

Proposal 6

Close the Homer Marine Terminal Barge Basin to Sport Fishing

The Issue

Anglers fishing within the close confines of the barge basin while commercial activities are being conducted has created safety concerns and at times hampered commercial activities. This is an active freight landing area and is extremely unsafe for recreational users.

Explanation of property operations

We own approximately 80 acres of property on the Homer Spit in Homer Alaska. For the purpose of this proposal we will be focusing on the 59.6 acres that is owned and managed under the Homer Spit Properties LLC Homer Marine Terminal Department. This is a Marine industrial commercial yard that supports a good portion of the commercial highway traffic and marine commercial loading and staging here in Homer. We have a large property that has a wide variety of commercial business happening at one time, including storage lots and staging areas for commercial trucks. We also have an upland marine storage yard for smaller commercial and recreational boats as well as a large vessel barge and landing craft haul out area. We support, load and offload commercial vessels in our barge basin, along with operating heavy equipment daily. At this Facility we handle very large, extremely heavy and on occasion dangerous cargo with heavy equipment. Handling this cargo or operating this equipment can be dangerous for bystanders and people not accustomed to these types of operations. There are many operations and or situations that are just not appropriate for bystanders and the general public to be near. We also have upwards of 15 million dollars' worth of assets on the property at one time that is either owned or stored with us here on the property.

The Situation:

Despite our many efforts, we have encountered an unfathomable amount of trespass no matter the amount of clear and properly placed signage. The terminal has exhausted every avenue to try and prevent the trespass issue so we can provide a reliable, safe, business for our customers, employees and the general public. We have installed over 1200 feet of fencing and this has helped in the areas that were reasonable to fence. Although it is possible to fence the barge basin it would be expensive and cause a huge inconvenience to our daily operations.

The problem:

As we all know there are many concerns that arise with trespass. Increased theft, vandalism, safety and the liability associated with the dangers of the property. We are concerned about all these issues here at the Homer Marine Terminal, and our main concern is the safety of our employees, customers and the general public. This terminal may appear to not have much activity at times, and this can be misleading as our jobs can be sporadic.

The concerns with the beach goes have caused the most issues with the number of people just getting out of control. At times, if left unattended for more than an hour during good fishing tides, we will have numerous vehicles blocking our gates to the point where we can't access the property at that entrance. Numerous people walk back and forth across the main thoroughfare on

our property at times causing a dangerous situation for themselves, our equipment operators and the commercial traffic that uses our property. We have had kids climbing up and down our sheet pile dock ladders that are deemed unsafe for use by our company. People, including kids, fish from our sheet pile dock and climb up and down our riprap rock. We have had people swimming in the barge basin, snorkeling, kayaking setting up hammocks from the sheet pile dock. The general public needs to understand this is a commercial property and is not suited for recreational use and this starts with closing it to fishing. People are confused or unsure about whether they can fish or use the property as a recreational location. When people see other folks fishing, they think that it is acceptable to swim or drop off the kids for their next adventure and it is clearly not. At times it may appear to be an unused pond perfect for fishing, swimming or other recreational activities but at any moment we could have a serious commercial activity taking place that now makes it an unsafe location for any recreational use.

Furthermore, there is no legal access to the barge basin by land in the first place, but the fact that it is open to fishing encourages people to trespass.

Proposed Area to be Closed to Fishing

The attached map shows the approximate area proposed to be closed to fishing. As you can see, we are only proposing to close the confined area of the barge basin. We have discussed this with local Fish and Game to help solidify our intended proposed closed area with GPS coordinates. While still achieving our goal, we are also keeping the fisherman in mind in the decision on the exact proposed location of the closed area. There are many considerations on the table as to how to achieve our goal of safety and be the least intrusive to the fisherman. This includes coming up with landmarks and GPS coordinates to not cause confusion as to where the open or closed waters are. We have also discussed not having the closed water reaching out into Kachemak Bay affecting boats that are beach trolling.

Misconceptions

General Public has access to all navigable waters and land associated with the navigable waters below mean high water.

First, I'd like to note this is irrelevant to the fact that this is an unsafe location for recreational use. Secondly, as a man-made and maintained body of water, the current understanding is that the Homer Spit Properties LLC has ownership of all land included in the basin, including tidal lands and the basin bottom as it is not considered navigable water for title purposes under state definition. People keep getting hung up on this navigable water and public access to lands. We are not asking anyone to make a determination on whether this is navigable waters or grant or deny anyone access. We are simply asking this to be closed to fishing which will eliminate the desire to access the property which will immensely help resolve our safety concerns here at the Homer Spit marine terminal. Lastly I'd like to say it really doesn't matter if the waters are navigable or not, essentially all waters that Fish and Game or Board of Fish makes regulation on is considered navigable waters, this is no different.

