

Appendix A

Legal Guidance and Planning Coordination

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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, and agreements with the State of Alaska also guide the management of the Refuge. This appendix identifies the international treaties and Federal laws and policies that are integral to the development of this Plan. It also describes the national and regional plans that were reviewed and considered during the revision of the Tetlin Refuge Conservation Plan to ensure that the revised management direction for Tetlin Refuge is consistent with these national and regional conservation plans.

1.1 Legal Guidance

The U.S. Fish & Wildlife Service (Service) manages national wildlife refuges pursuant to various legal and administrative requirements. Management of Tetlin National Wildlife Refuge (Tetlin Refuge, Refuge) is dictated, in large part, by the Alaska National Interest Lands Conservation Act of 1980 (ANILCA), which designated the Refuge and identified the purposes for which it was established. However, operation and management of Tetlin Refuge is also influenced by a wide array of other laws, treaties, and executive orders, and the regulations and policies developed to implement them. Among the most important are the National Wildlife Refuge System Administration Act as amended by the National Wildlife Refuge System Improvement Act; the Refuge Recreation Act; the Alaska Native Claims Settlement Act (ANCSA); and the Endangered Species Act. A brief description of these and other pertinent documents that influence management of Tetlin Refuge is found in the following subsections.

1.1.1 International Treaties

Several treaties affect how the Service manages Tetlin 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 alteration 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 one of the families containing listed species. Of the migratory bird species of concern in the treaties, those that use Tetlin Refuge include loons, swans, geese, ducks, hawks, eagles, harriers, ospreys, falcons, cranes, plovers, sandpipers, jaegers, gulls, terns, owls, and passerines.

1.1.2 National Guidance

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

In addition to amending the Alaska Native Claims Settlement Act (ANCSA), the Alaska Statehood Act, and the Wild and Scenic Rivers Act and modifying portions of the Wilderness Act

as it applies to Alaska lands, ANILCA expanded the Federal conservation system throughout the State (including refuges, parks, forests, Wilderness areas, and Wild and Scenic Rivers). ANILCA sets forth the purposes of the refuges, defines provisions for planning and management, and authorizes studies and programs related to wildlife and wildland resources, subsistence opportunities, and recreational and economic uses (such as oil and gas exploration and development, access, and transportation and utility systems).

Title VIII of ANILCA authorizes the State of Alaska to regulate subsistence uses on Federal public lands if several requirements are met. The State of Alaska managed statewide subsistence harvests until late 1989, at which time the Alaska Supreme Court ruled that the rural residency preference required by Federal law violated the Alaska Constitution. Despite repeated efforts, the State has not amended its constitution to bring its regulatory framework back into compliance with ANILCA.

The Federal government began managing subsistence hunting, trapping, and fishing on Alaska's Federal public lands in July 1990. For the purposes of Federal subsistence management, public lands are defined to include lands managed by the U.S. Fish and Wildlife Service (Service), National Park Service, Bureau of Land Management, Bureau of Indian Affairs, and the USDA Forest Service; public lands also include non-navigable waters on these lands and some navigable and marine waters. On October 1, 1999, management authority of the Federal Subsistence Board was extended to include navigable water within and adjacent to exterior boundaries of Federal conservation units in which the United States has an interest by virtue of the reserved water rights doctrine.

The Federal Subsistence Board (FSB) establishes regulations for the harvest of fish and wildlife on Federal public lands in Alaska by qualified rural residents for subsistence purposes. The Federal process involves substantial public input. Individuals and organizations submit proposals for regulations to the FSB that are reviewed by the Federal Subsistence Regional Advisory Councils (RACs) (e.g., the Eastern Interior Federal Subsistence RAC). The RACs, which are composed of local citizens, make recommendations on the proposals to the FSB. The Federal subsistence staff also advises the FSB on regulation proposals, providing data and analysis from local Federal managers as well as from the Alaska Department of Fish and Game (ADF&G).

The State's recreational, commercial, personal use, and subsistence regulations continue to apply on all Federal lands unless superseded by Federal subsistence regulations. However, the FSB may establish Federal regulations to provide for use only by eligible rural residents in order to protect the ANILCA Title VIII preference for local rural users or to protect a wildlife population or fishery.

1.1.2.2 Alaska Native Claims Settlement Act of 1971 as amended, 43 U.S.C. 1601-1624

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.

1.1.2.3 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 serves as the “organic act” for the National Wildlife Refuge System (System). Where this act provides direction that conflicts with direction described in ANILCA, the ANILCA direction is followed. The act establishes a unifying mission for the System, direction for determining compatible uses of refuges, and a requirement for preparing comprehensive conservation plans. This Act states, first and foremost, that the mission of the National Wildlife Refuge System be focused singularly on wildlife conservation.

It identifies six priority wildlife-dependent recreation uses and reinforces and expands the “compatibility standard” of the Refuge Recreation Act, which requires that, before they can be allowed, public uses must be determined to be compatible with refuge and agency missions and purposes.

