June 17, 1977 review of easements within the Eek Village selection area, the F-SLUPC recommended 25-foot-wide easements along both banks of the Eek-Eenayarak-Kuskokwim water route and the stream connecting Eek Lake and the Eenayarak River.²⁰ (Attachment 15) This recommendation was identical to the March 28, 1977 easement review for Napaskiak. (Attachment 8)

On November 7, 1979, the BLM discussed revising Eek Village easements in conformance to new easement regulations. The agency dropped the stream-side easements and concluded that the Eenayarak River was a major waterway and navigable throughout the Eek selection area (river miles 0-6 and 24-54) “as a trade and travel route between villages.”²¹ (Attachment 16)

A draft of the final easements memo for Iqfijouaq Company (Eek Village) dated December 21, 1979, reaffirmed the determination, stating:

The Eenayarak River is determined to be navigable through the selection area [from Sec. 2., T. 1 N., R. 75 W., to Sec. 15, T. 2 N., R. 75 W., [river miles 0-6] and Sec. 22., T. 3 N., R. 74 W., to Sec. 4, T. 4 N., R. 72 W., SM [river miles 24-54] as a trade and travel route between villages. Tidal influence extends to Sec. 33, T. 4 N., R. 72 W., SM [river mile 46]. It is an all-weather inland route from Bethel to Eek and is used for the transport of commercial fish catches (white fish) and drums of fuel.²² (Attachment 17)

This all-weather inland route was also determined to “receive significant present use for access to public lands.”²³

In a BLM trip report from a meeting in Eek, dated April 5, 1983, Eek villagers were summarized as stating that Eek Lake was misnamed and should be called Eenayarak Lake, and that “no boat use is made of this lake,” but that “The Eenayarak River is used by skiffs.”²⁴ (Attachment 18) The villagers further reported that the channel of the Eenayarak where it rejoins the Kuskokwim

had shifted and was now located in Secs. 29-30, T. 2 N., R. 75 W., SM. In addition the villagers were summarized as saying that “the slough joining the Eenayarak River in Section 1, T. 3 N., R. 73 W., SM is not used by Eek villagers. A [Native] allotment up the slough in Sec. 23 is not an Eek villager but perhaps a Napaskiak village[r’s Native] allotment. Eek villagers do not believe access is by the slough.”²⁵

On June 9, 1983, the BLM issued a Final Easements Memorandum for Eek Village that determined the Eenayarak River as a major waterway.²⁶ (Attachment 19)

In a Navigability Determination Memorandum for Eek village-selected lands dated July 22, 1983, the BLM determined the Eenayarak River navigable in Tps. 1 and 2 N., R. 75 W.; Secs. 13-15, 22, and 23, T. 3 N., R. 74 W.; T. 3 N., R. 73 W., (excepting Secs. 7 and 11); Sec. 6, T. 3 N., R. 72 W., and T. 4 N., R. 72 W., SM (river miles 0-6 and 24-54). A map attached to the memorandum shows the Eenayarak River heading in Eek Lake (locally known as Eenayarak Lake). The memorandum noted that the Eenayarak River’s location at its confluence with the Kuskokwim River had changed to a location indicated by the Eek villagers.²⁷ (Attachment 20)

The BLM issued a DIC for the Eek village-selected lands on September 29, 1983. In the maps associated with the DIC, the Eenayarak River is depicted as navigable within the Eek selection area from its mouth in the Eek channel to its head in Eek Lake (river miles 0-6 and 24-54). The maps also indicated that determinations of tidal influence were pending.²⁸ (Attachment 21)

On February 29, 1984, the BLM conveyed surface estate lands selected by Iqfijouaq Company in IC No. 799 to Iqfijouaq Company of Eek. The Calista Corporation received the subsurface estate for these lands in IC No. 800. Maps attached to the ICs show the Eenayarak River as navigable throughout the conveyed area (river miles 0-6 and 24-54) on maps attached to the ICs. The maps also indicated that determinations of tidal influence were pending.²⁹ (Attachment 22) The BLM issued IC Nos. 1032 and 1033 for additional lands (surface and subsurface estate, respectively) in the Eek area on April 19, 1985. These additional lands did not include the bed of the Eenayarak River.³⁰ (Attachment 23)

In a Navigable Waters Memorandum issued on August 12, 1988, the BLM identified navigable waters in Group Survey No. 253 (Eek). The criterion used was travel in a craft larger than a one-man kayak. The memorandum named the Eenayarak River and the Eek Lake outlet as navigable throughout the group survey area (river miles 42-54). Eek Lake was automatically segregated from conveyed lands in accordance with the 1973 Manual of Surveying Instructions direction to meander lakes 50 acres or larger. The memorandum also determined a segment of a slough off of the Eenayarak River in Sec. 27, T. 4 N., R. 74 W., SM, to be navigable. The mouth of the slough is located on the north bank of the river in Sec. 15, T. 3 N., R. 74 W., SM.³¹ (Attachment 24)

The BLM reaffirmed the August 12, 1988 identification of navigable waters in a Navigable Waters memorandum for the Eek Village Project Area dated January 12, 2006. The January 12 memorandum also reversed the earlier determination for the slough off of the Eenayarak River in Sec. 27, T. 4 N., R. 74 W., SM, identifying it as non-navigable. The BLM reversed its earlier decision that receiving overflow from other streams qualified this slough as navigable.³² (Attachment 25)

The BLM issued Corrected IC Nos. 1980 and 1981 to Iqfijouaq Company and Calista Corporation on May 15, 2006, excluding certain surveyed Native allotments from IC Nos. 799 and 800. Native allotment FF-025351 (U.S. Survey 10155),³³ situated along the Eenayarak River in Secs. 17 and 20 of T. 4 N., R. 72 W., SM, was excluded from lands conveyed to Iqfijouaq, Inc., for the village of Eek.³⁴ (Attachment 26)

In preparation to convey the final ANSCA land entitlement to the Iqfijouaq Company on behalf of Eek Village, the BLM issued an easements memorandum on June 13, 2006. One section to be conveyed, Sec. 3 of T. 4 N., R. 72 W., SM, sits at the southwestern shore of Eek Lake. The memorandum does not mention that Eek Lake has been determined navigable. As no easements along that section of the lake were proposed, the easement maps attached to the document do not show the lake. Because the lake is larger than 50 acres it will be excluded, as required by survey instructions, from the conveyance of lands along its shore.³⁵ (Attachment 27)

On August 20, 2008 the BLM issued a DIC for further lands selected by the Iqfijouaq Company of Eek village. Of the lands described in the DIC, only Sec. 16, T. 3 N., R. 74 W., SM, (river miles 17-18) borders the Eenayarak River. The DIC stated that within the lands approved for conveyance the Eenayarak River is considered navigable.³⁶ (Attachment 28)

On October 8, 2008, the BLM issued IC Nos. 2154 and 2155 to the Iqfijouaq Company of Eek village and the Calista Corporation respectively. Of the lands described in the IC, only Sec. 16, T. 3 N., R. 74 W., SM (river miles 17-18) borders the Eenayarak River.³⁷ (Attachment 29)

Other Navigability Determinations

The BLM has also considered navigability and made determinations outside of village and Native allotment lands. On November 26, 1979, a BLM Realty Specialist recommended that the Eek-Eenayarak-Kuskokwim water route be determined “administratively navigable.” The reasons cited for this recommendation included Native use, transport of commercial cargo up to 1,000 pounds and the potential for a boat carrying up to 3,000 pounds to travel along it. The Eek-Eenayarak-Kuskokwim Portage route follows the Eenayarak River from its mouth to Sec. 18, T. 4 N., R. 72 W., SM, (river mile 50). The route then branches off and follows various lakes and streams until it joins the Lomavik Slough of the Kuskokwim River in Sec. 10, T. 6 N., R. 73 W., SM.³⁸ (Attachment 30)

