

Appendix F

Compatibility Regulations



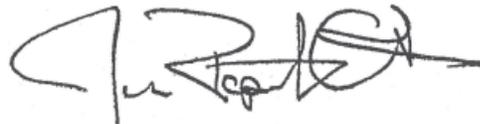
U.S. FISH AND WILDLIFE SERVICE TRANSMITTAL SHEET

PART 603 FW 2	SUBJECT National Wildlife Refuge System Uses Compatibility	RELEASE NUMBER 360
ORIGINATING OFFICE Division of Refuges		DATE November 17, 2000

EXPLANATION OF MATERIAL TRANSMITTED:

This chapter establishes the process for determining whether or not a use of a national wildlife refuge is a compatible use, incorporating the compatibility provisions of the National Wildlife Refuge System Improvement Act of 1997, that amends the National Wildlife Refuge System Administration Act of 1966.

This chapter supersedes 5 RM 20 (Refuge Manual).



DIRECTOR

FILING INSTRUCTIONS:

Remove:

None

Insert:

603 FW 2, FWM 360, 11/17/00 (6 sheets)
Exhibit 1, 603 FW 2, FWM 360, 11/17/00
(1 sheet)
Exhibit 2, 603 FW 2, FWM 360, 11/17/00
(1 sheet)

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2.1 What is the purpose of this chapter? This chapter provides policy for determining compatibility of proposed and existing uses of national wildlife refuges.

2.2 What does this policy apply to? This policy applies to all proposed and existing uses of national wildlife refuges where we have jurisdiction over such uses.

2.3 What is the compatibility policy? The refuge manager will not initiate or permit a new use of a national wildlife refuge or expand, renew, or extend an existing use of a national wildlife refuge unless the refuge manager has determined that the use is a compatible use.

2.4 What are the objectives of this chapter?

A. To provide guidelines for determining compatibility of proposed national wildlife refuge uses and procedures for documentation and periodic review of existing national wildlife refuge uses; and

B. To ensure that we administer proposed and existing national wildlife refuge uses according to laws, regulations, and policies concerning compatibility.

2.5 What are our statutory authorities for requiring uses of national wildlife refuges to be compatible?

A. National Wildlife Refuge System Administration Act of 1966 as amended by the National Wildlife Refuge System Improvement Act of 1997, 16 U.S.C. 668dd-668ee (Refuge Administration Act). This law states that "The Secretary is authorized, under such regulations as he may prescribe, to -- (A) permit the use of any area within the System for any purpose, including but not limited to hunting, fishing, public recreation and accommodations, and access whenever he determines that such uses are compatible" 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." The law also provides that, in administering the National Wildlife Refuge System, "... the Secretary is authorized to . . . Issue regulations to carry out this Act." A significant directive of the Refuge Administration Act is to ensure that we maintain the biological integrity, diversity, and environmental health of the National Wildlife Refuge System for present and future generations of Americans. We are now using the term "ecological integrity" in lieu of the phrase "biological integrity, diversity, and environmental health." Uses that we reasonably may anticipate to conflict with pursuing this directive to maintain the ecological integrity of the System are contrary to fulfilling the National Wildlife Refuge System mission and are therefore not compatible. Fragmentation of the National Wildlife Refuge System's wildlife habitats is a direct threat to the integrity of the National Wildlife Refuge System, both today and in the

decades ahead. Uses that we reasonably may anticipate to reduce the quality or quantity or fragment habitats on a national wildlife refuge will not be compatible.

B. Refuge Recreation Act of 1962, 16 U.S.C. 460k-460k-4 (Refuge Recreation Act). This law requires that any recreational use of a national wildlife refuge must be compatible with the primary purposes for which the refuge was established.

C. Alaska National Interest Lands Conservation Act of 1980, P.L. 96-487, 94 Stat. 23-71 (ANILCA). Section 304 of ANILCA adopted the compatibility standard of the Refuge Administration Act for Alaska refuges.

2.6 What do these terms mean?

A. Compatibility determination. A written determination signed and dated by the refuge manager and Regional Chief signifying that a proposed or existing use of a national wildlife refuge is a compatible use or is not a compatible use. The Director makes this delegation through the Regional Director.

B. Compatible use. 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.

C. Comprehensive conservation plan. A document that describes the desired future conditions of a refuge or planning unit and provides long-range guidance and management direction to achieve the purposes of the refuge; helps fulfill the mission of the Refuge System; maintains and, where appropriate, restores the ecological integrity of each refuge and the Refuge System; helps achieve the goals of the National Wilderness Preservation System; and meets other mandates.

D. Conservation, and Management. To sustain and, where appropriate, restore and enhance, healthy populations of fish, wildlife, and plants utilizing, in accordance with applicable Federal and State laws, methods and procedures associated with modern scientific resource programs. Such methods and procedures include, consistent with the provisions of the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd-668ee), protection, research, census, law enforcement, habitat management, propagation, live trapping and transplantation, and regulated taking.

E. Coordination area. A wildlife management area made available to a State by:

(1) Cooperative agreement between the U.S. Fish and Wildlife Service and a State agency having control over

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wildlife resources pursuant to section 4 of the Fish and Wildlife Coordination Act (16 U.S.C. 664); or

(2) Long-term leases or agreements pursuant to title III of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1010 et seq.). The States manage coordination areas but they are part of the National Wildlife Refuge System. The compatibility standard does not apply to coordination areas.

