

LOWER TALARIK CREEK
SPECIAL USE AREA DESIGNATION
ADL 227445

I. Location

Uplands, shorelands and waters within the Lower Talarik Creek area depicted on the attached map (*Attachment A*) and described as:

Township 6 South, Range 37 West, SM.
Section 22: All;
Section 23: All;
Section 24 All;
Section 25: Fractional, All;
Section 26: Fractional, All;
Section 27: Fractional, All;
Section 35: Fractional, All.
Excluding USS 7805 Lots 1 & 2 and USS 11314 Lots 1 & 2.
(*Exclusions depicted on Attachment A.*)

II. Authority

11 AAC 96.010(b), AS 38.05.020, AS 38.05.850, AS 41.21.020

III. Proposed Action

Create a special use area for the purpose of enhancing the world class recreational rainbow trout fishery, protecting high value fish and wildlife habitat, and providing recreational opportunities for commercial and noncommercial users.

Adoption of the Special Use Area would:

- reduce the existing 14 day limit for commercial camps authorized under commercial recreation permits to “day use” only from August 1 through October 31,
- reduce the existing generally allowed 14 day limit for private, noncommercial camps to 5 days from August 1 through October 31, and
- limit private, noncommercial camping to a designated area adjacent to the Fish and Game cabin located within Section 26 from August 1 through October 31.

IV. Land Status

Uplands other than USS 7805 Lots 1 and 2, USS 11314 Lots 1 and 2 within the Lower Talarik Creek drainage are state-owned.

- USS 7805, Lots 1 and 2 is a privately owned native allotment.
- The 155 acre parcel identified as USS 11314 Lot 2, critical because of its ecological and public use values, has been acquired by The Nature Conservancy of Alaska as a result of negotiations between a native allotment claimant and the State of Alaska. The 155 acre parcel will ultimately be transferred back to the State of Alaska by The Nature Conservancy for long term management.

Management guidelines and covenants addressing the allowable uses and management intent for the 155 acres will accompany transfer of the lands. The Nature Conservancy has been granted a conservation easement on the remaining 5 acre parcel identified as USS 11314, Lot 1. The conservation easement carries restrictions that are consistent with the overall management of Lower Talarik Creek. Management actions on adjacent state lands are very important to the overall use of the area.

State owned lands within Sections 24, 25, 26 and 27 have been selected by the Lake and Peninsula Borough's as part of their Municipal Entitlement Land Selections (ADL 227017).

IV. Background

Lower Talarik Creek drains a 50 square mile watershed and meanders some eight miles before flowing into the northwestern corner of Lake Iliamna. Since statehood Lower Talarik Creek has had a history of special management and is presently one of six waters in southwest Alaska to be managed as a "fly fishing only, catch and release" fishery area. Rainbow trout found within these waters support a world class recreational fishery.

The habitat included within the Lower Talarik Creek Special Use Area supports a complex ecological system driven by tens of thousands of sockeye salmon that spawn in the waters of Lower Talarik Creek each year. Maintenance of this habitat is vital to the sound management of fish and wildlife resources within the area, and the opportunity for people to enjoy those resources.

The Department of Natural Resources (DNR) recognized the importance of fish and wildlife and recreation to the Iliamna Region when developing the Bristol Bay Area Plan (BBAP) in 1984. The BBAP identifies important values on state lands and provides specific management direction and guidance. This direction is the basis for management guidelines that apply to the Lower Talarik Creek Special Use Area.

Based on the high value of fish and wildlife resources and recreation values, the plan includes the following management goals:

Maintain the historic levels of productivity of fish and wildlife populations important for subsistence, recreation, and commercial use and maintain the carrying capacity of their natural habitats.

Provide for optimal commercial, subsistence, and recreational use of fish and wildlife resources through conservation and compatible management of land use consistent with the purposes of the BBAP.

Maintain a range of recreational, scenic, educational, wilderness, and unique natural resources in the Bristol Bay region adequate to provide for the needs of local residents and state and national users.

The BBAP establishes fish and wildlife habitat and subsistence and recreational harvest primary uses throughout the Lower Talarik Creek drainage.

"The harvest and nonconsumptive use of these fish and wildlife resources are a major economic value to residents of the Bristol Bay area, the State of Alaska, and the nation.

Through implementation of the plan (including plan guidelines), fish and wildlife resources and the employment and income generated from the harvest of fish and wildlife resources

At other times:

Camps, both commercial and private, are allowed to remain in one specific location for up to 14 days. On or before the end of the fourteenth day, camps must be relocated at least 1 mile.

No permit is required for private, noncommercial camps.

Commercial businesses conducting activities requiring the use of camps in the Special Use Area is required to secure a permit from the Department of Natural Resources, Division of Land.

