

## Fish and Wildlife Habitat and Harvest Areas

### Goals

**Ensure Access to Public Lands and Waters.** Ensure access to public lands and waters to promote or enhance the responsible public use and enjoyment of fish and wildlife resources.

**Mitigate Habitat Loss.** When resource development projects occur, avoid or minimize reduction in the quality and quantity of fish and wildlife habitat.

**Contribute to Economic Diversity.** Contribute to Alaska's economy by protecting the fish and wildlife resources which contribute directly or indirectly to local, regional, and state economies through commercial, subsistence, sport and non-consumptive uses.

**Maintain and Protect Publicly Owned Habitat Base.** Maintain in public ownership and protect habitat for fish and wildlife resource protection to supply sufficient numbers or a diversity of species to support commercial, recreational, or traditional uses on an optimum sustained yield basis; or protect a unique or rare assemblage of a single or multiple species of regional, state, or national significance.

**Avoid the Introduction of and Reduce the Spread of Invasive Plant Species.** State lands are to be managed to avoid or reduce the spread of non-native invasive plants. This management shall be consistent with the applicable requirements of 11 AAC 34.

### Management Guidelines: Habitat Areas

**A. Mitigation.** When issuing permits and leases or otherwise authorizing the use or development of state lands, DNR, ADF&G, ADEC will recognize the requirements of the activity or development and the effects to habitat when determining stipulations or measures needed to protect fish, wildlife, or their habitats. The costs of mitigation relative to the benefits to be gained will be considered in the implementation of this policy.

All land use activities will be conducted with appropriate planning and implementation to avoid or minimize adverse effects on fish, wildlife, or their habitats.

The departments will enforce stipulations and measures appropriate to their agency, and will require the responsible party to remedy any significant damage to fish, wildlife, or their habitats that may occur as a direct result of the party's failure to comply with applicable law, regulations, or the conditions of the permit or lease.

When determining appropriate stipulations and measures, the departments will apply, in order of priority, the following steps. Mitigation requirements listed in other guidelines in this plan will also follow these steps:

1. Avoid anticipated, significant adverse effects on fish, wildlife, or their habitats through siting, timing, or other management options.
2. When significant adverse effects cannot be avoided by design, siting, timing, or other management options, the adverse effect of the use or development will be minimized.
3. If significant loss of fish or wildlife habitat occurs, the loss will be rectified by repairing, rehabilitating, or restoring the affected area to a useful state.
4. DNR will consider requiring replacement with, or enhancement of, fish and wildlife habitat when steps 1 through 3 cannot avoid substantial and irreversible loss of habitat. The ADF&G or the Office of Habitat Management and Permitting, DNR, as appropriate, will identify the species affected, the need for replacement or enhancement, and the suggested method for addressing the impact. Replacement with or enhancement of similar habitats of the affected species in the same region is preferable. DNR will consider only those replacement and enhancement techniques that have either been proven to be, or are likely to be, effective and that will result in a benefit to the species impacted by the development. Replacement or enhancement will only be required by DNR if it is determined to be in the best interest of the state either through the AS 38.05.035(e) or the permit review process.

**B. Allowing Uses in Fish and Wildlife Habitats (Ha).** The areas designated Habitat (Ha) in Chapter 3 of the plan were defined using the best available information when the plan was written. Most of the areas designated "Ha" are tidelands and submerged land areas; relatively few upland units were given this designation. It should be noted that many of the large, interior upland units on Kodiak Island contain areas of sensitive habitat but were not assigned a Habitat designation. Instead, these large units were assigned the designation of General Use, reflecting the large size, lack of dominance of any one resource, or absence of known or anticipated development. In these instances, information on the sensitive resource(s) as well as management intent language has been provided. The latter has been used to indicate the kind and level of protection to be afforded the resource(s).

In the designation of habitat areas on tidelands, data sources were sometimes of a generalized nature. Because of this and in order to be conservative in the delineation of habitat areas, large tideland areas were identified. The wildlife and fishery information identified for specific units in Chapter 3 occupy either part or all of the area of a unit.<sup>1</sup>

The resource that was used to make the determination that an area should be designated "Ha" is identified in the unit descriptions contained in Resource Allocation Tables in Chapter 3 under the column, "Resources and Uses". In some cases, there is only a single resource but in other instances, several resources exist, with these resources sometimes occupying differing portions of the unit. The spatial distribution of habitat resources is described in the management intent language, if known. Units are to be managed to protect the resource(s) identified in these tables. Areas of sensitive habitat in units designated General Use are, similarly, to be managed to protect the resource that is identified.