F. Director. The Director, U.S. Fish and Wildlife Service or the authorized representative of such official.

G. Fish, Wildlife, and Fish and wildlife. Any member of the animal kingdom in a wild, unconfined state, whether alive or dead, including a part, product, egg, or offspring of the member.

H. National wildlife refuge, and Refuge. A designated area of land, water, or an interest in land or water located within the National Wildlife Refuge System but does not include coordination areas.

I. National Wildlife Refuge System, and System. All lands, waters, and interests therein administered by the U.S. Fish and Wildlife Service as wildlife refuges, wildlife ranges, wildlife management areas, waterfowl production areas, coordination areas, and other areas for the protection and conservation of fish and wildlife including those that are threatened with extinction as determined in writing by the Director or so directed by Presidential or Secretarial order. The determination by the Director may not be delegated.

J. National Wildlife Refuge System mission, and System mission. 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.

K. Plant. Any member of the plant kingdom in a wild, unconfined state, including any plant community, seed, root, or other part of a plant.

L. Purpose(s) of the refuge. The purposes specified in or derived from the law, proclamation, executive order, agreement, public land order, donation document, or administrative memorandum establishing, authorizing, or expanding a national wildlife refuge, national wildlife refuge unit, or national wildlife refuge subunit. For refuges that encompass Congressionally designated wilderness, the purposes of the Wilderness Act are additional purposes of the wilderness portion of the refuge.

M. Refuge management activity. An activity conducted by the Service or a Service-authorized agent to fulfill one or more purposes of the national wildlife refuge, or the National Wildlife Refuge System mission. Service-authorized agents

include contractors, cooperating agencies, cooperating associations, refuge support groups, and volunteers.

N. Refuge management economic activity. A refuge management activity on a national wildlife refuge that results in generation of a commodity which is or can be sold for income or revenue or traded for goods or services. Examples include: farming, grazing, haying, timber harvesting, and trapping.

O. Refuge Manager. The official directly in charge of a national wildlife refuge or the authorized representative of such official. In the case of a national wildlife refuge complex, this refers to the official directly in charge of the complex.

P. Regional Chief. The official in charge of the National Wildlife Refuge System within a Region of the U.S. Fish and Wildlife Service or the authorized representative of such official.

Q. Refuge use, and Use of a refuge. A recreational use (including refuge actions associated with a recreational use or other general public use), refuge management economic activity, or other use of a national wildlife refuge by the public or other non-National Wildlife Refuge System entity.

R. Regional Director. The official in charge of a Region of the U.S. Fish and Wildlife Service or the authorized representative of such official.

S. Secretary. The Secretary of the Interior or the authorized representative of such official.

T. Service, We, and Us. The U.S. Fish and Wildlife Service, Department of the Interior.

U. Sound professional judgment. A finding, determination, or decision that is consistent with principles of sound fish and wildlife management and administration, available science and resources, and adherence to the requirements of the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd-668ee), and other applicable laws. Included in this finding, determination, or decision is a refuge manager's field experience and knowledge of the particular refuge's resources.

V. State, and United States. One or more of the States of the United States, Puerto Rico, American Samoa, the Virgin Islands, Guam, and the territories and possessions of the United States.

W. Wildlife-dependent recreational use, and Wildlife-dependent recreation. A use of a national wildlife refuge involving hunting, fishing, wildlife observation and photography, or environmental education and interpretation. The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd-668ee) specifies that these are the

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six priority general public uses of the National Wildlife Refuge System.

2.7 What are our responsibilities?

A. Director. Provides national policy for making compatibility determinations to ensure that such determinations comply with all applicable authorities.

B. Regional Director.

(1) Ensures that refuge managers follow laws, regulations, and policies when making compatibility determinations.

(2) Makes the final decision on compatibility determinations when the Regional Chief does not concur with the refuge manager.

(3) Notifies the Director regarding controversial or complex compatibility determinations.

C. Regional Chief.

(1) Reviews all compatibility determinations for the purpose of deciding whether or not to concur.

(2) Refers a compatibility determination to the Regional Director if the Regional Chief does not concur with the refuge manager. Discusses nonconcurrency with the refuge manager for possible resolution before referring to the Regional Director.

(3) Notifies the Regional Director regarding controversial or complex compatibility determinations.

D. Refuge Manager.

(1) Determines if a proposed or existing use is subject to the compatibility standard.

(2) Determines whether a use is compatible or not compatible.

(3) Documents all compatibility determinations in writing.

(4) Ensures that we provide for public review and comment opportunities for all compatibility determinations, unless previously provided.

(5) Refers all compatibility determinations to the Regional Chief for concurrence.

2.8 What is the compatibility standard for Alaska refuges?

A. The Refuge Administration Act establishes the same standard for compatibility for Alaska refuges as for other national wildlife refuges. The provisions of ANILCA are the primary guidance refuge managers should apply when examining issues regarding subsistence use. We may alter the compatibility process, in some cases, for Alaska refuges to include additional procedural steps, such as when reviewing applications for oil and gas leasing on non-North Slope lands (ANILCA Sec. 1008) and for applications for transportation and utility systems (ANILCA Sec. 1104).

B. Alaska refuges established before the passage of ANILCA have two sets of purposes. Purposes for pre-ANILCA refuges (in effect on the day before the enactment of ANILCA) remain in force and effect, except to the extent that they may be inconsistent with ANILCA or the Alaska Native Claims Settlement Act, in which case the provisions of those Acts control. However, the original purposes for pre-ANILCA refuges apply only to those portions of the refuge established by the prior executive order or public land order, and not to those portions of the refuge added by ANILCA.