On December 22, 1981, a BLM Realty Specialist reported on information provided by an ADF&G Biologist in a memorandum on susceptibility to navigation. The memorandum stated that there were three commercial whitefish operations in the Eek Lake region. One of the major travel routes of the fishing operations was the Eek-Eenayarak-Kuskokwim Portage; the average length of boat making the trip was 26 feet and the annual harvest of whitefish was one to three tons.³⁹ (Attachment 31)

The Master Title Plats (MTPs) along the Eenayarak River show it as meandered and segregated upstream from its mouth through T. 3 N., R. 73 W., SM (river mile 37).⁴⁰ (Attachment 32)

On March 16, 2007, in a Navigable Waters memorandum for the Calista region, the BLM identified the Eek-Eenayarak-Kuskokwim Portage as navigable through Secs. 1-36, T. 5 N., R. 72 W., and Secs. 1-36, T. 6 N., R. 72 W., SM. It also identified Eek Lake as navigable within Secs. 2-4, 9-15, 24, 25, and 31-36, T. 5 N., R. 71 W., SM. The unnamed slough which connects Eek Lake to the Eenayarak River was determined navigable in Secs. 31-36, T. 5 N., R. 71 W., SM, comprising its entire length. ⁴¹ (Attachment 33)

Summary of Navigability Determinations: Navigability determinations for the Eenayarak River and Eek Lake are summarized in Table 1 and shown in Figures 6-8. The BLM initially declared Eek Lake non-navigable in proposed easement recommendations for Oscarville and Napaskiak village selections in 1976. In 1977, the F-SLUPC recommended that the Eek-Eenayarak-Kuskokwim water route, including the first 50 river miles of the Eenayarak River, be determined navigable based on commercial fishing and subsistence use of the route. In 1979, a BLM realty specialist recommended that the Eek-Eenayarak-Kuskokwim route be determined navigable due to Native use, transport of commercial cargo of up to 1,000 pounds and potential for a boat to travel it carrying up to 3,000 pounds. Since 1982-1983, the BLM has consistently determined Eenayarak River, Eek Lake, and the slough connecting Eek Lake to Eenayarak River navigable throughout their entire extent in areas selected by Oscarville, Napaskiak and Eek villages.

Table 1: Eenayarak River and Eek Lake Navigability Determinations.

Dates	River Section	Type Decision and Substance	Navigability Criteria
12/23/1976 Attachment 1	Eek Lake	Easement Recommendations: Eek Lake declared non-navigable.	N/A
1/26/1982 Attachment 2	Eek Lake and upper river	Letter: Eek Lake and the stream connecting it to the Eenayarak River determined navigable.	N/A
2/2/1982 Attachment 3	Upper River and Eek Lake	Final Easement Memo: The whole of Eek Lake and the Eenayarak River and connecting stream within the Napaskiak village selection determined navigable, river miles 54-55.	Present and historic use for travel, trade, and commerce.
3/31/1982 Attachment 4	Mid-upper river and Eek Lake	DIC: Associated maps show the Eenayarak River as navigable within the Eek and Napaskiak selection areas, river miles 34-55, and Eek Lake navigable within the Oscarville selection area.	N/A
6/27/1983 Attachment 5	Upper River	IC No. 675 and IC No. 676: Maps depict the Eenayarak River as navigable within the Napaskiak selection area, river miles 54-55.	N/A
4/21/1976 Attachment 7	Eek Lake	Task Force Memo: Eek Lake determined non-navigable.	N/A
7/21/1980 Attachment 9	Lower, mid and upper river	Draft Easement Memo: Eek-Eenayarak-Kuskokwim Portage determined navigable. Eenayarak river miles 0-50.	Susceptibility to travel, trade, and commerce.
2/2/1982 Attachment 10	Upper river	Final Easement Memo: The whole of Eek Lake and the Eenayarak River and connecting stream within the Napaskiak village selection determined navigable, river miles 54-55.	Present and historic use for travel, trade, and commerce.
3/31/1982 Attachment 11	Whole river	DIC: Maps show Eenayarak River from river miles 4-55 along with the portage connecting the river to Eek Lake, and Eek Lake within the Oscarville selection area to be navigable.	N/A

4/11/1983 Attachment 12	Upper River and Eek Lake	IC No. 633 and IC No. 634: Eenayarak River, the portage connecting it to Eek Lake and Eek Lake shown as navigable.	N/A
1/27/1977 Attachment 13	Lower river	Easement Task Force memo: Eenayarak River determined tidal from river miles 0 to 20.	Tidal influence.
6/17/1977 Attachment 15	Lower, middle and upper river.	F-SLUPC: Opined that the Eek-Eenayarak-Kuskokwim water route is navigable. Eenayarak river miles 0 to 50.	Commercial fishing and subsistence, with flat bottom skiffs up to 32 feet in length.
11/7/1979 Attachment 16	Upper, middle and lower river	Easement Review: Eenayarak River declared a major waterway and navigable within Eek selection area, river miles 0-6 and 24-54.	Trade and travel route between villages.
12/21/1979 Attachment 17	Lower, middle and upper river	Draft Final Easements Memo: Eenayarak River determined navigable from river miles 0-6 and 24-54 as well as tidally influenced from its mouth through river mile 46.	Commercial transportation and use as a route for trade and travel.
7/22/1983 Attachment 20	Lower, middle and upper river	Navigability Determination Memo: Eenayarak river navigable in river miles 0-6 and 24-54.	N/A
9/29/1983 Attachment 21	Lower, middle and upper river	DIC: Maps depict the Eenayarak River navigable within the Eek selection area. river miles 0-6 and 24-54.	N/A
2/29/1984 Attachment 22	Lower, middle and upper river	IC No. 799 and IC No. 800: Attached maps depicted the Eenayarak River as navigable throughout the Eek selection area. river miles 0-6 and 24-54.	N/A
8/12/1988 Attachment 24	Upper River	Navigable Waters Memo: Eenayarak River determined navigable from river miles 42-54. Eek Lake is segregated due to being larger than 50 acres.	Travel in a craft larger than a one-man kayak.
1/12/2006 Attachment 25	Upper River	Navigable Waters Memo: Eenayarak River determined navigable from river miles 42-54. Eek Lake is segregated due to being larger than 50 acres.	Travel in a craft larger than a one-man kayak.
8/20/2008 Attachment 28	Lower River	DIC: Eenayarak River said to be navigable in Sec. 16 T. 3 N., R. 74 W., SM.	N/A
10/8/2008 Attachment 29	Lower River	IC Nos. 2154 and 2155: Sec. 16 T. 3 N., R. 74 W., SM, conveyed to Iqfijouaq Company.	N/A
3/16/2007 Attachment 33	Eek Lake and Unnamed Slough	Navigable Waters Memo: Eek Lake and Unnamed Slough connecting Eek Lake and Eenayarak River determined navigable within village selection areas.	N/A

