

## COMPATIBILITY DETERMINATION

**Use:** Commercial Shore-Fast Sea Ice Access

**Refuge Name:** Arctic National Wildlife Refuge

**Establishment and Acquisition Authority:** The Arctic National Wildlife Refuge (Refuge, Arctic Refuge) was established by the Alaska National Interest Lands Conservation Act (ANILCA) (Public Law 96-487 Stat. 2371) on December 2, 1980. The Refuge boundary encompassed 19.64 million acres of land, including the 8.83-million acre Arctic National Wildlife Range (Range), which was established on December 6, 1960, by Public Land Order 2214. ANILCA re-designated the Range as part of Arctic Refuge, designated 7.16 million acres of the Refuge as Wilderness, and designated three wild rivers. In 1988, Public Law 100-395 added 325,000 acres of lands managed by the Bureau of Land Management (BLM) to the Refuge. An additional 1.3 million acres of land, originally selected by the State of Alaska under the Alaska Statehood Act (Public Law 85-508) but later relinquished, was added to the Refuge in two actions occurring in 1983 and 1985. Both these additions were of lands already within the boundaries of the Refuge.

**Refuge Purposes:** ANILCA established four purposes for the Refuge (including lands and waters in the original Range):

- i. to conserve fish and wildlife populations and habitats in their natural diversity including, but not limited to, the Porcupine caribou herd (including participation in coordinated ecological studies and management of this herd and the Western Arctic caribou herd), polar bears, grizzly bears, muskox, Dall's sheep, wolves, wolverines, snow geese, peregrine falcons and other migratory birds and Arctic char and grayling;*
- ii. to fulfill the international treaty obligations of the United States with respect to fish and wildlife and their habitats;*
- iii. to provide, in a manner consistent with the purposes set forth in subparagraphs (i) and (ii), the opportunity for continued subsistence uses by local residents; and*
- iv. 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 within the Refuge.*

Public Land Order 2214 established the original Arctic National Wildlife Range “for the purpose of preserving unique wildlife, wilderness and recreational values....” These pre-ANILCA purposes apply only to those lands and waters in the original Range, and they remain in force and effect only to the extent they are not inconsistent with ANILCA or the Alaska Native Claims Settlement Act (ANILCA Section 305; 603 FW 2.8).

The Wilderness Act of 1964 (Public Law 88-577) creates the following additional purposes for the designated Wilderness area in the Refuge's boundaries; these purposes are within and supplemental to the Refuge's ANILCA and Range purposes: secure an enduring resource of Wilderness; protect and preserve the Wilderness character of areas in the National Wilderness Preservation System (NWPS); administer the NWPS for the use and enjoyment of the American people in a way that will leave these areas unimpaired for future use and enjoyment as Wilderness; and gather and disseminate information regarding the use and enjoyment of Wilderness areas.

***National Wildlife Refuge System Mission:*** The mission of the National Wildlife Refuge System (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 (National Wildlife Refuge System Administration Act of 1966, as amended [16 U.S.C. 668dd-668ee]).

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***Description of Use(s):*** This is a re-evaluation of this activity, which was found compatible in the 1988 Arctic Refuge Comprehensive Conservation Plan and again in 1994.

The village of Kaktovik has traditionally received commercial goods and heavy equipment, excluding fuel, delivered overland from Deadhorse during winter. Transportation activities usually occur when sea ice travel is safe in mid- to late January through late April. CATCO all-terrain vehicles, also known as Rolligons, and other similar vehicles have been used to haul freight in the past. They weigh several thousand pounds and use extremely large, very low pressure air bags to move across a surface. Depending on the amount of freight, one to four vehicles in a train would complete one to two round trips per year. The equipment follows a west to east path along the shoreline driving on solid ice at least one mile from the shore when practicable. Shore-fast sea ice access by commercial companies is authorized with a special use permit, and special conditions are designed to avoid impacts to Refuge resources and disruption to subsistence users and visitors. To ensure that this activity does not adversely affect polar bears and complies with applicable laws, Section 7 Endangered Species Act and Marine Mammal Protection Act consultations are required for this permit.

