



THE STATE
of ALASKA
GOVERNOR SEAN PARNELL

ANILCA Implementation Program

OFFICE OF PROJECT MANAGEMENT & PERMITTING

550 West Seventh Avenue, Suite 1430
Anchorage, Alaska 99501
Main: 907.269.8690
Fax: 907.269.5673

July 31, 2014

Jay Kinsman, Shoreline II Team Leader
Sitka Ranger District
204 Siginaka Way
Sitka, AK 99901-99835

Dear Mr. Kinsman:

The State of Alaska reviewed the June 16 Notice of Intent (NOI) for the Shoreline II Outfitter/Guide Environmental Impact Statement (EIS). The following comments represent the consolidated views of the State resource agencies.

We appreciate the considerable effort of Forest Service (Service) staff to involve the public in this planning effort over the past two years through the website, newsletters, notices in local papers and multiple scoping meetings. In general, we support increased opportunity for recreational activities, including guided recreational activities, on the Forest as well as the establishment of monitoring requirements to better direct allocation and capacity decisions.

The NOI indicates that: *"new outfitter and guide use allocations are needed in the project area to balance commercial and non-commercial recreational opportunities and to provide and maintain high quality recreation experiences without degrading forest resources."*

Outfitting and guiding opportunities are extremely important to the economy of Southeast Alaska. In addition, the state owns and manages the tide and submerged lands adjacent to Service uplands, and is responsible for the sustainability and management of all fish and wildlife, including for subsistence purposes, regardless of land ownership or designation, unless specifically preempted by federal law. Because of the importance of commercial and recreational activities to State interests, we request an opportunity to work with the Forest Service on the development of the draft EIS.

In addition, we request the EIS include the following bulleted information.

- **Historic outfitter/guide use for each area's user groups (e.g., sport fishing, hunting, wildlife viewing).**

- **Matrix of data (by season, use, resources and site) used to compile projected resource use.**
- **Description of the standards and indicators that will be used to increase or decrease allocations for specific areas.**
- **Rationale if restrictive allocations are proposed in areas with current low use levels.**
- **Alternatives to user limits in high use areas.**

This information will allow reviewers of the draft EIS to evaluate the allocative decisions by area. Information framing visitor capacity and commercial allocation quantitatively (how many), spatially (where) and temporally (when) is particularly useful.

- **Explanation of how the proposed decisions in Shoreline II differ or expand on the decisions in Shoreline I.**
- **Documented, quantified examples of user conflicts including how perceived conflicts are being reported, documented and quantified.**

While reducing user conflicts is oftentimes an appropriate goal, the EIS should provide specific examples of past, existing, or anticipated conflicts. Specific examples of user conflicts will provide context and a basis for proposed management actions as well as ensuring that appropriate management tools are being used, including use of state tools where appropriate (see attached State Tools document). While the newsletters generally refer to crowding in certain areas, more specific information on perceived crowding is important since perceptions can vary depending on the observer, the location and the circumstances surrounding the perceived conflict. For example, the NOI references impacts from small to mid-size cruise ships. Detailed information on the perceived conflict and the potential impacts to shoreline-based commercial, non-motorized recreation, as well as to other commercial and non-commercial recreational use would be useful in identifying potential solutions.

We caution the Service on relying solely on encounter rates to evaluate crowding associated with *public use*, and would object to factoring *administrative use* into encounter rates.

- **An alternative in the EIS that considers maximum capacity numbers.**

This alternative will ensure the interests of all shoreline users are considered

- **An analysis of the potential indirect effects on public access.**

The EIS should also appropriately recognize the provisions in the Alaska National Interest Lands Conservation Act (ANILCA) for access and use of federal lands in Alaska. This includes the access

provisions of Sections 1110 (within CSUs) and 811, and the allowance for temporary facilities (Section 1316(b)) and cabins in wilderness areas (Section 1315(c) and (d)).

While the NOI specifies the proposed action “*does not limit non-commercial use by the public,*” a high percentage of visitors depend on commercial operators to access the Tongass National Forest, including designated wilderness areas. Even though this plan does not apply to transporters, we are generally concerned that, over time, reduced outfitter/guide allocations could effectively curtail general public access within the Tongass.

