

Kenai National Wildlife Refuge  
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### **COMPATIBILITY DETERMINATION**

*The National Wildlife Refuge System Administration Act of 1966, as amended (16 U.S.C. 668dd-668ee) states that “The Secretary is authorized, under regulations as [s]he may prescribe, to – (A) permit the use of any area within the [National Wildlife Refuge] System for any purpose, including but not limited to hunting, fishing, public recreation and accommodations, and access wherever [s]he determines that such uses are compatible’ and that “... the Secretary shall not initiate or permit a new use of a refuge or expand, renew, or extend an existing use of a refuge, unless the Secretary has determined that the use is a compatible use and that the use is not inconsistent with public safety.” A compatible use is defined as “A proposed or existing wildlife-dependent recreational use or any other use of a national wildlife refuge that, based on sound professional judgment, will not materially interfere with or detract from the fulfillment of the National Wildlife Refuge System mission or the purposes of the national wildlife refuge.” The compatibility determination is to be a written determination signed and dated by the Refuge Manager and Regional Chief of the National Wildlife Refuge System, signifying that a proposed or existing use of a national wildlife refuge is a compatible use or is not a compatible use.*

*Applicable compatibility regulations in 50 CFR Parts 25, 26, and 29 were published in the Federal Register October 18, 2000 (Vol. 65, No. 202, pp 62458 – 62483).*

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**Use:** Misc. Commercial Uses (Rafting, Air Taxi, Russian River Ferry, etc.)

**Refuge:** Kenai National Wildlife Refuge

**Establishing and Acquisition Authorities:** The Refuge was first established as the Kenai National Moose Range by Executive Order 8979 on December 16, 1941. The boundaries were modified, purposes expanded, and name changed to Kenai National Wildlife Refuge under the provisions of the Alaska National Interest Lands Conservation Act (ANILCA) on December 2, 1980 (Public Law 96-487 Stat. 2371).

**Refuge Purposes:** The Executive Order purpose was primarily to “... protect the natural breeding and feeding range of the giant Kenai moose on the Kenai Peninsula, Alaska...”. ANILCA purposes for the Refuge include: “(i) to conserve fish and wildlife populations and habitats in their natural diversity including, but not limited to moose, bear, mountain goats, Dall sheep, wolves and other furbearers, salmonids and other fish, waterfowl and other migratory and nonmigratory birds; (ii) to fulfill the international treaty obligations of the United States with respect to fish and wildlife and their habitats; (iii) to ensure to the maximum extent practicable and in a manner consistent with the purposes set forth in paragraph (i), water quality and necessary water quantity with the refuge; (iv) to provide in a manner consistent with subparagraphs (i) and (ii), opportunities for scientific research, interpretation, environmental education, and land management training; and (v) to provide, in a manner compatible with these purposes, opportunities for fish and wildlife oriented recreation.” The Wilderness Act of 1964 (Public Law 88-577) purposes are to secure an enduring resource of wilderness, to protect and preserve the wilderness character of areas within the National Wilderness Preservation System,

and to administer this wilderness system for the use and enjoyment of the American people in a way that will leave them unimpaired for future use and enjoyment as wilderness.

Policy (FWS 603 2.8) directs that pre-ANILCA purposes remain in force and effect, except to the extent that they may be inconsistent with ANILCA or the Alaska Native Claims Settlement Act, and that such purposes only apply to those areas of the Refuge in existence prior to ANILCA. The Executive Order purpose to protect Kenai moose, however, is treated as complimentary to the broader ANILCA purpose of conserving fish and wildlife populations; therefore, no special attention is given the Executive Order purpose in this compatibility review process.

Sec. 4(a) of the Wilderness Act provides that the purposes of the Act are to be within and supplemental to the purposes for which national wildlife refuges are established and administered. These purposes are applied to the approximately 1.3 million acres of Congressionally designated wilderness within the Refuge. While these purposes do not apply to the remaining approximately 700,000 acres of Refuge lands that are not designated as wilderness, we must consider the effects of uses on any Refuge lands that might affect the wilderness areas.