C. Section 22(g) of the Alaska Native Claims Settlement Act provides that patents issued to Village Corporations for selected land within the boundaries of a refuge existing on December 18, 1971, the signing date of the Act, will contain provisions that these lands remain subject to laws and regulations governing the use and development of such refuges. This includes application of the compatibility standard for such use and development, excepting certain differences provided in regulation (50 CFR 25.21) that acknowledge the unique status of these lands.

2.9 When is a compatibility determination required?

A. We require a compatibility determination for all refuge uses as defined by the term "refuge use" and must include in the analysis consideration of all associated facilities, structures, and improvements, including those constructed or installed by us or at our direction. This requirement will apply to all such facilities, structures, improvements, and refuge actions associated with uses that we approve on or after the effective date of this policy and to the replacement or major repair or alteration of facilities, structures, and improvements associated with already approved uses.

B. Facilities, structures, and improvements commonly associated with recreational public uses include: environmental education centers; boat/fishing docks; parking lots; boat ramps; roads; trails; viewing platforms/towers; and visitor centers.

C. Facilities, structures, and improvements commonly associated with refuge management economic activities include: loading/unloading areas; construction, operation,

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and maintenance buildings; parking lots; roads and trails; fences; stock ponds and other livestock watering facilities; and crop irrigation facilities.

D. We will make compatibility determinations for such facilities, structures, and improvements at the same time we make the compatibility determination for the use or activity in question.

2.10 When is a compatibility determination not required?

A. Refuge management activity. We do not require a compatibility determination for refuge management activities as defined by the term "refuge management activity" except for "refuge management economic activities." Examples of refuge management activities that do not require a compatibility determination include: prescribed burning; water level management; invasive species control; routine scientific monitoring, studies, surveys, and censuses; historic preservation activities; law enforcement activities; and maintenance of existing refuge facilities, structures, and improvements. In addition, we do not require compatibility determinations for State wildlife management activities on a national wildlife refuge pursuant to a cooperative agreement between the State and the Fish and Wildlife Service where the refuge manager has made a written determination that such activities support fulfilling the refuge purposes or the System mission.

B. Other exceptions.

(1) There are other circumstances under which the compatibility requirements may not be applicable. The most common exceptions involve property rights that are not vested in the Federal Government, such as reserved rights to explore and develop minerals or oil and gas beneath a refuge. In some cases, these exceptions may include water rights, easements, or navigable waters. Exceptions may apply when there are rights or interests imparted by a treaty or other legally binding agreement, where primary jurisdiction of refuge lands falls to an agency other than us, or where legal mandates supersede those requiring compatibility. Where reserved rights or legal mandates provide that we must allow certain activities, we should not prepare a compatibility determination. In the case of reserved rights, the refuge manager should work with the owner of the property interest to develop stipulations in a special use permit or other agreement to alleviate or minimize adverse impacts to the refuge.

(2) Communication and cooperation between the refuge manager and the owner of reserved rights will help protect refuge resources without infringing upon privately held rights. Refuge managers may find it helpful in these instances to secure legal advice from the Department of the Interior Office of the Solicitor.

(3) Compatibility provisions of the Refuge Administration Act do not apply to Department of Defense overflights or non-Department of Defense overflights above a refuge. However, other Federal laws (e.g., Airborne Hunting Act, Endangered Species Act, Bald Eagle Protection Act) may govern overflights above a refuge. For Department of Defense overflights, active communication and cooperation between the refuge manager and the local base commander will be the most effective way to protect refuge resources. For non-Department of Defense overflights, active communication and cooperation between the refuge manager and personnel at local airports, pilot training schools, and private groups regarding the Federal Aviation Administration's requested minimum altitudes over national wildlife refuges will be the most effective way to protect refuge resources.

(4) Compatibility requirements apply to activities on bodies of water in or within any area of the National Wildlife Refuge System. Under 50 CFR 25.11, this is effectively to the extent of the ownership interest of the United States in lands or waters. Where activities on water bodies not within an area of the National Wildlife Refuge System are affecting refuge resources, the refuge manager should seek State cooperation in managing the activities. If necessary, the refuge manager should consider refuge-specific regulations that would address the problem or consult with the Office of the Solicitor regarding other legal remedies for injury to refuge resources.

(5) Compatibility provisions of the Refuge Administration Act do not apply to activities authorized, funded, or conducted by another Federal agency that has primary jurisdiction over the area where a refuge or a portion of a refuge has been established, if those activities are conducted in accordance with a memorandum of understanding between the Secretary or the Director and the head of the Federal agency with primary jurisdiction over the area.

C. Emergencies. The Refuge Administration Act states that the Secretary may temporarily suspend, allow, or initiate any use in a refuge if the Secretary determines it is necessary to immediately act in order to protect the health and safety of the public or any fish or wildlife population. Authority to make decisions under this emergency power is delegated to the refuge manager. Temporary actions should not exceed 30 days and will usually be of shorter duration. Such emergency actions are not subject to the compatibility determination process as outlined in this chapter. When using this authority, the refuge manager will notify the Regional Chief in advance of the action, or in cases where the nature of the emergency requires immediate response, as soon as possible afterwards, and typically no later than the start of business on the first normal workday following the emergency action. The refuge manager will create a written record (memorandum to the file) of the decision, the reasons supporting it, and why it was necessary to protect the health and safety of the public or any fish or wildlife population.

