

Appendix A:

Legal and Policy Guidance

1. Legal and Policy Guidance

The U.S. Fish & Wildlife Service (Service) manages national wildlife refuges pursuant to various legal and administrative requirements. Management of Togiak National Wildlife 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 Togiak 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 legal documents that influence management of Togiak Refuge is found in the following subsections.

1.1 International Treaties

- The international treaties that affect Togiak Refuge are migratory bird treaties with Canada, Mexico, Japan, the Soviet Union, 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 protecting and managing individual species.
- Treaties for migratory bird protection include management provisions such as:
 - Prohibiting disturbance of nesting colonies
 - Allowing the Secretary of the Interior to establish seasons for the taking of birds and collections of their eggs by indigenous inhabitants of Alaska for their own nutritional and other essential needs
 - Directing each nation to undertake, to the maximum extent possible, measures necessary to protect and enhance migratory bird environments and prevent and abate pollution or detrimental alteration of their habitats

- Requiring each nation to provide immediate notification to the other when pollution or destruction of habitats occurs or is expected
- Stipulation that each nation shall, to the extent possible, establish preserves, refuges, protected areas, and facilities for migratory birds and their habitats and manage them to preserve and restore natural ecosystems
- Stipulating that special habitats outside the jurisdictional boundaries (territorial limits) may be designated in which, to the maximum extent, persons under each nation's jurisdiction shall act in accordance with the principles of the treaty (for instance, this stipulation might require U.S. oil tankers to avoid or prevent pollution of special seabird areas on the high seas)
- 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 the Togiak Refuge include loons, cormorants, swans, geese, ducks, hawks, eagles, harriers, ospreys, falcons, cranes, plovers, sandpipers, jaegers, gulls, terns, alcids, owls, and passerines.

1.2 National Guidance

- 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 (Refuge Administration Act).
- This act serves as the organic act for the National Wildlife Refuge System. The act, as amended, consolidated the various categories of lands administered by the Secretary of the Interior (Secretary) through the Service into a single National Wildlife Refuge System. The act establishes a unifying mission for the Refuge System, a process 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.
- This act identified six priority wildlife-dependent recreation uses, clarified the Secretary's authority to accept donations of money for land acquisition, and placed restrictions on the transfer, exchange or other disposal of

lands within the Refuge System. Most importantly, this act reinforces and expands the compatibility standard of the Refuge Recreation Act. The Refuge Administration Act authorizes the Secretary, under such regulations as he may prescribe, to "permit the use of any area within the System for any purpose, including but not limited to hunting, fishing, public recreation and accommodations, and access whenever he determines that such uses are compatible with the major purposes for which such areas were established."

The Refuge Recreation Act of 1998 (16U.S.C.460k-460k-4, as amended)

- 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. This act also requires that sufficient funding be available for the development, operation, and maintenance of recreational uses that are not directly related to the area's primary purpose(s).

Alaska Native Claims Settlement Act of 1971 (ANCSA)

- This act provides for "a fair and just settlement of all claims by Natives and Native groups of Alaska, based on aboriginal land claims." The law provided for grants of land and money and the establishment of Native corporations to maintain the economic affairs of Native organizations. In exchange for this settlement, all aboriginal titles and claims, including any fishing and hunting rights, were extinguished. Section 17(d)(2)(A) provided the basis for the enactment of ANILCA. Under Section 22(g), refuge lands conveyed to the village corporations remain subject to the laws and regulations governing use and development of the Refuge. This section applies only to lands which were designated as Refuge lands at the time ANCSA was passed. Section 17(b) of the act provided for public easement across Native lands for access to federal lands.

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

- In addition to amending the Alaska Native Claims Settlement Act, 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 Refuge, defines provisions for planning and management, and authorizes studies and programs related to wildlife and wildland resources, subsistence opportunities, recreational, and economic uses (such as oil and gas exploration and development, access, and transportation and utility systems). Section 1317 of ANILCA requires that all refuge lands that were not designated as wilderness be reviewed as to their suitability for wilderness designation.

- 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, when 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 of 1990. For the purposes of federal subsistence management, public lands are defined to include lands managed by the U.S. Fish and Wildlife Service, National Park Service, Bureau of Land Management, Bureau of Indian Affairs and the U.S. Forest Service; 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 for subsistence purposes by qualified rural residents on federal public lands in Alaska. 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 Bristol Bay Federal Subsistence RAC and Yukon-Delta Federal Subsistence RAC). The regional councils, which are composed of local citizens, make recommendations on the proposals to the FSB. The federal subsistence staff also advises the board on regulation proposals, providing data and analysis from local federal managers and the ADF&G.

- The state's 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.

