

Appendix A
Legal Guidance and Planning Coordination

A. Legal Guidance and Planning Coordination

1.1 Introduction

Management of the Refuge is dictated, in large part, by the legislation that created the unit and the purposes and goals described in chapter 1. However, other laws, regulations and policies also guide the management of the Refuge. This appendix identifies the acts and policy guidance that are integral in the development of this Plan.

1.2 Legal Guidance

Operation and management of the Refuge is influenced by a wide array of federal laws, treaties, and Executive orders. Among the most important are the National Wildlife Refuge System Administration Act, as amended by the National Wildlife System Improvement Act; the Refuge Recreation Act; the Endangered Species Act; the Wilderness Act; and the Wild and Scenic Rivers Act. These acts are described briefly, along with other acts and legal guidance that influence management of the Refuge.

1.2.1 International Treaties

Several treaties affect how the Service manages the Refuge. Among these are migratory bird treaties with Canada, Mexico, Japan, and Russia and the Convention on Nature Protection and Wildlife Conservation in the Western Hemisphere. These treaties differ in emphasis and species of primary concern, but collectively provide clear mandates for identifying and protecting important habitats and ecosystems and for protecting and managing individual species.

Treaties for migratory bird protection include management provisions such as (1) prohibiting disturbance of nesting colonies; (2) allowing the Secretary of the Interior to establish seasons for the taking of birds and the collection of their eggs by “indigenous inhabitants” of Alaska for their own nutritional and other essential needs; (3) directing each nation to undertake, to the maximum extent possible, measures necessary to protect and enhance migratory bird environments and to prevent and abate pollution or detrimental alternation of their habitats; and (4) providing that protective measures under the treaty may be applied to species and subspecies not listed in the specific convention, but which belong to on of the families containing listed species.

Of the migratory bird species of concern in the treaties, those that use the Refuge include several Species of Concern identified by the State of Alaska: American peregrine falcon, arctic peregrine falcon, northern goshawk, olive-sided flycatcher, gray-cheeked thrush, Townsend’s warbler, and blackpoll warbler.

1.2.2 National Guidance

Alaska National Interest Lands Conservation Act of 1980 as amended, 16 U.S.C. 140hh-3233, 43 U.S.C. 1602-1784(ANILCA):

ANILCA amended the Alaska Native Claims Settlement Act, the Alaska Statehood Act, and the Wild and Scenic Rivers Act, and modified portions of the Wilderness Act as it applies to Alaska lands. It expanded the federal conservation system in Alaska (including national parks, refuges, forests, wilderness areas, and wild and scenic rivers.) Specifically, title III of ANILCA established new refuges, identified the purposes of each refuge, and provided administrative guidance for management of refuges in Alaska, including requiring the preparation and periodic updating of a comprehensive conservation plan for each refuge.

In addition, ANILCA provided comprehensive management guidance for all federal public lands in Alaska, including provisions regarding wilderness; subsistence; transportation and utility corridors; oil and gas leasing; mining; public access; and hunting, fishing, and trapping. The Nowitna Wild and Scenic River was designated on the Nowitna National Wildlife Refuge by ANILCA. Section 1317 required that all refuge lands not designated as wilderness be reviewed for their suitability for wilderness designation, in accordance with the provisions of the Wilderness Act. The Wilderness Review conducted as part of the Final Refuge Comprehensive Conservation Plans recommended that—although all refuge lands are suitable for designation as wilderness—no additional lands would be recommended for inclusion in the National Wilderness Preservation System.

Alaska Native Claims Settlement Act of 1971 as amended, 43 U.S.C. 1601-1624(ANSCA):

The purpose of this act was to provide for “...settlement of all claims by Natives and Native groups of Alaska, based on aboriginal land claims.” It provided for grants of land and money and the establishment of Native corporations to maintain the economic affairs of Native organizations. In exchange, all aboriginal titles and claims, including any fishing and hunting rights, were extinguished. Section 12(a) allowed village corporations to select lands, with several stipulations, in national wildlife refuges. Section 22(g), however, stated that these lands were to “...remain subject to the laws and regulations governing use and development of such refuge.” Other refuge lands were selected under section 14(h) (1), which allowed regional corporations to select cemetery sites and historical places. Section 17(b) provided for public easement across Native lands for access to federal lands. Section 17(d) (2) (A) provided the basis for the enactment of ANILCA.