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little concern if it involves few boats, but of increasing concern with growing numbers of boats. Likewise, when considered separately, a use may not exceed the compatibility threshold, but when considered cumulatively in conjunction with other existing or planned uses, a use may exceed the compatibility threshold.

(2) While refuge managers should be looking for tangible impacts, the fact that a use will result in a tangible adverse effect, or a lingering or continuing adverse effect is not necessarily the overriding concern regarding "materially interfere with or detract from." These types of effects should be taken into consideration but the primary aspect is how does the use and any impacts from the use affect our ability to fulfill the System mission and the refuge purposes. For example, the removal of a number of individual animals from a refuge through regulated hunting, trapping or fishing would, in many instances, help the refuge manager manage to improve the health of wildlife populations. However, the take of even one individual of a threatened or endangered species could significantly impact the refuge's ability to manage for and perpetuate that species. Likewise, wildlife disturbance that is very limited in scope or duration may not result in interference with fulfilling the System mission or refuge purposes. However, even unintentional minor harassment or disturbance during critical biological times, in critical locations, or repeated over time may exceed the compatibility threshold.

(3) The refuge manager must consider not only the direct impacts of a use but also the indirect impacts associated with the use and the cumulative impacts of the use when conducted in conjunction with other existing or planned uses of the refuge, and uses of adjacent lands or waters that may exacerbate the effects of a refuge use.

C. Making a use compatible through replacement of lost habitat values or other compensatory mitigation. We will not allow compensatory mitigation to make a proposed refuge use compatible, except by replacement of lost habitat values as provided in subparagraph D below. If the proposed use cannot be made compatible with stipulations we cannot allow the use.

D. Existing rights-of-way. We will not make a compatibility determination and will deny any request for maintenance of an existing right-of-way that will affect a unit of the National Wildlife Refuge System, unless (1) the design adopts appropriate measures to avoid resource impacts and includes provisions to ensure no net loss of habitat quantity and quality; (2) restored or replacement areas identified in the design are afforded permanent protection as part of the national wildlife refuge or wetland management district affected by the maintenance; and (3) all restoration work is completed by the applicant prior to any title transfer or recording of the easement, if applicable. Maintenance of an existing right-of-way includes minor expansion or minor realignment to meet safety standards. Examples of minor

expansion or minor realignment include: expand the width of a road shoulder to reduce the angle of the slope; expand the area for viewing on-coming traffic at an intersection; and realign a curved section of a road to reduce the amount of curve in the road.

E. Refuge-specific analysis. We must base compatibility determinations on a refuge-specific analysis of reasonably anticipated impacts of a particular use on refuge resources. We should base this refuge-specific analysis on information readily available to the refuge manager, including field experience and familiarity with refuge resources, or made available to the refuge manager by the State, tribes, proponent(s) or opponent(s) of the use, or through the public review and comment period. Refuge-specific analysis need not rely on refuge-specific biological impact data, but may be based on information derived from other areas or species that are similarly situated and therefore relevant to the refuge-specific analysis. We do not require refuge managers to independently generate data to make determinations but rather to work with available information. Refuge managers may work at their discretion with the proponent(s) of the use or other interested parties to gather additional information before making the determination. If information available to the refuge manager is insufficient to document that a proposed use is compatible, then the refuge manager would be unable to make an affirmative finding of compatibility, and we must not authorize or permit the use. See 2.12A(8) for additional information dealing with priority public uses.

F. Relationship to management plans. The refuge manager will usually complete compatibility determinations as part of the comprehensive conservation plan or step-down management plan process for individual uses, specific use programs, or groups of related uses described in the plan. The refuge manager will incorporate compatibility determinations prepared concurrently with a plan as an appendix to the plan. These compatibility determinations may summarize and incorporate by reference what the refuge manager addressed in detail in the comprehensive conservation plan, step-down management plan, or associated National Environmental Policy Act (NEPA) document.

G. Managing conflicting uses. The refuge manager may need to allocate uses in time and/or space to reduce or eliminate conflicts among users of the refuge. If this cannot be done, the refuge manager may need to terminate or disallow one or more of the uses. The Refuge Administration Act does not prioritize among the six wildlife-dependent recreational uses. Therefore, in the case of direct conflict between these priority public uses, the refuge manager should evaluate, among other things, which use most directly supports long-term attainment of refuge purposes and the System mission. This same analysis would support a decision involving conflict between two nonpriority public uses. Where there are conflicts between priority and nonpriority public uses, priority public uses take precedence.

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(1) The refuge manager should deny a proposed use without determining compatibility if any of the following situations exist:

(a) The proposed use conflicts with any applicable law or regulation (e.g., Wilderness Act, Endangered Species Act, Marine Mammal Protection Act, Migratory Bird Treaty Act);

(b) The proposed use conflicts with any applicable executive order, or written Department of the Interior or Service policy;

(c) The proposed use conflicts with the goals or objectives in an approved refuge management plan (e.g., comprehensive conservation plan, comprehensive management plan, master plan or step-down management plan);

(d) The proposed use has already been considered in an approved refuge management plan and was not accepted;

(e) The proposed use is inconsistent with public safety;

(f) The proposed use is a use other than a wildlife-dependent recreational use that is not manageable within the available budget and staff; or

(g) The proposed use conflicts with other resource or management objectives provided that the refuge manager specifies those objectives in denying the use.