Wilderness Act of 1964 (P.L. 88-577)

- This act established the National Wilderness Preservation System, provides the framework for designation by Congress of new units to the system, and prescribes policy for management of these areas. Section 702(10) of ANILCA designated about 2,372,744 acres in the Togiak Refuge as wilderness. Section 1317 of ANILCA requires the "review, as to their suitability or unsuitability for preservation as wilderness, all land within... units of the National Wildlife Refuge System in Alaska not designated as wilderness by this act..."

The Wild and Scenic Rivers Act (16 U.S.C. 1271-1287) Public Law 90-542, approved October 2, 1968, (82 Stat. 906)

- This act establishes a National Wild and Scenic Rivers System and prescribes the methods and standards through which additional rivers may be identified and added to the system. Rivers in the National Wild and Scenic Rivers System have outstanding scenic, recreational, geologic, fish and wildlife, historic, cultural, ecological, or other values, and are managed these in a way that protects these values for present and future generations. Rivers are classified as wild, scenic or recreational, and hunting and fishing are permitted in components of the system under applicable federal and state laws. The Wild and Scenic Rivers Act states in section (d)(1) that, "In all planning for the use and development of water and related land resources, consideration shall be given by all federal agencies involved to potential national wild, scenic and recreational river areas". This Plan is such a plan and therefore considers potential wild, scenic and recreational rivers within the Togiak Refuge.

Marine Mammal Protection Act of 1972, as amended; (16 U.S.C. 1361-1421h; 50 CFR 13, 18, 216 and 229 as amended)

This act established a federal responsibility for conservation of marine mammals. Management of walrus was vested in the Department of Interior. The act established a moratorium on the taking and importation of marine mammals and products

made from them. Alaska Natives who take marine mammals for subsistence purposes, however, were exempt from the moratorium.

Endangered Species Act of 1973, as amended; P.L. 93-205; (16 U.S.C. 1531-1544, et seq., as amended)

This act provides for the conservation of threatened and endangered species of fish, wildlife, and plants by federal action and by encouraging the establishment of state programs. Among its provisions the act authorizes the determination and listing of endangered and threatened species and the habitat critical to those species; prohibits unauthorized taking, possession, sale, transport, etc., of endangered species; provides authority to acquire land for the conservation of listed species with land and water conservation funds; and authorizes the assessment of civil and criminal penalties for violating the act or implementing regulations. Section 7 of the act requires federal agencies to ensure that any action authorized, funded, or carried out by them does not jeopardize the continued existence of listed species or modify their critical habitat. Currently threatened or endangered species known to occur on the Togiak Refuge include the Steller sea lion, Steller's eider, and the spectacled eider.

The planned actions found in the Togiak Refuge Comprehensive Conservation Plan are not likely to adversely affect listed species or designated critical habitat. Therefore, the U.S. Fish and Wildlife Service finds the Plan to be fully consistent with Section 7 of the act.

Antiquities Act (16 U.S.C. 431-433); Archaeological Resources Protection Act of 1979, P.L. 96-95; (16 U.S.C. 470as, et seq., as amended; 43 CFR 50-58; and the National Historic Preservation Act of 1966, (P.L. 89-665; 16 U.S.C. 470 et seq., as amended)

These laws make reference to cultural resources or govern the management of cultural resources on federal lands. The various historic preservation laws, in general, do the following:

- Vest ownership of historic and prehistoric properties and of materials collected from such sites with the state and federal government.
- Protect archeological and historic sites from unauthorized disturbance and prescribe penalties for individual who damage (or collect from) such sites.

Provides for issuing of permits to qualified individuals and institutions to conduct scientific research.

- Mandate the inventory and evaluation of all sites on government owned and managed lands. Inventory is the responsibility of the individual federal agency involved.
- Require that all projects with state or federal involvement be conducted in such a way as to protect any significant cultural resources that may be present. This includes, but is not limited to, the performance of archeological surveys, site evaluations, and, if necessary, mitigation of adverse impacts on such resources.

National Environmental Policy Act (NEPA) of 1969, as amended, 42 U.S.C. 4321-4347, and the Council on Environmental Quality's (CEQ) Regulations for Implementing the Procedural Provisions of NEPA, 40 CFR 1500-1508

NEPA is the basic national charter for protection of the environment. The procedural provisions in CEQ regulations require federal agencies to integrate the NEPA process with other planning at the earliest possible time whenever taking a major federal action that may significantly affect the human environment in order to provide a systematic interdisciplinary approach; identify and analyze the environmental effects of their actions; describe appropriate alternatives to the proposal; involve the affected state and federal agencies, tribal governments, and the affected public in the planning and decision-making process; and fully integrate all refuge proposals that may have an impact on the environment with the provisions of NEPA (40 CFR 1501.2). Implementation of any one of the alternatives in this Plan for managing the Togiak Refuge is such an action. Therefore, this planning process is subject to NEPA requirements.

