

## **Appendix F**

### **NEGATIVE DETERMINATION FOR THE OFF-ROAD VEHICLE USE PLAN GLACIER BAY NATIONAL PRESERVE**

The State of Alaska has an approved coastal zone management program, the Alaska Coastal Management Program (ACMP) which includes regulations in Title 6, Chapter 50 of the Alaska Administrative Code (6 AAC 50). The Alaska Department of Natural Resource's Office of Project Management & Permitting (OPMP) coordinates review of federal consistency determinations as per 6 AAC 50.020. The Alaska Coastal Policy Council promulgates standards in the ACMP in chapter 80 of Title 6 (6ACC 80). Guidelines for District Coastal Management Programs are provided in 6 ACC 85. CZMA Federal Consistency Regulations (15 CFR 930.35(b)) state that negative determinations include an evaluation of the relevant policies set forth in the ACMP and applicable district programs.

The National Park Service (NPS) is proposing an Off-Road Vehicle (ORV) Use Plan for Glacier Bay National Preserve (T. 32. S., R. 41. E.). Lands in the project area fall within the coastal zone of the State of Alaska and the City and Borough of Yakutat Coastal Management District (ACMP "Coastal Zone Boundaries of Alaska" Map #102 for the Yakutat Quadrangle). The project area is federal land managed by the National Park Service and by definition is outside the state's coastal zone.

This project would authorize and regulate the use of off-road vehicles on specific trails and routes in the Dry Bay area of the Preserve in support of commercial fishing as well as other purposes (i.e., subsistence and recreational activities) while minimizing damage to Preserve resources and values. The designation of ORV trails and routes and the expansion of allowable ORV uses would occur through special regulations. Existing tracks that duplicate routes or are no longer used or cause resource damage may be closed. Repair strategies for trail segments in poor condition or contributing to resource damage along designated routes would be developed.

A detailed description of the Glacier Bay National Preserve Off-Road Vehicle Use Plan is provided in the attached environmental assessment. Alternative 3 is the NPS preferred alternative.

The following section details the NPS's Negative Determination analysis by which it was determined that the Off-Road Vehicle Use Plan would not effect any coastal use or resource. In determining effects, the NPS followed 15 CFR 930.33(a)(1) and has included an evaluation of the relevant enforceable policies of the ACMP and the Yakutat District. State standards included for analysis are coastal development; recreation; fish and seafood processing; subsistence; habitats; air, land, and water quality; and historic, prehistoric, and archaeological resources. The project would be located on lands under federal jurisdiction, which are outside the coastal zone.

#### **6 AAC 80.040. COASTAL DEVELOPMENT.**

(a) In planning for and approving development in coastal areas, districts and state agencies shall give in the following order, priority to:

- (1) water-dependent uses and activities;
  - (2) water-related uses and activities; and
  - (3) uses and activities which are neither water-dependent nor water-related for which there is no feasible and prudent inland alternative to meet the public need for the use or activity.
- (b) The placement of structures and the discharge of dredged or fill material into coastal water must, at a minimum, comply with the standards contained in Parts 320-323, Title 33, Code of Federal Regulations (Vol. 42 of the Federal Register, pp. 37133 - 47 (July 19, 1977)). (Eff. 7/18/78, Register 67; am 8/18/79, Register 71)

*Analysis: The NPS Preferred Alternative (Alternative 3) would authorize ORV use on 62.9 miles (75.3%) of trails or routes and close 20.6 miles (24.7%) of existing trails and routes to ORV use. No new trails would be developed. The designation of trails and routes in the Dry Bay area of Glacier Bay National Preserve open to ORV use is water-related in that it supports commercial fishing activities and recreational use of the area.*

*Designated trails and routes would be open to ORV use for commercial fishing activities and other purposes (i.e., recreation, subsistence, hunting and sport fishing). Trails and routes designated under Alternative 3 would provide access to State land below the mean high tide line. These lands are used for commercial fishing and recreational purposes. The designation of ORV trails and routes and the expansion of allowable ORV uses would occur through special regulations.*

#### **6 AAC 80.060. RECREATION.**

- (a) Districts shall designate areas for recreational use. Criteria for designation of areas of recreational use are
- (1) the area receives significant use by persons engaging in recreational pursuits or is a major tourist destination; or
  - (2) the area has potential for high quality recreational use because of physical, biological, or cultural features.
- (b) Districts and state agencies shall give high priority to maintaining and, where appropriate, increasing public access to coastal water. (Eff. 7/18/78, Register 67; am 8/18/79, Register 71)