- **Recognition of existing State authorities and processes**

The State is responsible for sustainability and management of all fish and wildlife, including for subsistence purposes, regardless of land ownership or designation, unless specifically preempted by federal law. The Alaska Department of Fish and Game (ADF&G) manages on the sustained yield principle, and when necessary, utilizes emergency orders to ensure sustainability of fish and wildlife. The Alaska Boards of Fisheries and Game determine issues related to the allocation of fish and wildlife among all user groups, including for subsistence.

The Federal Subsistence Board assures a priority under ANILCA Title VIII for subsistence opportunities among consumptive uses of fish and wildlife by rural residents on federal lands. At times, the state and federal Boards have worked together to address issues of mutual concern. Any unilateral efforts by the Service to minimize user conflicts, based solely on allocation concerns, would circumvent these existing regulatory processes.

In addition, the State owns and manages navigable waterways within the planning area. We request the Service consult with the State before recommending restrictions on state-owned navigable water bodies.

- **Discussion of the basis for limits on land-based activities.**
- **Use of standard definitions, as identified by the Arthur Carhart Wilderness Training Center, for designated wilderness throughout the document.**

Standard definitions will assist the public in understanding Service objectives.

- **District Wilderness Commercial Needs Assessments (WCNA) in an appendix in the EIS, along with a clear explanation of the purpose of the WCNAs and their relationship to the EIS, and an opportunity to comment on the WCNAs as part of the EIS.**

This will provide the public with an important opportunity to review and meaningfully comment on the WCNAs' recommendations.

- **Explain how inquiries and interest in new outfitter/guide opportunities, not authorized thorough this planning effort, will be considered and processed by the Service in designated wilderness areas.**

We have consistently expressed concerns to the Alaska Region that the current WCNA process and the potential for arbitrary decision-making could erode economic opportunities in Southeast Alaska's commercial recreation sector. Commercial recreation is an essential ingredient to achieving the Secretary of Agriculture's desire to transition the Tongass National Forest to a more ecologically, socially, and economically sustainable forest management program.

The Service has verbally agreed to future consideration of new outfitter and guiding activities not found necessary in the WCNAs to due to lack of demand or availability. Being openly responsive to changes in the desires of the public or to potential economic opportunities are hallmarks of adaptive management.

The State has area staff with expertise in sustainable management of recreational and commercial fisheries, as well as hunting, trapping and subsistence use, who are available to meet with the Service to discuss relevant data needed for this EIS. We also re-iterate our request to work cooperatively with the Alaska Region to develop an objective and consistent WCNA process that provides outfitters and guides with meaningful and economically sustainable opportunities within wilderness areas on the Tongass.

Thank you for this opportunity to comment. We look forward to working with the Service on this planning effort as it moves forward. Please contact me at (907) 269-7529 with any questions.

Sincerely,



Jennifer Wing
ANILCA Project Coordinator

cc: Sue Magee, ANILCA Program Coordinator

Attachment: Select State Tools for Managing State Land/Water and Related Public Activities....

**Select State Tools for Managing State Land/Water and Related Public
Activities involving Fish and Wildlife Resources
Version # 8 – Updated December 13, 2010**

The following is a brief compilation of the land and resource management tools that the state and municipal governments may apply to public activities involving state land, water, and related use of fish and wildlife resources.

State Administrative Authorities

Most state land management authorities for general state-owned lands are found in Titles 38 and 41 of the Alaska Statutes. Most fish and game management authorities are found in Title 16 of the Alaska Statutes. Titles 38 and 41 provide the Alaska Department of Natural Resources (DNR) and Title 16 provides the Alaska Department of Fish and Game (ADF&G) with general administrative authorities provided by the legislature. These administrative management tools include the following.¹

DNR Administrative Authorities

Special Use Land Designations – Under 11 AAC 96.014, DNR may designate state land² “Special Use Land.” The process for developing this designation always includes public notice and involvement and may be part of a DNR planning process under AS 38.04.065. Special Use Land designations that call for public use restrictions must be promulgated as regulations before they become effective. Such designations have been used to establish guidelines for activities such as camping, limiting motorized access, and resource extraction. This designation has also been used to require authorizations for activities where they were not formerly required. Restrictions on public access can be made administratively only if within the limits of AS 38.04.200 (see *Access Restrictions* below).

