

Navigable Rivers and Lakes

Management Intent of Navigable Waterbodies

Background

The intent of the plan is to designate and provide management intent for the shorelands under all navigable waterbodies. 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 plan designation maps. 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 Public Access Assertion and Defense unit in the Division of Mining, Land and Water in Anchorage.

For further information on the state’s navigability policy, go to <http://dnr.alaska.gov/mlw/nav/>

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 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 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. Nevertheless, with 99 percent of Alaska in public ownership at statehood, state laws regarding the transfer of land to private parties 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 Lakes⁹

Because of their importance for recreation, water resources, and habitat, certain navigable rivers and lakes are given specific use designations. These are listed in Tables 3-1 and 3-2. Anadromous streams and lakes are designated Habitat and those rivers and lakes that are particularly significant for public recreation are designated Public Recreation-Dispersed. In those instances where the stream or lake is important for both purposes, these are co-designated Habitat and Public Recreation-Dispersed. Streams that are neither anadromous nor important for public recreation acquire the designation of the management unit¹⁰ through which they cross and since there may be numerous parcels that may have differing designations, these streams may have varying designations. Consult the plan maps to determine the appropriate designation(s).

Management Intent: Other Rivers and Lakes

The following designations apply to the navigable rivers and lakes *not* specified in Tables 3-1 and 3-2:

Navigable Rivers and Lakes within LDAs.

Anadromous lakes or streams within LDAs are co-designated Public Recreation-Dispersed and Habitat¹¹. 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 land are the same as those of the upland tract, except that those portions of navigable, anadromous streams are designated Habitat.

Navigable rivers and lakes that are not within general state land or LDAs are designated General Use and are to be managed consistent with the public trust doctrine.

⁹ Management of all rivers and lakes are subject to AS 38.05.126 as defined in AS 38.05.965(13) and AS 38.05.965(18).

¹⁰ This assumes that the parcel is owned by the state. Unlike other areas of the state, most of the land within the planning area is either owned by the state or has been selected by the state, so it is likely that a stream is crossing state land.

¹¹ These designations do not apply to LDAs that are state parks.

Table 3-1: Navigable Streams & Creeks

Streams & Creeks	Designation
Bearpaw River	Ha, Rd
Atutsak River	Rd
Baker Creek	Ha, Rd
Beaver Creek	Ha, Rd
Big Salt River	Ha, Rd
Birch Creek	Ha, Rd
Blind River	Rd
Boney Creek	Rd
Cantwell Creek	Rd
Chatanika River	Ha, Rd
Chitana River	Ha, Rd
Cosna River	Ha, Rd
Dugan Creek	Rd
East Middle Fork Nenana River	Rd
Healy Creek	Rd
Hess Creek	Ha, Rd
Hot Springs Slough	Rd
Hutlinana Creek	Ha, Rd
Jack River	Rd
John Hanson Creek	Rd
Kantishna River	Ha, Rd
Little Tonzona River	Ha, Rd
Lost Slough	Ha, Rd
Muddy River	Ha, Rd
Nenana River	Ha, Rd
Ray River	Ha, Rd
Sanneck Slough	Rd
Swift Fork Kuskokwim River	Ha, Rd
Tanana River	Ha, Rd
Tatalina River	Rd
Teklanika River	Ha, Rd
Toklat River	Ha, Rd
Tolovana River	Ha, Rd
Tonzona River	Rd
Totchaket Slough	Rd
Tozitna River	Ha, Rd

Streams & Creeks	Designation
Washington Creek	Rd
West Middle Fork Nenana River	Rd
Williams Slough	Rd
Wood River	Rd
Yukon River	Ha, Rd
Zitziana River	Ha, Rd

Table 3-2: Navigable Lakes

Lakes	Designation
Blair Lakes	Rd
Clear Lake	Rd
East Twin Lake	Rd
Eightmile Lake	Rd
Fish Lake	Rd
Geskakmina Lake	Rd
Grassy Lake	Rd
Jim Lake	Rd
John Hanson Lake	Rd
Kindanina Lake	Rd
Lake Minchumina	Rd
Lake Snohomish	Rd
Minto Lakes	Rd
Montana Creek and Lake system	Rd
Otto Lake	Rd
Wein Lake	Rd
West Twin Lake	Rd