*Analysis: The project area is within Glacier Bay National Preserve. Dry Bay is the final destination for popular Alsek River float trips originating in Canada. The Dry Bay area is also used by recreationists for fishing, hunting and nature appreciation, especially for parties staying at the commercial lodges.*

*Alternative 3 would expand ORV use to all user groups in the Dry Bay Area. Designated trails and routes would be open to ORV use for commercial fishing activities and other purposes (i.e., recreation, subsistence, hunting, and sport fishing). Current regulations limit ORV use specifically for commercial fishing related purposes only.*

*The designated trail network would support recreational activities by providing access to recreation destination in Dry Bay. Alternative 3 would authorize ORV use on 62.9 miles of trails or routes (75.3% of existing trails). Only trails or routes providing duplicate access to commercial fishing activities or causing environmental problems would be closed to ORV use.*

## **6 AAC 80.090. FISH AND SEAFOOD PROCESSING.**

Districts shall identify and may designate areas of the coast suitable for the location or development of facilities related to commercial fishing and seafood processing. (Eff. 7/18/78, Register 67)

*Analysis: Commercial fishing and activities incidental activities are authorized by the park's enabling legislation (ANILCA, 1980). Existing trails in the Dry Bay area of the Glacier Bay National Preserve developed primarily to provide access to commercial fishing areas on the Alsek and East Alsek Rivers, commercial fish camps, boat haulout areas, fish processing plant, and airstrips. Access to these areas and facilities would be maintained under the NPS Preferred Alternative (Alternative 3). The plan would not affect commercial fishing uses or facilities in Dry Bay.*

## **6 AAC 80.120. SUBSISTENCE.**

(a) Districts and state agencies shall recognize and assure opportunities for subsistence usage of coastal areas and resources.

(b) Districts shall identify areas in which subsistence is the dominant use of coastal resources.

(c) Districts may, after consultation with appropriate state agencies, Native corporations, and any other persons or groups, designate areas identified under (b) of this section as subsistence zones in which subsistence uses and activities have priority over all nonsubsistence uses and activities.

(d) Before a potentially conflicting use or activity may be authorized within areas designated under (c) of this section, a study of the possible adverse impacts of the proposed potentially conflicting use or activity upon subsistence usage must be conducted and appropriate safeguards to assure subsistence usage must be provided.

(e) Districts sharing migratory fish and game resources must submit compatible plans for habitat management. (Eff. 7/18/78, Register 67)

*Analysis: The Dry Bay area is in Glacier Bay National Preserve and is open to subsistence uses under ANILCA Title VIII. The NPS is responsible for managing subsistence in the Preserve. The NPS has prepared an ANILCA section 810 evaluation and has determined that the plan would not cause a significant restriction of subsistence uses.*

## **6 AAC 80.130. HABITATS.**

(a) Habitats in the coastal area which are subject to the Alaska coastal management program include

- (1) offshore areas;
- (2) estuaries;
- (3) wetlands and tideflats;
- (4) rocky islands and seacliffs;
- (5) barrier islands and lagoons;
- (6) exposed high energy coasts;
- (7) rivers, streams, and lakes; and
- (8) important upland habitat.

(b) The habitats contained in (a) of this section must be managed so as to maintain or enhance the biological, physical, and chemical characteristics of the habitat which contribute to its capacity to support living resources,

(c) In addition to the standard contained in (b) of this section, the following standards apply to the management of the following habitats:

(1) offshore areas must be managed as a fisheries conservation zone so as to maintain or enhance the state's sport, commercial, and subsistence fishery;

(2) estuaries must be managed so as to assure adequate water flow, natural circulation patterns, nutrients, and oxygen levels, and avoid the discharge of toxic wastes, silt, and destruction of productive habitat;

(3) wetlands and tideflats must be managed so as to assure adequate water flow, nutrients, and oxygen levels and avoid adverse effects on natural drainage patterns, the destruction of important habitat, and the discharge of toxic substances;

(4) rocky islands and seacliffs must be managed so as to avoid the harassment of wildlife, destruction of important habitat, and the introduction of competing or destructive species and predators;

(5) barrier islands and lagoons must be managed so as to maintain adequate flows of sediments, detritus, and water, avoid the alteration or redirection of wave energy which would lead to the filling in of lagoons or the erosion of barrier islands, and discourage activities which would decrease the use of barrier islands by coastal species, including polar bears and nesting birds;

(6) high energy coasts must be managed by assuring the adequate mix and transport of sediments and nutrients and avoiding redirection of transport processes and wave energy; and

(7) rivers, streams, and lakes must be managed to protect natural vegetation, water quality, important fish or wildlife habitat and natural water flow.