Federal Water Pollution Control Act of 1972, as amended by The Clean Water Act of 1977, P.L. 95-217; (33 U.S.C. 1251-1387, et seq., as amended; 33 CFR 320 ff; 40 CFR 15, 100-400, 220-233, 400-471)

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, and limits the discharge of pollutants or toxins into water. The act 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.

1.3 Policy Guidance

Programmatic guidance and policy documents provide additional direction for the management of national wildlife refuges throughout the system. While it is not practical to provide information about all of these documents in this Plan, they are critical to management of the Refuges. 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 provide guidance that an ecosystem approach be used in refuge management. In other words, we must consider the health of the entire ecosystem when managing the Refuges. 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 management plans and programs that were considered during the development of this Plan. Other key policies such as the compatibility policy are described in later chapters as they provide guidance in this Plan.

1.4 Ecosystem Approach to Management

Ecosystem management recognizes the complex relationships that are present within an ecosystem. Any change in one part of an ecosystem affects the other parts of the ecosystem that it is related to. Any change in those parts affects their related parts and so on. Ecosystem management also recognizes the boundaries of any particular ecosystem may not be confined within the boundaries of a wildlife refuge, a state, or country.

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 its mission and mandates, and by working closely with others. This is an ambitious goal; the only hope for success lies in the coordinated efforts of many public agencies, private organizations, landowners, and citizens. Many Service 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 where the Service works with others to conserve the nation's biological heritage will the goal be realized.

1.5 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, 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 over political and administrative lines, there are several national efforts designed to monitor and protect these species. These plans were reviewed during the revision of the Togiak Refuge Comprehensive Conservation Plan to ensure that the revised management direction is consistent with these national conservation plans.

Centennial Legacy Plan. These plans were developed for refuges nationwide to mark the centennial anniversary of the National Wildlife Refuge System. They are intended to serve as a vision to provide resources for the Refuge system in the next 100 years. These plans prioritize and address only the Refuge system's most pressing needs in three main categories: essential staff, mission-critical projects, and major maintenance.

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 1970's. The international partnership has worked to identify priority habitats for waterfowl and has established goals and objectives for the waterfowl populations and habitats (North American Waterfowl Management Plan 1998).

Partners in Flight Conservation of the landbirds of the United States. Partners In Flight is a cooperative effort involving partnerships between 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 in order 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 them, and to implement and monitor progress on the plans.

U.S. Shorebird Conservation Plan (2000) This conservation plan seeks to stabilize populations of all shorebirds that are in decline due to factors affecting habitat in the U.S. 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.

North American Waterbird Conservation Plan for the Americas (2002) This plan provides a continental-scale framework for the conservation and management of 210 species of waterbirds, including seabirds, coastal waterbirds, wading birds, and marshbirds utilizing aquatic habitats in 29 nations throughout North America, Central America, the islands and pelagic waters of the Caribbean Sea and western Atlantic, the U.S.-associated Pacific Islands and pelagic waters of the Pacific.

Coastal Zone Management Act of 1972 This act was passed in recognition of the increasing and conflicting uses that were causing irreparable harm to both the biological and physical systems associated with coastal areas. The act directed states to complete comprehensive coastal management programs. It mandated that once a state's plan received federal approval, that federal actions (which includes this Comprehensive Conservation Plan must be consistent with the state's plan.

1.6 Regional Management Plans

In addition to the national conservation plans, this plan considers the management of neighboring lands by reviewing regional conservation plans and other land management goals of the 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. Where applicable, specific information from these plans is identified in the Affected Environment (Comprehensive Conservation Plan Chapter 3).

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

This bird conservation plan was developed through the Partners In Flight national initiative. It provides conservation priorities and objectives for landbirds in each region of Alaska.

Yukon-Kuskokwim Delta Goose Management Plan (1999)

This plan directed the Service to develop comprehensive management plans for four goose species nesting in western and arctic Alaska. The Refuge provides black brant and emperor geese important spring and fall staging habitat, and provides important nesting and staging habitat for Canada geese.

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.

Management Plan for Alaska Raptors (2001) This plan establishes priorities for and increases management emphasis on those species with suspected population problems in Alaska. In addition to setting species priorities, priorities will also be set for tasks and, to some extent, locations of key importance to species or where impacts are anticipated.