This designation has been applied to state-owned land and water, providing an administrative and regulatory means for limiting public uses that are “Generally Allowed Uses.”³ For example, the Marmot Island area has restrictions placed on off-road vehicles, boating, and camping, among other uses. Another example is the proposed Kashwitna Special Use Land, which will include restrictions on off-road vehicle use. The State’s Togiak Special Use Land was established as part of a coordinated management strategy with the U. S. Fish and Wildlife Service. The designation established camping limits on state-owned shorelands within and adjacent to the Togiak National Wildlife Refuge.

¹ Some of these management tools are provided in more than one statute and/or regulation, so the citations may not be complete.

² “Land” or “State Land” means all land, including shore, tide and submerged land, or resources belonging to or acquired by the state (AS 38.05.965(20)).

³ “Generally Allowed Uses” are listed under 11 AAC 96.010 which describes which uses on land managed by the DNR Division of Mining, Land and Water do not require a permit or other written authorization.

Land Planning – Several statutes, including AS 38.05.300, require or allow DNR to adopt land use plans to provide for the use and management of state-owned land. DNR uses a system of multiple use classifications, which identify primary uses for any given parcel of land within a planning area. Any given parcel can have up to three primary use classifications. There are numerous classifications established by regulation, including ones for public recreation and wildlife habitat. A map of completed plans can be viewed at the DNR website: <http://www.dnr.state.ak.us/mlw/planning/2005ap.pdf>

Plans have been used to recommend the establishment of Special Use Areas (the Kashwitna Special Use Area was proposed by the Kashwitna Management Plan) and as the basis for establishment of Special Use Areas. For example, the Lake Clark, Kenai Fjords, Resurrection Bay, and Exit Glacier Road Special Use Land designations were adopted concurrently with the Kenai Area Plan.

Development and Management of Parks – AS 38.05.295 gives the Commissioner of the Department of Natural Resources the authority to establish a policy and adopt regulations by which parks and recreation areas can be developed and managed, and it gives the authority to classify public land as parks and recreation areas. This statute works in conjunction with AS 38.05.300, and, therefore, any parks or recreation areas created under this statute are limited to 640 acres. Many of the smaller units of the State Park System located around the state were established by this method. Units over 640 acres can be added to the State Park System only through legislation (see “*Legislative Authorities*” section below).

Cooperative Resource Management Agreements – Under AS 38.05.027, the state can cooperate with federal agencies through mutual agreement. Under these agreements, management objectives and practices are explicitly addressed on specifically identified parcels of land. Memoranda of Understanding have also been used. For instance, the U. S. Fish and Wildlife Service, Alaska Department of Fish and Game, and Alaska Department of Natural Resources signed a memorandum to cooperatively manage the lands and waters of the Chickaloon Flats in the vicinity of Kenai National Wildlife Refuge.

Access Restrictions – The DNR Commissioner can regulate access on state lands, but state law restricts that authority regarding traditional means of access for traditional outdoor activities on state lands and waters. Specifically, 38.04.200 states:

The commissioner may not manage state land, water, or land and water so that a traditional means of access for traditional outdoor activities is restricted for the purpose of protecting aesthetic values of the land, water or land and water or is prohibited unless the restriction or prohibition meets one or more of the following criteria:

- (1) for an area of land and water that encompasses 640 contiguous acres or less;
- (2) temporary in nature and effective cumulatively less than eight months in a three year period;
- (3) for the protection of public safety and public or private property;
- (4) for the development of natural resources and a reasonable alternative for the traditional means of access across the land, water, or land and water for traditional outdoor activities on other land, water, or land and water is available and approved by the commissioner;
- (5) authorized by the legislature.

State land is required to be managed for multiple use. Alaska Statute 38.05.300 states that land and water may not be closed to multiple purpose use if the area involved is more than 640 acres (one square mile), except by act of the legislature or under specific criteria. In addition, while DNR can theoretically administratively create a non-motorized area, as a practical matter, to implement such restrictions through enforcement is limited by available staff and the provisions of Title 38.