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<sup>1</sup> Note to DNR adjudicators: Accordingly, there may be portions of a unit that do not contain the resource(s) that is/are identified in the specific unit descriptions under the "Resources and Uses" column in Chapter 3.

Since there is a distinct seasonality associated with the critical life periods of certain terrestrial mammals, marine mammals and fish, seasonality shall be taken into consideration during project review and approval. Seasonality and critical life cycle stages are identified in ADF&G publications.<sup>2</sup> Thus, it may be possible that uses and facilities may be appropriate within areas designated “Ha” if the seasonality criteria are satisfied by including mitigating measures in project design.

Tideland and upland uses that are not consistent with the types of uses associated with the approved designation or are not authorized in the management intent statement for a specific unit and that, if permitted, *would* result in the degradation of the resource(s) associated with areas designated “Ha”, are to be considered incompatible with the plan's management intent and, specifically, with the “Ha” designation. Degradation of the resource might result from actions involving one or more of the following factors: dredging, filling, significant compaction of vegetation and sediment, alteration of flow patterns, discharge of toxic substances, or disturbance during sensitive periods. If there is a question as to whether a use would be appropriate or whether it would de-grade a listed resource, DNR shall consult with ADF&G and the Office of Habitat Management and Permitting, DNR, in making the determination of initial incompatibility.

Non-designated uses that cause significant adverse impacts to the resources identified within a given “Ha” unit *may* be allowed *if*:

- ADF&G determines through new information or more detailed analysis that the area is not “Ha” as defined in the plan; or
- If DNR in consultation with ADF&G determines that the non-designated use can be made compatible and significant adverse impacts to the “Ha” area avoided with appropriate design, siting, and operating stipulations; or
- The use (project) is found consistent under the ACMP and significant adverse impacts are mitigated under Management Guideline A.

**C. Allowing Uses Outside of Designated Fish and Wildlife Habitat Areas.** Outside of areas designated Habitat, habitat-altering uses will be sited consistent with the management guidelines in this chapter, and the management intent and guidelines in Chapter 3.

**D. Habitat Manipulation: General Requirements.** Habitat restoration through water control, timber management practices, removal of pollution sources, or other measures may be used to improve habitat for certain fish and wildlife species where ADF&G or the Office of Habitat Management and Permitting, DNR, as appropriate, determines that it is beneficial to the species or habitat and DNR determines that it is compatible with other primary uses.

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<sup>2</sup> These publications include, but are not limited to the following: ADF&G Regional Habitat Guides and NOAA's Oil Spill Response Atlas. Note to DNR adjudicators: In the event that information is not contained in these publications, consult other pertinent publications and ADF&G to determine seasonality.

**E. Habitat Manipulation: Management of Invasive Plant Species.** The management of invasive plant species is of concern in the Kodiak Archipelago. The state is to manage its lands and waters to avoid the introduction of and reduce the spread of invasive non-native plants, consistent with the requirements of 11 AAC 34. Although the strategic management plan for noxious and invasive plant species recognizes this as a statewide issue, in most instances this problem is best handled at the local level. The Kodiak Soil and Water Conservation District has a program in place that currently concentrates on surveying areas of infection and providing landowners with treatment options and Best Management Practices in an effort to manage these species. Contact them for more information.

**F. Hatchery and Aquatic Farm Source Waters.** To preserve the quality of an existing hatchery's water supply, uses should not be located on state land where they would risk reducing water quality or quantity below that needed by the hatchery or aquatic farm.

**G. Water Intake Structures.** When issuing water rights for waters providing fish habitat, DNR will require that practical water intake structures be installed that do not result in entrainment or impingement of fish and will maintain instream flows needed to sustain existing fish populations. The simplest and most cost-effective technology may be used to implement this guideline.

Water intake structures should be screened, and intake velocities will be limited to prevent entrapment, entrainment, or injury to fish. The structures supporting intakes should be designed to prevent fish from being led into the intake. Other effective techniques may also be used to achieve the intent of this guideline. DNR, DMLW and the Office of Habitat Management and Permitting should be consulted to determine screen size, water velocity, and intake design if the intake structure is in fish habitat.

**H. Alteration of the Riverine Hydrologic System.** To the extent feasible, channelization, diversion, or damming that will alter the natural hydrological conditions and have a significant adverse impact on important riverine habitat will be avoided.

