

Appendix E

Meghan Carfoglio/USFWS



Refuge sign along Turkey Island Cutoff

Federal Consistency Determination, State Historic Preservation Office Letter, and Compliance with Section 7 of the Endangered Species Act

FEDERAL CONSISTENCY DETERMINATION**Draft Comprehensive Conservation Plan / Environmental Assessment***for***Presquile National Wildlife Refuge
Chesterfield County, Virginia****U.S. Fish and Wildlife Service
Department of the Interior**

This document provides the Commonwealth of Virginia with the U.S. Fish and Wildlife Service's (the Service, we, our) Consistency Determination under the Coastal Zone Management Act Section 307(c)(1) and Title 15 Code of Federal Regulations (CFR) Part 930, Subpart C, for implementing the draft Comprehensive Conservation Plan / Environmental Assessment (draft CCP/EA) for Presquile National Wildlife Refuge (NWR), located in Chesterfield County, Virginia. This CCP would guide management of Presquile NWR over the next 15 years. The information in this Consistency Determination is provided pursuant to 15 CFR §930.39. The Service seeks concurrence from the Virginia Coastal Management Program (VCP) that alternative B (the Service-preferred alternative) as detailed in the draft CCP/EA is consistent, to the maximum extent practicable, with the enforceable policies of the VCP.

To streamline the administrative requirements of the CCP development process and environmental review, the Service prepared a combined document that evaluates the potential environmental impacts from implementing a CCP. The draft CCP/EA was prepared in accordance with the National Environmental Policy Act of 1969 (NEPA), as amended (42 USC §§ 4321-4347); the Council on Environmental Quality regulations for implementing NEPA (40 CFR §§ 1500-1508); and the Department of the Interior (516 DM 8) and Service (550 FW 3) policies. The draft CCP/EA also complies with Section 106 of the National Historic Preservation Act of 1966, as amended. Refer to section 1.3 of the draft CCP/EA for additional information regarding regulatory compliance.

Background

Presquile NWR is located in Chesterfield County, Virginia and is approximately 20 miles southeast of Richmond. The regional context of the project area is defined by the interactions of the nearby metropolitan area, the James River watershed, and the Chesapeake Bay Estuary (map 1.1 in the draft CCP/EA).

Presquile NWR was established in 1953, under the authority of the Migratory Bird Conservation Act of 1929 (45 Stat. 1222) as a gift under the provisions of the will of Dr. A.D. Williams, D.D.S. The purpose of the refuge is "...for use as an inviolate sanctuary, or for any other management purpose, for migratory birds" (Migratory Bird Conservation Act, 16 U.S.C. § 715d). It is one of many important migratory bird stopover sites along the Atlantic Flyway, providing protected breeding habitat for State-listed threatened and endangered species, as well as many neotropical migrant bird species (map 1.2 of the draft CCP/EA).

The 1,329-acre refuge is comprised of a variety of wildlife habitats at Presquile NWR: open waters of the James River and associated backwaters, tidal swamp forest, tidal freshwater marshes, grasslands, mixed mesic forest (transitional and mature), and river escarpment. This total acreage includes one acre held by the Service in right-of-way easements on adjacent private properties.

Project Description

As detailed in chapter 3 of the draft CCP/EA, alternative B (the Service-preferred alternative) emphasizes the management of specific refuge habitats to support priority refuge species whose habitat needs benefit other species of conservation concern that are found around the refuge and in the larger landscape of the lower James River. In particular, we would emphasize habitat for priority birds identified in the Mid-Atlantic Coastal Plain bird conservation region (BCR 30), such as migratory waterfowl, waterbirds, forest-dependent songbirds, early successional forest species, and priority refuge resources of concern, including federally endangered Atlantic sturgeon and federally threatened sensitive joint-vetch.

We would:

- Maintain and restore the ecological integrity of wildlife habitats for species of conservation concern.
- Convert approximately 177 acres of grassland habitat to transitional mixed mesic forest habitat through natural succession, supplemented by invasive plant management and plantings (as needed).
- Maintain 46 acres of managed grassland for refuge administrative, educational, and interpretive purposes (e.g., 23 acres of regularly mown lawn, 23 acres of less-frequently mown grassland as pollinator habitat).
- Strive to maintain and restore ecological integrity of 11 acres of river escarpment habitat for the benefit of bald eagles, great blue herons and other wading birds, and work through partnerships to improve the natural and cultural resource condition monitoring along the shoreline, assess the potential to slow bank erosion and reduce sediment loading into the James River, and develop shoreline management and improvement projects.
- Increase our efforts to protect cultural resources on the refuge, as well as expand our understanding of the refuge's resources and their role in the area's cultural history.
- Expand our on-refuge environmental education program through our partnership with the James River Association (JRA).
- Establish Presquile NWR as the home of the James River Association Ecology School (the Ecology School), bringing an increased number of students to the refuge for overnight visits to participate in an expanded environmental education program.
- Continue the current 3-day deer hunting program and consider extending the season length to provide a higher quality hunt experience.

