



THE STATE
of **ALASKA**
GOVERNOR MIKE DUNLEAVY

Department of Natural Resources
OFFICE OF PROJECT MANAGEMENT AND PERMITTING

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June 24, 2024

Lake Clark National Park & Preserve
Johnson Tract Transportation and Port Site Easements
Attention: Superintendent Fleek-Green
240 West 5th Avenue, Suite 236
Anchorage, AK 99501

Submitted online at <https://parkplanning.nps.gov/LACLJohnsonTractEasements> and by email

Re: Lake Clark National Park and Preserve proposed easements to access Johnson Tract

Dear Superintendent Fleek-Green,

The State of Alaska (State) reviewed the newsletter Lake Clark National Park and Preserve (LACL) released regarding the issuance of two easements on the Johnson Tract; one for a transportation corridor; and one for a port. The port site is anticipated to be located in Tuxedni Channel, across from Chisik Island. LACL is requesting information as it seeks to put together a Resource Analysis for the issuance of the easements in lieu of a typical National Environmental Policy Act (NEPA) process. The newsletter states Section 910 of the Alaska National Interest Lands Conservation Act (ANILCA) specifies the easements are not subject to NEPA. Staff from the Departments of Natural Resources (DNR) and Fish and Game (ADF&G) contributed to the information below and are available for follow-up discussion upon request. These comments are specifically related to the easements and proposed Resource Analysis.

Additionally, the ADF&G Habitat Section is reviewing the permitting needs for the mining operations and plans under Title 16 of the Alaska Statutes and may have further comments or permit stipulations associated with operations and plans.

Johnson Tract is part of Cook Inlet Region, Inc.'s (CIRI) Alaska Native Claims Settlement Act (ANCSA) land selections and is a known mineral prospect on the west side of Cook Inlet at the head of the Johnson River. Under the Cook Inlet Land Exchange passed by Congress and signed by President Ford in 1976, we understand the Secretary, not the National Park Service (NPS), is required to convey two easements to CIRI to allow for the transportation and shipping of minerals extracted from the Johnson Tract. We seek clarification on the authority of the NPS to conduct this Resource Analysis as it is not stipulated under the terms and conditions of the Cook Inlet Land Exchange. The provisions of Part I Section B (3) of the Terms and Conditions for Land Consolidation and Management in the Cook Inlet Area, as clarified August 31, 1976, states:

The Secretary shall also convey to CIRI, and easement for a port which shall reasonably provide for receiving, shipping, storage, and incidental handling, and incidental facilities thereto, of the mineral extracted from the lands conveyed under this subparagraph. **The Secretary shall also convey to CIRI a transportation easement** to provide for transportation by road, rail, or pipeline of the minerals from the above

described lands to the port easement. **The Secretary and the CIRI shall mutually agree upon the location of the port and transportation easement.** [emphasis added]

We request the following:

- NPS abandon the Resource Analysis for these easements as it is not required in the Cook Inlet Land Exchange agreement.
- NPS identify the recording instrument of the easements and make that publicly available.

If the NPS continues to develop the proposed Resource Analysis, we provide the following comments:

We request any Resource Analysis produced by NPS reflect ADF&G is the State's principal manager of fish and wildlife resources and their habitats, regardless of land ownership. ADF&G is mandated under state law 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 . . ." (AS 16.05.020).

ADF&G staff are available to assist the NPS in identifying direct and indirect impacts that may be a consideration in siting the easements and help evaluate the appropriate mitigation measures that the NPS may develop into stipulations for the use of these easements.

Based on the information provided in the Newsletter, ADF&G staff identified the following resources and resource uses LACL should address in its Resource Analysis document. ADF&G recognizes that Newsletter seeks information on the siting of the easement locations and does not address impacts from any future mining activities occurring on the Johnson Tract. Once the activities that will occur within the easements as far as construction and operation are presented, an analysis can occur.

- The tidal flats in the proposed port area are known as an important area for brown bears in the spring/early summer. Anadromous rivers, like Johnson River, are also important habitats for brown bears when the fish are running.
- Moose harvest in the area is regulated by a registration permit, and potential increase of access to the area may result in increased hunting pressure.
- Several set net sites are located off Chisik Island. Figure 1 identifying those site locations is included below.
- Drift netters set up off the tidal guts in Tuxedni Channel, and sport fishing occurs within the Channel.
- Beluga whales and sea otters utilize the waters in and around Tuxedni Channel and Bay.
- The ADF&G Habitat Section has conducted baseline aquatic studies and discussed those locations with NPS.