VII. Monitoring and Compliance

The Division of Land and the Department of Fish and Game will work together in a joint effort for monitoring and compliance to protect the area.

VIII. Changes to Guidelines

Significant Changes:

To meet changing use patterns and protect the fishery and bear population, the Department of Natural Resources and the Department of Fish and Game may consider changing or adding management tools such as: time of day restrictions, communal food caches, restricting ATV use or requiring 5-day paid permits or a registration system may be considered. The addition of or significant modification of a guideline will be considered significant. Prior to adding guidelines or making significant modifications to existing management guidelines, DNR will provide for meaningful public participation and public notice.

Minor Changes:

Minor changes may be necessary for clarification, accuracy, technical correction, consistency, or to facilitate the implementation of management guidelines. Minor changes are made at the discretion of the Director of the Division of Land and do not require public notice.

Neither type of change addressed in this section will modify the management intent of the special use area designation.

can be expected to continue indefinitely thereby providing a sound economic base for Alaska and the Bristol Bay area.”

Lower Talarik Creek is found within Unit 10, Western Iliamna, Kvichak River of the Bristol Bay Area Plan. The plan acknowledges the importance of lands and waters in this unit as the most important source of salmon in the region. The management intent for this unit is to:

“Manage this unit for fish and wildlife with emphasis on fisheries production and public recreation on the Talarik Creeks and the Kvichak and Alagnak Rivers.”

In addition to the BBAP, the public trust doctrine provides direction for management of Lower Talarik Creek. The Alaska Constitution (Article VIII, sections 1,2,3,6,13 and 14) and Alaska Statutes (38.05.127 and 38.05.128) are the legal basis for applying the public trust doctrine in Alaska. Under the Alaska Constitution, the state has special duties and management constraints with respect to state owned land underlying navigable waters.

The public trust doctrine as embodied in the Constitution and statutes requires the state to exercise authority to ensure that the right of the public to use navigable waters for navigation, commerce, recreation, and related purposes are not substantially impaired. The doctrine guarantees protection of areas for ecological study and the public right to engage in such things as commerce, navigation, fishing, hunting, swimming, etc.

The 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.” Article VIII, Section 14, AS 38.05.127 requires that the state Commissioner 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.”

V. Management Intent

The Bristol Bay Area Plan, 1984, recognizes the habitat and recreation values of the proposed Lower Talarik Creek Special Use Area. The state now has better knowledge of the rainbow trout fishery and public use, as well as brown bear activity in the area. Therefore, the special use area will continue to be managed: *(i)* for fish and wildlife with emphasis on protecting the rainbow trout fishery and bear population; *(ii)* to provide for traditional subsistence harvest activities and *(iii)* to accommodate public recreation.

VI. Guidelines:

From August 1 through October 31:

Private, noncommercial camps are only allowed in a designated area adjacent to the Fish and Game cabin located in Section 26 for five (5) consecutive days. On or before the end of the fifth day, camps must be removed from the special use area. No permit will be required.


Commercial (guided) activities are limited to “day use” only. No permit will be required. Commercial camps are not allowed anywhere within the Special Use Area.

DECISION

The Division of Land recognizes that uplands and shorelands at Lower Talarik Creek have high value for fish and wildlife habitat and harvest and recreation. The Division of Land recognizes that a mix of opportunities such as sportfishing and hunting and traditional subsistence activities, must be offered while protecting fish and wildlife values. Managing the lands to be included in the Lower Talarik Creek Special Use Area designation in accordance with the guidelines set forth herein will assure that the fish and wildlife values of the area will be protected and available for the use and enjoyment of the public.

