

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:** Research & Scientific Studies and Surveys

**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 addresses the wide variety of research activities that have historically occurred or may occur on the land now comprising the Kenai National Wildlife Refuge. Researchers must obtain a Refuge Special Use Permit from the Refuge Manager and may have to make payment of administrative, and if appropriate, land use fees. For the purposes of this compatibility determination, research includes data gathering for hypothesis testing, modeling, monitoring, and surveys. This determination covers research conducted by all agencies or entities including the Alaska Department of Fish and Game when appropriate; however, many of the Alaska Department of Fish activities are already properly authorized under the provisions of a Master Memorandum of Agreement with the Service, or other agreement. If a particular study or research project fell outside to this determination, or existing agreement, then a separate compatibility determination would be required.

Research conducted with the Service acting as a significant partner (where the researcher(s) are reasonably determined to be acting as the Service’s agent in the work) is also exempt from a compatibility review.

The Kenai Refuge is composed of five terrestrial ecoregions and freshwater, marine, and estuarine aquatic habitats. Research may occur in all of these areas. Research has been and would continue to be a common activity. Research activities would occur at all times of the year, but mostly in the spring, summer and fall. A partial list of research categories includes biology, ecology, botany, geology, climatology, glaciology, palentology, archeology, paleoecology, sociology, oceanography, hydrology, space physics, geophysics, and anthropology.

This compatibility determination considers issues of access, logistics, methods, facilities, accountability, and public interaction. Common methods of access for research include motor boats, human-powered boats, fixed-wing aircraft, helicopters, dog sleds, hiking, snowshoeing,

snowmachines, and cross-country skiing. Logistical support may include basecamps with tents, tent frames, spike camps, weatherports, removable floors, existing administrative cabins, satellite communication systems, human waste management, and temporary fuel and supply caches. Research may employ a wide spectrum of methods from many disciplines of science. When justified, lethal sampling of fish, wildlife, or plants may be used to collect important data not otherwise available. Equipment for sampling may include both hand-powered and motorized instruments (tools). Researchers may be required to submit investigation plans or proposals, annual activity reports, and copies of publications resulting from the research. Researchers would be required to minimize effects on other users of Refuge lands. They may also be encouraged to communicate research activities and findings to communities near the Refuge and to the general public.

Proposed research and investigation plans developed for the Kenai Refuge are expected to be peer reviewed. The type and level of review should be commensurate with the potential significance of the scientific information and its likely influence on policy and management actions.

Any study that involves an invasive procedure or that harms or materially alters the behavior of an animal under study must generally be reviewed and approved by a recognized Institutional Animal Care and Use Committee pursuant to the Animal Welfare Act prior to implementing field work. Such studies also require an approved operational plan or scientific permit from the Alaska Department of Fish and Game.

Requests for access by helicopter and use of motorized equipment on the Refuge, including wilderness and other areas of special designation, are anticipated. These requests would be considered on a case by case basis with regard to the Refuge purposes, the Wilderness Act, and other applicable legislative and administrative provisions. Maintaining wilderness values and resources, preserving the wilderness character of the biological and physical resources, and providing opportunities for research and recreation are the management focuses for designated Wilderness. As applicable, research in wilderness will be subject to provisions of the Wilderness Act of 1964 which may include an examination of methods, equipment, minimum tool analyses, or administrative practices necessary to successfully and safely administer the Refuge and accomplish Wilderness management objectives.

#### **Availability of Resources:**

Refuge personnel and base operational funds are available to manage research activities at current levels. Administrative staff time primarily involves phone conversations, written correspondence, proposal review, permit issuance, field monitoring of Special Use Permit compliance with permit conditions, and other professional interactions with researchers. Equipment and facilities are in place to administer this program at current levels. Equipment might include aircraft, trucks, boats, and snowmachines used in monitoring compliance of Special Use Permits. Facilities include offices, workshops, administrative cabins, fuel storage, and administrative housing. Researchers submit investigation plans which are evaluated for compatibility with refuge purposes. Access issues are examined similarly. Special Use Permits are written with stipulations, called "Special Conditions", to ensure compatibility.

When requested, the permit holder would provide logistical support for site visits. Logistical support may include transportation from Soldotna or another community adjacent to the Refuge. An administrative fee is charged to private companies and for-profit organizations seeking to do research or data collection on the Refuge. This fee is waived for research associated with public agencies and educational institutions.