As the NPS collects information on fish and wildlife in the project area ADF&G is very interested in obtaining copies of the fish and wildlife data the NPS collects. At this time, that includes information collected on anadromous fish and both brown and black bear collaring efforts. This request is in accordance with the Master Memorandum of Understanding between our two agencies (attached).

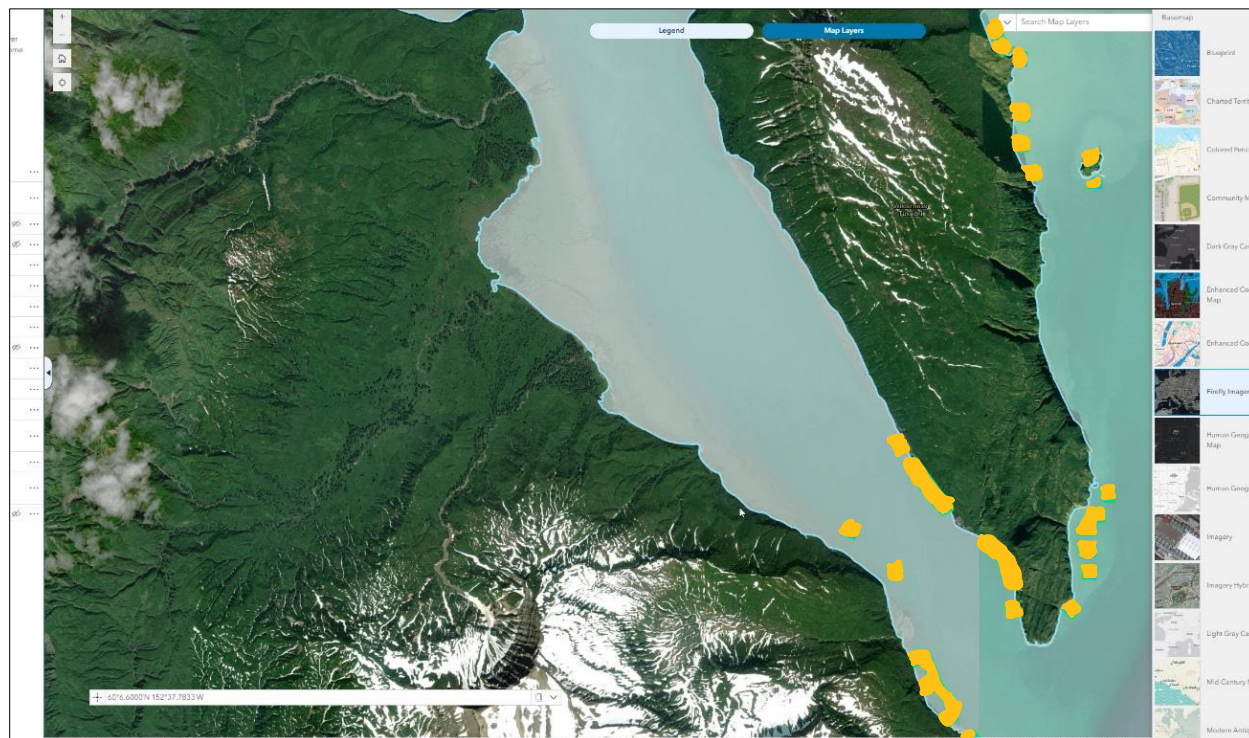


Figure 1 -- Set Net Locations in Tuxedni Channel and Chisik Island (shown in orange)

DNR Management Authority, General

DNR has management authority for State lands (including the land, water, tidelands, and shorelands of navigable waters within the State). This authority includes management of navigable waters, tidelands, and shorelands within and adjacent to the boundaries of federal lands like Lake Clark National Park & Preserve. More information can be found at the DNR Navigability Project website: <https://dnr.alaska.gov/mlw/paad/nav/>. Additionally, a map of waters the State considers navigable can be found here by opening the Navigable Waters map in the left menu: <https://mapper.dnr.alaska.gov/map#map=4/-16632245.12/8816587.34/0>

Maps and other future project documents should acknowledge State ownership and management of navigable waters and those submerged lands that are within project areas, so the NPS and the public understand land ownership and possible permitting authorities. Additionally, as watersheds often contain a mix of landowners including navigable waters and state shorelands, coordination with State and other landowners is key in many projects. Any infrastructure activity proposed below ordinary high water and any water-based commercial activity on the tidelands or submerged lands requires authorization from DNR's Division of Mining, Land, and Water (DMLW).