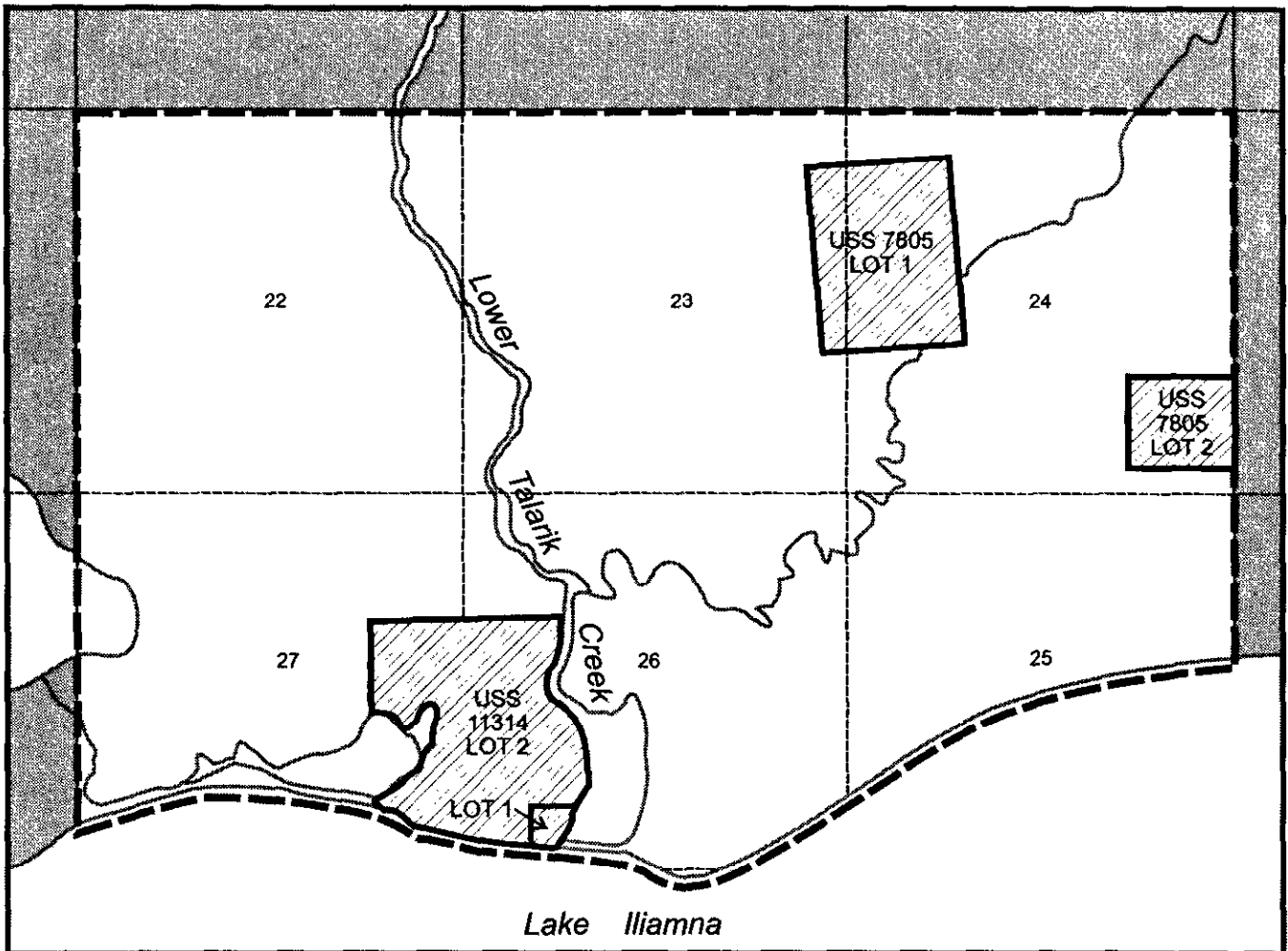
Under 11 AAC 96.010(a)(2) and 11 AAC 96.010(b), the lands described herein and shown on the attached map are hereby designated as special use lands. The areas will be known as the Lower Talarik Creek Special Use Area and managed in accordance with the guidelines established in Section VI. I find that this is consistent with the Department of Natural Resources' management authority and that it is in the best interest of the state. Furthermore, I have determined that it is in the best interest of the State of Alaska to have this decision become effective on the date this decision is signed. Being effective upon signing will enable the guidelines for which the special use area is being designated to be enforceable on or about August 15, 1999 (11 AAC 96.010(b)).

This is a final administrative order and decision of the department for purposes of an appeal to Superior Court. A person adversely affected by this final order and decision may (1) appeal to Superior Court within 30 days in accordance with the rules of the court, and to the extent permitted by applicable law, or (2) first request reconsideration of this decision, in accordance with AS 44.62.540 and 11 AAC 02.020 to John Shively, Commissioner, Department of Natural Resources, 3601 C Street, Suite 1210, Anchorage, AK 99503-5921. Please include the appeal code number provided below. Any such request for reconsideration must be received at that address, or received by being faxed to 1-907-562-4871, within 15 calendar days after the date of "delivery" of this decision, as defined by 11AAC 02.040(c) and (d). Failure of the commissioner to act on a request for reconsideration within 30 days after the delivery of this decision is a denial of reconsideration and is also a final administrative order and decision for purposes of an appeal to Superior Court. It may then be appealed to Superior Court within a further 30 days in accordance with the rules of the court, and to the extent permitted by applicable law. A copy of 11 AAC 02 may be obtained from any regional information office of the Department of Natural Resources.





Marty Rutherford, Deputy Commissioner
Department of Natural Resources

5-19-99
Date

Attachment A.
**Lower Talarik Creek
Special Use Area**
ADL 227445



MAP KEY

-  Lower Talarik Creek Special Use Area boundary
-  Private inholdings excluded from the Special Use Area
-  State land outside the Special Use Area