(2) A compatibility determination should be prepared for a proposed use only after the refuge manager has determined that we have jurisdiction over the use and has considered items (a) through (g) above (see Exhibit 1).

E. Existing compatibility determinations. Compatibility determinations in existence prior to the effective date of this policy will remain in effect until and unless modified and will be subject to periodic reevaluation as described in section 2.11H. Any use specifically authorized for a period longer than 10 years (such as rights-of-way) is subject to a compatibility determination at the time of the initial application and when the term expires and we receive a request for renewal. We will use periodic reevaluations for such long-term uses to review compliance with permit terms and conditions.

2.11 What are considerations when applying compatibility?**A. Sound professional judgment.**

(1) In determining what is a compatible use, the Refuge Administration Act relies on the "sound professional

judgment" of the Director. The Director delegates authority to make compatibility determinations through the Regional Director to the refuge manager. Therefore, it is the refuge manager who is required and authorized to exercise sound professional judgment. Compatibility determinations are inherently complex and require the refuge manager to consider their field experiences and knowledge of a refuge's resources, particularly its biological resources, and make conclusions that are consistent with principles of sound fish and wildlife management and administration, available scientific information, and applicable laws. When a refuge manager is exercising sound professional judgment, the refuge manager will use available information that may include consulting with others both inside and outside the Service.

(2) The refuge manager must also consider the extent to which available resources (funding, personnel, and facilities) are adequate to develop, manage, and maintain the proposed use so as to ensure compatibility. The refuge manager must make reasonable efforts to ensure that the lack of resources is not an obstacle to permitting otherwise compatible wildlife-dependent recreational uses (hunting, fishing, wildlife observation and photography, and environmental education and interpretation). If reasonable efforts do not yield adequate resources to develop, manage, and maintain the wildlife-dependent recreational use, the use will not be compatible because the Service will lack the administrative means to ensure proper management of the public activity on the refuge.

(3) Refuge managers are reminded that, unless otherwise provided for in law or other legally binding directive, permitting uses of national wildlife refuges is a determination vested by law in the Service. Under no circumstances (except emergency provisions necessary to protect the health and safety of the public or any fish or wildlife population) may we authorize any use not determined to be compatible.

B. Materially interfere with or detract from.

(1) When completing compatibility determinations, refuge managers use sound professional judgment to determine if a use will materially interfere with or detract from the fulfillment of the System mission or the purpose(s) of the refuge. Inherent in fulfilling the System mission is not degrading the ecological integrity of the refuge. Compatibility, therefore, is a threshold issue, and the proponent(s) of any use or combination of uses must demonstrate to the satisfaction of the refuge manager that the proposed use(s) pass this threshold test. The burden of proof is on the proponent to show that they pass; not on the refuge manager to show that they surpass. Some uses, like a proposed construction project on or across a refuge that affects the flow of water through a refuge, may exceed the threshold immediately, while other uses, such as boat fishing in a small lake with a colonial nesting bird rookery may be of

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(1) We will reevaluate compatibility determinations for existing wildlife-dependent recreational uses when conditions under which the use is permitted change significantly, or if there is significant new information regarding the effects of the use, or concurrently with the preparation or revision of a comprehensive conservation plan, or at least every 15 years, whichever is earlier. In addition, a refuge manager always may reevaluate the compatibility of a use at any time.

(2) Except for uses specifically authorized for a period longer than 10 years (such as rights-of-way), we will reevaluate compatibility determinations for all existing uses other than wildlife-dependent recreational uses when conditions under which the use is permitted change significantly, or if there is significant new information regarding the effects of the use, or at least every 10 years, whichever is earlier. Again, a refuge manager always may reevaluate the compatibility of a use at any time.

(3) For uses in existence on November 17, 2000, that were specifically authorized for a period longer than 10 years (such as rights-of-way), our compatibility reevaluation will examine compliance with the terms and conditions of the authorization, not the authorization itself. We will frequently monitor and review the activity to ensure that the permittee carries out all permit terms and conditions. However, the Service will request modifications to the terms and conditions of the permits from the permittee if the Service determines that such changes are necessary to ensure that the use remains compatible. After November 17, 2000, no uses will be permitted or reauthorized, for a period longer than 10 years, unless the terms and conditions for such long-term permits specifically allows for the modifications to the terms and conditions, if necessary to ensure compatibility. We will make a new compatibility determination prior to extending or renewing such long-term uses at the expiration of the authorization. When we prepare a compatibility determination for reauthorization of an existing right-of-way, we will base our analysis on the existing conditions with the use in place, not from a pre-use perspective.

(4) The refuge manager will determine whether change in the conditions under which the use is permitted or new information regarding the effects of the use is significant or not. The refuge manager will make this decision by considering whether or not these new conditions or new information could reasonably be expected to change the outcome of the compatibility determination. Any person at any time may provide information regarding changes in conditions and new information to the refuge manager. However, the refuge manager maintains full authority to determine if this information is or is not sufficient to trigger a reevaluation.

(5) When we reevaluate a use for compatibility, we will take a fresh look and prepare a new compatibility determination following the procedure outlined in paragraph 2.12A.

I. Public review and comment. An opportunity for public review and comment is required for all compatibility determinations. For compatibility determinations prepared concurrently with comprehensive conservation plans or step-down management plans, we can achieve public review and comment concurrently with the public review and comment of the draft plan and associated NEPA document. For compatibility determinations prepared separately from a plan, we will determine the appropriate level of opportunity for public review and comment through a tiered approach based on complexity, controversy, and level of impact to the refuge. See 2.12A(9) for details on public review and comment.