Conclusion

Thank you for the opportunity to comment. Please contact me at (907) 269-0880 or by email at Catherine.heroy@alaska.gov to coordinate any follow-up discussions.

Sincerely,

Catherine Heroy
Federal Program Manager

Attachments: Master Memorandum of Understanding Between NPS and ADF&G

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MASTER MEMORANDUM OF UNDERSTANDING
BETWEEN
THE ALASKA DEPARTMENT OF FISH AND GAME
JUNEAU, ALASKA
AND
THE U.S. NATIONAL PARK SERVICE
DEPARTMENT OF THE INTERIOR
ANCHORAGE, ALASKA

This Master Memorandum of Understanding between the State of Alaska, Department of Fish and Game, hereinafter referred to as the Department, and the U.S. Department of the Interior, National Park Service, hereinafter referred to as the Service, reflects the general policy guidelines within which the two agencies agree to operate.

WHEREAS, the Department, under the Constitution, laws, and regulations of the State of Alaska, is responsible for the management, protection, maintenance, enhancement, rehabilitation, and extension of the fish and wildlife resources of the State on the sustained yield principle, subject to preferences among beneficial uses; and

WHEREAS, the Service, by authority of the Constitution, laws of Congress, executive orders, and regulations of the U.S. Department of the Interior is responsible for the management of Service lands in Alaska and the conservation of resources on these lands, including conservation of healthy populations of fish and wildlife within National Preserves and natural and healthy populations within National Parks and Monuments; and

WHEREAS, the Department and the Service share a mutual concern for fish and wildlife resources and their habitats and desire to develop and maintain a cooperative relationship which will be in the best interests of both parties,

the fish and wildlife resources and their habitats, and produce the greatest public benefit; and

WHEREAS, the Alaska National Interest Lands Conservation Act (ANILCA) and subsequent implementing Federal regulations recognize that the resources and uses of Service lands in Alaska are substantially different than those of similar lands in other states and mandate continued subsistence uses in designated National Parks plus sport hunting and fishing, subsistence, and trapping uses in National Preserves under applicable State and Federal laws and regulations; and

WHEREAS, the Department and the Service recognize the increasing need to coordinate resource planning and policy development;

NOW, THEREFORE, the parties hereto do hereby agree as follows:

THE DEPARTMENT OF FISH AND GAME AGREES:

1. To recognize the Service's responsibility to conserve fish and wildlife and their habitat and regulate human use on Service lands in Alaska, in accordance with the National Park Service Organic Act, ANILCA, and other applicable laws.
2. To manage fish and resident wildlife populations in their natural species diversity on Service lands, recognizing that nonconsumptive use and appreciation by the visiting public is a primary consideration.
3. To consult with the Regional Director or his representative in a timely manner and comply with applicable Federal laws and regulations before embarking on management activities on Service lands.

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4. To act as the primary agency responsible for management of subsistence uses of fish and wildlife on State and Service lands, pursuant to applicable State and Federal laws.
 5. To recognize that National Park areas were established, in part, to "assure continuation of the natural process of biological succession" and "to maintain the environmental integrity of the natural features found in them."

THE NATIONAL PARK SERVICE AGREES:

1. To recognize the Department as the agency with the primary responsibility to manage fish and resident wildlife within the State of Alaska.
2. To recognize the right of the Department to enter onto Service lands after timely notification to conduct routine management activities which do not involve construction, disturbance to the land, or alterations of ecosystems.
3. To manage the fish and wildlife habitat on Service lands so as to ensure conservation of fish and wildlife populations and their habitats in their natural diversity.
4. To cooperate with the Department in planning for management activities on Service lands which require permits, environmental assessments, compatibility assessments, or similar regulatory documents by responding to the Department in a timely manner.
5. To consider carefully the impact on the State of Alaska of proposed treaties or international agreements relating to fish and wildlife resources which could diminish the jurisdictional authority of the State, and to consult freely with the State when such treaties or agreements have a significant impact on the State.

