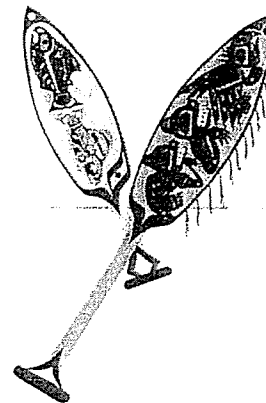




# Yakutat Tlingit Tribe

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February 22, 2016

Michelle Hale, Division Director  
Department of Water  
Alaska Department of Environmental Conservation  
410 Willoughby Ave., Ste. 303  
Juneau, AK 99811-1800  
[Michelle.hale@alaska.gov](mailto:Michelle.hale@alaska.gov)

Re: Nomination for Tier 3 Outstanding Natural Resource Water (ONRW) Designation

Ms. Hale:

On August 26 the Yakutat Tlingit Tribal Council unanimously voted to seek Tier 3 Natural Resource Water Designation. The Yakutat Tlingit Tribal Council represents the Yakutat Tlingit Tribe (Petitioners) in nominating the Yakutat Forelands for ONRW status and protection under 18 AAC 70.015(a)(3). To qualify as a Tier 3, or ONRW water, one of two criteria must be met. The water must either be in a national or state park or wildlife refuge or be a water with exceptional recreational or ecological significance (Emphasis added). Under these criteria, the Yakutat Forelands qualify as both an exceptional recreational area and as having special ecological significance. Additionally, these lands contain many historic, traditional, sacred and cultural sites vital to the Yakutat Tlingit Tribe. The area is currently under congressionally designated protection and within an inventoried Roadless Area.

Even though the State of Alaska has no nomination procedures yet in place, the federal antidegradation policy provides guidance for Petitioners. ONRW designation offers special protection for waters of "exceptional ecological significance." These are water bodies that are important, unique, or sensitive ecologically, but whose water quality, as measured by the traditional parameters such as dissolved oxygen or pH, may not be particularly high or whose characteristics cannot be adequately described by these parameters (such as wetlands).<sup>1</sup> See also 40 CFR 131.12(a)(3).

Guidance for developing implementation methods for antidegradation policies is provided through EPA's Regional Offices. While there is no published antidegradation guidance in Region X, Region VIII provides the following guidance on factors to consider when designating ONRW's. The factors to be considered in granting ONRW status include:

<sup>1</sup> Water Quality Standards Handbook: Second Edition EPA-823-B-94-005; August 1994 updated June 2007. At: <http://water.epa.gov/scitech/swguidance/standards/handbook/index.cfm>



- (1) Location (e.g., on federal lands such as national parks, national wilderness areas, or national wildlife refuges),
- (2) Previous special designations (e.g., congressionally protected areas),
- (3) Existing water quality (e.g., pristine or naturally-occurring),
- (4) Ecological value (e.g., habitat critical to the propagation of anadromous fish),
- (5) Recreational or aesthetic value (e.g., presence of an outstanding recreational fishery), and,
- (6) Other factors that indicate outstanding ecological or recreational resource value (e.g., rare or valuable wildlife habitat).<sup>2</sup>

### Overview

We find that the entire area described below is comprised of an interconnected wetland that functionally serves as one watershed. The entirety of this low-lying wetland is productive anadromous fish habitat and functions as a single unit forming a unique ecological and recreational area that contributes to both the state and local economies. The many streams and rivers are surrounded by riparian habitat that plays a crucial role in water quality, fish habitat and channel stability: shade, cover, food, stream energy dissipation, and habitat complexity, are critical to the maintaining the functions of this anadromous wetland area. As this entire area serves as a single interconnected water resource, it is imperative that water quality be protected by granting Tier 3 ONRW protections.

Specifically, the wetland functions need to be maintained to enhance or protect water quality for drinking water, spawning, and other uses as is described by the State of Alaska.<sup>3</sup> The Yakutat Forelands area described below supports over a dozen species of fish, including all five Pacific salmon species, and serves as prime spawning, rearing, and migration habitat. The State of Alaska Dept. of Fish and Game in 1983 classified the Yakutat Forelands as "Class I", a designation meaning that "the area merits permanent protection."<sup>4</sup>

The United States Environmental Agency (USEPA) identifies wetlands specifically as being eligible for ONRW protections.