**National Wildlife Refuge System Mission:** The National Wildlife Refuge System Mission is “To administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans.

**Description of Use:** This compatibility determination includes a variety of currently permitted commercial activities that are not included in other contemporary compatibility reviews. Specifically it includes commercial scenic rafting, air taxi operations, operation of the Russian River Ferry and access area, simple commercial filming activities, and a variety of services authorized under conditions of a special use permit including backcountry transport services or guiding for misc. (not hunting or fishing) purposes, like guided canoe trips, overnight hiking and camping trips, or wildlife viewing and photography trips. While all of these commercial uses are generally covered under this determination, a specific determination may be required at any time for a specific use or group of uses. For example, this compatibility determination generally covers commercial filming and is likely to suffice for a day or two of filming for an outdoor fishing show, but if the proposal was to do a feature length film, requiring overnight use, helicopters, large numbers of crew and extras, etc., a specific compatibility determination will almost certainly have to be prepared.

The Refuge currently has 12 permittees specific to commercial scenic rafting (and approximately 5 more multiple use permits that allow the activity along with other uses), 13 permitted air taxi operators, 5 permittees authorized to conduct guided canoe trips, five horse packer/transporters, and eight permittees authorized for commercial photography uses. Some of the permits include a variety of activities, such as hiking, camping, wildlife viewing, fishing, photography services, along with guided canoe trips. Additionally, a commercial contract is let every five years for a commercial operator to oversee public use operations at the Kenai/Russian River Ferry. The numbers and types of permits change a little from year to year, but are generally consistent with the overall services described here as being provided.

Scenic rafting primarily occurs on the Upper Kenai River between Sportsman’s Lodge (Russian River Area) to Jim’s Landing, or further downriver to Skilak Lake. Operations continuing to Skilak Lake travel through the Kenai River Canyon which provides some whitewater and a more remote (away from roads and facilities) experience. Wildlife commonly seen along the route may include moose, black and brown bear, Dall sheep, bald eagles, waterfowl, and shorebirds.

Permittees solely authorized for rafting trips may not allow clients to fish, however, viewing of salmon migration, salmon spawning, and riverside angler activities add to the viewing pleasure of the clients. Scenery includes the Kenai River itself, adjacent boreal forests, mountains, fireweed and other flowers, Skilak Lake and Glacier and a variety of habitats and natural influences, such as areas re-growing following recent wildfires. Scenic rafting permits for the Upper Kenai River have been capped at no more than 17; however, there are no current limits on the growth of the businesses having those permits (can add more boats and clients without restriction at present). Because the permits are limited in nature, they are subject to regulatory requirements involving a competitive bid process when permits expire. In general, the permits are valid for five years and may be renewed once, for another five years, without a new competitive process.

Air taxi operators primarily use float-equipped single engine airplanes to drop-off hunters, fishermen, and hikers for backcountry trips. Flight-seeing, with landings, also occur as do transport to Refuge cabins for overnight stay. Air taxi operators also provide services to agencies, organizations, and businesses conducting official business such as geological exploration, scientific research, and fish and wildlife monitoring. On occasion larger multi-engine airplanes are employed for special missions. Limited upland landing areas are open and permitted air taxi operators are authorized to use them. These uses are generally limited to support of waterfowl or bear hunting ventures, or in support of sport fishing activities.