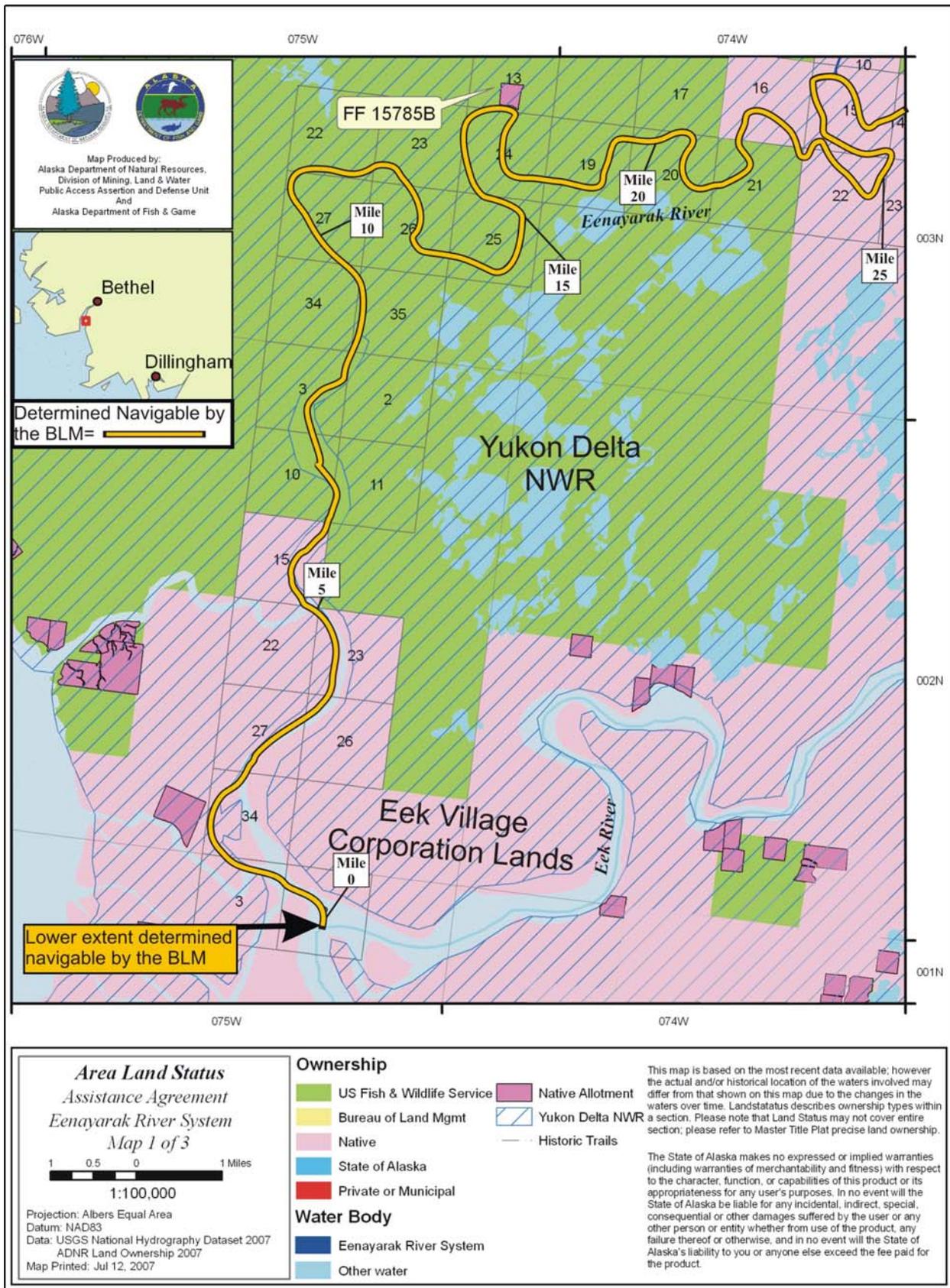


Figure 6. Map showing BLM determinations of navigability on the lower Eenayarak River

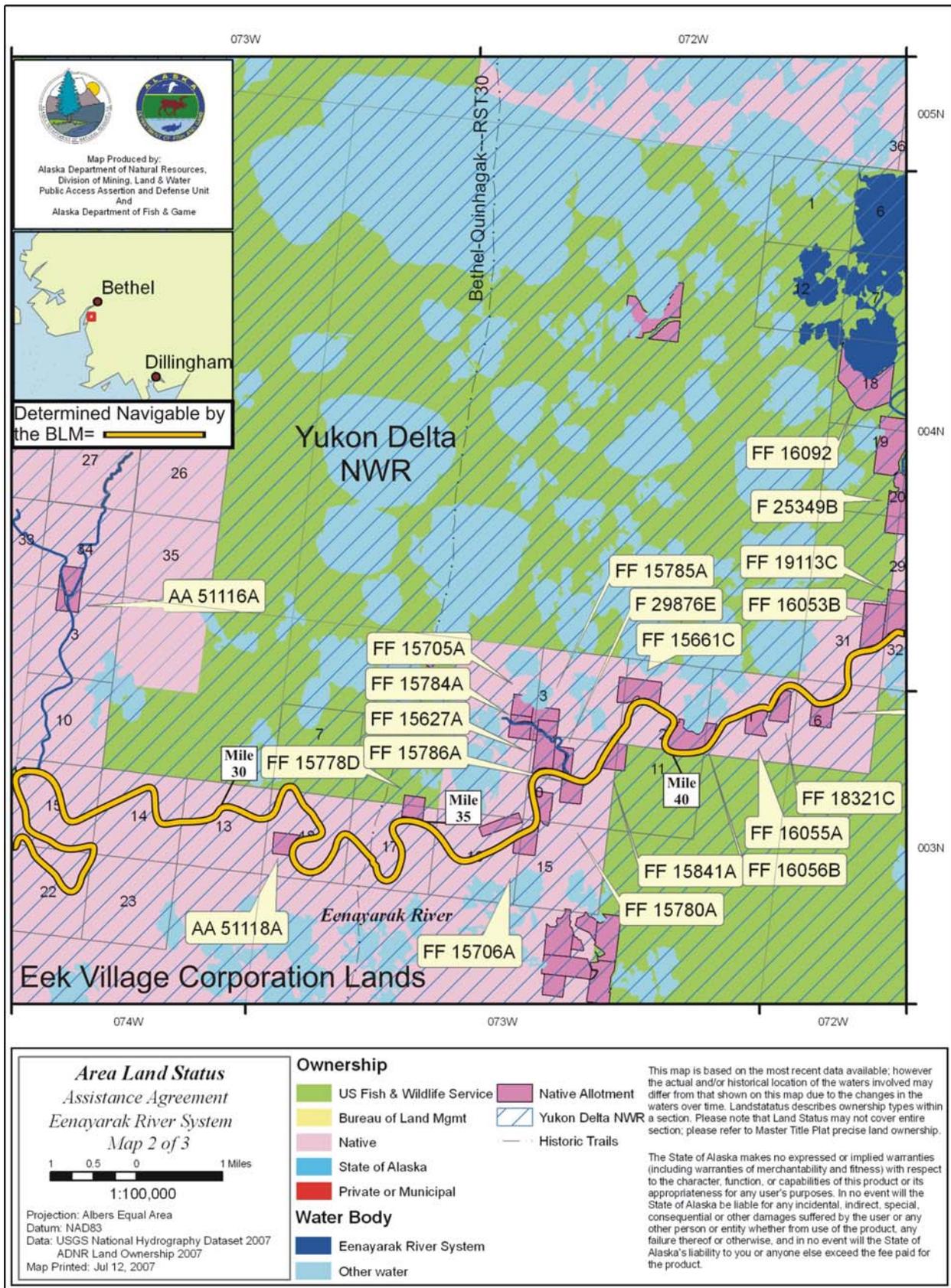


Figure 7. Map showing BLM determinations of navigability on the middle Eenayarak River.