(d) Uses and activities in the coastal area which will not conform to the standards contained in (b) and (c) of this section may be allowed by the district or appropriate state agency if the following are established:

(1) there is a significant public need for the proposed use or activity;

(2) there is no feasible prudent alternative to meet the public need for the proposed use or activity which would conform to the standards contained in (b) and (c) of this section; and

(3) all feasible and prudent steps to maximize conformance with the standards contained in (b) and (c) of this section will be taken.

(e) In applying this section, districts and state agencies may use appropriate expertise, including regional programs referred to in 6 AAC 80.030(b). (Eff. 7/18/78, Register 67)

*Analysis: The NPS Preferred Alternative (Alternative 3) would authorize ORV use on 62.9 miles (75.3%) of trails or routes and close 20.6 miles (24.7%) of existing trails and routes to ORV use. No new trails would be developed.*

*The preferred alternative would use a combination of trails closures and stream crossing improvements to protect fish habitat, water quality, and wetlands. The preferred alternative would close three trails that crossing anadromous streams. These include the DSC Trail, Varni East Trail and the Doame Trail complex. The DSC Trail crossed the main channel of the lower Dog Salmon Creek and a number of its distributaries. The Varni East Trail crosses a lower East Alsek River wetland drainage that has experienced substantial bank erosion from ORV use. The State of Alaska, Office of Habitat Management and Permitting recommended that these crossing be closed (Kanouse, 2006). The Doame Trail complex crosses the East Alsek River, Doame*

*River delta and a low-gradient low-flow wetland drainage about 600 feet west of the Doame River. After trail closure these degraded habitats would be allowed to naturally recover.*

*Prescriptive actions would be taken to protect anadromous fish streams on trails providing access to commercial fishing facilities or lodges. Specific streams requiring improvements include Dog Salmon Creek on Main East Trail and the Lake Outlet crossing southwest of EAR on the East Access Trail (Kanouse, 2006). Improvement of ORV stream crossing (streambed and bank hardening) will be conducted in accordance to the Standard Alternative Measures identified in the General Consistent Determination for the construction of small ATV Trails (GCD-22) under the Alaska Coastal Management Program List of Expedited Consistency Reviews. Stream bed and bank hardening with porous pavement panels such as Geoblock™ or other trail hardening method would bring treated areas to a sustainable level due to the resistant nature of the treated tread surface. Trail widths at existing stream crossings would be kept to a maximum of 10 feet as per GCD-22. Prescriptive actions would reduce streams bank erosion and stream siltation thus improving fish habitat and water quality.*

*ORV routes, in the estuary area, that cross the Dog Salmon Creek would not be improved through stream bank and bed hardening. Stream substrate at the crossings consists of sand and some gravel. Any stabilization efforts would probably be washed away since the estuarine area is heavily influence by tides (Kanouse, 2006) and shifting sand substrate. The estuarine ORV crossings are accessible by ORVs only during low tide when few fish are present and would likely have minimal effect on salmonids.*

#### **6 AAC 80.140. AIR, LAND, AND WATER QUALITY.**

Notwithstanding any other provision of this chapter, the statutes pertaining to and the regulations and procedures of the Alaska Department of Environmental Conservation with respect to the protection of air, land, and water quality, in effect on August 18, 1992, are incorporated into the Alaska coastal management program and, as administered by that agency, constitute the components of the coastal management program with respect to those purposes. (Eff. 7/18/78, Register 67; am 5/20/93, Register 126)

*Analysis: The NPS Preferred Alternative (Alternative 3) would authorize ORV use on 62.9 miles (75.3%) of trails or routes and close 20.6 miles (24.7%) of existing trails and routes to ORV use. No new trails would be developed. All trail maintenance activities would occur on land under federal ownership which is outside the coastal zone. No other lands would be affected. Trail maintenance activities and ORV operation would not affect air or water quality in the surrounding area.*

#### **6 AAC 80.150. HISTORIC, PREHISTORIC, AND ARCHAEOLOGICAL RESOURCES**

Districts and appropriate state agencies shall identify areas of the coast which are important to the study, understanding, or illustration of national, state, or local history or prehistory. (Eff. 7/18/78, Register 67)

*Analysis: Effects of the proposed action on cultural resources would not be anticipated for several reasons. Although Dry Bay is the homeland of the Ghunaaxhoo Kwaan of the Tlingit*