***Availability of Resources:*** Adequate Refuge personnel and base operational funds are available to manage activities at existing and projected levels. Administrative staff time (as many as five staff days per year) primarily involves phone conversations, written correspondence, formal or informal consultations with other U.S. Fish and Wildlife Service (Service) offices, and personal interaction with permittees regarding ongoing activities. Field

work associated with administering the program primarily involves monitoring (when applicable) activities to ensure all activities remain compatible.

***Anticipated Impacts of Uses:*** We anticipate minimal impacts to fish and wildlife resources, other Refuge resources, or other Refuge users. The Refuge's administrative oversight of the activity and comprehensive Federal regulations continually evolve to respond to management needs. Compliance with regulations and permit conditions will be routinely checked by Refuge staff. Refuge law enforcement personnel will also help minimize direct impacts from commercial shore-fast sea ice access activities by enforcing compliance with special use conditions.

Consultations under the Marine Mammal Protection Act and Section 7 of the Endangered Species Act ensure that polar bear and polar bear critical habitat is not adversely affected. Stipulations are included in the special use permit to ensure that permittee activities avoid polar bear denning habitat, reduce the potential for interactions, and minimize impacts when interactions occur. Impacts to Refuge habitats may be minimal and transitory because access to the Refuge would be primarily by operating on sea ice with applicable restrictions to avoid polar bear denning habitat. Impacts to vegetation will not occur because all travel is restricted to sea ice. The introduction of invasive species could affect Refuge resources, although it is not known to have occurred by this activity in the Refuge to date, and staff will continue to monitor for such occurrences. In rare instances, temporary displacement and/or disturbance to wildlife, particularly polar bears, can occur. Impacts would likely be short-term and minimal because of avoidance measures put in place by permit conditions and Endangered Species Act and Marine Mammal Protection Act consultations.

***Public Review and Comment:*** Public comments on compatibility determinations were solicited concurrently with the draft of the Refuge's Revised Comprehensive Conservation Plan (Plan) and Environmental Impact Statement. Public comments on compatibility determinations were accepted during the public review period for the draft Plan, which was announced in the Federal Register, on local radio stations, and in local newspapers. The 90-day public comment period began on August 15, 2011, and ended on November 15, 2011. We mailed the full draft Plan, and a summary of the Plan, to the individuals and organizations on our mailing list and posted both on the Refuge's web site. Six public hearings were held in Anchorage, Arctic Village, Fairbanks, Fort Yukon, Kaktovik, and Venetie, during which the Service received comments on the draft Plan. We received five specific comments on this compatibility determination.

The Northern Alaska Environmental Center, the Alaska Wilderness League, and the Sierra Club commented that further review was needed for this activity. They thought the description of the use should be narrowed to include only the support of the delivery of goods by aircraft and barge to the city of Kaktovik and to exclude any activities that are prohibited in the Refuge, including any industrial activities such as support for offshore oil and gas exploration or development. They also felt that there is insufficient information and analysis in the draft EIS about the existing activity for commercial sea-fast sea ice access upon which to analyze compatibility, specifically that more information is needed about the types of vehicles deployed, frequency, exact geographic scope, number and timing of trips, and the past history of activities including any spills, and other factors. Further, they were concerned that the use would be occurring on sea ice in designated Critical Habitat for polar bears at a time when

bears are denning. Finally they asked if the use included travel on ice within designated Wilderness, how is climate change affecting the reliability of sea ice travel, how often haulers end up travelling on land and, if so, if this was a result of open water conditions, and how often the vehicles are hauling fuel. They also requested that any permits should clearly prohibit travel on land, including barrier islands, and require live global positioning system (GPS) data of their routes. Another commenter also voiced concerns about insufficient information (timing, scope, etc.) provided to assess if the use is compatible.