"ONRW designation also offers special protection for waters of "exceptional ecological significance." These are water bodies that are important, unique, or sensitive ecologically, but whose water quality, as measured by the traditional parameters such as dissolved oxygen or pH, may not be particularly high or whose characteristics cannot be adequately described by these parameters (such as wetlands)."<sup>5</sup>

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<sup>2</sup> U.S. Environmental Protection Agency, Region VIII, EPA Region VIII Guidance: Antidegradation Implementation 9 (1993).  
[http://www2.rivernetwork.org/cleanwater/Region8\\_ch2\\_pg5-20.pdf](http://www2.rivernetwork.org/cleanwater/Region8_ch2_pg5-20.pdf)

<sup>3</sup> Alaska's Final Integrated Report F. Alaska Water Quality Management Program: P. 110

<sup>4</sup> 101<sup>st</sup> Congress 1st Session AMENDING ANILCA TO DESIGNATE CERTAIN LANDS IN THE TONGASS NATIONAL FOREST AS WILDERNESS, AND FOR OTHER PURPOSES. H.R. REP. NO. 101-84, Part 1 at 35 (1989).

<sup>5</sup> 40 CFR 131.12(a)(3)



The Forelands remote nature and pristine water quality are crucial factors that sustain millions of salmon that are born, grow, migrate and return to spawn its gravels. This fish habitat supports a varied community of bear, moose and thousands of migratory birds as well as the economy and the practice of cultural activities of the nearby community of Yakutat.

All of these resources depend on the protection of the high quality water that not only physically connects the wetlands and numerous streams and rivers, but also connects the fish and wildlife resources.

### **Location of the ONRW**

The area nominated is comprised of the congressionally-designated Yakutat Forelands Land Use Development II ("LUD II") Management Area<sup>6</sup> and a Semi-remote Recreation LUD designated in the 2008 Amendment to the Tongass Land and Resource Management Plan (TLMP), 2008. A map is available in the published Forest Plan.<sup>7</sup>

This area is within the Yakutat Forelands Inventoried Roadless Area (#339). This Roadless Area's specific boundaries can be described as encompassing the land southeast from the town of Yakutat, between the Forest Highway 10 on the northeast, Glacier Bay National Park on the southeast, and the southwest boundary is the Gulf of Alaska, from Dry Bay to the South to Johnson Slough on the North. (*339-Yakutat Forelands C2-234 Final SEIS*)

### **Previous Special Designations**

All of the nominated area is within an inventoried Roadless Area and currently under Congressional protections as either a LUD II area or Semi Remote Recreation area.

Congress passed the Tongass Timber Reform Act in 1990. In this landmark legislation, Congress designated the southern part of the nominated area as the Yakutat Forelands LUD II Management Area. The northern part of the nominated area is designated as Semi-remote Recreation LUD. Congress chose the Yakutat Forelands LUD II Area "for special management because of [its] critical importance for fish and wildlife habitat and [its] high value to tourism and recreation."<sup>8</sup>

The protections afforded under a Tier 3 designation are consistent with these management goals.

The Tongass Forest Plan (2008) describes the desired future condition for lands designated under Semi-Remote Recreation LUD as "characterized by generally unmodified natural environments. Ecological processes and natural conditions are only minimally affected by past or current human uses or activities." See 2008 TLMP at 3-63.

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<sup>6</sup> Tongass Timber Reform Act, Pub. L. 101-626, § 201, 104 Stat. 4426, 4428 (1990).

<sup>7</sup> [http://tongass-fpadjust.net/Maps/FPA\\_Map\\_ROD.htm](http://tongass-fpadjust.net/Maps/FPA_Map_ROD.htm)

<sup>8</sup> H.R. CONF. REP. NO. 101-931, at 16 (1990).



## Exceptional Existing Water Quality and Ecological Value

There is very little chemical water quality data available for this area. The fact that the area supports a vibrant and diverse aquatic community and wildlife in an exceptional environmental setting is evidence of a high quality water resource.

The Yakutat Forelands comprise a diverse array of rivers and wetlands that possess a variety of functions and values that contribute substantially to the State of Alaska's and the Nation's economy and well-being. The 1979 Forest Plan recognized the area as the single most diverse and productive fish, wildlife and waterfowl area in the Tongass.<sup>9</sup> It includes productive rivers and streams, moist and wet marshes, kettle ponds, palustrine emergent marshes, Sitka spruce/hemlock forested wetlands, riparian shrub communities, littoral wetlands, and temperate rainforest wetlands.

All of the activities, either natural or by man on the Forelands are dependent on the natural high quality and abundance of water. The interconnectedness between hydrology, fisheries, wildlife and people in this area demands the highest level of protection by the State of Alaska.