We identified that coordination and consultation with various State agency offices responsible for enforcing the policies of the VCP is an important action to be implemented by the refuge as it implements the CCP. The following list identifies strategies that would subject to the VCP enforceable policies:

- Protect and maintain the characteristics on refuge lands that contributed to the area's special designation as the Lower James River Important Bird Area and Anadromous Fish Use Area, as well as its contribution to other Special Status Area designations.
- Continue working toward stabilization and restoration of the refuge's shoreline by not opening the refuge for recreational fishing from the refuge shoreline (see appendix B), while working with the Virginia Department of Game and Inland Fisheries (VDGIF) to promote opportunities for public fishing on public waters and lands where allowed by State regulations.
- Participate in partnerships with communities and partners in the Chesapeake Bay watershed to implement the Strategy for Protecting and Restoring the Chesapeake Bay Watershed (Executive Order 13508) at the refuge, with an emphasis on land conservation and public access, and citizen stewardship.
- Implement the established partnership with the National Park Service, fulfilling the MOU in regards to the promotion of the Captain John Smith Chesapeake National Historic Trail (NHT) and Chesapeake Bay Gateways and Watertrails Network, at the refuge by enhancing place-based interpretation, providing public access, and fostering conservation and restoration of natural and cultural resources related to the Chesapeake Bay through programming, outreach, and citizen involvement.
- Restore native vegetation, with priority action given to the most degraded sites.
- Reduce the carbon footprint of facilities, vehicles, workforce, and operations by using energy efficient equipment, where feasible, and maintaining and constructing facilities using sustainable green building technologies (see appendix C of the draft CCP/EA).

The draft CCP/EA was developed with sufficient detail to account for the greatest potential impacts that could result from the proposed actions identified under both alternatives. However, additional NEPA analysis will be necessary for certain types of actions, even once we adopt a final CCP. Where decisions have not been made in the draft CCP/EA, but must be made later, we analyze the impacts of the possible range of alternatives in this document. During the planning process for those plans and actions, we will consult with the Virginia Department of Environmental Quality (VDEQ) to determine if additional FCDs are needed.

Examples of proposed actions that may require further analysis include:

- Shoreline stabilization projects involving construction;
- Water-based transportation facility improvements involving construction; and
- Activities related to the Captain John Smith Chesapeake NHT involving construction.

Effect on Resources

Implementation of the preferred alternative would impact the natural and human environments, varying in duration, context, type, and intensity. Chapter 4 and the summary table comparison of consequences (table 4.3) of the draft CCP/EA details impacts in the local, regional, and national contexts, over the short- and long-term, and identifies the intensity of beneficial and adverse impacts that would directly, indirectly, and cumulatively result from implementation of alternative B.

In summary, implementation of Alternative B would affect the land or water uses or natural resources of Virginia in the following manner:

Air Quality—Long-term benefits of air filtering and carbon sequestration would result from managing 981 acres of forested refuge lands. Emissions generated by maintaining 177 acres of grassland by mowing and prescribed burning would be eliminated. Long-term, adverse impacts on local air quality would negligibly increase from more frequent use of fuel-burning engines of boats to transport visitors to and from the refuge. None of our actions would violate EPA standards, and all actions would be undertaken to ensure compliance with the Clean Air Act.

To reduce potential adverse impacts on local air quality, we would follow guidance provided State agencies regarding construction project design and implementation, including the minimization of vehicle idling, use of precautionary measures to restrict emissions of volatile organic compounds and oxides of nitrogen, and minimization of fugitive dust.

Hydrology and Water Quality—Long-term, negligible, beneficial impacts on hydrology and water quality in the refuge vicinity would result from the continued protection of soils, wetlands, and waterways within the refuge boundary. Our increased efforts to inventory and monitor aquatic resources would inform specific refuge management decisions that have the potential to impact hydrology and water quality in the refuge vicinity. Land-disturbing activities on the refuge, such as trail maintenance and facility management, have the potential to negligibly and adversely impact local water quality.

To reduce potential adverse impacts on local hydrology and water quality, we would employ best management practices when conducting land-disturbing activities. As needed, we would consult with State offices regarding permitting applicability and requirements to ensure compliance with applicable Federal and State laws and regulations, as well as Chesterfield County's ordinance for the protection of Resource Management and Protection Areas.

Soils—Long-term, beneficial impacts on soils would result from maintaining the land cover with natural vegetation, conducting few activities with the potential to disturb soils, and allowing public use on a limited acreage and in designated areas. We would employ and maintain sediment and erosion control measures to minimize the potential for soils to migrate during land-disturbing activities (e.g., facility maintenance and construction). We would continue to plant and maintain vegetation to help control erosion along the refuge's shoreline. We anticipate working with other Federal and State agencies to investigate options for reducing

erosion of lands along the Turkey Island Cutoff and deposition of sediment in the James River oxbows. In the long-term, increased refuge visitation has the potential to adversely impact soils via compaction.