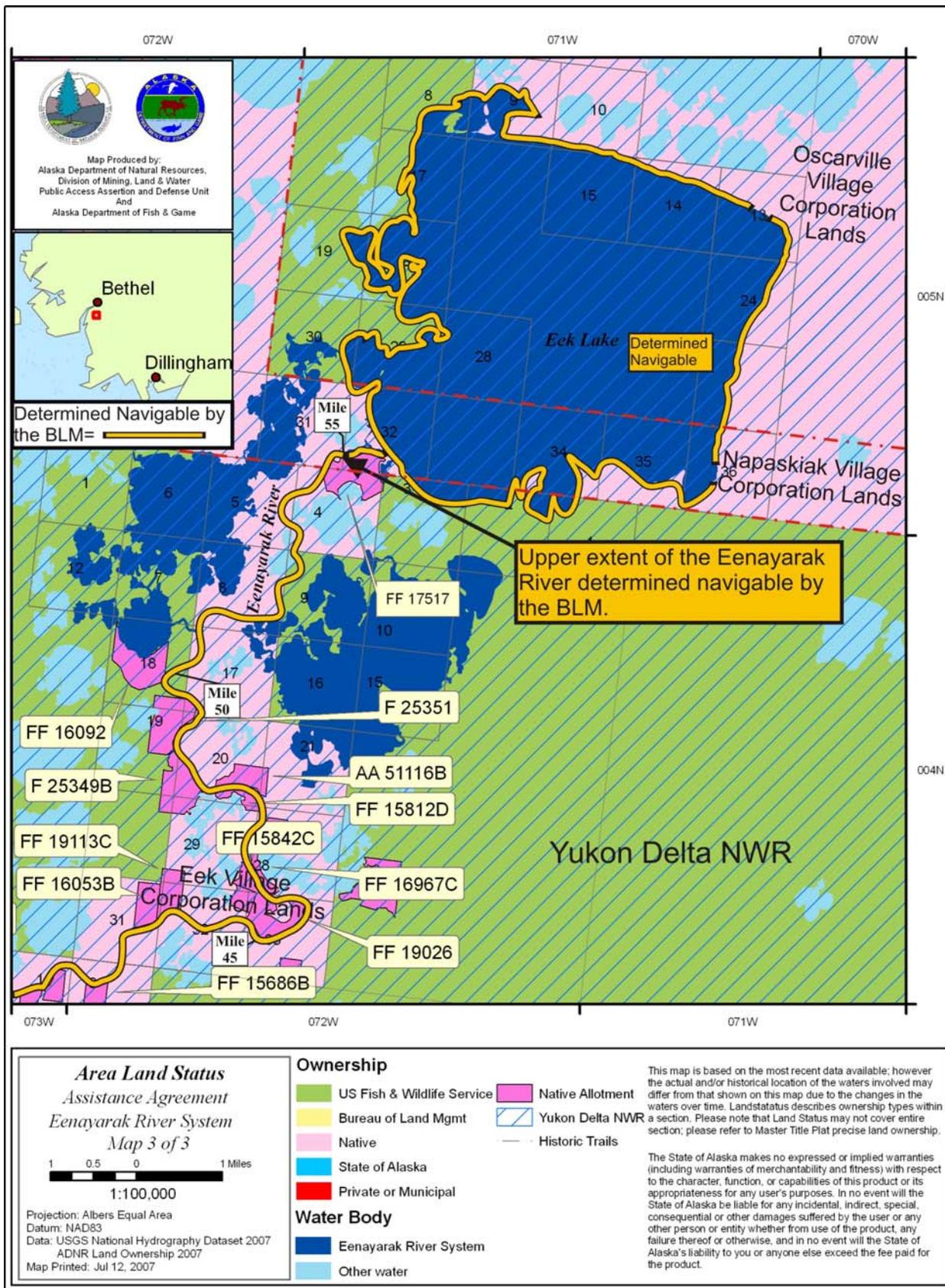


Figure 8. Map showing BLM determinations of navigability on the upper Eenayarak River

IV. Physical Character of the Waterway

The Eenayarak River is commonly referred to as a component of the Eek-Eenayarak-Kuskokwim Portage, an inland water route from the Kuskokwim Bay to an upstream region of the Kuskokwim River. The Eenayarak River System, as it is here described, refers to the Eenayarak River, Eek Lake, and the stream flowing southwest from Eek Lake that connects it to Eenayarak River.

The Eenayarak River is 55 miles long and drains an area of about 530 square miles. The river heads in several lakes, most principally in Eek Lake. The outlet of the lake flows southwest into the Eek River (Figure 9). The river meanders through a low tundra plain laced with many small lakes, with willow growing along the banks of the river (Figure 10). The Eenayarak River is described by C. Michael Brown as a deep, muddy, meandering river. The river has many small unnamed tributaries and sloughs. The headwaters of the river are located in Sec. 31, T. 5 N., R. 71 W., SM, and the mouth of the river is located in Sec. 34, T. 2 N., R. 75 W., SM. The lower portion of the river flows through an intertidal portion of the Yukon-Kuskokwim Delta.⁴²



Figure 9. The Eenayarak River, river mile 49, at Joseph Evan's Native allotment, (FF-25315). Photo by Lee Morris, April 23, 1985, BLM files, FF-25315, NARA, Anchorage.

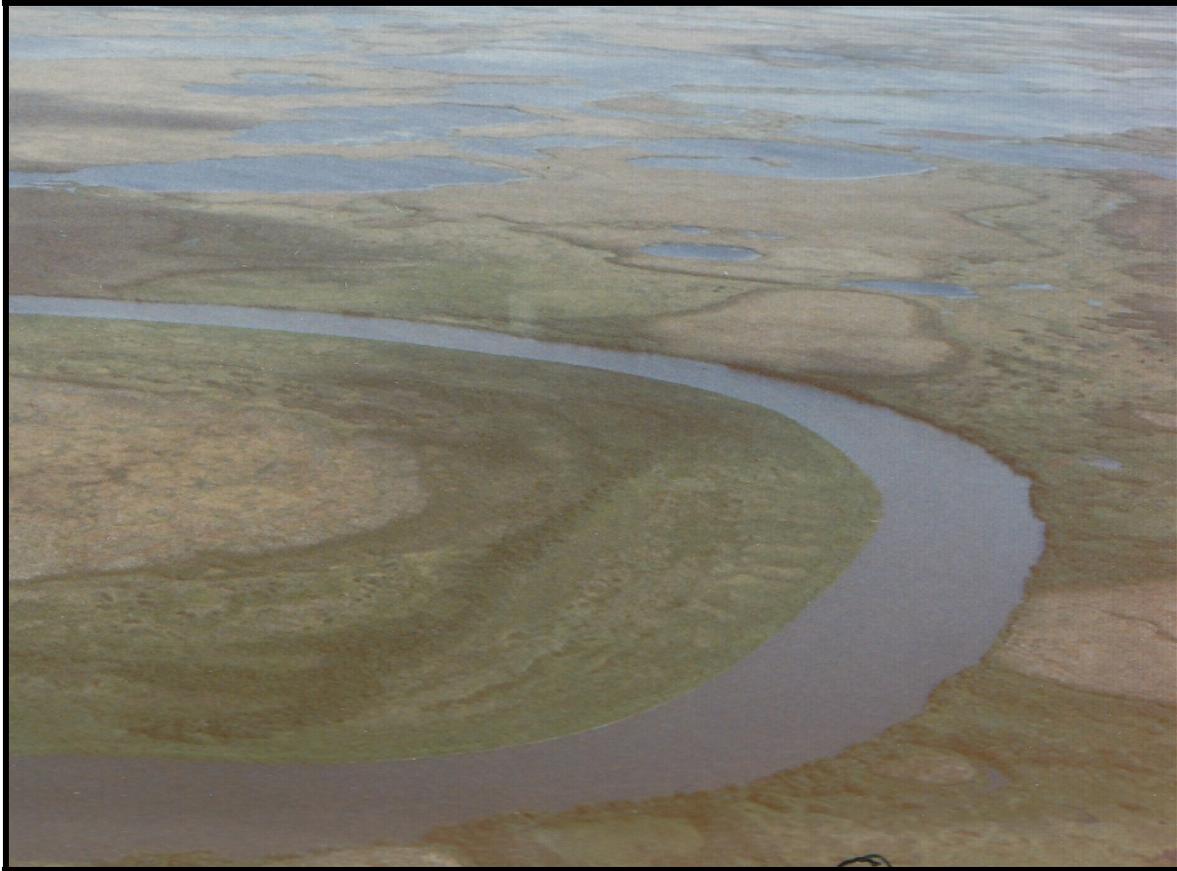


Figure 10. The Eenayarak River, river mile 23, at Suzie Brown’s Native allotment (FF-51118-A). Photo by Sylvia K. Hale, August 28, 1986, BLM files, FF-51118-A, National Archives and Records Administration (NARA), Anchorage.