The Alaska Department of Fish and Game has identified over 90 anadromous fish streams in the area. This unique and productive coastal environment is exceedingly rare and in need of protection to water quality to ensure its continued vitality.

### Fisheries

This coastal and riverine wetlands are important to commercial, sport and subsistence fishing economies. The Yakutat Forelands are an interconnected wetland/estuarine complex that serve as critical spawning and rearing areas for all five salmon species, cutthroat, dolly varden trout and significant runs of eulachon. Included in this area are the Italito, Akwe and Alsek Rivers. According to the West Foreland Hydrologic Condition Assessment (2005):

"These streams collectively have the highest values for both spawning and rearing habitats. They are also among the most sensitive to both natural and human-caused disturbances. Some have developed complex life cycles uniquely adapted to their watersheds. The Situk River alone is considered one of the most productive rivers in Southeast Alaska due to its high fish species diversity and population density (Thedinga et al 1993)."

The valuable fisheries resources of the area are recognized by the State of Alaska Department of Fish and Game (ADF&G). Among the numerous fish bearing streams in the area, the Anadromous Waters Catalogue (ADF&G, 2000) identifies Williams Creek, Akwe River, Italio River, Ahrnklin River, and Situk River as primary fish-bearing streams (Class I). Additional Class I streams in the nominated area include: Cabin Slough, Emile Creek, Gines Creek, Clear

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<sup>9</sup> 101<sup>st</sup> Congress 1<sup>st</sup> Session AMENDING ANILCA TO DESIGNATE CERTAIN LANDS IN THE TONGASS NATIONAL FOREST AS WILDERNESS, AND FOR OTHER PURPOSES, H.R. REP. NO. 101-84, Part 1 at 35 (1989).



Creek, Tanis River and Lake, Muddy Creek Cannery Creek, Square Creek and Outflow, Ustay River and Triangle Lake, Dangerous River, Miller Creek, Antlen River, Seal Creek, Middle Slough, and Kunayosh Creek. These waters provide habitat for sockeye, chinook, coho, pink, and chum salmon; steelhead and cutthroat trout; and Dolly Varden char. Eulachon run in the Situk, Lost, Dangerous, Italio, Akwe, and Alsek Rivers.

In 1998, the ADF&G assessed wildlife and resource data to specific Southeast watersheds and ranked them for comparison into Value Comparison Units (VCU) in order to guide management decisions.<sup>10</sup> Within the nomination area are several river systems that earned the maximum VCU ranking of 1 for salmon production values. These systems are the Situk River, East Fork of the Italio, the Akwe River and Alsek River. ADF&G underwent this assessment because it believes it is the state's interest to minimize conflicts between resource developments that result in the loss of habitat productivity and other forest uses that depend on habitat integrity. ONRW protection would serve to further the State's interest in maintaining these incredible public trust resources supported on the Yakutat Forelands.

#### Wildlife Habitat

The Yakutat Forelands comprise valuable habitat that supports a rich wildlife population, both in numbers and species diversity. Large mammal species include both brown and black bears (including the glacier bear, a bluish color phase of the black bear), moose, wolverines, wolves, and mountain goats. There is a Sitka black-tailed deer population, as a result of transplant efforts in the 1940's. Small animals include mink, marten, beaver, snowshoe hare and pika, as well as several amphibian species.

There are few resident bird species; however, the area is heavily used by migratory species, both for nesting and resting and includes waterfowl and raptors. (Appendix C339-*Yakutat Forelands C2-236 Final SEIS* at (e)). These include Trumpeter swans, sandhill cranes and a wide variety of other shorebirds. Various other neotropical migrants utilize the area for reproduction, winter habitat and migration resting areas. Over 500,000 shorebirds utilize the foreland estuaries during migration. See Alaska's Key Coastal Wetlands, U.S. Forest Service.

#### **Exceptional Recreational and Aesthetic Values**

This area supports an exceptional wild and natural fishery that attracts fishermen, hunters and birders from all over the world. These world-class recreational fishing rivers attract thousands of sport fishermen per year. The revenue generated by sport fishing is vital to the economy of Yakutat and Southeast Alaska. Alaska State law (18 AAC 70.015.(3)) dictates that "if a high quality water constitutes an outstanding national resource, such as a water of a national or state park or wildlife refuge or a water of exceptional recreational or ecological significance, the quality of that water must be maintained and protected (Emphasis added)"<sup>11</sup>

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<sup>10</sup> See ADF&G Technical Bulletin No.98-4 Tongass Fish and Wildlife Assessment. Tab le 6 Appendix A (1998).