To reduce potential adverse impacts to soils, we would consult with State offices regarding permit applicability prior to conducting activities that have the potential to impact tidal wetlands, disturb land, or contaminate soils.

Freshwater Wetland Habitats and Vegetation—Long-term, beneficial impacts on freshwater wetland habitats and vegetation would result from our continued protection and minimal intervention efforts to protect the ecological integrity of the refuge's tidal swamp forest, tidal freshwater marsh, and riverine tidal habitats. We would establish a long-term monitoring effort to serve as an early detection and inform a rapid response in habitats due to invasive species, global climate change, or storm events. We would partner with other Federal and State agencies to conduct biological monitoring, as well as to improve interagency coordination on actions with the potential to adversely impact known populations of plant and animal populations associated with the freshwater wetland habitats within and surrounding the refuge. In the long-term, beneficial impacts would result from continued efforts to protect the refuge's shoreline and designating areas for appropriate and compatible public uses.

Since wetlands management and protection is a Federal trust responsibility and our highest priority for the refuge, we would take all necessary precautions to avoid adverse impacts to wetlands. However, we would continue to conduct actions that have the potential to negligibly and adversely impact freshwater wetland habitats and vegetation, such as trail maintenance and facility maintenance. To reduce potential adverse impacts to wetlands and vegetation, we would consult with State offices regarding best management practices to be employed on a project-specific basis and acquire permits prior to conducting activities as warranted.

Upland Habitat and Vegetation—Long-term, beneficial impacts on upland habitat and vegetation would result from our conversion of 177 acres of grassland to forest. We anticipate that this conversion would require less active management than trying to reclaim areas overgrown with invasive species such as Canada thistle, Johnsongrass, crab grass, and rye. We would supplement the natural succession of the grasslands to forest with plantings of native trees and shrubs, controlling nonnative plants, and conducting prescribed burns. Over time, the mature forest block size would increase and improve connectivity between the existing forests, wetlands, and riparian habitats of the refuge. We would restore and maintain the ecological integrity of upland habitats through inventory, monitoring, and active habitat management. Appropriate public uses would continue to be conducted in designated areas in accordance with refuge-specific stipulations to ensure compatibility with the refuge's purpose (see appendix B).

Species of Special Concern—Long-term, beneficial impacts for various species of special concern would result from active habitat management efforts and limitations on public uses. Benefits for the federally threatened sensitive joint-vetch would result from our efforts to preserving the refuge's tidal freshwater marsh habitat, which includes restricting public access to these areas and improving interagency coordination on public uses on lands and waters surrounding the refuge. Benefits to the federally endangered Atlantic sturgeon would result from continued support of efforts to monitor populations and conduct experimental habitat improvements in the vicinity of the refuge. Benefits to the delisted bald eagle would result from continued protection of nesting and foraging habitat on the refuge, following time-of-year restrictions to limit disturbance of this species, and limitations on public uses in the vicinity of active bald eagle nests. We also emphasize interagency coordination regarding the protection and maintenance of species of special concern, while continuing to offer recreational public uses in a manner that is appropriate and compatible with the refuge's purpose.

Birds—Long-term, beneficial impacts on birds would result from implementation of the CCP. Preservation of 738 acres of tidal swamp forest, managing 197 acres of transitional mixed mesic forest, and maintaining 46 acres of mature mixed mesic forest would continue to provide important breeding and migratory stopover habitat for priority refuge resources of concern such as prothonotary warbler, bald eagle, rusty blackbird, and other forest breeding landbirds. We expect minimal disturbance to breeding and migrating birds from trail maintenance, invasive species control activities, mowing, and other management activities. The conversion of 177 acres of grassland to mature mixed mesic forest would result in an initial transitional shrub stage, which would benefit priority refuge birds of concern such as the prairie warbler, field sparrow, and American woodcock. This transition would provide benefits to species that utilize early successional forest habitat for up to 20 years. The transition of 200 acres of grassland to mixed mesic forest would reduce available habitat for migratory Canada geese on the refuge, as well as for grasshopper sparrow, field sparrow, American woodcock,

and northern bobwhite. Beyond the timeframe of this CCP, the eventual conversion of grassland to mature mixed mesic forest would benefit a different suite of species such as scarlet tanager and wood thrush, and for other species of conservation concern such as Louisiana waterthrush and other forest breeding landbirds.