No precise data were found regarding the depth of the Eenayarak River, but it was described by C. Michael Brown in BLM’s *Kuskokwim Regional Report* as “deep.”⁴³ Brown reported the width of the Eenayarak River as 30 feet. Roger Clay described the river as being less than 250 feet wide in the upper river and widening to greater than 500 feet in the lower river.⁴⁴

There have been several tidal determinations made regarding the Eenayarak River. In 1977, a BLM Easement Task Force for the Eek selection area determined the Eenayarak River tidal from its mouth upstream to Sec. 19, T. 3 N., R. 74 W., SM (river mile 20).⁴⁵ (Attachment 13) The ADF&G reported that the Eenayarak River was tidally influenced through Sec. 1, T. 3 N., R. 73 W., SM (river mile 42).⁴⁶ (Attachment 14) A December 21, 1979 draft of the Final Easements Memorandum for the Eek village selection area declared the Eenayarak River tidal through Sec. 33, T. 4 N., R. 72 W., SM (river mile 46).⁴⁷ (Attachment 17) Brown also referenced an ADF&G statement that the Eenayarak River was tidally influenced to Sec. 1, T. 3 N., R. 73 W., SM (river mile 42). Brown also wrote that: “the lake system northwest of the river is tidally influenced to Sec. 32, T. 6 N., R. 72 W., SM.”⁴⁸

Eek Lake is a permafrost thaw lake interconnected with the many smaller lakes in the surrounding area. It sits at an elevation of 10 feet and has two inlets and one outlet. It has a surface area of 17 square miles and is located in the Eenayarak River watershed.⁴⁹

V. Evidence of Use

Native Use of the Eenayarak River and Eek Lake Prior to Statehood

In 1963 the anthropologist Wendell H. Oswalt published a study of the village of Napaskiak that he had done from September 7, 1955 through August 30, 1956.⁵⁰ Oswalt stated that the primary boat used for travel and subsistence activities in the region was a plank boat “approximately twenty-four feet long. These boats have a two-foot freeboard, a three-foot beam, a pointed bow, and a square stern, and the bow section is decked over for about three feet. Outboard motors ranging from one and one-half to thirty-two horsepower are used.”⁵¹

Oswalt also reported that “kayaks and canoes are used if the loads are light and the portages difficult. One old man travels in a kayak nearly every fall to Eek via a series of sloughs rather than on the Kuskokwim River.”⁵² There was no direct mention of the Eenayarak River. However, C. Michael Brown referenced Oswalt’s statement in his Kuskokwim regional history for the Eenayarak River. Brown noted that the Eenayarak River formed a part of the Eek-Eenayarak-Kuskokwim water route used by local residents for hunting, fishing, trapping and commercial whitefish fishing.⁵³ In this way Oswalt’s statement is linked to the Eenayarak River and indicates use of the river prior to statehood.

One of the stated uses for the Eek-Eenayarak-Kuskokwim portage route was to avoid rough waters on Kuskokwim Bay. Kuskokwim Bay has had a reputation for dangerous waters since the time prior to Alaska’s statehood. One USGS expedition led by Josiah Edward Spurr, a geologist well known for exploring the Yukon River region, came across evidence of a need to avoid Kuskokwim Bay in 1898. In Spurr’s diary, which recorded a trip to discover a route into Interior Alaska, it was mentioned that Kuskokwim Bay was notorious for unexpected squalls that made boat travel along the coast dangerous. Earlier that summer, a boatload of prospectors, a missionary family, and a Native man drowned on Kuskokwim Bay in foul weather, so there was some appeal to taking an alternative, inland route to Bristol Bay or elsewhere.⁵⁴

Native Use of the Eenayarak River Documented in Native Allotment Files

The BLM began collecting information in the 1970’s to adjudicate Native allotment applications filed by local Natives that have fished, hunted and picked berries along the Eenayarak River and Eek Lake. The Natives accessed favorite spots along the river for hunting, trapping, fishing and berry picking. These favorite spots, through custom and use, developed into exclusive use areas. The federal government adjudicated many of these allotments and transferred title to the parcels to the applicants. Twenty-four individuals filed Native allotment applications for 25 parcels on the portion of the Eenayarak River between river mile 0 and river mile 55. Native allotment files for these 25 allotments indicate that one allotment was used in the spring, one allotment was

used in June, one allotment was used in the fall and winter, one allotment was used May through September, nine allotments were used May through October, six allotments were used May through December, three allotments were used June through September, and one allotment was used June through December. Documents in all of these Native allotment files, including application forms and BLM field inspection reports, indicate that the applicants accessed their parcels during the open season (when the water body was not frozen). Three of the files indicate that the allotment holder traveled to their parcel by boat.

Frank Paul of Napakiak filed an application on March 14, 1972 for a Native allotment split into three parcels. The parcel on the Eenayarak River is 39.99 acres (FF-15785-B) and lies in Sec. 13, T. 3 N., R. 75 W., SM, on the right bank of the river (river mile 17). Paul began using the parcel (Figure 11) in 1940 for berry picking and hunting from June through December.⁵⁵ Neither the allottee's application nor the inspection report contained any indication of how Frank Paul accessed his parcel.⁵⁶



Figure 11. The Eenayarak River, river mile 17, at Frank Paul's Native allotment (FF-15785-B). Photo by William M. Peake, October 14, 1976, BLM files, FF-15785-B, NARA, Anchorage.

Suzie Brown of Eek filed an application on August 3, 1964 for a Native allotment split into three parcels. The parcel on the Eenayarak River is 39.99 acres (AA-51118-A) and lies in Sec. 18, T. 3 N., R 73 W., SM, on the left bank of the river (river mile 23). Brown began using the parcel in 1923 to pick berries in June.⁵⁷ In the Native allotment field report for Brown's allotment, she was recorded as stating that she accessed her parcel by boat.⁵⁸ As a part of her application process Brown participated in the lawsuit of Barr v. United States. In a signed affidavit Brown stated:

It [Parcel A] is located up the Eenayarak River to the trail that leads to Bethel. I remember first going with my Mother to pick berries on this land... We would travel to parcel A by boat... I believe I began to pick berries by myself when I was ten or eleven years old. That was around 1923... I continue to go to my land to pick berries every summer and fall. Now when I go, I go by motorboat up the river to the snowmobile trail that leads to Bethel.⁵⁹

Sam W. Alexie of Eek filed an application on March 14, 1972 for a Native allotment split into four parcels. The parcel on the Eenayarak River is 40 acres (FF-15778-D) and lies in Secs. 8 and 17, T. 3 N., R. 73 W., SM, on the right bank of the river (river mile 35). Alexie began using the parcel (Figure 12) in 1957 for berry picking and fishing for whitefish from May through October.⁶⁰ Neither the allottee's application nor the inspection report contained any indication of how Sam W. Alexie accessed his parcel.⁶¹



Figure 12. The Eenayarak River, river mile 35, at Sam W. Alexie's Native allotment (FF-15778-D). Photo by Wayne R. Dawson May 12, 1976, BLM files, FF-15778-D, NARA, Anchorage.

Steven White of Eek filed an application on March 13, 1972 for a Native allotment split into four parcels. The parcel on the Eenayarak River is 40 acres (FF-15706-A) and lies in Secs. 15 and 16, T. 3 N., R. 73 W., SM, on the left bank of the river (river mile 36). White began using the parcel in 1950 for berry picking, hunting and fishing for whitefish from May through December.⁶² Neither the allottee's application nor the inspection report contained any indication of how Steve White accessed his parcel.⁶³

Lewis Beebe of Eek filed an application on March 14, 1972 for a Native allotment split into four parcels. The parcel on the Eenayarak River is 39.98 acres (FF-15780-A) and lies in Secs. 10 and 15, T. 3 N., R. 73 W., SM, on the left bank of the river (river mile 37). Beebe began using the parcel in 1950 for berry picking and fishing from May through October.⁶⁴ Neither the allottee's application nor the inspection report contained any indication of how Lewis Beebe accessed his parcel.⁶⁵

Paulina P. Carter filed an application on March 13, 1972 for a Native allotment split into three parcels. The parcel on the Eenayarak River is 79.86 acres (FF-15627-A) and lies in Secs. 3 and 10, T. 3 N., R. 73 W., SM, on the right bank at river mile 37. Carter began using the parcel (Figure 13) in 1940 for berry picking from May through October.⁶⁶ Neither her application nor the inspection report contained any indication of how Paulina P. Carter accessed her parcel.⁶⁷



Figure 13. The Eenayarak River, river mile 37, at Paulina P. Carter's Native allotment, (FF-15627-A). Photo by Wayne R. Dawson, May 12, 1976, BLM files, FF-15627-A, NARA, Anchorage.