<sup>11</sup> 18 AAC 70.015



The 1979 forest plan recognized the Area (Yakutat Forelands) as the single most diverse and productive fish, wildlife, and waterfowl area in the Tongass. The numerous rivers, including the Italo, Akwe, and Ustay-Tanis Rivers are highly productive commercial fisheries for coho and sockeye salmon. The Forest Service describes the recreational fisheries for steelhead and salmon as "world class." See AMENDING ANILCA TO DESIGNATE CERTAIN LANDS IN THE TONGASS NATIONAL FOREST AS WILDERNESS, AND FOR OTHER PURPOSES, H.R. REP. NO. 101-84, Part 1 at 35 (1989).

The Yakutat Forelands have been vital for local food security for millennia. These wetlands support community food gathering for Native and rural non-Native Alaskans, as well as big game hunting. Resident households in Yakutat consume over 1000 pounds of wild foods, annually, from the forelands alleviating the high cost of grocery bills. See Alaska Dept. of Fish and Game Subsistence Division Report, 1999.

### **Importance to Tlingit Culture**

The Tlingit people have occupied this area for thousands of years. The use of these land supports and is entwined with traditional and cultural practices and or the continuation of culture for future generations. These areas contains numerous archeologically sensitive areas sacred to us, one such example is, "where the Raven came to shore." Much of our culture and identity are dependent on the continued health of the Forelands and the fishery and wildlife it supports.

### **Local Economy**

The majority of the monetary economy of Yakutat is derived from the Forelands in the form of commercial fishing, guided hunting and fishing, tourism, and remote recreation. Much of Yakutat's economy is almost entirely based on sport, commercial and subsistence fishing on the Situk River alone.<sup>12</sup> All of these activities depend on the pristine quality of the wetland resource.

### **Trigger for a Tier 3 Review**

The Department of Environmental Conservation's past practice has been to consider the potential for ONRW designation as part of the public notice and comment process on a draft wastewater discharge permit. However there is nothing in the interim guidelines that precludes consideration and granting of an ONRW nomination request outside of an application for a discharge permit or other trigger for an antidegradation review.<sup>13</sup>

Although the nominated area is not the subject of an application for a discharge permit, the area faces multiple threats for development. Oil and gas exploration has occurred in the area and the potential for development appears relatively high. The U.S. Geological Survey (USGS) has identified the Yakutat Forelands as a "Most Favorable Petroleum Reserve Area." As yet, development activities have not been initiated. Furthermore, the USGS Mineral Resource Data website (2001) indicates that there are eight prospects in the area for iron, titanium, gold, platinum, and chromium.<sup>14</sup>

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<sup>12</sup> Hubbard Glacier, Russell Fiord and Situk River –A Landscape in Motion, by Robert Gubernick Steven Paustian: *USDA Forest Service, Tongass National Forest, 2007*

<sup>13</sup> ([http://www.dec.state.ak.us/water/wqsar/Antidegradation/docs/P&P-Interim\\_Antidegradation\\_Implemenation\\_Methods.pdf](http://www.dec.state.ak.us/water/wqsar/Antidegradation/docs/P&P-Interim_Antidegradation_Implemenation_Methods.pdf))

<sup>14</sup> Tongass Forest Plan Final SEIS, C2-242 at: [www.tongass-seis.net/yrd.pdf](http://www.tongass-seis.net/yrd.pdf) 339.pdf



Exploration activities may well be permitted outside of the need for a discharge permit application, or a discharge may be granted a temporary exclusion. Once an area is targeted for mineral or oil and gas development there will be little political will to do anything that may delay that development. It is imperative that ONRW protections be in place prior to any move to actively develop oil and gas leases in this area.

**Therefore** we ask the Alaska State Department of Environmental Conservation to acknowledge the Cultural significance, exceptional ecological values and outstanding recreational opportunities of the Yakutat Forelands and protect the dependent relationship between the surface and subsurface water quality, soils, fish and wildlife, economy and culture and designate this area a Tier 3 Outstanding Natural Resource Water afforded the highest level of protection from degradation.

Thank you for your assistance in helping us to attain this.