National Wildlife Refuge System Administration Act of 1966 as amended by the National Wildlife Refuge System Improvement Act of 1997, 16 U.S.C. 668dd-668ee

This act establishes a unifying mission for the National Wildlife Refuge System (System), a mission that, first and foremost, focuses on the conservation of fish, wildlife, plants, and their habitats. It requires the preparation of a comprehensive conservation plan for each unit of the System. Furthermore, it reinforces and expands the “compatibility standard” of the Refuge Recreation Act, which requires that public uses must be determined to be compatible with refuge and agency missions and purposes before they can be allowed and establishes a process for determining compatibility. The act also identifies six priority wildlife-dependent recreation uses; clarifies the authority of the Secretary of the Interior to accept donations of money for land acquisition; and places restrictions on the transfer, exchange, or other disposal of lands within the System.

The Refuge Recreation Act of 1962 as amended, 16 U.S.C. 460k-460k-4

This act requires that any recreation use on areas of the system be “compatible” with the primary purpose(s) for which the area was acquired or established. It also requires that sufficient funding be available for the development, operation, and maintenance of recreation uses that are not directly related to the area’s primary purpose(s).

National Environmental Policy Act of 1969 as amended, 42 U.S.C. 4321-4347 (NEPA)

This act and the implementing regulations developed by the Council on Environmental Quality (40 CFR 1500-1508) require federal agencies to integrate the National Environmental Policy Act (NEPA) process with other planning at the earliest possible time to provide a systematic interdisciplinary approach to decision making; to identify and analyze the environmental effects of their actions; to describe appropriate alternatives to the proposed actions; and to involve the affected State and federal agencies, tribal governments; and public in the planning and decision making process.

Endangered Species Act of 1973 as amended, 16 U.S.C. 1231-1544

The Endangered Species Act provides for the conservation of threatened and endangered species of fish, wildlife, plants, and their critical habitats by federal action and by encouraging the establishment of State programs. Although not specifically addressing the System, it does directly affect management activities on national wildlife refuges. It directs federal agencies to take actions that would further the purposes of the act and to ensure that actions they carry out, authorize, or fund do not jeopardize endangered species or their critical habitat (section 7).

The Wilderness Act of 1964, 16 U.S.C 1131-1136

This act (P.L. 88-577) defined the wilderness resource and established the National Wilderness Preservation System. It provides the framework for designation by Congress of new units to the System and prescribes for their management. A Wilderness Review, which is required by section 1317 of ANILCA, was undertaken during development of the Refuge's 1987 Comprehensive Conservation Plan and Environmental Impact Statement following the framework and guidance provided by the Wilderness Act. The review found all non-designated refuge lands suitable for Wilderness designation, but no lands were recommended for inclusion in the National Wilderness Preservation System. The Refuge currently has 400,000 acres of designated wilderness.

The Wild and Scenic Rivers Act of 1968, 16 U.S.C. 1271-1287

This act establishes a National Wild and Scenic Rivers System and describes the methods and standards through which additional rivers may be identified and added to the system. Section 5(d)(1) requires that in all planning by federal agencies for the use and development of water and related land resources, consideration be given to potential wild, scenic, and recreation rivers. Rivers are added to the national system based on their free-flowing character and their outstandingly remarkable scenic, recreation, geologic, fish and wildlife, historic, cultural, ecological, or other, values. Rivers in the system are managed to maintain and to protect these outstandingly remarkable values for present and future generations. For Wild and Scenic Rivers in Alaska, ANILCA also provided direction for management of designated rivers. The Nowitna Wild River was designated on the Nowitna National Wildlife Refuge.

The Federal Water Pollution Control Act of 1972, as amended by The Clean Water Act of 1977, 33 U.S.C. s/s 1251 et seq.

This act regulates the discharge of pollutants into waters of the United States. The act protects fish and wildlife, establishes operation permits for all major sources of water pollution, limits the discharge of pollutants or toxins into water, and makes it unlawful for any person to discharge any pollutant from a point source into navigable waters unless a permit is obtained under the Clean Water Act.

Other Laws

Laws that affect mineral leasing, recreational use, commercial fishing, preservation and protection of cultural and historic resources, and other activities on federal lands are also considered in the comprehensive conservation planning process.