Preserving of 189 acres of tidal freshwater marsh would also provide important breeding and migratory stopover habitat for waterfowl such as American black duck, wood duck, and waterbirds of conservation concern such as the American bittern. We would continue to coordinate with State agencies by sharing information about wildlife populations and habitat management strategies, especially regarding protection of State endangered species. We would also increase partnerships and the use of volunteers and citizen scientists to collect information on species of concern.

Since some disturbance to breeding birds is likely from public use of the refuge, we would continue to allow appropriate and compatible public uses in designated areas and in accordance with stipulations to ensure compatibility (see appendix B). Birds that occupy the periphery of the refuge may be more likely affected by human activity and associated noise. Under both alternatives, we would continue to maintain the closure of waterfowl hunting around the refuge, providing protection to migratory waterfowl, wetland, and waterbird species that use tidal swamp forest, tidal freshwater marsh, and riverine habitats on the refuge.

Fisheries—Long-term, beneficial impacts on fisheries would result from our efforts to protect, maintain, and restore habitats for native wildlife; protect water quality minimizing erosion of the refuge's shoreline and sediment deposition loads in waterways; and improved interagency coordination and partnership support for fisheries monitoring and management. We would also continue to support recreational fishing on public lands and waters where allowed by State regulations. Our continued efforts to minimize the existing issue of shoreline erosion would reduce the refuge's adverse impacts on adjacent waterways and fish habitat. These efforts to would contribute beneficially to fisheries adjacent to, and down river from, the refuge.

Mammals—Long-term, beneficial impacts to larger mammals would result from converting 177 acres of grassland to forest, a shift that improves habitat connectivity between the existing mature mixed mesic forest and tidal swamp forest habitats. We also emphasize interagency coordination to ensure that the refuge offers a quality public deer hunting program.

Reptiles and Amphibians—Long-term, beneficial impacts to amphibian and reptile populations would result from continued maintenance of habitats that afford hibernation, foraging, and breeding habitat on the refuge and conversion of grassland to forest. Invasive plant control to promote native plant food species would also be beneficial. Increased visitation could potentially result in added off-trail usage impacts and disturbance as a result of non-compliance with permit conditions. Service staff would monitor impacts adjacent to trails and shorelines to prevent or correct any unauthorized off-trail use or added disturbance that might influence impacts on native amphibians and reptiles.

Invertebrates—Long-term, adverse impacts to invertebrates that inhabit grasslands would result. However, 46 acres of managed grassland would be maintained for administrative and educational purposes, including a small demonstration native planting areas focusing on invertebrate pollinator habitat. In the long-term, forest-dwelling invertebrates would benefit from conversion of grassland to forest.

Public Uses—Long-term, local and regional, minor to moderate, beneficial impacts would result from offering an increased number of higher quality programs for a larger audience, both on and off the refuge. Through our partnerships, our potential to achieve the goal of inspiring appreciation and stewardship of the refuge in relation to the James River watershed, Chesapeake Bay Estuary, and the National Wildlife Refuge System would increase. By telling a more complete story of the area's significance to Native Indians and early European settlers, our efforts would promote a deeper understanding and appreciation of America's diverse peoples and inspire refuge stewardship. We would maintain the refuge closed to recreational fishing, which would continue to have no impact on recreational fisheries or the availability of fishing opportunities in the refuge vicinity. Long-term, minor to moderate, beneficial impacts for the hunting community would result from our continued offering of public deer hunting opportunities and our efforts to explore additional enhancements through program expansion. Maintaining our permit requirement for refuge visitors facilitates direct communications regarding resource protection, minimization of conflicts with wildlife use of the refuge, and refuge operations.

Consistency Determination

Enforceable Policies

The VCP contains the following applicable enforceable policies. For each enforceable policy, specific actions to be implemented under alternative B are described.

Fisheries Management—Administered by Marine Resources Commission (MRC) and VDGIF, this program stresses the conservation and enhancement of shellfish and finfish resources and the promotion of commercial and recreational fisheries (Code of Virginia §28.2-200 through §28.2-713, §29.1-100 through §29.1-570, or §3.1-249.59 through §3.1-249.62).

We anticipate conducting additional investigation, assessment, and analysis of management alternatives to reduce adverse impacts to shellfish and finfish habitat currently resulting from refuge shoreline erosion and sediment deposition in the James River conservation and enhancement of shellfish and finfish resources. In an effort to limit any additional erosion of the refuge's banks, we would neither open the refuge to fishing from our land nor construct any new facilities on the refuge to promote recreational fishing. However, we would promote recreational fishing on waters and lands where permitted through our partnership with VDGIF.

Subaqueous Lands Management—Administered by MRC, this program establishes conditions for granting permits for encroachments in, on, or over state-owned submerged lands throughout the Commonwealth (Code of Virginia §28.2-1200 through §28.2-1213).