ADF&G Administrative Authorities

In conjunction with the regulatory authorities of the Alaska Boards of Fisheries and Game, ADF&G's general mandate is to manage, protect, maintain, improve, and extend the fish, game, and aquatic plant resources of the state in the interest of the economy and general well-being of the state. The combined authorities of the Boards and ADF&G include the establishment of seasons, quotas, bag limits, and harvest levels and regulation of commercial, recreational, guided, subsistence, and personal uses of fish and wildlife through fishing, hunting, trapping and other activities. The ADF&G and Boards of Fisheries and Game are empowered to establish the means and methods employed in the pursuit, capture, transport, and related uses of fish and wildlife. Restrictions on methods and means may include types of access, vessel types, size of motors, and establishment of areas with particular public restrictions such as non-motorized areas for hunting and limiting fishing to catch and release only. Except in emergencies or on legislated lands managed by ADF&G, such restrictions can only be effected through regulations adopted after an extensive public process.

State Legislative Authorities

The power to establish policy for managing public uses of state natural resources resides with the legislature. Although the legislature is not limited regarding what types of designation it can create for any area of state land and water, several designations have consistently been used under Titles 41 and 16, described below.

Alaska Statutes, Title 41

Designations legislated under Title 41 include: State Parks, Recreation Areas, Special Management Areas, Public Use Areas, and Recreational Rivers. For any of these designations, the legislature identifies in statute the public purposes meriting the designation, the lead management agency, specific guidance regarding incompatible activities and allowable uses, the specific powers to adopt and enforce a management plan and regulations, and provides funding. The legislation also can provide specific directions to state agencies regarding joint management with federal agencies.

Management of these areas is usually legislatively assigned to DNR and frequently to the Division of Parks and Outdoor Recreation (State Parks). ADF&G has responsibilities for management of fish and game resources on all lands in the State of Alaska, and this responsibility remains unchanged by these legislative designations. Typically, DNR implements the statutory purposes of the land designation by developing management plans and promulgating regulations in consultation with ADF&G. Given an area's statutory purposes,

these plans and regulations identify incompatible uses, restrict certain uses, and require that guides and other commercial operators obtain special permits to operate in these areas. In state park units established under Title 41, Chapter 21, a person who violates a provision of the statute or regulations is guilty of a misdemeanor, and a citation may be issued to the offender by DNR.

State Park – The statutory purposes for individual parks vary. Examples include “park area” for Denali State Park; water supply, recreational opportunities, scenic value, wildlife, and wilderness for Chugach State Park; and recreational and scenic resources, fish and wildlife habitat, sport and subsistence hunting and fishing, personal use fishing, trapping, and commercial fishing for Afognak Island State Park.

State Recreation Area (SRA) – These are created for “public recreation.” Examples include Captain Cook SRA, Caines Head SRA, and Chena River SRA.

Special Management Area (SMA) – The general intent is to protect and perpetuate fishery and wildlife resources and habitat and to manage recreational uses and development activities. There currently are only two: Kenai River SMA and Business Park Wetlands SMA.

Public Use Area – The statutory purposes vary but may include protection of fish and wildlife habitat, public enjoyment of fish and wildlife and their habitat, public recreation, traditional public uses, personal use woodcutting, fishing, hunting, grazing, trapping, protection of water quality, and scenic resources. Typically the legislature provides very detailed policy guidance (much more so than for a state park), including delineating incompatible uses and specifying uses which may not be restricted. Such policy guidance expresses legislative intent regarding any limitation of public uses. To illustrate how such legislation can be tailored to specific areas, the Nelchina Public Use Area statutes specify that the DNR will obtain the concurrence of ADF&G on land plans for the central caribou calving area.

Recreation River – The statutory purposes for the Susitna Basin Recreation Rivers include protection of fish and wildlife populations and habitat, recreation and economic use, multiple use management of upland activities, and accommodation of access for resource uses. As with Public Use Areas, the legislature provides very detailed guidance on management and compatible activities. Recreation Rivers are not part of the State Park system, and instead are managed primarily by the DNR Division of Mining, Land, and Water. The division has limited field staff and does not have the statutory authority to issue citations for infractions of the regulations.