Alaska Seabird Management Plan (1992) This plan serves as the basis for completing operational plans for selected species in Alaska. The primary purposes of the plan are:

- To link the Service's national and regional policies and management directives for seabirds;
- To provide the basis for program planning, budgeting, and evaluating the seabird program in Alaska, and for completing operational plans for selected species and species groups;
- To promote internal and interagency communications and coordination regarding seabird management and information needs in Alaska; and
- To encourage public awareness of the management of seabirds in Alaska.

Conservation Plan for the Pacific Walrus in Alaska (1994)

This plan was developed to describe management and research actions that will maintain the Pacific walrus population within its optimum sustainable population range,

thus ensuring that walrus remain a sustained resource for coastal Native inhabitants of the Bering and Chukchi seas and a functioning component of the Bering-Chukchi shelf ecosystem.

Bristol Bay Cooperative Management Plan. In the early 1980s, public land managers in the Bristol Bay region developed a cooperative plan in collaboration with local governments and Native interests. The plan was prepared pursuant to ANILCA Section 1203. The plan melded direction for all public lands and took an integrated approach to issues such as cross-peninsula transportation corridors. The Regional Management Plan was never adopted as a consolidated plan. Instead, it formed the basis for the state's Bristol Bay Area Plan (1984), and provided the basis for management direction in the existing Togiak Refuge Comprehensive Conservation Plan.

Alaska Natural Heritage Program This program was developed by the Nature Conservancy. The mission of the Alaska Natural Heritage Program is "to document the distribution and abundance of ecologically significant plant and animal species, ecological communities, and natural features, and to assist in maintaining an ecologically healthy environment, while promoting the development of a sustainable economy in Alaska." The program has developed a Biological Conservation Database that provides information on species distribution, trends, and habitats for species in need of over 1,300 plants and animal species in Alaska.

Alaska Coastal Management Program/Bristol Bay Coastal Management Plan This program was established as a result of the 1972 Coastal Zone Management Act of 1972 and the Alaska Coastal Management Act of 1977, which directed the State of Alaska to implement a comprehensive coastal management program. The Bristol Bay Coastal Management Plan established broad goals and objectives for the entire Bristol Bay region including the Togiak Refuge. Under these acts, this CCP/EIS must be consistent with the Bristol Bay Coastal Management Plan.

The Alaska Coastal Management Program identifies 12 primary categories that are to be used in a consistency evaluation. The U.S. Fish and Wildlife Service finds the Comprehensive Conservation Plan for Togiak National Wildlife Refuge and the Hagemeister Island portion of Alaska Maritime Refuge to be fully consistent with policies of

the Alaska Coastal Management Program, and the Bristol Bay Coastal Management Plan.

Natural Resources Plan South Coastal Long Range Radar Stations Plan This plan guides the land use, fish and wildlife management, and outdoor recreation management of three long range radar stations owned by the United States Air Force, including the Cape Newenham Long Range Radar Station located within the Togiak Refuge.

Wood-Tikchik State Park Management Plan (2002) This plan guides the management of the 1.6 million acre Wood-Tikchik State Park adjacent to the Togiak Refuge. The affects of management actions in both the state park plan and the Togiak Refuge Plan were considered during the revision of the Togiak Refuge Plan.

1.7 Togiak National Wildlife Refuge Plans

Finally, there are those plans which are beyond the scope and purpose of this Comprehensive Conservation Plan, but which are needed to help the refuge achieve its goals within the context of ecosystem management and other national and regional plans.

Land Use Protection Plan for the Togiak National Wildlife Refuge (1999) This plan sets priorities for acquisition or other land protection measures based upon the resource value of these private lands. This Land Protection Plan (LPP) is required by Service policy; however, it does not obligate the Service or the landowner to implement any land protection measure. Rather, it is a management tool that guides refuge land protection activities and provides the framework for refuge and private landowner cooperation. The goal of the LPP is to identify and conserve high quality habitat found on privately owned land within the refuge boundary.

Fisheries Management Plan (1990) The Fisheries Management Plan establishes strategies for accomplishing specific goals and objectives outlined in this Comprehensive Plan. These strategies generally include the types of operations, procedures, facilities, equipment and costs associated with specific projects, and specific methods for inventory and monitoring of fisheries and habitats within the Togiak Refuge.

Wildlife Inventory and Monitoring Plan (Draft) This plan serves a purpose similar to the Fisheries Management Plan described previously, but provides specific direction for accomplishing goals and objectives related to terrestrial wildlife, marine mammals, and bird species and their habitats throughout the Togiak Refuge. These goals and objectives are also included in this Comprehensive Conservation Plan.

Nushagak Peninsula Caribou Management Plan (1994) This management plan was developed in cooperation with ADF&G and several local area representatives. The plan and the planning committee work to maintain a healthy caribou population on the Nushagak Peninsula through monitoring efforts and hunting recommendations.