John C. Alexie of Eek filed an application on March 14, 1972 for a Native allotment split into four parcels. Two of his parcels are on the Eenayarak River, the first (FF-29876-E) is 40 acres and lies in Sec. 10, T. 3 N., R. 73 W., SM, on the right bank at river mile 37. The second parcel (FF-29876-C) is 39.98 acres and lies in Secs. 28, 29, 32 and 33, T. 4 N., R. 72 W., SM, on the right bank at river mile 44. Alexie began using the parcels in 1953 for fishing and berry picking from May through October.⁶⁸ Neither the allottee's application nor the inspection reports contained any indication of how John C. Alexie accessed his parcels.^{69 70}

Minnie Petluska of Eek filed an application on March 14, 1972, for a Native allotment split into four parcels. The parcel on the Eenayarak River is 39.99 acres (FF-15786-A) and lies in Sec. 10, T. 3 N., R. 73 W., SM, on the left bank of the river (river mile 38). Petluska began using the parcel in 1952 for fishing and berry picking from May through October.⁷¹ Neither the allottee's application nor the inspection report contained any indication of how Minnie Petluska accessed her parcel.⁷²

Adolf Carter of Eek filed an application on March 15, 1972 for a Native allotment split in to four parcels. The parcel on the Eenayarak River is 40 acres (FF-15841-A) and lies in Secs. 10 and 11, T. 3 N., R. 73 W., SM, on the left bank at river mile 38. Carter began using the parcel in 1946 for fishing and hunting from May through December.⁷³ Neither the allottee's application nor the inspection report contained any indication of how Adolf Carter accessed his parcel.⁷⁴

Lucy Henry of Eek filed an application on March 13, 1972 for a Native allotment split into three parcels. The parcel on the Eenayarak River is 80 acres (FF-15661-C) and lies in Secs. 2 and 3, T. 3 N., R. 73 W., SM, on the right bank at river mile 39. Henry began using the parcel (Figure 14) in 1954 for fishing and berry picking from May through October.⁷⁵ Neither her application nor the inspection report contained any indication of how Lucy Henry accessed her parcel.⁷⁶



Figure 14. The Eenayarak River, river mile 39, at Lucy Henry's Native allotment, (FF-15661-C). Photo by Wayne R. Dawson, May 12, 1976, BLM files, FF-15661-C, NARA, Anchorage.

Sally Caldwell of Eek filed an application on March 20, 1972 for a Native allotment split into two parcels. The parcel on the Eenayarak River is 79.96 acres (FF-16056-B) and lies in Secs. 1 and 2, T. 3 N., R. 73 W., SM, on the right bank of river mile 40. Caldwell began using the parcel in 1966 for berry picking from May through September.⁷⁷ Neither her application nor the inspection report contained any indication of how Sally Caldwell accessed her parcel.⁷⁸

William F. Brown of Eek filed an application on March 20, 1972 for a Native allotment split into four parcels. The parcel on the Eenayarak River is 39.98 acres (FF-16055-A) and lies in Sec. 1, T. 3 N., R. 73 W., SM, on the left bank of river mile 41. Brown began using the parcel in 1964 for hunting and fishing for whitefish in May through December.⁷⁹ Neither his application nor the inspection report contained any indication of how Brown accessed his parcel.⁸⁰

Moses Green of Eek filed an application on March 17, 1972 for a Native allotment split into four parcels. The parcel on the Eenayarak River is 39.98 acres (FF-18321-C) and lies in Sec. 1, T. 3 N., R. 73 W., SM, on the left bank of the river (river mile 42). Green began using the parcel in 1964 for hunting and fishing for muskrat and whitefish from May through October.⁸¹ Neither the allottee's application nor the inspection report contained any indication of how Moses Green accessed his parcel.⁸²

James Petluska of Eek filed an application on March 13, 1972 for a Native allotment split into four parcels. The parcel on the Eenayarak River is 40 acres (FF-15686-B) and lies in Sec. 6, T. 3 N., R. 72 W., SM, on the left bank of river mile 42. Petluska began using the parcel (Figure 15) in 1941 for hunting and fishing from May through December.⁸³ Neither his application nor the inspection report contained any indication of how James Petluska accessed his parcel.⁸⁴



Figure 15. The Eenayarak River, river mile 42, at James Petluska's Native allotment (FF-15686-B). Photo by Wayne R. Dawson, June 15, 1976, BLM files, FF-15686-B, NARA, Anchorage.

Carrie N. Carter of Eek filed an application on March 20, 1972 for a Native allotment split into two parcels. The parcel on the Eenayarak River is 79.98 acres (FF-16053-B) and lies in Sec. 31, T. 4 N., R. 72 W., SM, on the right bank at river mile 43. Carter began using the parcel in 1968 for fishing and berry picking from May through October.⁸⁵ Neither the allottee's application nor the inspection report contained any indication of how Carrie N. Carter accessed her parcel.⁸⁶

Peter Green of Bethel filed an application on June 19, 1972 for a Native allotment split into three parcels. The parcel on the Eenayarak River is 79.98 acres (FF-19113-C) and lies in Secs. 29-32, T. 4 N., R. 72 W., SM, on the right bank at river mile 43. Green began using the parcel (Figure 16) in 1960 for fishing, hunting and trapping from April through October.⁸⁷ Neither the allottee's application nor the inspection report contained any indication of how Peter Green accessed his parcel.⁸⁸



Figure 16. The Eenayarak River, river mile 43, at Peter Green's Native allotment, (FF-19113-C). Photo by Wayne R. Dawson, January 5, 1977, BLM files, FF-19113-C, NARA, Anchorage.

Peter Petluska (deceased) of Napaskiak filed an application on June 12, 1972 for a 159.98 acre Native allotment (FF-19026) in Secs. 28, 29 and 33, T. 4 N., R. 72 W., SM, on the right bank of the Eenayarak River (river miles 45-46). Petluska began using his allotment (Figure 17) in 1927 for hunting, trapping and fishing from May through December.⁸⁹ Neither the allottee's application nor the inspection report contained any indication of how Peter Petluska accessed his allotment.⁹⁰



Figure 17. The Eenayarak River, river mile 45-46, at Peter Petluska's Native allotment (FF-19026). Photo by Wayne R. Dawson, May 12, 1976, BLM files, FF-19026, NARA, Anchorage.

Carlie White Sr. (deceased) of Eek filed an application on March 28, 1972 for a Native allotment split into four parcels. The parcel on the Eenayarak River is 39.99 acres (FF-16967-C) and lies in Secs. 28, 29, and 33, T. 4 N., R. 72 W., SM, on the left bank at river mile 47. White began using his parcel in 1935 for fishing from May through October.⁹¹ Neither his application nor the inspection report contained any indication of how Carlie White Sr. accessed his parcel.⁹²

Joseph Joshua of Eek filed an application on March 15, 1972 for a Native allotment split into four parcels. The parcel on the Eenayarak River is 39.99 acres (FF-15842-C) and lies in Sec. 28, T. 4 N., R. 72 W., SM, on the left bank at river mile 47. Joshua began using his parcel in 1950 for hunting and fishing from May through December.⁹³ Neither the allottee's application nor the inspection report contained any indication of how Joseph Joshua accessed his parcel.⁹⁴

Daniel Foster of Eek filed an application on March 15, 1972 for a Native allotment split into four parcels. The parcel on the Eenayarak River is 39.98 acres (FF-15812-D) and lies in Secs. 20, 28, and 29, T. 4 N., R. 72 W., SM, on the right bank at river mile 48. Foster began using his parcel in 1950 for hunting and fishing from May through December.⁹⁵ Neither the allottee's application nor the inspection report contained any indication of how Daniel Foster accessed his parcel.⁹⁶

Willie Brown of Eek filed an application on March 21, 1984 for a Native allotment split into two parcels. The parcel on the Eenayarak River (Figure 18) is 79.97 acres (FF-51116-B) and lies in Secs. 20 and 21, T. 4 N., R. 72 W., SM, on the left bank at river mile 48. Brown began using his parcel in 1923 for fishing and hunting from June through December.⁹⁷ In the field report for his parcel, Brown indicated that he accessed his parcel by "river boat."⁹⁸



Figure 18. The Eenayarak River, river mile 48, at Willie Brown's Native allotment (FF-51116-B. Photo by Sylvia Hale, August 29, 1986, FF-51116-B, NARA, Anchorage.