Alaska Statutes, Title 16

In certain areas where conservation and protection of wildlife and fish is emphasized, the Alaska Legislature under Title 16 created refuges, sanctuaries, and critical habitat areas. As with other types of legislative designation, unit-specific policy guidance regarding allowable uses and incompatible activities is common. Generally, the legislature does not specifically direct ADF&G to restrict fishing or hunting, although there are exceptions, and ADF&G has general statutory authority to issue citations and to arrest violators. DNR also has authorities that vary

between designated areas such as the right to issue leases, rights of way, mining claims, and oil and gas leases.

Title 16 authority for managing fish and wildlife resources is delegated to the Commissioner of Fish and Game, with certain responsibilities assigned to the Board of Fisheries and the Board of Game. This division of powers can seem complex, especially in regard to the “special areas” discussed below. For simplification, the combined authorities are referred to as belonging to ADF&G, recognizing that within the responsibility for conservation and development of the resources, the allocation of resource utilization rests with the Boards.

Sanctuaries – Three such areas have been designated and were created to protect a specific species and associated public uses: walrus at Walrus Island State Game Sanctuary and brown bear at Stan Price and McNeil River State Game Sanctuaries. ADF&G manages the fish and wildlife resources and most land use activities. The DNR manages mineral entry and leasing (except at McNeil River, which is closed to mineral entry and leasing by statute). Hunting and trapping within McNeil River Sanctuary are statutorily prohibited. At Stan Price Sanctuary, ADF&G is legislative directed to manage state owned tidelands compatibly with the U. S. Forest Service’s management of the adjacent uplands.

Refuges – The generic purpose of the state’s refuge designation is to protect and preserve natural habitat and wildlife populations in certain areas of the state, and some refuges have more specific statutory purposes. ADF&G and DNR retain their respective management authorities in refuges. ADF&G manages the fish and wildlife and is responsible for developing a management plan for the refuge in consultation with DNR. An example of site-specific policy guidance is found at the Yakataga State Game Refuge, where timber harvest activities in certain areas are provided for and commercial, recreational, and subsistence fishing and hunting are specifically allowed.

Critical Habitat Areas – The purpose of these areas is to protect and preserve habitat especially crucial to the perpetuation of fish and wildlife and to restrict other uses not compatible with that primary purpose. ADF&G is specifically directed to adopt regulations it considers advisable for conservation and protection purposes governing the taking of fish and game in these areas. Similar to Refuges and Sanctuaries, ADF&G and DNR retain their other respective management authorities. There is sometimes a provision for establishing a citizens advisory committee. At Dude Creek Critical Habitat Area, allowable public uses are listed.

Public Trust Doctrine

The Alaska Constitution and Statutes accepts the authority and responsibility for management of its public trust doctrine resources. The doctrine provides that public trust lands (those below Mean High Tide and within Ordinary High Water boundaries), waters, and living resources are held by the state in trust for the benefit of all of the people and establishes the right of the public to fully utilize these lands, waters, and resources for a wide variety of public uses. The public has a right to use all waterways in Alaska regardless of ownership of the underlying land. State law permits members of the public to touch the bed of a waterway to the extent reasonably necessary to participate in public trust activities, such as boating, hunting, fishing, and trapping. The state manages all waterways for public uses in the state except where specifically limited by

Congressional legislation or Court actions. Attached are most public trust doctrine provisions in Alaska's Constitution and statutes. These lands/waters are managed as general state lands by DNR except where modified by legislative designations or administrative actions.

Designation of waters as special areas – One option for state management of public uses on waters, shorelands, tidelands, and submerged lands may be to adopt legislation utilizing one of the existing designations discussed above or to create a new designation. The legislation would need to identify the purposes for the designation, lead management agency, specific guidance regarding incompatible activities and allowable uses, specific powers the resource agencies have to adopt and enforce a management plan and regulations, and provide funding. The legislation could also provide a specific charge to state agencies regarding joint management with federal agencies, if appropriate.

