

Appendix A:

Legal Guidance and Planning Coordination

1. Legal Guidance and Planning Coordination

1.1 Introduction

Management of Kenai National Wildlife Refuge (Refuge, Kenai Refuge) is dictated, in large part, by the legislation that created the unit and the purposes and goals described in Chapter 1. However, other laws, regulations, and policies also guide the management of the Refuge. This Appendix identifies the acts and policy guidance that are integral in the development of this Comprehensive Conservation Plan (Plan).

1.2 Legal Guidance

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

1.2.1 International Treaties

Several treaties affect how the U.S. Fish and Wildlife Service (Service) manages Kenai 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 Kenai Refuge include several Species of Concern identified by the State of Alaska: American peregrine falcon, Steller’s eider, olive-sided flycatcher, gray-cheeked thrush, Townsend’s warbler, and blackpoll warbler. Of 192 bird species that have been recorded on or adjacent

to the Refuge, 113 are known to breed in the area, and the majority are migratory.

1.2.2 National Guidance

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

ANILCA—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 in Alaska (including national parks, refuges, forests, Wilderness areas, and Wild and Scenic Rivers. Specifically, title III of ANILCA established new refuges, identified the purposes of each refuge, and provided administrative guidance for management of refuges in Alaska, including requiring the preparation and periodic updating of a comprehensive conservation plan for each refuge.

In addition, ANILCA provided comprehensive management guidance for all Federal public lands in Alaska, including provisions regarding Wilderness; subsistence; transportation and utility corridors; oil and gas leasing; mining; public access; and hunting, fishing, and trapping. No Wild and Scenic Rivers were designated on Kenai Refuge by ANILCA. Section 1317 required that all Refuge lands not designated as Wilderness be reviewed for their suitability for Wilderness designation, in accordance with the provisions of the Wilderness Act. The 1988 Supplemental Environmental Impact Statement for the Wilderness Proposal of the Final Kenai Comprehensive Conservation Plan recommended, under Section 1317, 195,500 acres of Refuge land for designation as Wilderness. That recommendation remains in effect. Section 1317(c) provides that a recommendation of proposal for Wilderness designation does not affect the normal administration and management of the affected areas of the Refuge.

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.

Coastal Zone Management Act of 1972

This act was passed in recognition of the increasing and conflicting uses that were causing irreparable harm to 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, Federal actions (which include this Comprehensive Conservation Plan) must be consistent with the state's plan.

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 National Wildlife Refuge System (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).

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

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

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.

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

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

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

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

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

This act (P.L. 88-577) defined the Wilderness resource and established the National Wilderness Preservation System. It provides the framework for designation by Congress of new units to the National Wilderness Preservation System and prescribes for their management. The Wilderness review required by Section 1317 of ANILCA and included in the 1988 Supplemental Environmental Impact Statement for the Wilderness Proposal of the Final Kenai Comprehensive Conservation Plan was undertaken following the framework and guidance provided by the Wilderness Act. The recommendation for Wilderness designation included in the Record of Decision (ROD) for the 1988 Supplemental Environmental Impact Statement is a preliminary administrative determination that is conducted prior to being forwarded to Congress for final action. Kenai Refuge currently has 1,319,500 acres of designated Wilderness.

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

This act establishes a National Wild and Scenic Rivers System and prescribes the methods and standards through which additional rivers may be identified and added to the system. Section 5(d)(1) requires that in all planning by Federal agencies for the use and development of water and related land resources, consideration be given to potential wild, scenic, and recreation rivers. Rivers are added to the national system based on their free-flowing character and their outstandingly remarkable scenic, recreation, geologic, fish and wildlife, historic, cultural, ecological, or other values. Rivers in the system are managed

to maintain and protect these outstandingly remarkable values for present and future generations. For Wild and Scenic Rivers in Alaska, ANILCA also provided direction for management of designated rivers. No Wild and Scenic Rivers have been designated on Kenai Refuge, though 17.3 miles of the Russian River designated as part of the national system has been recommended by the U.S. Forest Service (USDA 2002).

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.

1.3 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 lands were reviewed during the revision of the Kenai Refuge Comprehensive 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.

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.

North American Waterfowl Management Plan

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

cackling Canada geese, white-fronted geese, snow geese, sandhill cranes, northern pintail, mallard, green-winged teal, and other dabbling ducks. Up to 5,000 lesser Canada geese at a time may use the Chickaloon estuary in late September and early October on their southward migration. Sixteen species of waterfowl are known to breed on the Refuge, including trumpeter swan, Canada goose, green-winged teal, mallard northern pintail, northern shoveler, American widgeon, ring-necked duck, greater scaup, harlequin duck, surf scoter, white-winged scoter, common goldeneye, Barrow's goldeneye, common merganser, and red-breasted merganser.

