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NWR5710-130

## United States Department of the Interior

### FISH AND WILDLIFE SERVICE

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AUG 20 2010

#### Memorandum

To: All Regional and Field Office Units

From: Regional Director, Region 7

Subject: Regional Policy for Management of Permitted Cabins on National Wildlife Refuges in Alaska (RW-1)

We have revised the regional cabin management policy, which has not been updated since 1989. The previous cabin policy became the basis for the current cabin regulations (50 CFR 36.33) published in 1994. However, not all pertinent topics were included in the regulations, and additional policy guidance is needed for managing special use permits for the private use of cabins on refuge lands in Alaska. While the attached policy is intended to be comprehensive, it frequently references the regulations, and refuge managers will need to become familiar with both sets of guidance.

Please insert the attached RW-1 policy revision into your copy of the *Region 7 Policy Manual*, and contact Brian Anderson, Refuge Permits Coordinator, at (907) 786-3379 if you have questions or need additional information.

Attachment

**REGION 7 POLICY FOR MANAGEMENT OF PERMITTED CABINS  
ON NATIONAL WILDLIFE REFUGES IN ALASKA**

**1. INTRODUCTION**

- a. Scope
- b. Definitions
- c. Background

**2. ASSOCIATED POLICY AND REQUIREMENTS**

- a. Appropriate Refuge Use Policy
- b. Compatibility Policy
- c. Subsistence Evaluation Requirement

**3. CABIN CATEGORIES**

- a. Recreational Cabin
- b. Subsistence Cabin
- c. Trapping Cabin used by a Non-Rural Resident
- d. Commercial Cabin
- e. Other cabin types

**4. FEES**

- a. Administrative Fee
- b. Reserved Site Use Fee

**5. CABIN PERMIT ADMINISTRATION**

- a. Cabin Permit Decisions and Appeals
- b. Permit Duration and Renewal
- c. Cabin Ownership
- d. Sale of Personal Property/Interest
- e. Abandoned and Trespass Cabins

**6. SPECIAL PROVISIONS**

- a. Construction Specifications
- b. Other Related Structures
- c. Incidental Uses
- d. Department of the Interior Employees
- e. Fire Protection
- f. Land Acquisition

## 1. INTRODUCTION

### a. Scope

This policy provides additional guidance for management of cabins permitted on National Wildlife Refuges in Alaska, consistent with regulations at 50 CFR 36.33 implementing the Alaska National Interest Lands Conservation Act (ANILCA) sections 304 and 1303. This policy also provides clarification for guidance regarding fees associated with cabin permits found in regional policies RW-7 (1990) and RW-7(a) (1993). This policy does not affect the management of public use or administrative cabins on refuge lands.

### b. Definitions

- *cabin* shall mean a small, usually single story, three or more sided structure that is permanently and completely enclosed with a roof and walls. The roof and walls are not fabric, cannot be easily disassembled, and are not removed seasonally [50 CFR 36.33 (a)].
- *commercial cabin* shall mean any cabin which is used in association with a commercial operation including but not limited to commercial fishing activities and recreational guiding services [50 CFR 36.33 (a)].
- *existing cabin* shall mean any cabin situated on Federal lands before December 2, 1980. A cabin legally situated on lands that subsequently become refuge will also be considered an "existing" cabin providing the applicant meets the appropriate application deadlines [50 CFR 36.33 (a)].
- *family* shall include the spouse (including what is known as a common-law relationship), children by birth or adoption, and other blood relatives within the second degree of kindred [50 CFR 36.33 (a)].
- *immediate family* shall include the spouse and children, either by birth or adoption, of the claimant residing in the cabin or structure [50 CFR 36.33 (a)].
- *new cabin* shall mean any permitted cabin constructed on refuge lands after December 2, 1980. This may also include a cabin whose claimant failed to meet the application deadline for existing cabins but is otherwise a permitted cabin [50 CFR 36.33 (a)].
- *other related structures* shall mean those structures or devices essential to the activities for which the cabin special use permit is issued. This includes but is not limited to outdoor toilets, food caches, storage sheds, and fish drying racks [50 CFR 36.33 (a)].

- *private recreational use* shall mean a use associated with leisure activities, not including bona fide subsistence uses or authorized commercial uses [50 CFR 36.33 (a)].

- *resident* means any person who has his or her primary, permanent home for the previous 12 months within Alaska and whenever absent from the primary, permanent home, had the intention of returning to it [continued] (50 CFR 100.4).

- *rural* means any community or area of Alaska determined by the [Federal Subsistence] Board to qualify as such under the process described in 50 CFR 100.15 (50 CFR 100.4).

- *subsistence uses* means the customary and traditional uses of wild, renewable resources for direct personal or family consumptions as food, shelter, fuel, clothing, tools, or transportation; for the making and selling of handicraft articles out of nonedible byproducts of fish and wildlife resources taken for personal or family consumption; and for customary trade (50 CFR 100.4).

### c. Background

Cabins have long been associated with the traditional and customary use of land by Alaska's rural residents, and have also been used to support the commercial guiding and shore fishing industries. Recognizing this, Congress included in ANILCA provisions that address the use of cabins for specific purposes on national wildlife refuges in Alaska. Section 304(d) requires that the Service permit the use of refuge lands, including cabins, for the exercise of valid commercial fishing rights. Section 1303 (b) allows refuges to permit the use of cabins for traditional and customary uses, where these activities have been found to be compatible with the purposes for which the refuge was established.