2.12 What information do we include in a compatibility determination?

A. All compatibility determinations will include the following information. To maintain consistency, we will use the format provided in Exhibit 2 for documenting all compatibility determinations.

(1) **Use.** Identify the use. A use may be proposed or existing, and may be an individual use, a specific use program, or a group of related uses. The refuge manager will determine whether to consider a use individually, a specific use program, or in conjunction with a group of related uses. However, whenever practicable, the refuge manager should concurrently consider related uses or uses that are likely to have similar effects and associated facilities, structures and improvements, in order to facilitate analysis of cumulative effects and to provide opportunity for effective public review and comment.

(2) **Refuge name.** Identify the name of the refuge.

(3) **Establishing and acquisition authority(ies).** Identify the specific authority(ies) used to establish the refuge (e.g., Executive Order, public land order, Secretarial Order, refuge-specific legislation, or general legislation).

(4) **Refuge purpose(s).** Identify the purpose(s) of the refuge from the documents identified in 2.12A(3). For a use proposed for designated wilderness areas within the System, the refuge manager must first analyze whether or not the use can be allowed under the terms of the Wilderness Act (16 U.S.C. 1131-36). If so, the refuge manager must then determine if the use is compatible. As a matter of policy, the refuge manager will also analyze whether or not the use is compatible with the purposes of the Wilderness Act, which makes such purposes supplemental to those of the national wildlife refuge.

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(5) National Wildlife Refuge System mission. The mission of the National Wildlife Refuge System 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.”

(6) Description of use. Describe the nature and extent of the use. The refuge manager may work with the proponent(s) of a use to gather information required in subparagraphs (a) through (e) below to describe the proposed use. If the use is described in sufficient detail in a comprehensive conservation plan, step-down management plan, other plan, or associated NEPA document, the refuge manager may provide a summary of the use and reference the plan or NEPA document. At a minimum, the refuge manager must address and include the following in the compatibility determination:

(a) What is the use? Is the use a priority public use?

(b) Where would the use be conducted? Describe the specific areas of the refuge that will be used: habitat types and acres involved; key fish, wildlife, and plants that occur in or use that habitat; and the proportion of total refuge acreage and the specific habitat type involved. Include a description of other areas that may be affected incidental to the specific use, such as access to the destination area and storage of equipment. This information may be described in writing and on a map.

(c) When would the use be conducted? Describe the time of year and day, and duration of the use.

(d) How would the use be conducted? Describe the techniques to be used, types of equipment required, and number of people per given period. Include supporting uses and associated facilities, structures and improvements as appropriate, e.g., boating and boat ramps to support fishing, camping and campsites to support hunting, etc.

(e) Why is this use being proposed? Describe the reason for the use and the need to conduct the use on the refuge. Describe the extent to which other areas in the vicinity provide similar opportunities.

(7) Availability of resources.

(a) Complete an analysis of costs for administering and managing each use. Implicit within the definition of sound professional judgment is that adequate resources (including financial, personnel, facilities, and other infrastructure) exist or can be provided by the Service or a partner to properly develop, operate, and maintain the use in a way that will not materially interfere with or detract from fulfillment of the refuge purpose(s) and the System mission. If resources are lacking for establishment or continuation of wildlife-

dependent recreational uses, the refuge manager will make reasonable efforts to obtain additional resources or outside assistance from States, other public agencies, local communities, and/or private and non-profit groups before determining that the use is not compatible. If adequate resources cannot be secured, the use will be found not compatible and cannot be allowed. Efforts to find additional funding must be documented on the compatibility determination form.

(b) For many refuges, analysis of available resources will have been made for general categories of uses when preparing comprehensive conservation plans, step-down management plans, other plans, or NEPA documents. If the required and available resources are described in sufficient detail in a comprehensive conservation plan, step-down management plan, other plan, or associated NEPA document, provide a summary of the required and available resources for the use and reference the plan or NEPA document. If not sufficiently covered in the planning document, the following should be documented in the compatibility determination:

(i) Resources involved in the administration and management of the use.

(ii) Special equipment, facilities or improvements necessary to support the use. Itemize expenses such as costs associated with special equipment, physical changes or improvements necessary on the refuge that would be required to comply with disabled access requirements.

(iii) Maintenance costs associated with the use (e.g., trail maintenance and mowing, signing, garbage pickup or sanitation costs, parking areas, road repair or grading, building or structure repair, including blinds, boat ramps, kiosks, etc.).

(iv) Monitoring costs (e.g., biological or visitor surveys, maintenance of control sites, etc.) to assess the impact of uses over time on natural resources and quality of the visitors' experience.

(c) This analysis of cost for administering and managing each use will only include the incremental increase above general operational costs that we can show as being directly caused by the proposed use.

(d) Offsetting revenues, such as entrance fees and user fees that are returned to the refuge, should be documented in determining the costs to administer individual or aggregated uses.

(8) Anticipated impacts of the use.