The Russian River Ferry operation is a type of concession currently operated under permit by Alaska Rivers Management. The contract is offered for bid every five years, and a number of operators have successfully bid and received the contract over the years. Cook Inlet Region, Inc. has a legislated first right of refusal for the Ferry operation and other revenue generating visitor services in the area, and could choose to operate the business in the future, subject to the same contractual requirements as any successful bidder would be. The operation consists of managing the Russian River Ferry Access Area including boat launch, camping, parking, ferry operation, and maintenance (litter control, toilet pumping, etc.). The primary purpose of the operation is to provide access across the Kenai River from the Sterling Highway side parking area, to the opposite shore at the confluence of the Kenai and Russian Rivers. This site is the most popular fishing location in the State, hosting tens of thousands of anglers each year. Sockeye salmon are the primary species sought June – August; however, fishing also occurs for rainbow trout, Dolly Varden char, and silver salmon later in summer and early Fall. The current Ferry contract requires operation roughly between Memorial Day and Labor Day each year.

Photography operations vary from a lone photographer desiring to take photographs to sell to a magazine, to a large film crew producing television programs or feature length films. Locations and special needs also vary greatly and are addressed in conditions of special use permits. Currently all commercial video productions require a Special Use Permit but still photographers, who may sell their photographs, but do not require special privileges to acquire the images (such as access to restricted areas) are not required to get a permit. Filming proposals that are not deemed appropriate, that pose too much risk to wildlife or habitats, or have significant safety concerns are denied without issuing a permit.

**Availability of Resources:** This compatibility determination is not addressing any specific new proposed use; rather, it is reviewing general ongoing activities that have been found compatible in the past and are likely to continue on the Refuge in some form in the future. There is no specific need for additional resources to manage the uses other than base funding currently held by the Refuge. All of the commercial uses described here are permitted under discretionary actions, and though the Refuge will not cancel existing permits without significant cause, new permits may or may not be issued. One reason they may not be issued would be due to lack of adequate

resources to effectively administer the use. This decision may be made without completing a new compatibility determination or revising this one.

**Anticipated Impacts of the Use:** Impacts from the uses described are as variable as the uses themselves and range from minor to potentially significant. On the lower end of impacts include such activities as a single photographer taking still photographs. Minor habitat disturbance or disturbance to wildlife may occur from the activity, but would generally not be of any notice unless the photographer approached wildlife, such as bears or moose, too close or chose to build a photo blind in an unacceptable location or manner. Such concerns can easily be addressed through permit stipulations. On the other end of the range of projected impacts, operation of the Russian River Ferry and access area has significant effects to the area and Refuge resources. This area, of approximately 2,000 acres, has had intense fishing pressure for thousands of years, first with Native village sites and now with recreational users engaged in what is often referred to as “combat fishing”. Impacts to the area, users, and resources include trampling of riverbank vegetation and erosion of stream banks from foot traffic; loss of cultural artifacts through erosion along the river, damage, or theft; litter; sanitation problems; vandalism; escape of campfires; problems with bears leading to human or bear injury or death; poaching and crimes against people; and disturbance to fish and wildlife. These impacts have been accepted for decades for a variety of reasons, primarily to provide highly sought after fishing (wildlife-dependent recreation) in a concentrated area that is readily accessible to the public. The impacts to the area are very evident, but not in consideration of the Refuge as a whole, and significant efforts by several State and Federal agencies effectively mitigate many of the negative impacts. Additionally, the commercial use of the area (managed via contract) not only does not contribute to the impacts, but lessens them. For example, the contractor provides litter clean-up, education to visitors about bears, and notifies law enforcement staff to violations.

Some proposed commercial uses may have specific impacts that would need to be analyzed in a separate compatibility determination.

**Public Review and Comment:** This compatibility determination has been prepared while revising the Refuge’s Draft Comprehensive Conservation Plan and Environmental Impact Statement. Future revisions can be accomplished outside of this planning process if deemed necessary and would be completed with public notice and involvement. Legal notice of the draft compatibility determination was published in the Anchorage Daily News and Kenai Peninsula Clarion on February 25, 2007 which initiated a 45-day public comment period. The notice was also posted on a bulletin board at the Refuge headquarters for the same time period, made available starting February 28, 2007 on a list server [fws-akrefugecompatibility@lists.fws.gov](mailto:fws-akrefugecompatibility@lists.fws.gov) to 137 addresses, and made available on the Regional Refuge Planning web site at <http://alaska.fws.gov/nwr/planning/completed.htm>.