Willie Cyril of Napaskiak filed an application on May 20, 1971 for a Native allotment split into two parcels. The parcel on the Eenayarak River is 154.99 acres (FF-25349-B) and lies in Secs. 19, 20, 29, and 30, T. 4 N., R. 72 W., SM, on the right bank at river mile 48. Cyril began using his allotment (Figure 19) in 1949 for fishing from June through September.⁹⁹ Neither the allottee's application nor the inspection report contained any indication of how Willie Cyril accessed his parcel.¹⁰⁰



Figure 19. The Eenayarak River, river mile 48, at Willie Cyril's Native allotment (FF-25349-B). Photo by Wayne R. Dawson, May 12, 1976, BLM files, FF-25349-B, NARA, Anchorage.

Joseph Evan (deceased) of Napaskiak filed an application on April 25, 1960 for a 159.95 acre Native allotment (FF-25351) in Secs. 17-20, T. 4 N., R. 72 W., SM, on the right bank of the Eenayarak River (river mile 49). Evan began using his allotment in 1926 for trapping from October through December.¹⁰¹ In the BLM field report for his allotment, Joseph Evan indicated that he accessed his parcel by boat.¹⁰²

Elena Willie of Napakiak filed an application on April 3, 1972 for a 160 acre Native allotment (FF-17517) in Secs. 31 and 32 T. 5 N., R. 71 W., SM, and Secs. 3 and 4, T. 4 N., R. 72 W., SM, on the left bank of the Eenayarak River and the south shore of Eek Lake (river mile 55). Willie began using her allotment in 1938 for spring camp from May through June.¹⁰³ Neither the allottee's application nor the inspection report contained any indication of how Elena Willie accessed her allotment.¹⁰⁴

Other Natives Traveling on the Eenayarak River and Eek Lake since Statehood

In a 1979 draft of the Final Easements Memorandum for Eek village, the BLM stated that the Eek River and Eenayarak River “both are water highways connecting the village of Eek with other Kuskokwim River villages. These waterways also receive significant present use for access to public lands surrounding the village.”¹⁰⁵ (Attachment 17)

In a 1979 interview by the BLM regarding to the Eek-Eenayarak-Kuskokwim water route, Ray Baxter of ADF&G stated that “the area through which the route travels is used by natives of Eek, Nopokiak [sic Napakiak] and Naposkiok [sic Napaskiak] for fishing, hunting and berry picking.” Baxter reported that he witnessed a skiff loaded with five or six barrels of fuel on the route and that he believed a boat could carry up to 3,000 pounds along the route. The author of the BLM memorandum reporting Baxter's interview stated that the route “is used in times of bad coastal weather. This use is primarily by the natives of Eek traveling northerly to, or southerly from, Bethel. Supplies are carried in their craft.”¹⁰⁶ (Attachment 30)

In December 1981, a BLM realty specialist asked four people familiar with the area whether Eek Lake and its interconnected sloughs were susceptible to trade, travel or commerce. The first person questioned, who had worked previously in BLM's Bethel office, responded that “at certain high tides--the whole area becomes navigable in the sense of being able to boat around without going on land.” “Locals use sloughs/lakes,” he added, “including Eek Lake.”¹⁰⁷ (Attachment 34) The second person questioned, Jim Culbertson, who worked for the Alaska Department of Natural Resources, replied that commercial fishing “takes place all over—in all sloughs, lakes, [and] ponds that interconnect with the Eek-Eenayarak-Kuskokwim Portage. He indicated that Eek Lake was 2½ feet deep and the sloughs were eight to nine feet deep.”¹⁰⁸ (Attachment 35)

The third person interviewed, a pilot for Bush Air in Bethel, noted that he had seen locals use the water courses for travel—probably going home or between villages. A fourth person, a pilot from another charter service in Bethel, stated that the water courses in question were “used extensively for travel” and he “has seen boats with motors on sloughs and lakes.” The travelers, he added, were probably people from Eek who were at three to four fish camps on shallow

lakes.¹⁰⁹ (Attachment 36) Based on the data provided, the BLM employee who conducted the four telephone interviews recommended that “Eek Lake and Lomavik Slough [on the north end of the portage] be added to the list of navigable waters.” He added that these water courses may in fact be tidally influenced and that should be determined at the time of survey.¹¹⁰ (Attachment 34)

Brown referenced a BLM realty specialist who stated that skiffs were used on the Eenayarak River within the Eek selection area.¹¹¹ Brown also referenced a report by ADF&G’s F.A. Stefanich to the F-SLUPC in which it was stated that the Eenayarak River was commonly travelled by locals using flat-bottomed skiffs up to 32 feet in length. The primary reasons given for the local use was to reach hunting and berry-picking ground on Eek Lake as well as an alternative route whenever bad weather prevented travel between villages on Kuskokwim Bay.¹¹²

Government Studies and Use of the Eenayarak River and Eek Lake since 1959

In a November 26, 1979 Navigability Determinations memorandum, BLM Realty Specialist Sherman Berg summarized information provided by ADF&G officials about the Eenayarak River, Eek Lake, Kuskokwim River Portage. The BLM had received a letter from Frank Stefanich of ADF&G stating that a water route linking the Eek, Eenayarak, Kuskokwim rivers has been used as a transportation route and other uses. In an interview conducted by Berg, Ray Baxter of ADF&G stated that he had personally used the Eek-Eenayarak-Kuskokwim water route several times since late 1977 and that it was used by natives of Eek, Napakiak and Napaskiak. The channel between the Eenayarak and Kuskokwim rivers is seasonally low in some spots, but even at those times, loaded boats can be, and are pulled through. Baxter noted that as a travel route, the portage was used in times of bad coastal weather primarily by natives of Eek traveling northerly to, or southerly from, Bethel. They carry supplies in their craft. Baxter had personally seen boats carrying up to 3,000 pounds of fuel traveling on the portage route. As a result of these interviews, Berg recommended “that the water-route be considered administratively navigable, along with the lakes that are interconnected to it.”¹¹³ (Attachment 30)

Commercial Use on the Eenayarak River and Eek Lake

A small commercial whitefish fishery existed in the lower Kuskokwim River drainage in the 1960s, 1970s and 1980s, and some of the whitefish harvested came from the Eenayarak River and Eek Lake. No information is available about how many whitefish were harvested on specific rivers and creeks because ADF&G did not regulate the fishery. Four varieties of whitefish are common in the lower Kuskokwim River and its tributaries. The ADF&G began gathering basic data about the fishery in 1966 because it was believed that whitefish represented a resource that could support a commercial industry. In 1971, a biologist position was established in Bethel whose concern was year-round study primarily of whitefish. The lower Kuskokwim River drainage was chosen for the study because whitefish stocks were abundant and there were suitable freezer plants available in local communities if the fishery expanded. Between 1966 and 1972, ADF&G biologists tagged and released 5,040 whitefish in the lower Kuskokwim River and its tributaries. The recovery rate--the percentage of tagged whitefish returned by fishermen

to the agency--was 1.5 percent. Tagged whitefish were recovered on the Eenayarak River and its lakes and sloughs, which the ADF&G project leader thought unusual. “Although no recoveries have been made [on the Kuskokwim River or tributaries] below the mouth of the Kialik River,” ADF&G biologist Rae Baxter wrote, “the mouth of the Enrayak [Eenayarak River] is about 25 miles downstream, but there is a shallow slough connection to the Kuskokwim River about 20 miles above the Kialik and during high water in the spring fish could move into the Enrayak [Eenayark River].”¹¹⁴ (Attachment 37)

An ADF&G study completed in 1975 found that limited sales of whitefish occurred in many communities. The majority of whitefish taken for commercial purposes, however, were sold to one store in Bethel for resale to local residents. An ADF&G biologist found that 18,000 whitefish (approximately 55,000 pounds, worth about \$11,000) were sold in Bethel stores during 1967-1970 (Table 2), but no data was available on the number of whitefish harvested on specific rivers. The majority of whitefish caught by commercial fishermen were taken in gillnets, and typically fished as set nets. During summer temperatures, whitefish caught in set nets and not retrieved immediately decay and become unsuitable to eat in one to two days. “Piles of rotten fish, up to about 500 whitefish and pike in one pile, have been observed in the upper Enrayak [Eenayarak] River and in some of the lakes and sloughs of the Johnson River.”¹¹⁵

Table 2. Commercial Catch of Whitefish in the Kuskokwim River and its Tributaries.