(a) Identify and describe the reasonably anticipated impacts of the use. In assessing the potential impacts of a proposed use on the refuge's purpose(s) and the System mission,

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refuge managers will use and cite available sources of information, as well as their best professional judgment, to substantiate their analysis. Sources may include planning documents, environmental assessments, environmental impact statements, annual narrative reports, information from previously conducted or ongoing research, data from refuge inventories or studies, published literature on related biological studies, State conservation management plans, field management experience and consultation with wildlife research professionals, State wildlife resource managers and industry professionals, etc. Refuge managers are not required to independently generate data on which to base compatibility determinations. The refuge manager may work with the proponent(s) of the use and other interested parties to gather additional information before making the determination. If available information to the refuge manager is insufficient to document that a proposed use is compatible, then the refuge manager would be unable to make an affirmative finding of compatibility and we must not authorize or permit the use. If the use is a priority public use, and sufficient information is not available, the refuge manager should work with the proponent of the use to acquire the necessary information before finding the use not compatible based solely on insufficient available information. This does not mean that the burden of information collection is shifted to the refuge manager, but that the refuge manager should take steps to ensure that the additional information needs are clearly identified and that appropriate assistance is provided in facilitating the collection of that information.

(b) Refuge managers should distinguish between long-term and short-term impacts. A use may initially only be expected to cause minor impacts to the resource. However, the cumulative impacts over time may become quite substantial. Other uses may have impacts that are very short in duration but very significant while they are occurring, or are the converse: very long in duration but very insignificant in effect.

(c) Although direct impacts on refuge resources, such as wildlife disturbance or destruction of habitats, or degradation of ecological integrity may be easily predicted, the analysis of impacts must also address indirect and cumulative effects that may be reasonably associated with a specific use. Indirect impacts of a proposed use may include taking away or diverting resources from an activity that would support fulfilling the System mission or refuge's purposes and therefore would be a factor in determining whether the proposed use is compatible or not. A use with little potential for impact on its own may contribute to more substantive cumulative impacts on refuge resources when conducted in conjunction with or preceding or following other uses, and when considered in conjunction with proposed or existing uses of lands and waters adjacent to the refuge.

(d) If the anticipated impacts of the use are described in sufficient detail in a comprehensive conservation plan, step-

down management plan, other plan, or associated NEPA document, refuge managers may provide a summary of the anticipated impacts of the use and reference the plan or NEPA document.

(e) Refuge managers should list all conservation objectives in approved refuge management plans (e.g., comprehensive conservation plan, comprehensive management plan, master plan, or step-down management plan), that reasonably might be affected by the proposed use. To the extent possible, the determination of anticipated impacts should include an explanation of the impacts on these specific conservation objectives and how that affects fulfilling refuge purposes or the System mission.

(9) Public review and comment.

(a) The refuge manager must provide an opportunity for public review and comment on the proposed refuge uses(s) before issuing a final compatibility determination. Public review and comment includes actively seeking to identify individuals and organizations that reasonably might be affected by, or interested in, a refuge use. Additionally, public review and comment will offer the public the opportunity to provide relevant information and express their views on whether or not a use is compatible. The extent and complexity of public review and comment that is necessary or appropriate will be determined by the refuge manager. For example, significantly modifying a popular hunting, fishing, or wildlife observation program would likely be controversial and would require considerable opportunity for public review and comment, whereas temporarily closing a small portion of a wildlife observation trail would likely require much less opportunity for public review and comment. For compatibility determinations prepared concurrently with comprehensive conservation plans or step-down management plans, public involvement can be achieved concurrently with the public review and comment of the draft plan and associated NEPA document. For compatibility determinations prepared separately from a plan, handle the level of public review and comment through the following tiered approach.

(i) For minor, incidental, or one-time uses that have been shown by past experience at this or other refuges in the System to result in no significant or cumulative impact to the refuge and would likely generate minimal public interest, the public review and comment requirement can be accomplished by posting a notice of the proposed determination at the refuge headquarters.

(ii) For all other uses, at a minimum, the refuge manager will solicit public comment by placing a public notice in a newspaper with wide local distribution. The notice must contain, at a minimum: a brief description of the compatibility determination process, a description of the use that is being evaluated, the types of information that may be used in completing the evaluation, how to provide comments, when

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comments are due, and how people may be informed of the decision the refuge manager will make regarding the use. The public will be given at least 14 calendar days to provide comments following the day the notice is published.

(iii) For evaluations of controversial or complex uses, the refuge manager should expand the public review and comment process to allow for additional opportunities for comment. This may include newspaper or radio announcements, notices or postings in public places, notices in the Federal Register, letters to potentially interested people such as adjacent landowners, holding public meetings, or extending the comment period.

(b) Public review and comment efforts must be documented on the compatibility determination form and relevant information retained with compatibility determinations as part of the administrative record. The documentation must include a description of the process used, a summary of comments received, and a description of any actions taken or not taken because of the comments received. All written public comments will be retained in the administrative record. If a comprehensive conservation plan or NEPA document is being prepared, this information would be included in these documents as part of the administrative record.

(10) Use is compatible or not compatible. Identify whether the use is compatible or not compatible. This is where the refuge manager indicates whether or not the use would, or would not, materially interfere with or detract from the fulfillment of the National Wildlife Refuge System mission or the purposes of the refuge.

(11) Stipulations necessary to ensure compatibility.

(a) Describe any stipulations (terms or conditions) necessary to ensure compatibility. If a use is not compatible as initially proposed, it may be modified with stipulations that avoid or minimize potential adverse impacts, making the use compatible. It is not the responsibility of the refuge manager to develop a sufficient set of stipulations so as to make an otherwise not compatible proposed use, compatible. If the use cannot be modified with stipulations sufficient to ensure compatibility, the use cannot be allowed.