**I. Threatened and Endangered Species.** All land use activities will be conducted consistent with state and federal Endangered Species Acts to avoid jeopardizing the continued existence of threatened or endangered species of animals or plants; or to provide for their continued use of an area and to avoid modification or destruction of their habitat. Specific mitigation recommendations should be identified through inter-agency consultation for any land use activity that potentially affects threatened or endangered species. Within the planning area, four species are under the jurisdiction of the U.S. National Marine Fisheries Service, U.S. Fish and Wildlife Service, or Alaska Department of Fish and Game as threatened (T) or endangered (E) in accordance with the state and federal Endangered Species Acts, as amended. Four species are identified by the federal government as either Threatened or Endangered, while the state identifies two of these four as either Threatened or Endangered. The table, below, identifies the species identified by the federal government as Threatened or Endangered. The two species identified as Threatened or Endangered by the state are noted.

Species	Status
Short-tailed Albatross ( <i>Diomedea albatros</i> )*	E
Humpback Whale ( <i>Megaptera novaeangliae</i> )*	E
Stellar Sea Lion ( <i>Eumetopias jubatus</i> )	E (western population)
Stellar Sea Lion ( <i>Eumetopias jubatus</i> )	T (eastern population)
Stellar's eider ( <i>Polysticta stelleri</i> )	T

\* Also included on the State's Threatened and Endangered list.

The U.S. Fish and Wildlife Service, Division of Ecological Services or the National Marine Fisheries Service will be consulted on questions that involve endangered species.

**J. Eagles.** Authorizations or disposals that potentially affect bald eagles will be consistent with the state and federal Endangered Species acts and the Bald Eagle Protection Act of 1940 as amended. Applicable standards are drawn from a cooperative agreement signed by the U.S. Forest Service and the U.S. Fish and Wildlife Service (USFWS), or such subsequent standards that may be promulgated. The USFWS may not determine them to be adequate in all circumstances. In addition, meeting the guidelines does not absolve the party from the penalty provisions of the Bald Eagle Protection Act; therefore, the USFWS should be consulted when activities may affect bald or golden eagles.

1. **Siting Facilities to Avoid Eagle Nests.** Facilities determined by the U.S. Fish and Wildlife Service to cause significant disturbance to nesting eagles will not be allowed within 330 feet of any bald eagle nest site, whether the nest is currently active or not.
2. **Activities Disturbing Nesting Eagles.** Activities the U.S. Fish and Wildlife Service determines likely to cause significant disturbance to nesting eagles will be prohibited within 330 feet of active bald eagle nests between March 15 and August 31. Temporary activities and facilities that do not alter eagle nesting habitat or disturb nesting eagles, as determined by the USFWS, may be allowed at other times.

**K. Sea Lion Haulouts and Rookeries and Sea Bird Colonies.** Individual sea lion haulouts, rookeries and sea bird colonies<sup>3</sup> not contained within specific tideland units are designated Habitat (Ha) and are to be managed according to Management Guideline H, 'Allowing Uses in Fish and Wildlife Habitats'. Authorizations should not be granted that will adversely impact these sites. Consult the US Fish and Wildlife Service and the Department of Fish and Game prior to granting authorizations to identify these haulout, rookery and colony locations, and to define minimum distance separation requirements and specific use restrictions.

**L. Soil Erosion.** Soil erosion will be avoided by restricting soil disturbance along waterbodies and by stabilizing disturbed soil as soon as possible.

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<sup>3</sup> Defined as 500 or more sea birds.

**M. Fish and Wildlife Enhancement on State Lands.** Fish and wildlife enhancement activities on state lands, whether by ADF&G or other parties, will be consistent with the management intent for those lands. Enhancement activities likely to attract significant public use, including sport fishing use, will be designed and located to minimize the impact of additional public use on the existing recreation resources, including anchorages, campsites, and existing and intended wilderness values.

**N. Grounding of Floating Facilities.** See management guideline L under Floating Facilities.

**O. Protection of Fish and Wildlife Resources - Transportation Facilities.** Important fish and wildlife habitats such as those described as riparian areas, wildlife movement corridors, important wintering areas, and threatened or endangered species habitat should be avoided in siting transportation routes unless no other feasible and prudent alternatives exist. Location of routes and timing of construction should be determined in consultation with the ADF&G and DNR, Office of Habitat Management and Permitting, as appropriate.