We anticipate conducting additional consultation with the MRC prior to implementing actions that would affect subaqueous lands or qualify as channel-ward encroachments on tidal waterways. Actions with the potential to adversely affect subaqueous lands are the potential to construct a tidal marsh observation deck; install new and maintain existing shoreline stabilization features; alter existing or construct new water-based transportation facilities. We would consult with State agencies early in the project planning phase to ensure consistency with the enforceable policies of the VCP. Permitting and site plan approvals would be acquired prior to implementing construction activities with the potential to adversely impact subaqueous lands.

Wetlands Management—Administered by MRC and VDEQ, the wetlands management program preserves and protects tidal wetlands (Code of Virginia §28.2-1301 through §28.2-1320 or § 62.1-44.15.5).

The protection of wetlands is of high management priority for our agency and at this refuge. We strive to avoid adverse impacts on wetlands and surface waters. However, where avoidance can not be achieved, we strive to minimize adverse impacts by minimizing land disturbance and impervious cover.

As identified in our draft CCP/EA, we would establish a long-term monitoring program to inform management actions aimed to protect wetlands on the refuge and adjacent to the refuge. In the future, we anticipate consulting with the State for individual projects for which site-specific planning has not yet been completed. Future projects with the potential to impact wetlands and waterways include the proposed construction of a tidal marsh observation deck and proposed water-based transportation facility improvements. Early in the planning phase for each of these projects, we would consult with MRC and VDEQ to identify the most appropriate best management practices to be employed to ensure the protection of wetlands and surface waters, as well as identify permitting or plan approvals required prior to project implementation.

Dunes Management—Administered by MRC, the purpose of this program is to prevent the destruction and/or alteration of primary dunes (Code of Virginia §28.2-1400 through §28.2-1420).

None of the actions to be implemented under alternative B would alter dunes in Virginia because dunes do not occur on the refuge or in the refuge vicinity.

Non-point Source Pollution Control—Administered by the Virginia Department of Conservation and Recreation (DCR), the Virginia Erosion and Sediment Control Law and Regulations (VESCL&R) are intended to minimize non-point source pollution entering Virginia's waterways (Code of Virginia §10.1-560 et seq).

As identified in our draft CCP/EA, we would manage nonnative plant species using herbicides. We would take all appropriate steps to minimize the potential to contaminate soils or cause runoff into the river when applying herbicide, including using the minimum effective dosage, using application methods that minimize non-target effects, applying during optimal growth stage for effectiveness, applying in optimal weather conditions, and adhering to licensing requirements and other Federal, State, and local regulations. We would minimize the potential for adverse impacts to the environment and humans by using only approved herbicides, developing and following a spill plan, and using the herbicide as instructed by the manufacturer and according to pesticide use plans approved by our regional contaminants coordinator.

Hazardous materials and wastes would be stored, transported, and disposed of in accordance with applicable laws and regulations. We would consult with VDEQ regarding identification of approved solid waste and hazardous waste disposal sites, as well as opportunities to reuse and recycle non-hazardous materials.

Early in the planning phase for facility maintenance and construction projects, we would consult with DCR to identify the most appropriate best management practices to limit potential for non-point source pollution generation, as well as identify permitting or plan approvals required prior to project implementation. Actions with the potential to disturb 2,500 square feet or more of land and/or generate non-point source pollution include the maintenance of existing, or construction of new, shoreline stabilization features and water-based transportation facilities.

Point Source Pollution Control—Administered by the State Water Control Board, the National Pollutant Discharge Elimination System permit program regulates point source discharges to Virginia’s waterways (Code of Virginia §62.1-44.15).

None of the actions proposed in our draft CCP/EA would generate a new point source discharge, or alter of any existing point source discharge, in to Virginia’s waterways. We would consult with DEQ regarding future maintenance or construction projects to determine which actions would be considered a new point source discharge and proceed with permitting and project approvals as needed.

Shoreline Sanitation—Administered by the Department of Health (VDH), this program regulates the installation of septic tanks to protect public health and the environment (Code of Virginia §32.1-164 through §32.1-165).

As identified in our draft CCP/EA, we anticipate conducting maintenance on the existing septic system serving the refuge’s Menenak Discovery Center and equipment storage barn. In the near future, we anticipate consulting with VDH regarding septic system maintenance and groundwater well operation to ensure protection of public health and the environment.

Air Pollution Control—Administered by the State Air Pollution Control Board, this program implements the Federal Clean Air Act through a legally enforceable State Implementation Plan (Code of Virginia §10.1-1300 through 10.1-1320).

As identified in our draft CCP/EA, none of our actions would violate EPA standards for air quality. All actions would be undertaken to ensure compliance with the Clean Air Act. To reduce potential adverse impacts on local air quality, we would follow guidance provided the VDEQ regarding construction project design and implementation, including the minimization of vehicle idling, use of precautionary measures to restrict emissions of volatile organic compounds and oxides of nitrogen, and minimization of fugitive dust. On a project-specific basis, we would consult with State agencies regarding permit requirements for boilers or fuel-burning equipment that may be used during facility maintenance or construction activities. We would continue to coordinate with State offices regarding prescribed burning as needed.