Enforcement Issues

Adequate law enforcement is a concern statewide. Some resource and land management concerns could be alleviated through enforcement of existing state regulations. Strict enforcement of the existing state regulations could reduce impacts of illegal public use and curb unethical commercial operators. The Alaska Bureau of Wildlife Enforcement's (BWE) responsibilities are spread out statewide over all lands, focused on the subsistence, recreational, and commercial fisheries and hunting, during the periods of seasonally high public use on state lands and waters. Citations may also be issued by the Alaska State Troopers (which includes BWE) for violations under Title 16 (ADF&G Special Areas) and Title 41 (DNR anadromous streams, Forest Practices Act and State Parks). Unfortunately most statutes and regulations that apply to general state lands (areas outside the State Park and ADF&G Special Areas systems) can only be enforced by civil action. While the Alaska State Troopers can issue citations for some nuisance activities such as trespass and littering under the Alaska Criminal Code, many of the nuisance activities that occur on state land are not covered under this code.

Trespass

Trespass concerns generally take one of two forms. The first is trespass onto private uplands, and the second is trespass that occurs on conveyed lands below the ordinary high water mark (shorelands). The first form of trespass often occurs because the private lands are not marked or the parcel has recently been conveyed into private ownership. The second form occurs in cases where shorelands under waterways (which the state asserts are navigable, thus state owned) were conveyed to the private upland owner in error by the Bureau of Land Management. Regardless of ownership, the private landowner is usually unaware that the public is allowed full use of the waterway. The Alaska State Troopers will enforce trespass on private and state lands where sufficient evidence of land ownership is available. Oftentimes, trespass enforcement falls upon appointees of the upland owner to file civil complaints if ownership is in question. Alaska State Troopers will not issue citations for trespass where the land ownership is in dispute.

Trespass could be reduced through educational efforts of land managers, such as maps and brochures that describe land ownership boundaries, the ordinary high water mark, Public Trust Doctrine rights, and the location of public trails, rights-of-way, or easements.

Water quality

All waste not disposed of in accordance with State of Alaska waste water disposal regulations or General Permit issued by the Department of Environmental Conservation, must be hauled to a permitted solid waste facility per 18 AAC 72.020(b). Regulations require a minimum separation of 100 feet between the mean annual high water level of a lake, river, stream, spring, or slough, or the mean higher high water level of coastal waters and the disposal of human waste.

Other Relevant State Regulations

DNR Permits

All commercial recreation businesses that use state uplands, shorelands, tidelands, and fresh water bodies must register. At this time, day use commercial recreation businesses that exclusively operate on salt water, without taking clients ashore on state-owned tidelands or uplands, are not required to register. Air or water taxi services that drop clients off on state tidelands for guided or unguided recreation must register. Air or water taxi services are not required to register the transportation of non-recreation oriented passengers or business services such as delivering supplies to commercial fisherman or transporting people to their remote cabin site. Commercial recreation businesses that occasionally use state land must also register.

Those commercial recreation businesses with a camp or facility, whether occupied or unoccupied, that remains overnight on state land must first obtain a land use permit or lease from DNR. These permits are issued on a non-competitive basis and cost \$500/year. A \$2.00 per overnight client fee is also charged.

Those commercial recreation businesses that already have permits or leases to operate on state land are required to register any commercial recreation day use regardless of whether it is directly related to the permits or leases.

Guide Registration

- (1) **Sport Fishing.** Under 5 AAC 75.075, all sport fish guides and sport fish service providers must register annually with the Alaska Department of Fish and Game. In addition, all registered sport fish service providers are required to annually register any powered water crafts and non-powered boats 10 feet or greater in length with the Department of Motor Vehicles. All sport charter vessels used in the guided recreational taking of fish must also be licensed with the Commercial Fishing Entries Commission (CFEC). Under 5 AAC 75.076, all fishing services operating charter vessels in saltwater must obtain and complete a marine logbook for all charter vessels they operate in marine waters.

Fish guiding regulations in various areas of the state, including Cook Inlet, provide specific area and seasonal stipulations that make it illegal for a guide to fish while a client is present or within a guide's control or responsibility, unless the guide is providing assistance to a client with a disability. This prevents the guide from harvesting a bag limit for themselves or more commonly for their clients.

Important Definitions:

"Fishing service" means the indirect provision of assistance for compensation or with the intent to receive compensation, to an angler engaged in sport fishing in the taking or attempt to take fish or shellfish by a

business that employees or contracts with a fishing guide for fishing guide services during any portion of the angler's fishing trip; "fishing service" does not include booking or ancillary services provided by a tour broker or agent to a business that conducts fishing services.