Oil and gas development on Arctic Refuge is not allowed in the 1002 Area without congressional approval. Therefore, it is not considered as a proposed or existing use, and the compatibility determination does not address it as a potential use of shore-fast ice travel. The compatibility determination for Commercial Shore-fast Sea Ice Access applies only to travel for delivery of goods and equipment to the Village of Kaktovik and not to other activities. The compatibility determination already outlines types and numbers of vehicles, route of travel, and time of year. Permits are conditioned to protect Refuge resources, and these special conditions of the permit are outlined in the "Stipulations Necessary to Ensure Compatibility." They prohibit crossing barrier islands or overland travel and the discharge of petroleum products or toxic materials. Any fuel storage must be outlined in a pre-approved plan of operations, and those of greater than 55 gallons must be in double-walled containers. Permittees are instructed to follow the Polar Bear Interaction Guidelines, and intra-service Endangered Species Act Section 7 consultation is conducted annually for all permitted activities on the Refuge that occur in Polar Bear critical habitat. We will consider the suggestion to utilize live GPS track logs for monitoring vehicle routes in future permits.

No changes were made to the compatibility determination as a result of public comments.

***Refuge Determination*** (check one below):

Use is not compatible

Use is compatible

***Stipulations Necessary to Ensure Compatibility:*** A special use permit with the following stipulations is required for commercial shore-fast sea ice access. These stipulations are intended to minimize impacts and ensure compatibility. Refuge permits may also include other special conditions as necessary or appropriate for the specific operations or activities that are proposed. These stipulations will be updated periodically to reflect management needs or policy changes.

1. Failure to abide by any part of this special use permit; violation of any refuge related provision in Titles 43 (Part 36) or 50(sub-chapters B and C), Code of Federal Regulations; or violation of any pertinent state regulation (e.g., fish or game violation) will, with due process, be considered grounds for revocation of this permit and could result in denial of future permit requests for lands administered by the U.S. Fish and Wildlife Service. This provision applies to all persons working under the authority of this permit (e.g., research assistants). Appeals of decisions relative to permits are handled in accordance with Title 50 Code of Federal Regulations Part 36.41.

2. The permittee is responsible for ensuring that all employees, party members, aircraft pilots, and any other persons working for the permittee and conducting activities allowed by this permit are familiar with and adhere to the conditions of the permit.
3. This permit may be cancelled or revised at any time by the Refuge manager in case of emergency (e.g., high fire danger, flooding, unusual resource problems, etc.).
4. A copy of this permit must be in the permittee's or field party chief's possession at all times while exercising the privileges of the permit.
5. The permittee or party chief must notify the Refuge manager during Refuge working hours in person or by telephone before beginning and upon completion of annual activities allowed by this permit.
6. Prior to beginning any activities allowed by this permit, the permittee must provide the Refuge manager with: (1) the name(s) and method of contact for the lead field guide(s); (2) aircraft and other vehicle types to be used and identification information for these vehicles; (3) names of assistant guides and helpers; and (4) any changes in information provided in the original permit application.
7. The Refuge manager or designee, upon request, shall be afforded the opportunity and logistical support from the nearest commercial transportation site to accompany the permittee for the purpose of inspection and monitoring permittee activities. A final inspection trip provided by the permittee of the areas of use may be required by the refuge manager to determine compliance with the terms of this permit.
8. An annual report of activities conducted on the Refuge shall be provided to the Refuge manager within 30-days of the permit expiration (normally 1-2 pages).
9. This permit authorizes use only on Arctic Refuge lands. Use of land selected by or conveyed to the State of Alaska or North Slope Borough; or a Native corporation or individual is not authorized by this permit.
10. The permittee and permittee's employees, coworkers, or contractors do not have the exclusive use of the site(s) or lands covered by this permit.
11. The permittee must take no action that interferes with subsistence activities of rural users or restricts the reasonable access of subsistence users to Refuge lands. This may include but is not limited to disturbance of wildlife and their movements near subsistence hunters, and damage to cabins, trails, traditional campsites, or caches used by subsistence users.
12. In accordance with the Archaeological Resources Protection Act (16 U.S.C. 470 ee), no person may excavate, remove, damage or otherwise alter or deface, or attempt to excavate, remove, damage, or otherwise alter or deface any archaeological resource located on public lands or Indian lands unless permitted or exempted (see 16 U.S.C 470cc for permit or exception guidance). No person may sell, purchase, exchange, transport, receive, or offer to sell, purchase, or exchange any archaeological resource if such resource was excavated or removed from public lands.
13. Construction of cabins, platforms, or other permanent structures is prohibited.
14. Crossing barrier islands or overland travel with surface vehicles on Refuge lands is prohibited. Entry on Refuge lands is permitted only to ensure personnel and equipment safety. Vehicle travel will cease once safety is reached. The Refuge manager will be immediately notified.