Coastal Lands Management—Administered by the DCR’s Division of Stormwater Management, Local Implementation (DSM-LI) administers the coastal lands management enforceable policy of the VCP which is governed by the Chesapeake Bay Preservation Act and Chesapeake Bay Preservation Area Designation and Management Regulations (Code of Virginia §§ 10.1-2100 through 10.1-2114, the Chesapeake Bay Preservation Area Designation and Management Regulations, or 9 VAC10-20-10 et seq).

Since the entire refuge is located within either the Chesapeake Bay Resource Protection Area (RPA) or the Resource Management Area (RMA), we would consult with State offices to ensure the protection of coastal lands. Actions to be undertaken within the RPA include maintenance and use of water-dependent features (e.g., maintenance of water-based transportation facilities and bulkhead, construction of tidal marsh observation deck). We would also conduct resource protection activities along the shoreline (e.g., nonnative plant management, planting of native trees and shrubs, documentation of archaeological resources). Actions that would occur within the RMA include conducting archaeological investigations, planting of native trees and shrubs, maintenance of a 3.5-mile nature trail by mowing, maintenance of the septic system serving the Menenak Discovery Center and equipment shed, and the concentration of visitors in designated public use areas. We would consult with DCR regarding best management practices, minimizing land disturbance and impervious cover, and the protection of native vegetation.

Advisory Policies

Although not required for the purposes of consistency, in accordance with 15 CFR §930.39(c), we considered the advisory policies of the VCP as well.

Geographical Areas of Particular Concern—Coastal natural resource areas (e.g., wetlands; aquatic spawning, nursery, and feeding grounds, significant wildlife habitat areas, public recreational areas, and underwater historic sites) are vital to estuarine and marine ecosystems and receive special attention from the Commonwealth because of their conservation, recreational, ecological, and aesthetic values. Coastal natural hazard areas are vulnerable to continuing and severe erosion and are susceptible to wind, tidal, and storm-related damage. Waterfront development areas are vital to the Commonwealth because of the limited number of areas suitable for waterfront activities.

The diversity of conservation, ecological, recreational, and aesthetic values associated with Presquile NWR are detailed in chapter 2 of the draft CCP/EA. As a unit of the National Wildlife Refuge System, the paramount purpose of this refuge is to serve as an inviolate sanctuary for migratory birds. We also support scientific research regarding the breeding of the Federally endangered Atlantic sturgeon in the refuge vicinity. The refuge has been opened for five priority, wildlife-dependent, recreational uses and one general public use, each of which has been found to be appropriate and compatible with the refuge's purpose (refer to appendix B).

As discussed earlier in this FCD, we anticipate consulting with VDEQ regarding water-based transportation facility improvements and shoreline structures on the refuge in the near future. We aim design and site facilities where the potential for property damage due to storms or shoreline erosion can be minimized.

Implementation of alternative B would have no direct impact on commercial ports, commercial fishing piers or community waterfronts in the refuge vicinity.

Shorefront Access Planning and Protection—The Commonwealth values maintenance of shorefront access for public recreational uses, while protecting the historic features of waterfront properties.

Implementation of alternative B would have no direct impact on Virginia's 25 miles of public beaches.

Implementation of alternative B would be consistent, to the maximum extent practicable, with the 2007 Virginia Outdoors Plan (VOP). Our partnership efforts with the JRA, National Park Service, and others exemplify our commitment to accommodate public uses of the refuge that are appropriate and compatible. We would increase the availability and quality of wildlife-dependent recreational uses on the refuge, as well as increase our outreach efforts through partners with shared conservation goals.

Implementation of alternative B would have direct impacts on recreational uses and values associated with Presquile NWR and the Captain John Smith Chesapeake NHT. Through our continued coordination and collaboration, we would maintain and protect recreational values associated with the refuge and the NHT while protecting natural and cultural resources for the enjoyment of future generations.

Implementation of alternative B would have no direct impact on waterfront recreational land acquisition opportunities in the Commonwealth.

As discussed earlier in this FCD, we anticipate consulting with VDEQ regarding water-based transportation facility improvements and shoreline structures on the refuge. Refuge facilities would be designed, constructed, and maintained to provide points of water access in support of refuge operations and visitor access when conducted in accordance with the stipulations identified for specific, appropriate, and compatible public uses (see appendix B).

As detailed in chapter 2 of the draft CCP/EA, the refuge has a long history of human settlement and development. We would use a proactive approach to interagency coordination for the protection of the refuge's cultural resources. Through our partnerships, we would promote cultural resource stewardship and appreciation both on and off the refuge in educational programs and interpretive media.