1.3 Policy Guidance

Programmatic guidance and policy documents provided additional direction for the management of national wildlife refuges throughout the System (<http://www.fws.gov/policy>). While it is not practical to provide information about all of these documents in this Plan, they are critical to management of the Refuge. Much of the management direction described in chapter 2 and

throughout this plan is influenced by guidance from these programmatic and policy documents. Several of these documents guide us to use an ecosystem approach in refuge management. In other words, we must consider the health of the entire ecosystem when managing the Refuge. This concept requires close coordination with others. In this section, we provide a brief description of this concept and of several of the national and regional (Alaska) management plans and programs that were considered during the development of this Plan. Other key policies, such as the compatibility policy, are described in chapter 2 because they provide guidance in this Plan.

1.3.1 Ecosystem Approach to Management

The goal of the Service's ecosystem approach is to constantly strive to contribute to "the effective conservation of natural biological diversity through perpetuation of dynamic, healthy ecosystems" while carrying out the Service's mission and mandates and through working closely with others (USFWS 1996). This is an ambitious goal and success lies in the coordinated efforts of many public agencies, private organizations, landowners, and citizens. Many programs and initiatives contribute to the conservation of biological diversity. Most obvious are actions that lead to the protection of habitat and the recovery of fish and wildlife populations in jeopardy. Less obvious, but equally significant, are actions that restore important habitats, reduce environmental degradation and contamination, monitor the integrity of natural systems, regulate the harvest of migratory birds, and provide technical assistance to private landowners.

The Service cannot fulfill this goal alone; only through an ecosystem approach in which we work with others to conserve the nation's biological heritage will the goal be realized. An ecosystem management approach recognizes that institutions other than refuges have responsibilities and authorities for resources that lie both within and outside the Refuge.

Fish and wildlife population and habitat goals are based on species biology, population dynamics, and ecological processes that may be international in scope (e.g., migratory waterfowl). Managers must think and function at multiple scales simultaneously. Planning and implementation of management actions within the Service's ecosystem units must be flexible enough to address site-specific conservation priorities and reflect the broader population and habitat needs of widely ranging species.

1.3.2 National Management Plans

Nature is not constrained by the administrative boundaries that are used to determine ownership or management of specific areas of land. Without physical barriers and with available habitat, wildlife and fish will freely roam through lands and waters regardless of ownership or management. To ensure the conservation of the many species that migrate across State lines, there are several national efforts designed to monitor and protect these species. These plans were reviewed during the revision of the Refuge Plan to ensure that the revised management direction is consistent with these national conservation plans.

North American Waterfowl Management Plan

This conservation plan seeks to restore waterfowl populations in Canada, the United States, and Mexico to levels recorded in the 1970s. The international partnership has worked to identify priority habitats for waterfowl and has established goals and objectives for waterfowl populations and habitats (USFWS 1998). The Refuge provides breeding and migration habitat for a variety of waterfowl.

Partners in Flight – Bird Conservation Plans

Partners in Flight is a cooperative effort involving partnerships among federal, State, and local government agencies; philanthropic foundations; professional organizations; conservation groups; industry; the academic community; and private individuals. Partners in Flight was created in 1990 in response to growing concerns about declines in the populations of many land bird species and to emphasize the conservation of birds not covered by existing conservation initiatives. Bird conservation plans are developed in each region to identify species and habitats most in need of conservation, to establish objectives and strategies to provide needed conservation activities, and to implement and monitor progress on the plans.

U.S. Shorebird Conservation Plan

This conservation plan seeks to stabilize populations of all shorebirds that are in decline because of factors affecting habitat in the United States. At a regional level, the plan's goal is to ensure that shorebird habitat is available in adequate quantity and quality to support shorebird populations in each region. Ultimately, the goal of the conservation plan is to restore and maintain shorebird populations throughout the Western Hemisphere through an international partnership (Brown et al. 2000).

North American Waterbird Conservation Plan

Waterbird Conservation for the Americas is a partnership that was created to “support a vision in which the distribution, diversity, and abundance of populations and habitats of breeding, migratory, and non-breeding waterbirds are sustained or restored throughout the lands and waters of North America, Central America, and the Caribbean.” Their plan “provides a continental-scale framework for the conservation and management of 210 species of waterbirds...in 29 nations throughout North America...” Sixty species of migratory waterbirds, including such diverse groups as loons, grebes, cranes, jaegers, gulls, and terns, occur on the Refuge, most of them as breeders.

1.3.3 Regional Management Plans

In addition to the national conservation plans, the Refuge Plan must consider the conservation plans and management goals of neighboring lands of the region. Currently there are no regional plans to review.