Comments on some or all of the (15) compatibility determinations were received from: The State of Alaska, The Wilderness Society, The National Wildlife Refuge Association, Friends of Kenai National Wildlife Refuge, Alaska Trappers Association, Defenders of Wildlife, Kenai Field Office (FWS), and The Humane Society of the United States.

Defenders of Wildlife expressed concern that the compatibility determination was too general to be of specific use. They also were concerned that there was no mention of 50 CFR 29.1 requirements regarding commercial activities. We agree that the determination is fairly general, but believe that, along with the specific reviews and compliance checks given special use permits or contracts associated with individual commercial uses, that adequate protection is given refuge resources and that administrative processes are reasonably accomplished. In consideration of 50

CFR 29.1, compliance decisions are routinely made for commercial use requests when applicable, but not part of a compatibility review process.

**Determination (check one below):**

Use is Not Compatible

Use is Compatible With Following Stipulations

**Stipulations Necessary to Ensure Compatibility:** All commercial uses are discretionary, unless specifically mandated by law or other legally binding directives, and, if permitted, are subject to the conditions of a special use permit. These controls (discretionary permitting and establishment of specific conditions if permitted) allow for adequate authority to address compatibility issues if they arise. Standard permit conditions may be amended to address concerns and specific conditions may be included to address concerns unique to a specific proposal. The general permit conditions for guides and outfitters include requirements to abide by all regulations and permit conditions, advise of responsibility for ensuring that all employees and others working under the permit are familiar with the conditions and adhere to them, submission of a use report (including number and type of clients guided, number of days per client, locations used, and number and species of fish or wildlife harvested), payment of fees, conditions for transfer of privileges, notification before beginning activities, requirements for sanitation, limits on structures, fire prevention standards, protection of archaeological resources, conditions specific to wildlife, use of firearms, notice of non-exclusive use, conditions for permit termination or suspension, limits on advertising, use of airplanes, addressing hazards, prohibitions on fuel caches and the construction of structures or abandonment of property, and information specific to the use of Native or State lands within the Refuge.

Specific permit conditions for air taxis, transporters, outfitters, and guides include requirements on providing vehicle identification numbers, compliance with all Alaska Statutes, restrictions on base camp locations, limitations on where horses may be kept, restrictions on horse use on some trails, limitations on camp materials and caching of materials, prohibition on baiting of wildlife, use report requirements, and certain area closures or restrictions to protect wildlife.

Permit stipulations included specific to guiding in the Swanson River and Swan Lake Canoe Systems includes group size limits, prohibition of pioneering new camping areas, registration requirements, and requirement to provide each person using a canoe with a U.S. Coast Guard approved life jacket.

For guides and outfitters utilizing watercraft outside of the canoe system, permit requirements include right-of-way requirements with vessels having smaller horsepower and in the Russian River Ferry area, safety equipment requirements, requirements to obtain and display permits/stickers, limitations on staging and launching areas, compliance requirements with other State and Federal regulations, motorboat restrictions (drift only areas), and horsepower restrictions and no wake zones.

**Justification:** The uses described above are long-term ongoing uses that are discretionary in nature. Most are supportive in nature of other uses (providing guiding or transport services to

hunters, fishermen, or campers, etc.) vs. being a use unto themselves (such as commercial photography). Adequate controls are in place to administer the uses and minimize impacts.

**Signature (Refuge Manager):** /s/ Robin L. West 6/13/07  
Signature and Date

**Concurrence (Regional Chief):** /s/ Todd J. Logan 8/14/07  
Signature and Date

**Mandatory 10-year Re-evaluation Date:** 8/14/17