Finding

Based on this information, data, and analysis, the Service finds that alternative B (the preferred alternative) of the draft CCP/EA for Presquile NWR is consistent, to the maximum extent practicable, with the enforceable policies of the VCP. Although not required for the purposes of consistency, we find that alternative B is in line with the VCP advisory policies when following them will not materially interfere with, or detract from, the fulfillment of the National Wildlife Refuge System mission or the purposes for which the refuge was established.

Concurrence Request

Pursuant to 15 CFR §930.41, the VCP has 60 days from the receipt of this letter in which to concur with or object to this Consistency Determination, or to request an extension under 15 CFR §930.41(b). Virginia's concurrence will be presumed if its response is not received by the Service on the 60th day from receipt of this determination. The State's response should be sent to:

Andy Hofmann, Refuge Manager
Eastern Virginia Rivers NWR Complex
336 Wilna Rd
P.O. Box 1030
Warsaw, VA 22572

The Service would implement alternative B (the preferred alternative) upon adoption of the CCP by the Northeast Regional Director of the U.S. Fish and Wildlife Service. Adoption of the CCP would be documented in a Finding of No Significant Impact, if appropriate, to satisfy NEPA requirements. To complete the CCP development process, we will produce a final CCP.



COMMONWEALTH of VIRGINIA

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May 23, 2012

Nancy L. McGarigal
Fish and Wildlife Service
NWRS Planning Team Leader, Region 5
Hadley, MA 01035-9589

Re: FWS/Region 5/NWRS
Draft Comprehensive Conservation Plan and Environmental Assessment
Presquile National Wildlife Refuge
DHR Project No. 2008-0628

Dear Ms. McGarigal:

Thank you for providing us with an internal review copy of the Presquile National Wildlife Refuge Draft Comprehensive Conservation Plan and Environmental Assessment (CCP/EA). We fully support the Service's Preferred Alternative, Alternative B. The draft CCP is well written and very thorough. We note that the recommendations made in the Archaeological Overview and Study (Goode, 2008) are carefully considered and presented. We are especially pleased to see the inclusion of the indigenous cultural landscape in the discussion of the affected environment and in the plans for future environmental education.

We offer a few minor comments for your consideration in preparing the final document:

1. Chapter 3. Alternatives. Section 3.4.3 page 3-15. It is stated that the short-term recommendations made in the Goode report include conducting a controlled surface collection, using an archaeologist approved by our RHPO, before ground disturbance activities occur. This appears to be a misunderstanding of the recommendation made on page 109 of that report, namely: *If refuge maintenance requires plowing of locations, then an archaeologist should conduct surface collection. In the past visitors have reported artifacts from plowed areas.* Ground disturbance activities will require consultation with the Regional Historic Preservation Officer. In plowed areas, surface collection may be sufficient. However, ground disturbance activities may also require a program of subsurface testing prior to any action that might affect intact cultural levels or features. The decision on the level of effort will be made by the RHPO in consultation with the State Historic Preservation Officer.
2. Again, on pages 3-15 and 3-16. I regret to inform you that the Virginia Council on Indians will no longer exist after June 30 of this year. Nevertheless continuing to consult with Native American communities in Virginia is an important goal. Consultation with the six Virginia tribes mentioned should be conducted directly. We sincerely hope that Deanna Beacham will remain in some capacity to continue to assist with sharing information about how the refuge's various natural resources were part of the lifeways of the Appamattuck Indians.
3. We support the Service's goals of protecting the shoreline from further erosion and promoting natural forest succession. Please note, however, that both tree planting and allowing natural succession to proceed has the potential to affect archaeological sites. As trees grow, the roots may severely damage intact cultural levels and features. Alternative B proposes a proactive Section 110 effort to identify and evaluate archaeological sites. This effort should take place prior to implementing planting and removal of acreage from grasslands to ensure that appropriate management plans can be developed for vulnerable archaeological sites.

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14415 Old Courthouse Way 2nd
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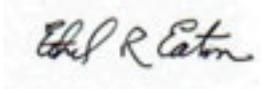
Western Region Office
962 Kime Lane
Salem, VA 24153
Tel: (540) 387-5428
Fax: (540) 387-5446

Northern Region Office
5357 Main Street
PO Box 519
Stephens City, VA 22655
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4. On the document distribution list, I am listed as director of Virginia's State Historic Preservation Office. Please note that I am an archaeologist and senior policy analyst in the Office of Resource Services and Review. Our director and State Historic Preservation Officer is Kathleen S. Kilpatrick.

If you have any questions concerning our comments, or if we may provide any further assistance, please do not hesitate to contact me at (804) 482-6088; e-mail ethel.eaton@dhr.virginia.gov. We look forward to working with you on future projects.