"Fishing guide services" means the direct provision of assistance, for compensation or with the intent to receive compensation, to an angler engaged in sport fishing in the taking or attempting to take fish or shellfish by accompanying or personally directing the angler in fishing activities during any portion of the angler's fishing trip; however, the term does not include services provided by assistants, deckhands, or persons similarly employed who work directly under the supervision of, and on the same vessel as, a fishing guide.

"Charter vessel" means a vessel licensed under AS 16.05.490, used for hire in the sport, personal use, or subsistence taking of fish or shellfish, and not used on the same day for any other commercial fishing purpose; a charter vessel does not include a vessel or skiff without a charter operator.

- (2) **Wildlife Guiding.** Big game guides and transporters are regulated by the Alaska Department of Community and Economic Development under Alaska Statute Title 8. The Big Game Commercial Services Board (commonly referred to as the Guide Board) was created for the purpose of licensing and regulating the activities of big game commercial service providers in the interest of the state's wildlife resources. The Guide Board consists of nine members that make final licensing decisions and takes disciplinary actions against persons who violate licensing laws. Alaska Statute 8, Chapter 54 contains the state's rules for game guides and related definitions can be found as follows: AS 08.54.610 defines a registered guide⁴; AS 08.54.620 Class A assistant guide; 08.54.630 Assistant guide, and 08.54.650 Transporter.

Under AS 08.54.720(17) and (18), big game guides are prohibited from taking big game while accompanying a client or taking the species a client has contracted for while the client is still in the field (excluding defense-of-life-and-property situations):

AS 08.54.720. Unlawful acts.

(a) It is unlawful for a

(17) registered guide, except in the defense of life or property, to knowingly personally take

(A) big game while accompanying a client in the field; or

(B) a species of big game if the registered guide is under contract with a client to provide a guided hunt for that species of big game and the client is in the field;

(18) person who is licensed as a registered guide, a class-A assistant guide, or an assistant guide, except in the defense of life or property, to knowingly personally take big game while a client of the registered guide by whom the person is employed is in the field unless the person is not participating in, supporting, or otherwise assisting in providing big game hunting services to a client of the registered guide by whom the person is employed; or

(19) person who is licensed as a transporter, or who provides transportation services under a transporter license, to knowingly accompany or remain in the field with a big game hunter who is a client of the person except as necessary to perform the specific duties of embarking or disembarking big game hunters, their

⁴ Beginning in 1932, the Alaska Game Commission required nonresident photographers to hire a registered guide to photograph brown, grizzly, or polar bear. The regulation was retained by the State of Alaska until 1967. Through the early 1970s, the definition of guiding was "Guiding as herein used means accompanying, guiding, or assisting another person to take or photograph game with the intent of receiving monetary or material remuneration for such services..."

equipment, or big game animals harvested by hunters; this paragraph does not apply to a person who holds both a transporter license and any class of guide license issued under this chapter.

Alaska Statute 16.05.790 prohibits obstruction or hindrance of lawful hunting, fishing, trapping, or viewing of fish or game.

Alaska Statute 16.05.940(33) defines “take” to mean taking, pursuing, hunting, fishing, trapping, or in any manner disturbing, capturing, or killing or attempting to take, pursue, hunt, fish, trap, or in any manner capture or kill fish or game. The phrase “or in any manner disturbing ...” may theoretically provide authority to cite those who “disturb” wildlife or fish out of season with the same force as someone who kills those critters; this has not been tested in court.

Attracting Wildlife

Feeding of wildlife or leaving garbage that attracts them is prohibited by regulation (5 AAC 92.230) except under an ADF&G permit:

A person may not intentionally feed a moose (except under terms of a permit issued by the department), bear, wolf, coyote, fox, or wolverine, or negligently leave human food, pet food, or garbage in a manner that attracts these animals. However, this prohibition does not apply to use of bait for trapping fur bearers or hunting black bears under 5 AAC 84 – 5 AAC 92.

The guidelines for taking a bear in defense of life and property are set forth in regulation 5 AAC 92.410. Provocation of the animal and negligent storage of food are not justifications for shooting a bear. Brochures and other means are used to advise traveling public to avoid using well-worn bear trails and avoid camping near food sources such as salmon streams or berry patches. The brochure, “Bear Facts,” from the Alaska Department of Fish and Game offices around the state addresses these issues.