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

This act requires that any recreational use on areas of the National Wildlife Refuge 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).

1.1.2.5 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.

1.1.2.6 The 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).

1.1.2.7 National Historic Preservation Act of 1966, as amended ((Public Law 89-665; 16 U.S.C. 470 et seq.) (NHPA)

This Act established a program for the preservation of historic properties throughout the United States. It established a Federal policy of cooperation with other nations, Tribes, States, and local governments to protect historic sites and values.

Together with its implementing regulations, NHPA authorized the National Register of Historic Places, created the Advisory Council on Historic Preservation, provided further considerations for National Historic Landmarks, and created procedures for approved State and local government programs. The National Register of Historic Places criteria for evaluation of properties to be nominated are found at 36 CFR Part 60.4. Consideration is given to "districts, sites, buildings,

structures and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association" and that are (a) related to events that have made a significant contribution to the broad patterns of our history; or that are (b) associated with the lives of persons significant in our past; or that (c) bear a pattern of distinctive characteristics of historic, architectural, archeological, engineering or cultural significance; or that (d) have yielded or may, in the future, yield important information as to our history or prehistory.

Regulatory provisions of NHPA require that State Historic Preservation Officers (SHPOs) prepare and implement State historic preservation plans. Protection of identified historic sites is facilitated through implementation of NHPA Section 106 review, a five-step process designed to ensure that historic properties are considered during the planning and execution of Federal projects.

Amendments passed in 1980 provided support for archeological resources protection by codifying portions of Executive Order 11593, which requires Federal agencies to develop programs to inventory and evaluate historic resources.

1.1.2.8 The Archaeological Resources Protection Act of 1979 (16 U.S.C. s/s 470 et seq.)

This act established detailed guidelines for issuing permits for excavation or removal of archaeological remains from Federal lands.

1.1.2.9 The Clean Air Act of 1977 (42 U.S.C. s/s 7401 et seq.)

This act regulates the discharge of air pollutants and establishes air quality standards to protect and enhance the quality of the nation's air resources. In particular, the Act regulates the amount of particulate matter Federal land managers can allow as a result of their actions (e.g., prescribed fires).

1.1.2.10 The Federal Water Pollution Control Act of 1972, as amended by The Clean Water Act of 1977, (33 USC 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.

1.1.2.11 Executive Order 13112 Invasive Species, signed February 3, 1999.

The purpose of this executive order is to prevent the introduction of invasive species and provide for their control, as well as to minimize the economic, ecological, and human health impacts that invasive species cause.

1.1.2.12 Americans with Disabilities Act of 1990 (Public Law 101-336, 28 CFR 35 and 36)

This act (among other actions) requires that public transportation services be accessible to individuals with disabilities. With respect to national wildlife refuges, regulations pertain to boating facilities, fishing piers or platforms, public restrooms, and facilities associated with public transportation.

1.1.2.13 Architectural Barriers Act of 1969 (42 U.S.C. 4151)

This act ensures that certain buildings financed or leased by Federal agencies are constructed (or renovated) so that they will be accessible to the physically handicapped. It requires the General

Services Administration, in consultation with the Secretary of Health and Human Services, to prescribe standards for non-military Federal buildings.

1.1.2.14 Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719 et seq.)

This act authorized the Alaska Natural Gas Transportation System and associated right-of-ways across Federal lands, including what is now Tetlin National Wildlife Refuge, consistent with other acts and regulations.

1.1.2.15 Other Laws

Laws that affect mineral leasing, recreation 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.

1.2 Planning Coordination

Nature is not constrained by government boundaries that are used to determine ownership or management of specific areas of land. Without physical barriers, and with available habitat, fish and wildlife will freely roam through lands and waters regardless of ownership or management. To ensure the conservation of the many species that migrate across legal and political boundaries, a number of efforts—at scales ranging from local community and regional plans to national and international conservation programs—have been designed to monitor and protect these species. These plans were reviewed during the revision of the Tetlin Refuge Conservation Plan to ensure that the revised management direction is consistent with these national conservation plans. The following list is not intended to be comprehensive but demonstrates the range of documents reviewed. When applicable, specific information from these plans has been incorporated into this document.

1.2.1 National Management Plans

1.2.1.1 North American Waterfowl Management Plan

This conservation plan seeks to restore waterfowl populations in Canada, the United States, and Mexico to the levels recorded in the 1970s. The international partnership has worked to identify priority habitats for waterfowl and has established goals and objectives for the waterfowl populations and habitats (USFWS 1998). Estuaries, lagoons, bays, and nearshore waters on and adjacent to the Refuge provide wintering habitat for an estimated 12,000 dabbling ducks and 150,000 sea ducks. Breeding waterfowl use of the Refuge is comparatively low because the area supports limited wetland breeding habitat.