Sincerely,



Ethel R. Eaton, Ph.D., Senior Policy Analyst
Division of Resource Services and Review

Administrative Services
10 Courthouse Ave.
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INTRA-SERVICE SECTION 7 BIOLOGICAL EVALUATION FORM

Originating Person and Station Name: **Cyrus Brame, Eastern Virginia Rivers National Wildlife Refuge (NWR) Complex**

Telephone and Facsimile Numbers: **telephone: 804-829-9020, fax: 804-829-9606**

Date: **08/23/2012**

Project Title: **Selection of Preferred Comprehensive Conservation Plan (CCP) Alternative-Presquile NWR**

I. Service Program: **Refuges**

II. Geographic Area Including Name of County/City and State and Specific Project Location:

Presquile NWR, Chesterfield County, Virginia

III. Proposed Activity:

Refuges are required by the Refuge Improvement Act of 1997 to complete a CCP and by the National Environmental Policy Act to complete an Environmental Assessment (EA) to accompany the CCP. The combined documents serve to guide refuge management decisions over the next 15 years, and inform the public and other interested parties, agencies, partners, and communities of these plans. Presquile NWR CCP/EA document explains the refuge mission and goals, describes the affected environment at the time of writing, offers two alternatives to management, describes the environmental consequences on the major habitat types for each alternative, and summarizes the consultation and coordination with others throughout the process. The primary distinction between the alternatives concerns the number of grassland acres to be provided. Alternative A would maintain grassland, former croplands and pasture at 200 acres. Alternative B (preferred) proposes to convert 177 acres of that grassland, former croplands and pasture to transitional mixed mesic forest and 23 acres to managed grasslands. Other proposed elements of Alternative B include promoting visitor use to return to historic levels, largely through interpretation and environmental education programming; and enhance biological monitoring efforts in upland and wetlands.

The document can be downloaded at:

<<http://www.fws.gov/northeast/planning/presquile/ccphome.html>>

IV. Pertinent Species and Habitat Within Action Area

- A. Action area (includes all areas to be affected directly or indirectly by the proposed project and not merely the immediate area involved in the action).

Action area includes the entire refuge (1,329 acres) plus approximately six miles of waters adjacent to the island.

- B. List of listed species/critical habitat, proposed species/critical habitat, and candidate species known to occur or potentially occurring within the action area. Include species/habitat occurrence on a map (preferably a U.S.G.S. quad.), when known, such that their relationship to the project location can be determined.

Sensitive joint-vetch (*Aeschynomene virginica*) is a globally-rare (G2) legume which is listed as threatened under the Endangered Species Act of 1973, as amended. The plant community supporting this species has been identified on the refuge. The location of the population is situated in a remote area, over one mile from primary visitor use and proposed habitat changes.

The Chesapeake Bay Distinct Population Segment of the Atlantic sturgeon (*Acipenser oxyrinchus oxyrinchus*) has been listed as endangered. The James River adjacent to the project area supports this species. This fish species is under NOAA fisheries' jurisdiction.

Species Common & Scientific Name	Critical Habitat within Action Area (designated/proposed)	Federal Status (endangered/threatened/proposed/candidate)
Sensitive joint-vetch (<i>Aeschynomene virginica</i>)	No	threatened
Atlantic sturgeon (<i>Acipenser oxyrinchus oxyrinchus</i>)*	No	endangered

V. Determination of Effects

- A. Explanation of the adverse and beneficial effects of the action on species and/or critical habitat listed above.

Because the proposed action (Alternative B) promotes increased visitor use to the refuge, motorized boat traffic and on-island foot traffic is anticipated to increase slightly. The growth will be within historic visitation levels and will be concentrated in areas away from species of concern. Enhanced monitoring will provide biological information to help guide further protect these species. Refer to the CCP for a more detailed discussion on the effects to species.

- B. Explanation of actions to be implemented to reduce adverse effects:

To protect the Atlantic sturgeon, the refuge will implement best management practices to minimize potential for refuge actions (e.g., trail and facility work) to increase sediment load and deposition in the James River, plant and maintain vegetated riparian areas and natural habitats, and support partner efforts to restore Atlantic sturgeon habitat.

VI. Effect Determination and ES Response Requested

- A. Listed species/designated critical habitat:

Field Station Determination	Species Name(s)	Ecological Services Response Requested (check one)
No effect	Sensitive joint vetch (<i>Aeschynomene virginica</i>)	<input checked="" type="checkbox"/> None Needed
Is not likely to adversely affect		<input type="checkbox"/> Concurrence
Is likely to adversely affect		<input type="checkbox"/> Formal Consultation

Field Station Determination	Species Name(s)	Ecological Services Response Requested (check one)
No effect	<u>Atlantic Sturgeon</u> (<i>Acipenser oxyrinchus oxyrinchus</i>)*	<input checked="" type="checkbox"/> None Needed
Is not likely to adversely affect		<input type="checkbox"/> Concurrence
Is likely to jeopardize		<input type="checkbox"/> Conference