15. The operation of vehicles resulting in herding, harassment, hazing, or driving of wildlife is prohibited. It is recommended that all aircraft, except for take-off and landing, and as necessary for safety, shall maintain a minimum altitude of 2000 feet above ground level (AGL).
16. Any human-wildlife interactions that have resulted in animals obtaining food; destroying property; or posing a threat to human safety; must be reported to the Refuge manager immediately at (907) 456-0250, as soon as communication becomes available. You are required to submit a written report within 30 days to the Refuge manager for all interactions with grizzly bears that have resulted in bears obtaining food; destroying property; posing a threat to human safety; or the death of a grizzly bear, so that this data can be used to help prevent future human-bear conflicts. You may use the Bear Incident Report form (Service 2008). Animals taken in defense of life or property must be reported to the Refuge manager immediately, and to the Alaska State Troopers at (907) 451-5350, and salvaged in accordance with State regulations.
17. Unauthorized caches of fuel or other supplies are prohibited. Fuel storage, if any, will be as outlined in the operations plan, preapproved by the manager, and in compliance with regional Service fuel storage policy.
18. All fuel containers with a storage capacity greater than 55 gallons shall be of double-wall construction. All fuel containers, including those emptied, shall be capped when not in actual use.
19. No discharge of petroleum products or toxic materials shall be made within the Refuge. All hazardous substance utilized and/or generated by permitted activity shall be contained, controlled and cleaned up. Such measures shall take precedence over all other matters except human safety. All spills or leakage of petroleum products or toxic materials, fires, fatalities, and any other conditions which threaten resources in the Refuge, the environment, or human safety, shall be reported by the permittee to the Refuge manager immediately or as soon as communication can be established.
20. Permittees shall maintain their use areas in a neat and sanitary condition. All combustible solid waste generated by permitted activity shall be incinerated or returned to the permittee's base of operations for disposal in accordance with applicable Federal, State, and local standards. All property of the permittee, including non-combustible solid waste, shall be removed from Refuge lands upon completion of permitted activities for disposal in accordance with applicable Federal, State, and local standards. Latrines must be located at least 200 feet from springs, lakes, and streams to avoid contamination of water resources. Toilet paper must be burned or packed out.
21. The permittee must read the Polar Bear Interaction Guidelines (Arctic Refuge 2010) to these permit Special Conditions. The Guidelines must also be distributed to all employees and clients of the permittee before engaging in any activities on the Refuge. In addition, the following conditions shall be met:
  - a. Protection of den sites and minimizing disturbance to sows with small cubs is of critical importance. Guides operating under this permit must become knowledgeable of the signs and behaviors indicating the presence of a den and avoid those areas. No person shall approach, or remain, within one mile of a polar bear den, or of a sow with small cubs. If at any time the permittee becomes aware of signs indicating their close proximity to a polar bear den, or encounters a sow

with small cubs, all members of the party must immediately retreat to a distance of at least one mile. If, at any time, the location of a den becomes known to the permittee, no approach shall be made closer than one mile.