### **Management Guidelines: Harvest Areas**

**A. Allowing Uses Within Designated Harvest Areas (Hv).** Considerations similar to those identified in the Habitat portion apply to areas designated Harvest (Hv). Only tideland units are affected by the Harvest designation.

The areas designated “Hv” in Chapter 3 of the plan were defined using the best available information at the time of plan preparation. In the designation of these areas, data sources were of a generalized nature, oftentimes at the 1:250,000 scale. Because of this and in order to be conservative in the delineation of harvest areas, large tideland areas were identified. In some cases, there is only a single harvest resource but in other instances several resources exist, with these resources sometimes occupying differing portions of the unit.<sup>4</sup> The spatial distribution of harvest resources is described in the management intent language, if known.

Units designated Harvest will be managed to ensure minimal disturbance to the harvest resources identified for a given area. Since there is a distinct seasonality associated with the critical life periods of certain marine mammals and fish, seasonality shall be taken into consideration during project review and approval. Seasonality and critical life cycle stages are identified in ADF&G publications.<sup>5</sup> Thus, it may be possible that uses and facilities may be appropriate within areas designated Harvest if the seasonality criteria are satisfied by including mitigating measures in project design.

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<sup>4</sup> Note to DNR adjudicators: Accordingly, there may be specific portions of a unit that may not contain the harvest resource(s) that is/are identified.

<sup>5</sup> These publications include, but are not limited to, the following: ADF&G Regional Habitat Guides and NOAA's Oil Spill Response Atlas. Note to DNR adjudicators: In the event that information is not contained in these publications, consult other pertinent publications to determine seasonality.

The resource(s) used to make the determination that an area should be designated Harvest are identified in the unit descriptions contained in the Resource Allocation Tables in Chapter 3 under the column, "Resources / Uses / Additional Information". In some cases, there is only a single resource but in other instances, several resources exist, with these resources sometimes occupying differing portions of the unit. The spatial distribution of harvest resources is described in the management intent language, if known.

Tideland and upland uses that are not consistent with the types of uses associated with the approved designation or are not authorized in the management intent statement for a specific unit, and uses that if permitted *would* result in the degradation of the resource(s) associated with areas designated Harvest or Ha/Hv are to be initially considered incompatible with the plan's management intent and with the Harvest and Ha/Hv designations. If there is a question as to whether a use would be appropriate or whether it would degrade a listed resource, DNR shall consult with ADF&G, in making the determination of initial incompatibility.

Uses may be permitted if the proposed use avoids the resource or if, through stipulations, it can be made to have minimal adverse impact on the harvest activity for which the area was designated. In instances when the proposed use cannot avoid the harvest area or cannot mitigate significant impacts through design, siting, or operation stipulations, the use may be permitted if the following conditions are satisfied:

- ADF&G determines through new information or more detailed analysis that the area is not Harvest or Ha/Hv as defined in the plan; or
- the use is of sufficient public importance or lacks a feasible and prudent alternative consistent with the guideline of the plan
- the use (project) is found consistent under the ACMP and significant adverse impacts are mitigated under Management Guideline A.

**B. Allowing uses in Other than Designated Harvest Areas.** Within the plan boundary, essentially all tidelands and submerged lands are used for some form of subsistence, sport or commercial harvest at some time during the year. The entire planning area is fully utilized by fisheries for one species or another. Maps depicting the areas used for harvest (sport, subsistence, and commercial) are identified in the ADF&G publication, Atlas to the Habitat Management Guide: Southwest Region (1985). More detailed information on harvest areas is included within publications and reports of the ADF&G. These reports should be consulted for site specific decisions.

Significant harvest areas occur oftentimes in areas designated General Use (Gu). Under that portion of the "Gu" definition (see Definitions, Chapter 3) applying to intertidal and submerged lands, all lands of this type are recognized to contain important fisheries for one or more subsistence, recreational and commercial harvest fisheries.

**C. Activities Adjacent to Designated Harvest Areas.** Uses adjacent to intensively used commercial, recreation, community, or subsistence harvest areas will not preclude access to harvest activities during the harvest or use season.

## **Management Guidelines: Special Management Areas - Tidelands & and Submerged Lands; Other**

**A. Activities in Intensive Purse Seine and Gill Net Areas.** Tideland facilities should not be located where they would obstruct drift, set net or seine use of the shoreline in intensive purse seine and gill net areas.

