

Superior Court ordered changes to the Knik River Public Use Area Management Plan

September 28, 2012

BACKGROUND

Several changes have been made to the Knik River Public Use Area Management Plan (Plan) pursuant to the Superior Court decision dated March 19, 2012. Portions of the text specific to critical habitat have been modified to comply with the court ordered remand to the Department of Natural Resources (DNR). The specific changes required by the court occur in Chapter 2 and Appendix A of the Plan and are provided below. Text that has been added is indicated by underline. You can view the Plan in its entirety by going to the KRPUA website at: <http://dnr.alaska.gov/mlw/krpua> and clicking the “Planning” tab on the right of the screen.

TEXT CHANGES IN CHAPTER 2, FISH AND WILDLIFE SECTION, PAGES 2-11 & 2-12

Fish and Wildlife Habitat

Background

The PUA has very rich and diverse habitat consisting of two general areas: the valley floor and the sub-alpine/alpine habitat. The valley floor comprises approximately 14 percent of the total land area while sub-alpine/alpine and glacier comprises the remaining 86 percent.

The floor of the valley is dominated by Knik River and associated braided channels, sloughs, and exposed shorelands and includes extensive lakes and wetlands. The lakes, wetlands, and vegetated shorelands of the valley floor provides a rich habitat for a diversity of fish and wildlife species including waterfowl, moose, bear, wolves, and many small furbearers. The extensive lakes and wetlands within the PUA are used for resting and staging during the spring and fall migrations of waterfowl and shorebirds. A number of these waterfowl stay in the PUA to nest, rear broods, or use available habitat for the summer. Waterbodies on the valley floor are important habitat for resident and anadromous fish populations. Jim Creek supports a popular coho salmon fishery. Many of the lakes are used for spawning and rearing habitat by coho, sockeye and chum salmon.

The sub-alpine and alpine habitat is used by many species including bear, moose, sheep, and goats. The lower elevations of the sub-alpine are commonly used by moose and bear for forage and rearing young. While goats and sheep tend to use the alpine habitat, sheep are commonly found at lower elevations at several locations in the PUA.

Many members of the public indicated that current uses are negatively impacting nesting swans and loons. Swan numbers and cygnet survival rates appear to be stable within the PUA. Nonetheless, a critical life stage for swans and loons exists while they are incubating their eggs and rearing their young (typically from May 15 to August 31); at this period swans and loons are highly susceptible to harassment from recreational users. If the disturbance is serious enough, swans and loons may abandon their nest sites, young, or cygnets. Once abandoned, swans and loons will not re-nest for the remainder of that year.

AS 41.23.180-41.23.230, provides direction to DNR for the protection of fish and wildlife habitat. This statute requires DNR to “perpetuate and enhance” the enjoyment of fish and wildlife, and to “protect and maintain” habitats for fish, wildlife and migratory waterfowl nesting so traditional use may continue. To achieve the

mandate of perpetuating and enhancing the public use while protecting habitat, DNR has worked with ADF&G to identify areas that require special management attention. After the review of available resource data and discussions with ADF&G, DNR has concluded that there are currently no areas of critical habitat within the PUA; however, several areas of sensitive habitat within the PUA have been identified. These include: swan and loon nesting sites, waterfowl nesting areas, fish spawning and rearing locations, and moose calving concentration areas. These areas have been determined by DNR to merit increased management priority in order to minimize impacts to fish and wildlife and other sensitive habitats.

AS 41.23.200(d)(2) specifically addresses off-road motor vehicle trails and requires DNR to “make accommodations that will provide the shortest possible route to avoid critical habitat.” Thus the statutes envisioned both continued protection and use of the habitats and provided specific direction to DNR where critical habitat was found.

Because the enabling statutes for the PUA did not provide a definition of “critical habitat,” DNR has developed a definition that is specific to the PUA and recognizes the implied importance of this type of habitat as opposed to other habitat types. DNR and ADF&G Statutes (particularly Titles 16 & 38) do not contain a definition of critical habitat; however, statutes specific to state Critical Habitat Areas (AS 16.20.500) suggest that critical habitat areas are areas that are crucial to the perpetuation of a fish or wildlife species. DNR’s definition of critical habitat for the PUA embodies this concept and is found in Appendix A.

To better understand habitat types within the PUA, DNR reviewed resource data and information developed by state and federal agencies, non-governmental organizations, and individuals.⁴ Additionally, DNR staff had discussions and on-site meetings with ADF&G staff to discuss habitats for several fish and wildlife species. Based on the information, data, and discussions, DNR identified areas of habitat that require special management attention. These areas have been identified as “sensitive habitat” and include: swan and loon nesting sites, waterfowl nesting areas, fish spawning and rearing locations, and moose calving concentration areas. These areas have been determined by DNR to merit increased management focus in order to avoid or minimize impacts to fish and wildlife and other sensitive habitats. The definition of sensitive habitat is included in Appendix A.