Year	Number of Fish Caught	Monetary Value of Catch
1967	2,817	\$ 1,260
1968	6,182	\$ 3,080
1969	6,393	\$ 3,196
1970	10,337	\$ 3,049

(Ray Baxter, *White Fish Investigations, A-Y-K Region, Alaska*, ADF&G, Bethel, Table 6.)

The commercial fishery for whitefish has always been small with annual participation typically fewer than a dozen permit holders and annual harvest a few thousand fish at most. Since 1975, participation has been sporadic and the principle market continues to be local retail grocery outlets within the Kuskokwim area. Due to the small number of interested commercial fishermen, the lack of commercial market interest, and concern for insuring sustainable subsistence harvest, no actions have been taken to promote or future regulate a commercial whitefish fishery in the Kuskokwim River area. The annual number of Kuskokwim area whitefish harvested commercially from 1977 through 2002 (Table 3) is reported in the ADF&G Commercial Fisheries Division annual management reports for the Kuskokwim Area. Those reports do not identify the number of whitefish harvested by specific water bodies.¹¹⁶ There has been no commercial harvest of whitefish since 2003. ADF&G issued a single permit for a catcher/seller in 2008 and 2010, but there has been no report of harvest for either year.¹¹⁷

Table 3. Commercial Catch of Whitefish in the Kuskokwim River and its Tributaries, 1977-2002.

Year	Number of Fishermen	Number of Fish Caught	Total Value (in Dollars)
1977	3	718	\$ 952
1978	a	1,735	b
1979	a	3,219	b
1980	4	10,337	\$ 830
1981	4	4,620	2,310
1982	5	1,512	2,856
1983	0	0	0
1984	2	0	0
1985	5	555	1,137
1986	3	0	0
1987	4	417	1,008
1988	3	b	1,991
1989	7	178	501
1990	11	1,664	5,166
1991	5	1,413	2,412
1992	6	2,124	6,285
1993	5	2,509	4,898
1994	3	2,393	4,345
1995	1	b	2,507
1996	2	3,139	4,776
1997	14	4,447	4,832
1998	0	0	0
1999	0	0	0
2000	0	0	0
2001	0	0	0
2002	1	193	339

a Does not include fishers who delivered catches incidental to the commercial salmon fishery.

b Data not available.

(Ward, et. al, *Annual Management Report for the Subsistence and Commercial Fisheries of the Kuskokwim Area, 2002*, Appendix F.1, p. 206.)

In a November 26, 1979 memorandum, BLM’s Realty Specialist Sherman Berg reported that a commercial whitefish fishery operation has occurred during the past three to four years along the portage in Secs. 18 and 33, T. 4 N., R. 72 W., SM (river miles 45 and 40). The fishermen take their catch northerly on the water route to the Kuskokwim River and then up that river to Bethel. ADF&G had recorded loads of up to 1,000 pounds of fish.¹¹⁸ (Attachment 30)

In a 1988 memorandum regarding Eek Lake and its susceptibility to navigation, another BLM realty specialist stated that:

There are three (3) commercial whitefish operations that employ the waters of Eek Lake, its interconnecting sloughs and streams. Their route of travel is via the Kuskokwim River, Lomavik Slough, and the Eek-Eenayarak-Kuskokwim Portage. Travel to and from the fishing locations is by boats of up to 32 feet in length (26 foot average), using 50-70 horsepower outboard motors. Nets are stretched across the mouths of the sloughs and streams of Eek Lake. The annual harvest of whitefish is of one to three tons and is transported by boat to the Bethel Market.¹¹⁹ (Attachment 31)

In 1981 Jim Culbertson of the Alaska Department of Natural Resources (DNR) reported that commercial fishing “takes place all over – in all sloughs, lakes, ponds that interconnect with the Eek-Eenayarak-Kuskokwim Portage.”¹²⁰

VI. Summary

In 1979, a BLM realty specialist recommended that the Eek-Eenayarak-Kuskokwim route be determined navigable due to Native use, transport of commercial cargo of up to 1,000 pounds and potential for a boat to travel it carrying up to 3,000 pounds. Since 1982-1983, the BLM has consistently determined Eenayarak River, Eek Lake, and the slough connecting Eek Lake to Eenayarak River navigable throughout their entire extent in areas selected by Oscarville, Napaskiak and Eek villages.

Prior to statehood, anthropologist Wendell Oswalt reported that at least one resident of Napaskiak travelled the Eenayarak River by kayak along the Eek-Eenayarak-Kuskokwim inland water route to the village of Eek rather than along Kuskokwim Bay, but there is little detailed information about his travels. Native allotment files document three individuals who used portions or all of these water ways in the years leading up to statehood (1959). They include: Suzie Brown of Eek since 1923; Willie Brown of Eek since 1923; and Joseph Evan of Napaskiak since 1926.

Since statehood, four different groups have taken boats up and down portions of the Eenayarak River or made use of Eek Lake. The first type of use is by regional Natives who use the Eenayarak River and Eek-Eenayarak-Kuskokwim Portage as a village-to-village route connecting the village of Eek with other lower-Kuskokwim villages for travel between villages. Local Natives use the Eek-Eenayarak-Kuskokwim Portage as an inland water route for travel between villages when storm conditions in Kuskokwim Bay make travel difficult or impossible. Boats used for this travel were flat bottomed skiffs up to 32 feet in length.

The second type of use on the Eenayarak River is for subsistence and access to public lands. ADF&G employees reported that natives of Eek and other local villages make frequent use of the water way for berry-picking, fishing, hunting, and access to public lands surrounding the villages. Native allotment files document three individuals who used portions or all of these water ways. They include: Suzie Brown of Eek, who traveled by boat to her allotment from 1959 through 1983; Willie Brown of Eek, who traveled by boat to his allotment from 1959 through 1983; and Joseph Evan of Napaskiak, who traveled to his allotment from 1959 through 1984.

The third type of use is that of government officials. Ray Baxter stated that he travelled the Eek-Eenayarak-Kuskokwim route several times while working for the ADF&G in the 1970s.

The fourth type of use is the commercial fishing operations that operated out of Eek Lake and along sloughs of the Eenayarak River. Commercial whitefish operations in the Kuskokwim area have been sporadic over the years. While ADF&G does not have records of commercial whitefish harvests by specific water bodies, a BLM employee reported in 1988 that there were three commercial whitefish operations within Eek Lake with a reported annual harvest of 1 to 3 tons. The fishermen carried loads of up to 1,000 pounds transported by boat to Bethel along the Eek-Eenayarak-Kuskokwim Portage. They used boats of up to 32 feet in length with outboard motors ranging from 50 to 70 horsepower.

Endnotes

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⁷ Ruth Stockie, Acting Chief, Branch of ANCSA Adjudication, Decision to Interim Convey for Oscarville Native Corporation, March 31, 1982, BLM files, FF-14916-EE.

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