**B. Activities in Traditional Use Commercial Herring Areas.** Activities should avoid disruption of the harvest within traditional herring fishery areas including the sac roe and wild kelp harvest fishery areas.

**C. Anchorages.** See Management Guidelines for Floating Facilities.

**D. Special Management Areas – Tidelands and Submerged Lands.** Special management areas termed ‘Tideland Resource Management Zones’ for tidelands and submerged lands apply where large areas of marine waters and tidelands are to be managed in a coordinated manner. These areas are significantly larger than a typical tidelands management unit, do not properly fit into the definition of a typical management unit as used in this plan, and are often under common ownership for some protected purpose. There are four such Tidelands Resource Management Zones. One affects the tidelands adjacent to the Kodiak NWR on Afognak and Kodiak Islands. Another affects the Becharof and Alaska Peninsula NWRs and the Katmai National Park and Preserve on the Alaska Peninsula. This same management zone also affects the Alaska Maritime NWR, which occupies various offshore rocks, islets, and islands. Another affects the tidelands adjacent to the Afognak Island and Shuyak Island State Parks and the last, the tidelands adjacent to Tugidak Island Critical Habitat Area. These areas are depicted on the individual plan maps in Chapter 3. Management intent language and guidelines are identified for these areas, similar to tidelands units. These management statements are contained in the section termed ‘Management Summary, Tidelands’ in the general description of management intent for the Kodiak Region contained in Chapter 3.

**E. Management of EVOS Acquisitions and Conservation Easements.** State lands or conservation easements acquired through Exxon-Valdez Oil Spill (EVOS) funds have special attributes which will enhance, restore, replace and rehabilitate injured natural resources and habitat areas particularly for those species that sustained significant injury resulting from the Exxon-Valdez oil spill. Changing the topography, dumping trash, using biocides, removing or destroying plants except for subsistence or medicinal use, altering watercourses, using motorized vehicles with the exception of floatplanes, removing or harvesting timber, and introducing non-indigenous plants in these areas is prohibited. Management activities on EVOS-acquired units must further the restoration objectives of the EVOS Restoration Plan, facilitate appropriate public use of these units or convey information necessary for public safety or the protection of natural resources. Limited facilities such as public use cabins, weir sites, trails and campsites may be constructed for research or management purposes. Any facilities or other development on the units acquired through EVOS funds shall be of limited impact and in keeping with the goals of restoration. Warranty deeds and



conservation easement documents need to be reviewed for specific unit restrictions prior to authorizing activities in these areas and areas directly adjacent to these lands. Although the Trustees acquired the surface estate of these units, in some cases they did not purchase the mineral estate. For this reason, nothing in this guideline should be interpreted to diminish the rights of the owner of the mineral estate.

**F. Management of ADF&G Salmon Special/Terminal Harvest Areas.** Special Harvest Areas (SHA) and Terminal Special Harvest Areas (THA) are used by ADF&G to manage the harvest of hatchery produced salmon.<sup>6</sup> SHAs have been established at Kitoi Bay, Spiridon Bay, Foul Bay, Waterfall Bay and Settler Cove. A THA has been established at Malina Creek. The Kitoi Bay SHA allows the orderly harvest of salmon returning to the Kitoi Hatchery while providing adequate protection for local natural salmon stocks. Fishing time is regulated to ensure that broodstock collection and hatchery cost recovery goals are achieved. The other areas are managed to harvest salmon that are returning as a result of stocking projects at barriered lakes. These areas are managed to allow the harvest of the stocked return without compromising wild stock escapements. Prior to issuing authorizations in either SHA or THA areas, DNR should coordinate with ADF&G to determine whether the proposed use would compromise these areas and to identify if use stipulations are necessary.

**G. Other Guidelines Affecting Fish and Wildlife Habitat.** Other guidelines may affect the protection and management of fish and wildlife habitat. See the following sections of this chapter:

- Aquatic Farming
- Coordination and Public Notice
- Floating Facilities
- Forestry
- Instream Flow
- Material Sites
- Recreation, Tourism, and Scenic Resources
- Settlement
- Shorelines, Stream Corridors and Coastal Areas
- Subsurface Resources

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<sup>6</sup> Both Special and Terminal Harvest Areas are managed under standards specified in Alaska Administrative Code. See 5 AAC 40.085 for Special Harvest Areas and 5 AAC 18.378 for Terminal Harvest Areas.