For the purposes of this plan, “critical habitat” is primarily distinguished from “sensitive habitat” within the PUA in that critical habitat is essential for the perpetuation of a fish and wildlife species while sensitive habitat is important for a species of fish and wildlife during a particular life stage. A key distinction between “sensitive” habitat as designated by DNR and “critical” habitat for purposes of AS 41.23.200(d)(2) is that the former term is not tied, or limited, to determining the necessity of re-routing existing off-road motor vehicle trails. Therefore, the “sensitive” habitat designation can be used prospectively as a planning tool, for example,

⁴ ADF&G data showing habitat ranges of various fish and wildlife species, included as appendices to the management plan. United States Fish & Wildlife Service (USFWS) data from 2000 analyzing trumpeter swan population status. USFWS’s 2005 North American Trumpeter Swan Survey. Audubon Site Profile for Jim Creek Basin. ADF&G, Division of Wildlife Conservation, data for refuges and sanctuaries, for regional comparisons of habitat for relevant fish and wildlife species, including Palmer Hay Flats State Game Refuge and Susitna Flats State Game Refuge. Knik River Watershed Group, Baseline Water Bird Surveys. ADF&G Preliminary Assessment of Waterfowl Resources, KRPUA. William Quirk memoranda providing observations of nesting swans and cygnets within KRPUA and adjacent areas. ADF&G Catalogue of Waters Important for the Spawning, Rearing of Migration of Anadromous Fishes. Joint agency plan developed by U.S. Coast Guard, U.S. Environmental Protection Agency, U.S. Department of the Interior, and Alaska Department of Environmental Conservation: Cook Inlet Subarea Contingency Plan maps and text, identifying areas of essential habitat for waterfowl and wildlife necessary for protection during the initial stages of an oil spill event. Various agency data sheets discussing human disturbances to loons. USFWS publication “Human Disturbances of Waterfowl: Causes, Effects, and Management.” Various scientific publications funded by USFWS and USDA analyzing impacts of human activities on water birds. And, Consultations with ADF&G staff, indicating that without further study DNR could not determine current “critical” habitat within the KRPUA.

to determine where new trails should not be allowed in the first instance. By contrast, AS 41.23.200(d)(2) restricts the function of a “critical” habitat finding to the re-routing of existing trails.

After the review of available resource data, information, and discussions with ADF&G, DNR was able to identify “sensitive habitat” but concluded that there are currently no areas of critical habitat within the PUA. This determination does not preclude a future determination of critical habitat during the more specific Trails Management Process. If DNR determines during the process, in consultation with ADF&G, that critical habitat is present, trails will be re-routed or accommodations otherwise made to avoid the critical habitat.

TEXT CHANGES IN APPENDIX A, GLOSSARY, PAGE A-2

The definition of critical habitat has been added to the Glossary as provided below.

Commercial. An action or operation that generates income from the buying, selling, renting, bartering, or trading goods or services.

Commercial Recreation. Recreational uses of lands, waters, and resources for business or financial gain, such as guided sport fishing, guided and outfitted sport hunting and guided recreation.

Critical Habitat. For the purposes of implementing AS 41.23.200(d)(2) within the Knik River Public Use Area, critical habitat is defined as habitat that is essential to the perpetuation of a species of fish or wildlife within the Knik River Public Use Area.

DNR. The Department of Natural Resources

Developed Recreational Facilities. These include any of the following: sanitary structures including trash receptacles, campground, picnic area, rest area, visitor information center, swim beach or area, trailhead, and parking area.

Division. The Division of Mining, Land & Water

DMLW. Same as “Division.” See “Division.”

DOF. Division of Forestry

DPOR. The Division of Parks and Outdoor Recreation

Easement. An interest in land owned by another that entitles its holder to a specific limited use or purpose.

17(b) Easement. An easement across Native corporation land reserved under the Alaska Native Claims Settlement Act of 1971 (ANCSA). Uses of the easements are limited to transportation purposes and other uses specified in the act and in conveyance documents.

Facilities. Includes buildings, parking areas, camping areas, a boat launch area or ramp, shelters/cabins, and sanitary facilities.

Facility Recommendations. A recommended type and character of facility consistent with the plans intent that allows the manager to use discretion in deciding the specific means for best achieving the intent based on particular circumstances and further site analysis.

Feasible. Capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, technical, and safety factors.

Fish and Wildlife. Any species of aquatic fish, invertebrates, and amphibians, in any stage of their life cycle, and all species of birds and mammals, found or that may be introduced in Alaska, except domestic birds and mammals.