### **Anticipated Impacts of the Use:**

The Refuge Manager would ensure that short term impacts would be minimized through Special Conditions incorporated within each Special Use Permit. Factors such as project purpose, data collection methods, number of researchers, transportation, aircraft use, fuel storage, garbage/human waste management, project duration, type and location of lodging, and location of access points would determine the extent of effects on the Refuge. Potential short-term effects on other refuge visitors include exposure to sights and sounds that may diminish the wilderness experience in some cases. Subsistence activities may also experience minor effects. Short or long-term placement of markers, data collection stations, or other unnatural objects to aid in research activities may alter small amounts of habitat or create minor aesthetic disturbances to some Refuge visitors. Minor disruption of animal movements may occur. Some animals, plants or other objects of natural history may be collected when justified. Other minor or short term impacts may also be expected such as establishment of short-term camps, localized disturbance of spawning areas, noise, temporary closures or restrictions for public safety when conducting such activities as trapping, test burns, or construction of blinds, weirs, or habitat protection devices. Potential cumulative effects on Refuge resource and visitors will be evaluated on a regular basis. Management action would be taken to avoid cumulative effects through public dialogue, and development and enforcement of permit conditions. The Refuge Manager will exercise his or her authority as necessary to stop, terminate, amend existing or establish new permit conditions if research activities are found to have unanticipated detrimental effects on refuge resources, authorized public use, or the health and safety of the public. Long term effects will be prevented by prohibiting projects that are not compatible and developing and enforcing appropriate permit conditions for approved projects. Any proposed project may be required to have a new compatibility determination completed specific to the proposed activity, and in any case research projects can be denied whether found compatible or not for cause. Examples for denying research proposals that might otherwise be found to be compatible could include, but not be limited to, interference with Refuge management plan or other Refuge goals, or objectives; public safety concerns; poor scientific design; or unnecessary impacts to Refuge users, wildlife, or habitats.

### **Public Review and Comment:**

This compatibility determination has been prepared while revising the Refuge's 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>.

The State of Alaska expressed some concern on the stipulations, most of which are general Regional stipulations to be included in special use permits for certain activities. While there are no immediate changes being made to these stipulations, or in Regional guidance, an evaluation of these issues, as they apply to all Alaskan refuges is likely in the near future.

**Determination (check one below):**

\_\_\_\_\_ Use is Not Compatible

  X   Use is Compatible With Following Stipulations

**Stipulations Necessary to Ensure Compatibility:**

The following stipulations may be included in Special Use Permits issued for scientific research. Monitoring authorized research activities would ensure compliance with the permit's general and special conditions.

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. 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.
4. Serious problems with wildlife shall be reported to the Refuge Manager. Animals taken in defense of life or property must be reported as soon as possible to the Refuge Manager, to Alaska Department of Fish and Game, and to Alaska Fish and Wildlife Protection. Carcasses must be salvaged in accordance with State regulations.
5. The permittee and permittee's employees or coworkers do not have the exclusive use of the site(s) or lands covered by this permit.
6. The use of private or State lands that have been conveyed (patented) is not authorized by this permit.
7. The permit may be canceled or revised at any time by the Refuge Manager in case of emergency (e.g., high fire danger, flooding, unusual resource problems etc.).
8. The permittee or party chief shall notify the Refuge Manager during refuge working hours in person or by telephone before beginning and upon completion of activities allowed by this permit.
9. Prior to beginning any activities allowed by this permit, the permittee shall provide the Refuge Manager with: (1) name and method of contact for the field party chief/supervisor, aircraft and other vehicle types to be used, identification information for these vehicles, and names of

assistant and helpers; and (2) any changes in information provided in the original permit application.

10. The Refuge Manager, 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.

11. The permittee shall provide the Refuge Manager with a report of activities within 30 days of permit expiration.

12. In accordance with the Archaeological Resources Protection Act (16 USC 470aa), the removal or disturbance of archaeological or historic artifacts is prohibited. The excavation, disturbance, collection, or purchase of historical, ethnological, or archaeological specimens or artifacts is prohibited.

13. Permittees shall maintain their use areas in a neat and sanitary condition. Removal of human waste may be required. Latrines, if allowed, must be located at least 150 feet from springs, lakes, and streams to avoid contamination of water resources. All property of the permittee must be removed from Refuge lands upon completion of permitted activities.

14. All waste materials must be removed from the Refuge (not buried) upon the permittee's departure.

15. Fixed tent platforms are prohibited. Wall tents with floors that are completely removed from the Refuge at the end of field season are allowed.

16. The construction of landing strips or pads is prohibited. Incidental hand removal of rocks and other minor obstructions may be permitted.

17. The use of off road vehicles is prohibited.

18. The operation of aircraft 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, maintain a minimum altitude of 2000 feet above ground level (AGL).

19. Unauthorized caches of fuel or other supplies are prohibited. Fuel storage, if any, will be as outlined in the operations plan and in compliance with regional Service fuel storage policy.

20. Construction of cabins or other permanent structures is prohibited.

21. All information, reports, photos, data, collections, and observations obtained as a result of this permit must be accessible from the permittee at any time upon request by the Service at no cost, unless specific arrangements are made to the contrary. The Service recognizes the proprietary nature of scientific data and will respect the researchers' privileged position regarding first publication. These data may be used in resource management decisions by the Service prior to their publication, however. Proprietary data of commercial value will be treated confidentially upon request, but may also be used in management decisions.