- 6. To review Service policies in consultation with the Department to determine if modified or special policies are needed for Alaska.
- 7. To adopt Park and Preserve management plans whose provisions are in substantial agreement with the Department's fish and wildlife management plans, unless such plans are determined formally to be incompatible with the purposes for which the respective Parks and Preserves were established.
- 8. To utilize the State's regulatory process to the maximum extent allowed by Federal law in developing new or modifying existing Federal regulations or proposing changes in existing State regulations governing or affecting the taking of fish and wildlife on Service lands in Alaska.
- 9. To recognize the Department as the primary agency responsible for policy development and management direction relating to subsistence uses of fish and wildlife resources on State and Service lands, pursuant to applicable State and Federal laws.
- 10. To consult and cooperate with the Department in the design and conduct of Service research or management studies pertaining to fish and wildlife.
- 11. To consult with the Department prior to entering into any cooperative land management agreements.
- 12. To allow under special use permit the erection and maintenance of facilities or structures needed to further fish and wildlife management activities of the Department on Service lands, provided their intended use is not in conflict with the purposes for which affected Parks or Preserves were established.

THE DEPARTMENT OF FISH AND GAME AND THE NATIONAL PARK SERVICE MUTUALLY AGREE:

1. To coordinate planning for management of fish and wildlife resources on Service lands so that conflicts arising from differing legal mandates, objectives, and policies either do not arise or are minimized.
2. To consult with each other when developing policy, legislation, and regulations which affect the attainment of wildlife resource management goals and objectives of the other agency.
3. To provide to each other upon request fish and wildlife data, information, and recommendations for consideration in the formulation of policies, plans, and management programs regarding fish and wildlife resources on Service lands.
4. To recognize that the taking of fish and wildlife by hunting, trapping, or fishing on certain Service lands in Alaska is authorized in accordance with applicable State and Federal law unless State regulations are found to be incompatible with documented Park or Preserve goals, objectives or management plans.
5. To recognize for maintenance, rehabilitation, and enhancement purposes, that under extraordinary circumstances the manipulation of habitat or animal populations may be an important tool of fish and wildlife management to be used cooperatively on Service lands and waters in Alaska by the Service or the Department when judged by the Service, on a case by case basis, to be consistent with applicable law and Park Service policy.
6. That implementation by the Secretary of the Interior of subsistence program recommendations developed by Park and Park Monument Subsistence Resource

Commissions pursuant to ANILCA Section 808(b) will take into account existing State regulations and will use the State's regulatory process as the primary means of developing Park subsistence use regulations.

7. To neither make nor sanction any introduction or transplant of any fish or wildlife species on Service lands without first consulting with the other party and complying with applicable Federal and State laws and regulations.
8. To cooperate in the development of fire management plans which may include establishment of priorities for the control of wildfires and use of prescribed fires.
9. To consult on studies for additional wilderness designations and in development of regulations for management of wilderness areas on Service lands.
10. To resolve, at field office levels, all disagreements pertaining to the cooperative work of the two agencies which arise in the field and to refer all matters of disagreement that cannot be resolved at equivalent field levels to the Regional Director and to the Commissioner for resolution before either agency expresses its position in public.
11. To meet annually to discuss matters relating to the management of fish and wildlife resources on, or affected by, Service lands.
12. To develop such supplemental memoranda of understanding between the Commissioner and the Regional Director as may be required to implement the policies contained herein.
13. That the Master Memorandum of Understanding is subject to the availability of appropriated State and Federal funds.

- 14. That this Master Memorandum of Understanding establishes procedural guidelines by which the parties shall cooperate, but does not create legally enforceable obligations or rights.
- 15. That this Master Memorandum of Understanding shall become effective when signed by the Commissioner of the Alaska Department of Fish and Game and the Alaska Regional Director of the National Park Service and shall continue in force until terminated by either party by providing notice in writing 120 days in advance of the intended date of termination.
- 16. That amendments to this Master Memorandum of Understanding may be proposed by either party and shall become effective upon approval by both parties.

STATE OF ALASKA

Department of Fish and Game

By Ronald O. Skoog
 Ronald O. Skoog
 Commissioner

Date 14 October 1982

U.S. DEPARTMENT OF THE INTERIOR

National Park Service

By John E. Cook
 John E. Cook
 Regional Director, Alaska

Date October 5, 1982