Other Government Tools

Boroughs (municipal governments) have authority to adopt planning, zoning, or municipal land use regulations that can address recreational development. Some boroughs have used planning and zoning powers to address certain types of recreational use, such as motorboats on lakes in the Mat-Su Borough, but generally do not restrict recreational uses unless there is a public health or safety issue (such as snowmachines on residential streets). ~~Municipalities can adopt Coastal Management Plans that apply to state, municipal, and private lands; these plans provide general guidance over development activities. The Coastal Management Plans generally do not address recreational use.~~ Boroughs may also own land, most of which is land transferred from the state under the municipal entitlement program.

ALASKA STATUTES

38.05.126. Navigable and public water.

- (a) The people of the state have a constitutional right to free access to and use of the navigable or public water of the state.
- (b) The state has full power and control of all of the navigable or public water of the state, both meandered and unmeandered, and the state holds and controls all navigable or public water in trust for the use of the people of the state.
- (c) Ownership of land bordering navigable or public water does not grant an exclusive right to the use of the water and a right of title to the land below the ordinary high water mark is subject to the rights of the people of the state to use and have access to the water for recreational purposes or other public purposes for which the water is used or capable of being used consistent with the public trust.
- (d) This section may not be construed to affect or abridge valid existing rights or create a right or privilege of the public to cross or enter private land.

Sec. 38.05.127. Access to navigable or public water.

- (a) Before the sale, lease, grant, or other disposal of any interest in state land adjacent to a body of water or waterway, the commissioner shall,
 - (1) determine if the body of water or waterway is navigable water, public water, or neither;
 - (2) upon finding that the body of water or waterway is navigable or public water, 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 limiting access is necessary for other beneficial uses or public purposes.
- (b) The department shall adopt regulations implementing this section.
- (c) Nothing in this section affects valid existing rights or limits in any way the constitutional right of the public to use and have free access to the navigable or public waters of the state.
- (d) Upon application by a municipality or an affected owner of land, the department may vacate, release, modify, or relocate an easement and right-of-way for public access to or along navigable or public waters reserved by the department in a patent issued under AS 29.65 or former AS 29.18, if the commissioner determines the action is consistent with the public interest.
- (e) The establishment of easements or rights-of-way for oil and gas and mineral leases under (a) of this section need not be made until the leases are ready to be developed.
- (f) Rights-of-way or easements to waterways established under (a)(2) of this section shall be established approximately once each mile unless the commissioner makes a written finding that regulating or limiting access is necessary for other beneficial uses or public purposes.
- (g) The commissioner may exchange land under AS 38.50 to create access to public water of the state.

Sec. 38.05.128. Obstructions to navigable water.

- (a) A person may not obstruct or interfere with the free passage or use by a person of any navigable water unless the obstruction or interference is
 - (1) authorized by a federal agency and a state agency;
 - (2) authorized under a federal or state law or permit;
 - (3) exempt under 33 U.S.C. 1344(f) (Clean Water Act);
 - (4) caused by the normal operation of freight barging that is otherwise consistent with law; or
 - (5) authorized by the commissioner after reasonable public notice.
- (b) An unauthorized obstruction or interference is a public nuisance and is subject to abatement. The cost of abatement shall be borne by the violator and is in addition to any penalty imposed by the court.
- (c) This section may not be construed to affect or abridge valid existing rights.
- (d) Free passage or use of any navigable water includes the right to use land below the ordinary high water mark to the extent reasonably necessary to use the navigable water consistent with the public trust.
- (e) Free passage or use of any navigable water includes the right to enter adjacent land above the ordinary high water mark as necessary to portage around obstacles or obstructions to travel on the water, provided
 - (1) entry is made without injury or damage to the land;
 - (2) entry is made in the least obtrusive manner possible;
 - (3) there is no reasonable alternative available to avoid the use of the adjacent land above the ordinary high water mark; and
 - (4) the navigable water is reentered immediately below the obstacle or obstruction at the nearest point where it is safe to do so.
- (f) A violation of (a) of this section is a class B misdemeanor.