1.2.1.2 Partners in Flight—Bird Conservation Plans

Partners in Flight is a cooperative effort among Federal, State, and local government agencies; philanthropic foundations; professional organizations; conservation groups; industry; universities; and private individuals. Partners in Flight was created in 1990 in response to growing concerns about declines in the populations of many landbird 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 meet those needs, and to implement plans and monitor progress on them.

1.2.1.3 U.S. Shorebird Conservation Plan (Brown et al. 2000)

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 U.S. Shorebird Conservation Plan is to restore and maintain shorebird populations throughout the western hemisphere through an international partnership.

1.2.2 Regional Management Plans

In addition to considering the national conservation plans, this Comprehensive Conservation Plan must consider the conservation plans and management goals of neighboring lands of the region. Regional plans, as well as goals and objectives from other programs, were reviewed to understand how the Tetlin Refuge can contribute to the goals for conservation within the State or local region. This list is not intended to be comprehensive but demonstrates some of the major regional plans that were reviewed during the development of this draft. When applicable, specific information from these plans has been incorporated into the plan.

1.2.2.1 A Conservation Plan for Alaska Shorebirds (Alaska Shorebird Working Group 2000)

This plan identifies shorebird species of concern in Alaska and provides goals and objectives for shorebird conservation throughout the State. Although nine shorebird species are known to nest on Tetlin Refuge, and at least 20 others have been found on the Refuge, habitat is limited and numbers are minimal.

1.2.2.2 Landbird Conservation Plan for Alaska Biogeographic Regions (Boreal Partners in Flight Working Group 1999)

This bird conservation plan, developed through the Partners in Flight national initiative, identifies by region those species and habitats most in need of conservation and establishes objectives and strategies to provide needed conservation activities and for monitoring progress in implementing the plan. Tetlin Refuge contributes to this plan through a variety of monitoring and inventory studies of land birds on the Refuge.

1.2.2.3 Alaska Interagency Wildland Fire Management Plan (1998)

This plan is a statewide effort to provide an opportunity through cooperative planning for land managers/owners to accomplish individual fire-related land use objectives in the most cost-effective manner. It established a statewide framework for land managers/owners to classify wildfire suppression options on their lands based on values to be protected and resource management objectives. The management options of this framework apply to all Refuge lands and nearly all lands within Alaska.

1.2.2.4 Mentasta Caribou Herd Management Plan (1995)

The Mentasta Caribou Herd (MCH) Management Plan was a cooperative effort by the Alaska Department of Fish and game, the U.S. National Park Service, and the U.S. Fish and Wildlife Service to adopt management guidelines that reflected the varied Federal and State policies and laws concerning management of the MCH (Wrangell-St. Elias National Park and Preserve 1995). This plan developed fall harvest quotas and bag limits for the MCH that would allow for priority subsistence uses and a strategy to minimize incidental harvest of Mentasta caribou during winter hunts targeted primarily for the Nelchina and Fortymile caribou herds.

1.2.2.5 Tanana Basin (1991) and Upper Yukon (2003) Area Plans

The Alaska Department of Natural Resources is responsible for development of plans for management of State lands, including the Tanana Basin Area Plan (ADNR 1991; currently under

revision) and the Upper Yukon Area Plan (ADNR 2003). These plans determine land use designations, management intent, and management guidelines that apply to all State lands in the two planning areas.

1.2.2.6 Wrangell- St. Elias National Park and Preserve General Park Management Plan (1986)

This plan outlines the overall management direction for the Park, including natural resource preservation and protection, public use facilities and access, visitor services, subsistence uses, and commercial activities.

1.2.2.7 Alaska Department of Fish and Game (ADF&G)

The Service shares management responsibility for fish and wildlife on refuge lands with the ADF&G as identified in the Master Memorandum of Understanding (Appendix B). In accordance with this policy directive, ADF&G has primary responsibility for managing fish and resident wildlife populations. Part of this management includes setting objectives for populations and harvest within management areas, called game management units (GMUs). Tetlin Refuge is within GMU 12. During the development of this Conservation Plan, the State's management objectives for fish and wildlife were important considerations for establishing and evaluating management direction on the Refuge. Information on key management objectives that address fish and wildlife populations found on the Refuge can be found in chapter 4.

1.2.2.8 Statewide Stocking Plan for Recreational Fisheries (2005)

This plan, developed by ADF&G, outlines the numbers of and schedule for stocking lakes throughout Alaska. With respect to Tetlin Refuge, this plan provided direction for the stocking of Hidden Lake.

1.2.2.9 Alaska's Comprehensive Wildlife Conservation Strategy (Alaska Department of Fish and Game 2006a)

The goal of this plan is to “conserve the diversity of Alaska's wildlife resources, focusing on those species with the greatest conservation need...” and is “intended to be a blueprint for an overall conservation approach.” The strategy largely intends to “coordinate and integrate conservation actions and strategies with Alaska's existing wildlife management and research programs...”