(b) Protective stipulations in the compatibility determination for a particular use should specify the manner in which that use must be carried out to ensure compatibility. Stipulations must be detailed and specific. They may identify such things as limitations on time (daily, seasonal, or annual) or space where a use could be safely conducted, the routes or forms of access to be used, and any restrictions on the types of equipment to be used or number of people to be involved. Monitoring of the use must be sufficient to evaluate compliance with stated conditions and swift action must be taken to correct or respond to any serious deviations.

(12) Justification. After completing the steps described above, the refuge manager will provide a written justification for the determination. The justification must provide a logical explanation describing how the proposed use would, or would not, materially interfere with or detract from the fulfillment of the National Wildlife Refuge System mission or the purposes of the refuge.

(13) Signature. The refuge manager will sign and date the compatibility determination and submit it to the Regional Chief for review and concurrence.

(14) Concurrence. The Regional Chief will sign and date the compatibility determination if in concurrence. If the Regional Chief does not concur, the Regional Chief must discuss the determination with the refuge manager and attempt to resolve the differences. If they do not agree, the Regional Chief must refer the compatibility determination to the Regional Director and the use may not be allowed unless, upon review, the Regional Director makes a written determination that the use is compatible.

(15) Mandatory 10- or 15-year reevaluation date. At the time the compatibility determination is made, the refuge manager will insert the required maximum 10-year reevaluation date for uses other than wildlife-dependent recreational uses or a 15-year maximum reevaluation date for wildlife-dependent recreational uses.

2.13 How do we expedite the compatibility determination process? The Refuge Administration Act provides for expedited consideration of uses that will likely have no detrimental effect on the fulfillment of the purpose(s) of the refuge or the System mission. The intent of this provision is to reduce the administrative burden on the refuge manager and speed the compatibility determination process for uses that are frequently found to be compatible. For minor, incidental, or one-time uses that have been shown to have no significant or cumulative impact to the refuge and would likely generate minimal public interest, the time period for an opportunity for public review and comment may be reduced to the time available.

2.14 What do we do with existing uses that are not compatible? Existing uses determined to be not compatible will be expeditiously terminated or modified to make the use compatible. Except with written authorization by the Director, this process of termination or modification will not exceed 6 months from the date that the compatibility determination is signed.

2.15 May we deny uses that are compatible? A determination that a use is compatible does not require the use to be allowed. Determinations on whether or not to allow otherwise compatible uses are based on compliance with other laws, the System mission, policy, refuge purposes, availability of resources to manage the use, possible conflicts

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with other uses, public safety, and other administrative factors. The refuge manager must clearly document and describe in writing the administrative reasons for not permitting a compatible use. Usually, a refuge manager will make this decision prior to making a compatibility determination and completing one will be unnecessary.

2.16 What are the procedures for appealing a permit denial? Procedures for appealing a permit denial are provided in 50 CFR 25.45 (special use permits), 50 CFR 29.22 (rights-of-way), 50 CFR 36.41 (i) (special use permits for refuges in Alaska), or 43 CFR 36.8 (rights-of-way for Alaska). We are providing no administrative mechanism to appeal a compatibility determination.

2.17 When do we prepare pre-acquisition compatibility determinations?

A. When we add lands to the National Wildlife Refuge System, the refuge manager assigned management responsibility for the land to be acquired, will identify prior to acquisition, withdrawal, transfer, reclassification, or donation of those lands, existing wildlife-dependent recreational public uses (if any) determined to be compatible that we will permit to continue on an interim basis, pending completion of the comprehensive conservation plan. For this purpose, the refuge manager will make a pre-acquisition compatibility determination that will apply to existing wildlife-dependent recreational public uses that may be allowed, if determined to be compatible during the interim between acquisition and completion of the comprehensive conservation plan. The purpose of this policy is to inform the public, prior to acquisition, which pre-existing wildlife-dependent recreational public uses will be allowed to continue on newly acquired lands. Such decisions must be based on the compatibility standards and procedures outlined in this chapter. These pre-acquisition compatibility determinations for continuing existing wildlife-dependent recreational public uses will be made in writing, using the format in Exhibit 2.

B. Pre-acquisition compatibility determinations only apply to existing wildlife-dependent recreational public uses and are intended to be short-term in nature, bridging the gap between acquisition of refuge lands and completion of refuge comprehensive conservation plans. They should be made in conjunction with the preparation and release of appropriate pre-acquisition Realty documentation, prepared pursuant to NEPA. Pre-acquisition compatibility determinations should document the type, level, timing and location of wildlife-dependent recreational public uses that are presently occurring on lands proposed for acquisition.

2.18 What is the relationship of compatibility to NEPA? NEPA requires us to examine the environmental impact of our actions, incorporate environmental information, and utilize public participation, as appropriate, in the planning and implementation of our actions. NEPA compliance is required

whenever we take an action. It is the action that triggers NEPA. A compatibility determination is not an action under NEPA, rather it is only one of many factors that we take into account whenever we consider taking an action; i.e., allow a refuge use. Deciding whether or not to allow the use is the action, not the compatibility determination. Comprehensive conservation plans, step-down management plans, and the issuance of special use permits are actions about allowing or not allowing refuge uses. These actions require NEPA compliance. Many compatibility determinations will be completed concurrently with these processes. Compatibility determinations are an integral part of our decision about refuge uses; however, it is important to note that compatibility is only one of many factors that we take into account when we consider allowing or not allowing a refuge use.