- b. When operating within 25 miles of the Beaufort Sea coastline, the permittee will store attractants (human food, dog food, garbage, etc.) in "bear-resistant" containers to minimize attracting polar bears and avoid conditioning bears to human food. Containers must be approved as "bear-resistant." Information about certified "bear resistant" containers can be found at [http://www.igbconline.org/BEAR\\_RESISTANT\\_Oct2010.pdf](http://www.igbconline.org/BEAR_RESISTANT_Oct2010.pdf) (Interagency Grizzly Bear Committee, 2011).
  - c. Legal take and harassment of polar bears is limited to defense of life or subsistence harvest by coastal-dwelling Native Alaskan situations only. Any killing or harassment of a polar bear in defense of life must be reported to the Refuge manager and to the U.S. Fish and Wildlife Service Office of Law Enforcement at (907) 456-2335 immediately, as soon as communication becomes available. You are also required to submit a completed copy of the Bear Incident Report form (Service 2008) to the Refuge manager for all interactions with polar bears that have resulted in bears obtaining food; destroying property; posing a threat to human safety; or the death of a polar bear, so that this data can be used to help prevent future human-bear conflicts.
22. The preeminent value of Arctic Refuge lies in its unsurpassed wilderness condition. The permittee must ensure that all employees and clients seek to minimize the effect of their activities on the wilderness characteristics of the land, wildlife, and the unique experience available there.

**Justification:** Commercial shore-fast sea ice access by CATCO or other similar vehicles to the Village of Kaktovik and other inholdings provides one of the least damaging modes of heavy freight transportation consistent with the adequate and feasible access guaranteed by ANILCA, Section 1110. Additionally, use of shore-fast sea ice is the only viable, economical option in the winter to transport large construction equipment, building supplies, and other such commercial goods. When working in the parameters of the permit special conditions and requirements of Endangered Species Act and Marine Mammal Protection Act consultations, sea ice travel produces no known degradation to the substrate or polar bear critical habitat, and negligible displacement of polar bear or other wildlife found along the coast when sea ice travel is practicable. After fully considering the impacts of these activities, as described previously in the "Anticipated Impacts" section of this document, it is my determination that commercial shore-fast sea ice access activities in the Refuge do not materially interfere with or detract from the purposes of the Refuge or the mission of the Refuge System.

**Supporting Documents:**

Arctic National Wildlife Refuge. 2010. Polar bear interaction guidelines. U.S. Fish and Wildlife Service, Fairbanks, Alaska. Unpublished. 3pp.

Interagency Grizzly Bear Committee. IBG Certified bear resistant products webpage. [http://www.igbconline.org/BEAR\\_RESISTANT\\_Oct2010.pdf](http://www.igbconline.org/BEAR_RESISTANT_Oct2010.pdf), Accessed 11 Feb 2011.

U.S. Fish and Wildlife Service. 1988a. Arctic National Wildlife Refuge Final Comprehensive Conservation Plan, Environmental Impact Statement, Wilderness Review, and Wild River Plans. U.S. Fish and Wildlife Service. Anchorage, Alaska. 609 pp.

U.S. Fish and Wildlife Service. 1988b. Record of Decision: Arctic National Wildlife Refuge Final Comprehensive Conservation Plan, Environmental Impact Statement, Wilderness Review, and Wild River Plans. U.S. Fish and Wildlife Service, November 10, 1988. Anchorage, Alaska, USA.

U.S. Fish and Wildlife Service. 2008. Region 7: Bear awareness and firearms safety training policy, Appendix F. U.S. Fish and Wildlife Service. Anchorage, Alaska. Unpublished. 36 pp.

U.S. Fish and Wildlife Service. 2011. Arctic National Wildlife Refuge Draft Revised Comprehensive Conservation Plan, Draft Environmental Impact Statement, Wilderness Review, and Wild and Scenic River Review. U.S. Fish and Wildlife Service, June 2011. Anchorage, Alaska, USA.

***Refuge Determination:***

Refuge Manager/

Project Leader Approval

Richard M 8-4-12  
Date

***Concurrence:***

Regional Chief

National Wildlife

Refuge System

Mike Boylan (Acting) 8/15/12  
Date

***Mandatory 10-year Re-Evaluation Date: 2022***

***Mandatory 15-year Re-Evaluation Date (for priority public uses): 2027***

***NEPA Compliance for Refuge Use Decision:***

Categorical Exclusion without Environmental Action Memorandum

Categorical Exclusion and Environmental Action Memorandum

Environmental Assessment and Finding of No Significant Impact

Environmental Impact Statement and Record of Decision