*Indians, and several important village sites occur in the general area, the portion of Dry Bay within the area of potential effect was unsuitable for human habitation throughout history because it is a young and very dynamic landscape, having evolved from a glacial outwash plain into a dissected river delta only within the past 200 years, during which time most of the area was either wetland, estuary, or shifting river course. Those areas not lying in or near the water table were windswept barrens largely devoid of vegetation and occasionally subject to catastrophic outburst floods associated with ice damming events at Alsek Lake. There is no soil development that would protect cultural deposits in the event some past activity might have left physical remains. Lastly, the proposed action will not expand disturbance into areas not already disturbed by ORV use and previously determined to be devoid of archaeological remains. Although several legend sites associated with Raven creation stories occur near the area of potential effect – Diyáayi [Looks Like a Whale – Bear Island] – they are natural bedrock outcrops that lie beyond any trails and will not be effected by trail closures or mitigation measures. The standard mitigation language to protect any archeological sites encountered during the project is included in Section 2.5 Mitigating Measures of the EA.*

**Enforceable Policies of the City and Borough of Yakutat CMP** that apply to the Dry Bay project are described below.

## **Coastal Development Policies**

### **2.1 Waterbody Development**

In planning for and approving uses and activities in waterfront areas, the following order of priority shall be used:

- a. First, to water-dependent uses and activities;
- b. Second, to water-related uses and activities; and
- c. Finally, to obtain approval to site a use or activity that is not water dependent nor water-related in the coastal area, the applicant must demonstrate:
  - There is a public need for the proposed use or activity;
  - There are no feasible and prudent inland alternatives that would meet the public need and allow siting away from the coastal area; and
  - All significant adverse impacts on coastal resources will be minimized.

*Analysis: See analysis of COASTAL DEVELOPMENT (6 AAC 80.040).*

## **Recreation Policies**

### **4.1 Development Impacts to Recreational Use Areas**

To the extent feasible and prudent, subject uses shall avoid significant adverse impacts to recreational use areas. Where the reviewing agency determines it is not feasible or prudent to avoid significant adverse impacts to recreational use areas, subject uses shall be planned, located, operated, and maintained to minimize impacts on recreational uses and to accommodate recreational activities in the recreation use areas.

*Analysis: See analysis of RECREATION (6 AAC 80.060)*

## **Subsistence Policies**

### **10.1 Development of Subject Uses in Subsistence Use Areas**

Subject uses shall avoid significant adverse impact on subsistence resources, use of those resources, and subsistence use areas.

## **10.2 Access**

Traditional and customary access for subsistence use within subsistence use areas on public land shall be accommodated unless reasonable alternative access is provided.

*Analysis: See analysis of SUBSISTENCE (6 AAC 80.120).*

## **Fish and Wildlife and Habitats Policies**

### **11.1 Development Planning**

To the extent feasible and prudent, all subject uses shall be conducted to avoid significant adverse impacts on fish, shellfish and wildlife, and their habitats.

*Analysis: See analysis of HABITATS (6 AAC 80.130).*

### **11.4 Threatened and Endangered Species**

Subject uses shall be developed such that habitat important to the continued existence of threatened and endangered species (plants and animals), is protected.

*Analysis: The Endangered Species Act (ESA) requires an analysis of impacts on all federally listed threatened and endangered species. The threatened Steller sea lion occasionally pursue spawning salmon up into the East Alsek River estuary; however, there are no records of sea lion haulouts along the Dry Bay beachfront. In compliance with the ESA, the NPS conducted an informal Section 7 consultation with the National Marine Fisheries Service (NMFS). The NMFS concluded that none of the alternatives in the ORV Use Plan would likely affect the threatened Steller sea lion (Brix, 2006).*

*There are no other known endangered or threatened species or critical habitat for any endangered or threatened species in the project area.*

## **Air, Land, and Water Quality Policies**

### **12.1 Discharge and Runoff to Waterbodies**

a. To the extent feasible and prudent, water contaminants shall be removed, reduced, or treated on-site before being discharged to waterbodies. Techniques include treatment by vegetation and soils, proper disposal of oil, and diversion of impervious surface runoff through grassy swales.

*Analysis: See analysis of AIR, LAND, AND WATER QUALITY (6 AAC 80.140).*

## **Historical and Archeological Resources Policies**

### **13.1 Protection for Cultural Resources**

Prior to the development of a subject use, the developer, in consultation with the City and Borough of Yakutat coastal coordinator and the State Historic Preservation Officer (SHPO), shall do the following:

1. To determine if any known resources are located within a project area, review local, state, and federal inventories.

Analysis: *See analysis of HISTORIC, PREHISTORIC, AND ARCHAEOLOGICAL RESOURCES (6 AAC 80.150).*

**NEGATIVE DETERMINATION:** Based on the above information the National Park Service finds that the Glacier Bay National Preserve Off-Road Vehicle Use Plan would not have any effects on land or water resources in the State of Alaska's coastal zone.