Definition of Navigable water per Alaska DNR website:

"Navigable Water" means water that, at the time the state achieved statehood, was used, or was susceptible of being used, in its ordinary condition as a highway for commerce over which trade and travel were or could have been conducted in the customary modes of trade and travel on water; the use or potential use does not need to have been without difficulty, extensive, or long and continuous. [AS 38.04.062 (g)(1)] <http://dnr.alaska.gov/mlw/nav/map/>

Homer Marine Terminal Barge Basin tidelands can be accessed by boat without trespassing.

As stated in the previous paragraph we own the tideland because this was a man-made body of water and therefore not navigable at the time of statehood. It is our educated understanding that any access to the tidelands within the barge basin would be trespassing including anchoring. Additionally, anchoring a vessel in the barge basin without consent could impede large vessel traffic accessing our landings.

The permit issued by the Army Corps of Engineers for the Barge Basin Construction stipulates that no attempt shall be made by the permittee to forbid the full and free use by the public of all navigable waters.

This is a true statement but has been misconstrued as to how it applies to this permit. First, by definition the basin is not navigable waters for title purposes. Secondly this is a general provision that was put on all Army Corps permits so if and when someone has activities related to the permit in navigable waters, they can't claim they have exclusive use of the navigable waters.

The permit issued by the Army Corps of Engineers for the Barge Basin Construction stipulates that this permit does not convey property rights, either in real estate or material, or any exclusive privileges, and that it does not authorize an injury to property...

This is a true statement and has also been misconstrued as to how it applies to this permit. This is also a general provision that was put on all Army Corps of Engineers permits to protect the landowner and inform the permittee that this permit does not put them above the law. The permit not conveying property rights is simply saying yes you have the permit to dredge but you don't own the land or the material and you have to have permission of the land owner.

Homer Marine Terminal Is claiming water rights.

We have not made any claims to water rights and anyone that thinks we have, has misunderstood what we are saying. We own all the shoreline and barge basin bottom. We do not own the water and have never made such claims. We have simply asked people not to fish from shore whether they accessed it by trespassing our upper property or came in by boat.

Homer Marine Terminal uses the barge basin for their own friends and family to fish.

For two summers now we have made it very clear to all friends and family that we will not allow anyone to fish in the barge basin. If we wanted this to be a private fishery, we wouldn't want to close it to fishing.

Comments

I am an outdoor enthusiast and don't like to see the rights of any outdoorsman taken away. In fact, when I first took over management of this property, I was under the impression we should just let the folk's fish. Thinking it would just be a few people here and there and we would pretend we didn't see them trespassing. This quickly turned into 40 or more people fishing at one time, entrances blocked, equipment being stopped to avoid close calls with pedestrians crossing the property, kids left unattended in unsafe conditions with heavy equipment being operated, barge traffic being interrupted, boats anchoring in the barge basin and in the channel completely blocking the traffic of large vessels, kids climbing up and down our sheet pile dock ladders that are deemed unsafe for use, and the absolute disrespect and disregard of private property even when asked to leave due to a commercial operation in the area they are fishing. The list goes on. I work here every day and am confident this is not the location for recreational use.

The terminal is considerate of organizations. We have allowed many organized groups to cross our property for access to the back beaches for research or field trips. This always requires checking in with the Homer Marine Terminal Staff and typically has stipulations as to how to get access in a safe manner. We inform our employees that these groups will be onsite and have scheduled these groups on days that we know we don't have commercial activities or inform the group that one access point or the other is closed due to commercial activity. The point is we are part of this community and we understand the importance of outdoor activities, public access, and research. While we try and support these activities, we have also witnessed numerous occasions that simply make unorganized recreational use in the barge basin a dangerous situation for all.

Please consider supporting our proposal to close the marine terminal to fishing so our business can continue to support the local community with safe and best practices. If you have any questions, please feel free to reach out.

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Homer Marine Terminal Barge Basin

Vessel Entrance Channel

Homer Spit Road

Approximate area proposed by Homer Spit properties to close to sport fishing. Draw a line across the entrance of the barge basin at 59.36°56.82' N 151.26°51.6048 to 59.36°54.14' N 151.26°47.86' W. Water inside of this line and within the barge basin are closed to sport fishing.

Approximate location of ADF&G Marker - northwest boundary of the Nick Dudiak Fishing Lagoon Area

Sheet Pile Dock (beach access to the barge basin at low tide)

Snagging allowed June 24 - Dec. 31

Snagging within 300 feet of shore closed year-round (except by emergency order)

Public beach used by shore and boat anglers

Public Parking and Beach Access

Nick Dudiak Fishing Lagoon

300 ft.

Reference for original map

<http://www.adfg.alaska.gov/static/regulations/regprocess/fisheriesboard/pdfs/2019-2020/lci/pes.pdf>
PC 003

0.25 mi