Partners in Flight

Partners in Flight is a cooperative effort involving partnerships among Federal, State, and local government agencies; philanthropic foundations; professional organizations; conservation groups; industry; the academic community; and private individuals. Partners in Flight was created in 1990 in response to growing concerns about declines in the populations of many land bird species and to emphasize the conservation of birds not covered by existing conservation initiatives. Bird conservation plans, including the *Landbird Conservation Plan for Alaska Biogeographic Regions* (Boreal Partners in Flight Working Group 1999), are developed in each region to identify species and habitats most in need of conservation, to establish objectives and strategies to provide needed conservation activities, and to implement and monitor progress on the plans.

U.S. Shorebird Conservation Plan (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 shorebird Conservation Plan is to restore and maintain shorebird populations throughout the western hemisphere through an international partnership. Twenty-four shorebird species have been recorded on the Refuge: greater yellowlegs, lesser yellowlegs, sandhill cranes, least sandpipers, spotted sandpipers, solitary sandpipers, Baird's sandpipers, pectoral sandpipers, semipalmated sandpipers, western sandpipers, semipalmated plovers, black-bellied plovers, American plovers, pacific golden-plovers, Wilson's snipe, ruddy turnstones, black turnstones, sanderlings, surfbird, whimbrel, wandering tattler, Hudsonian godwit, short-billed dowitcher, and red-necked phalarope.

1.3.1 Regional Management Plans

In addition to the national conservation plans, the Kenai Refuge 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 Kenai 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 this Plan.

Kenai Area Plan (DNR 2000)

This plan determines management intent, land use designations, and management guidelines that apply to all State lands on the Kenai Peninsula. The plan provides goals and specific guidelines that apply to State land and waters.

Kenai Peninsula Borough Coastal Management Plan (Kenai Peninsula Borough 2007)

This amended plan describes goals and objectives for resources within the coastal zone. The focus of the plan is to maintain the functions and values of coastal resources, including its socioeconomic values. The objectives of the plan were reviewed to look for opportunities to make progress on mutual goals.

Kenai Peninsula Borough Comprehensive Plan (Kenai Peninsula Borough 2005)

This plan outlines basic functions, authorities, and responsibilities of the Borough. It describes existing and expected future conditions; identifies important issues; and provides a basis for policy decisions through the development of goals, objectives, and implementation actions.

Kenai Peninsula Brown Bear Conservation Strategy (ADF&G 2000)

In November 1998, Alaska Department of Fish and Game (ADF&G) identified the Kenai Peninsula population of brown bears as a “Species of Special Concern.” This administrative designation was a proactive measure designed to focus attention and research efforts on Kenai Peninsula brown bears, an isolated population in an area experiencing steady human population growth and increased human activity. This Conservation Strategy identifies the policies and management actions that help ensure the future of brown bears and their habitat on the Kenai Peninsula and avoid restrictive actions such as the listing of Kenai Peninsula brown bears under the Federal Endangered Species Act.

Kenai Peninsula Caribou Management Plan (ADF&G et al. 2003)

This plan establishes goals, objectives, and criteria to maintain viable and healthy herds of caribou on the Kenai Peninsula, with special emphasis placed on suitable but unoccupied habitats in the Caribou Hills and alpine tundra south of Fox River.

Kenai River Comprehensive Management Plan (DNR 1997)

This plan provides a basis for management of State land and waters within the Kenai River Special Management Area (KRSMA), including the Kenai River, its tributaries, and those areas and habitats either having a hydrological connection to the Kenai River or those significant in terms of wildlife and fishery. It identifies management issues and provides management recommendations for the entire watershed and individual reaches of the river.

Upper Kenai River Interagency Cooperative Plan (DNR et al. 1997)

This plan is a product of a joint effort of Federal and State agencies, the Kenai Peninsula Borough, Cook Inlet Region, Inc., local residents, and others interested in the future of the upper Kenai River corridor. The plan addresses the public lands and waters within one-quarter mile of the Kenai and Russian rivers between Kenai, Lower Russian, and Skilak Lakes, and was developed using the Limits-of-Acceptable-Change process. The purpose of the plan is to guide future actions of the managing agencies as they strive for collective vision for the river corridor.

1.4 References

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