Yakutat Tlingit Tribe Council

Name: \_\_\_\_\_ Title: Tribal President \_\_\_\_\_  
Victoria L. Demmert

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

CC: Barbara Blake at: [Barbara.Blake@alaska.gov](mailto:Barbara.Blake@alaska.gov)  
Lt. Governor Byron Mallott



**NATIONAL PARK SERVICE**  
**Wrangell-St. Elias National Park & Preserve / Glacier Bay National Park & Preserve**  
**Yakutat Ranger Station P.O. Box 137**  
**Yakutat, AK 99689**  
**907 784 3295 Fax 907 784 3535**

**Date: February 22, 2016**

Byron Mallott  
Lt. Governor  
Alaska State Capital Building  
P.O. Box 110001  
Juneau, AK 99811-1800

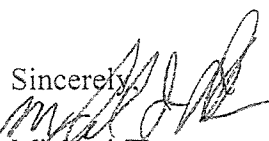
Dear Mr. Mallott:

The National Park Service Yakutat District Field Office of Wrangell-St. Elias & Glacier Bay National Parks and Preserves shares/supports the Yakutat Tlingit Tribe's desire to recognize and protect the pristine water resources found on the Yakutat Forelands. We support the nomination for Tier 3 Outstanding Resource Water Designation.

The Yakutat Forelands comprise a 400,000 acre mosaic of wetlands, shrublands, and forests. Over 200 bird species have been recorded on the forelands; approximately 60% of those species are known to breed or are suspected to breed in the area. Shorebirds, seabirds, songbirds, raptors, and Sandhill cranes use the Forelands rivers, wetlands and estuaries as stop over sites during their migration. The Black Sand Spit Aleutian Tern colony, the largest breeding colony in Alaska, hosts a significant proportion of the species' global population. Other important wildlife resources found on the Forelands include moose, black and brown bears, wolves, numerous fur bearers, Sitka black tail deer, Stellar sea lions, Harbor porpoise, and Harbor seals.

The Yakutat Forelands include some of the most pristine and productive salmon habitat in the state. A dense network of streams channels provides spawning and rearing habitat for all five species of Pacific salmon, Dolly Varden Char, cutthroat trout and steelhead trout. The salmon runs on the Forelands are all wild, produced annually by the high quality habitat without the need for hatcheries. This productivity is exemplified by the Situk River which supports runs of all five species of Pacific salmon and Alaska's largest run of steelhead trout. Commercial, sport, and subsistence fisheries—which make up much of the region's economy, are dependent on healthy functioning aquatic habitats and clean water.

The National Park Service, Yakutat District agrees with and fully supports the Yakutat Tlingit Tribes nomination to permanently protect these unique and exceptionally pristine resources. Please contact me if you should have any questions about the Yakutat Forelands.

Sincerely,  
  
Michael Thompson, Yakutat District Ranger





Forest  
Service

Alaska Region  
Tongass National  
Forest  
Yakutat Ranger  
District

P.O. Box 327  
Yakutat, AK 99689-0327  
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Date: September 17, 2015

Byron Mallott  
Lt. Governor  
Alaska State Capitol Building  
P.O. Box 110001  
Juneau, AK 99811

Dear Mr. Mallott:

The Yakutat Ranger District shares the Yakutat Tlingit Tribe's desire to recognize and protect the water resources of the Yakutat Forelands. We support the nomination for Tier 3 Outstanding Resource Water Designation.

The Yakutat Forelands is a 400,000 acre mosaic of wetlands, shrublands, and forests. Over 200 bird species have been recorded on the Forelands; approximately 60% of those species are known to breed or are suspected to breed in the area. Shorebirds, seabirds, songbirds, raptors, and sandhill cranes use the Forelands rivers, wetlands and estuaries as stop over sites during migration. The Black Sand Spit Aleutian tern colony, the largest breeding colony in the Alaska, hosts a significant proportion of the species' global population. Other important wildlife resources found on the Forelands include moose, black and brown bears, wolves, fur bearers, Sitka black tailed deer, Steller sea lions, and harbor seals.

The Yakutat Forelands include some of the most productive salmon habitat in the State. A dense network of stream channels provides spawning and rearing habitat for all five species of pacific salmon, Dolly Varden Char, cutthroat and steelhead trout. The salmon runs on the Forelands are all wild, produced annually by the high quality habitat without the need for hatcheries. This productivity is exemplified by the Situk River which supports runs of all five species of pacific salmon and Alaska's largest run of steelhead trout. Commercial, sport, and subsistence fisheries --which make up much of the region's economy, are dependent on healthy functioning aquatic habitats and clean water.

The Yakutat Ranger District agrees with the Yakutat Tlingit Tribe that these resources are exceptional and should be protected. Please feel free to contact me if you should have any questions about the Yakutat Forelands.

Sincerely,

LEE A. BENSON  
District Ranger