22. Prior to implementing field work, the permittee must provide documentation that activities that involve an invasive procedure that harms or materially alters the behavior of an animal under study have been reviewed and approved by a Institutional Animal Care and Use Committee (IACUC) pursuant to the Animal Welfare Act.

Depending on the specific circumstances, additional special conditions may be applied to the Special Use Permit. These include but are not limited to:

23. The permit holder will 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 disturbance of wildlife and their movements near subsistence hunters, or disturbance to cabins, trails, traditional campsites or caches used by subsistence users.

24. Some activities may not be permitted in certain areas and/or during some sensitive time periods (e.g., moose calving). Area closures and effective dates may be modified by the Refuge Manager as needed. Specific authorization to use localities within special areas may sometimes be obtained on a case-by-case basis, depending on the location of animal concentrations, high public use areas, access route, proposed activity, etc.

25. Occupied raptor nest sites may occur within your intended work area. Unless explicitly exempted, all activities including helicopter flights are prohibited within one-half mile of occupied nest sites during April 15 – August 15. Sites may be approached on foot or by boat to determine if an occupied nest is located at the site.

26. An annual report of research activities conducted on the Refuge shall be provided to the Refuge Manager within 30-days of the permit expiration (normally 1-2 pages). Copies of all final reports and publications resulting from the studies will be forwarded to the Refuge Manager for inclusion in the Refuge library.

27. Helicopter use may be authorized on a case by case basis provided that if helicopters are used, the activity report must include a detailed summary of activities. Helicopter information will include the GPS coordinates in decimal degrees, date, and time of each landing; starting and ending locations for the day, helicopter model, tail number, pilot, and company or ownership; and Special Use Permit number. Landing is prohibited except for the direct support of the activity covered by the permit, and emergencies. No recreational use of helicopters is permitted. Overnight stays must be authorized in advance. . Personnel transported are restricted to only those necessary to accomplish the authorized activity. . Low level slinging of gear from site to site must be authorized in advance. Landings are permitted only at authorized sites.

28. Any action by a permittee that interferes with Refuge visitors or impedes access to any site is prohibited. Examples of prohibited acts include: 1) parking aircraft or placing other objects (rocks, tents, etc.) on any area so as to restrict use by other aircraft; and 2) otherwise intentionally interfering in the activity of other refuge users.

29. A preeminent value of the Kenai NWR lies in its wilderness character. The permit holder shall ensure that all employees and clients seek to minimize the effect of their activities on the wilderness character of the land, wildlife, and the unique experience available here.

These stipulations may be modified and additional stipulations may be employed to mitigate potential impacts to any specific research project or study. Minimum tool analyses will be conducted for all proposed work in designated wilderness areas.

**Justification:**

In part, conservation units designated in ANILCA were set aside for their scientific value including Kenai National Wildlife Refuge. Scientific research is one of the specific purposes of the Kenai Refuge, and the U.S. Fish and Wildlife Service supports research as described in the Refuge Manual (4 RM 6) which reads:

Natural and social science information is necessary for the proper management of the National Wildlife Refuge System. It is the policy of the Service to encourage and support research and management studies in order to provide scientific data upon which decisions regarding management of units of the refuge system may be based.

The Service will also permit the use of a refuge for other investigatory scientific purposes when such use is compatible with the objectives for which the refuge is managed. Priority will be given to studies that contribute to the enhancement, protection, use, preservation, and management of native wildlife populations and their habitats in their natural diversity.

Scientific research activities may be supported in designated Wilderness Areas when wilderness values are not impaired. The Code of Federal Regulations (50 CFR 35.11) states the following:

Recognizing the scientific value of wilderness, research data gathering and similar scientific uses will be encouraged providing that wilderness values are not impaired. The person or agency involved in scientific investigation must be willing to accept reasonable limitations on activities and location and size of the area to be used for research purposes. A Special Use Permit authorizing scientific uses shall be required.

Refuge Managers need scientific data to fulfill their responsibilities for conserving fish and wildlife populations, their habitats, water quality, and providing subsistence and recreational opportunities. The scientific value of the Kenai National Wildlife Refuge lies in its naturalness, wildness and intense public use. The Service encourages research that depends on these conditions. Scientific study on the Kenai Refuge also provides opportunities to add to a broader body of scientific knowledge. Research often has a nexus to Refuge purposes. All proposed research covered by this compatibility determination will be thoroughly evaluated prior to authorization. Some projects may not be allowed as proposed or allowed at all. This compatibility determination provides a general finding of compatibility but does not automatically constitute authorization of any particular project. Specific compatibility determinations may be prepared for certain research projects, and even those that are found to be compatible still do not have to be authorized if other reasons exist for their denial. Authorized projects will include stipulations to minimize negative impacts and will be monitored to ensure that activities do not interfere with or detract from fulfilling the purposes of the Refuge and the mission of the National Wildlife Refuge System.

**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