No cabin may be constructed or occupied for private use on refuge lands except pursuant to a valid special use permit [50 CFR 36.33 (b)(1)]. Existing cabins which are compatible with refuge purposes may be allowed to continue for traditional and customary uses [50 CFR 36.33 (c)]. When found to be compatible, and where the applicant lacks a reasonable off refuge site, a permit for a new cabin may be issued in accordance with this policy, but will generally be given only to local residents to pursue a legitimate subsistence activity [50 CFR 36.33 (d)(1)].

## 2. ASSOCIATED POLICY AND REQUIREMENTS

### a. Appropriate Refuge Use Policy

To the extent that several provisions of ANILCA allow for the continuation of cabins used for traditional and customary purposes on refuges in Alaska, the Service policy for determining appropriate refuge uses (603 FW 1) is not applied when evaluating special use permit applications for cabins.

### b. Compatibility Policy

Except as otherwise provided in law, a permit for the construction, use and/or occupancy of a cabin will only be issued when the proposed cabin and other related structures have been individually determined to be compatible with refuge purposes, including Wilderness Act purposes for designated wilderness lands. Compatibility determinations will consider the individual and any cumulative impacts of proposed new cabins. A refuge-wide compatibility determination may not be used as part of the approval process for cabin permit applications or renewals.

In accordance with the Service compatibility policy (603 FW 2), compatibility determinations will be reevaluated when warranted by changing conditions or new information, but no longer than every ten years to coincide with a scheduled cabin permit renewal.

c. Subsistence Evaluation Requirement

In deciding whether to issue a permit for the use and occupancy of a cabin, refuge managers must consider the effects of the proposed cabin on subsistence uses and needs in accordance with section 811 of ANILCA.

### 3. CABIN CATEGORIES

a. Recreational Cabin

The private recreational use of a cabin on refuge lands may not be permitted [50 CFR 36.33 (b)(4)]. See the policy regarding *Incidental Uses* under Special Provisions.

b. Subsistence Cabin

Permits for a cabin for subsistence uses may be issued only to qualified Alaska rural residents. At the time of cabin permit renewal, the refuge manager must verify that that permit holder remains qualified. Subsistence uses of a cabin shall be consistent with the regulations governing such uses of national wildlife refuges in Alaska at 50 CFR 36 Subpart B.

c. Trapping Cabin Used by a Non-Rural Resident

Where trapping has been an ongoing activity on the refuge supported by the use of cabins, new trapping cabin permits may be issued to non-rural residents, after an individual determination of compatibility.

d. Commercial Cabin

Except as otherwise allowed by law, new cabins used for commercial purposes may be permitted only when determined to be compatible with refuge purposes, and when the new cabin is necessary to provide for the continuation of an ongoing activity or use

otherwise permitted on the refuge. No new commercial cabins will be permitted in designated wilderness areas [50 CFR 36.33 (e)(3)].

Section 304 (d) of ANILCA authorizes the use of refuge lands for the exercise of valid commercial fishing rights, including the use of cabins and other related structures [50 CFR 36.32 (b)]. Although this provision constitutes an exception to the compatibility requirement, the use is subject to "reasonable regulation." In addition, a refuge is not required to permit such uses that would represent a significant expansion of commercial fishing activities beyond the level occurring in 1979, and which are inconsistent with refuge purposes. Specifically, a determination of compatibility would be required to authorize the use of a cabin associated with commercial fishing activities determined to be beyond the level occurring in 1979.

Additional commercial use of an existing commercial cabin may be authorized. For example, an existing cabin permitted for commercial fishing may also be permitted for guiding. However, the use of new commercial cabins will be limited to the use authorized in the original permit [50 CFR 36.33 (e)(1)].

e. Other Cabin Types

Examples of other types of cabins subject to a special use permit include existing cabin home sites, and cabins used by the Alaska Department of Fish and Game for conducting fish and wildlife management activities.

**4. FEES**

a. Administrative Fee

A non-refundable \$100 administrative fee is charged for commercial cabin permits, and permits for trapping cabins used by non-rural residents. The administrative fee is not charged for subsistence use or for other types of cabin permits. When applicable, the administrative fee is charged when a cabin permit is first issued, and each time the permit is renewed.

b. Reserved Land Site Fee

The National Wildlife Refuge System Administrative Act (16 U.S.C. 668dd - 668ee) requires that holders of permits for reserved land sites, such as cabins, pay the fair market value of the use. However, because of the unique conditions in Alaska, and based on past practices, this requirement has been waived for certain cabin uses as described below.

A reserved land site (rental) fee is required for all commercial cabins. Permits issued to non-rural residents (i.e., not subsistence qualified) for the use of trapping cabins are also subject to reserved land site fees, with the following exception: Permits for non-subsistence trapping cabins that were originally issued prior to the date of this policy will not be subject to a reserved land site fee as long as the original permittee continues to

renew the permit. Permits for cabins used solely for subsistence uses are not subject to reserved land site fees.

The reserved land site fee will be in the amount specified on the current approved U.S. Fish and Wildlife Service Annual Fee Schedule (Division of Realty) and is charged when a commercial cabin is originally permitted, and each year thereafter. This annual rental fee is in addition to the administrative fee, and any applicable client use day fees. Reserved land site fees are required as long as the cabin permit remains in force, regardless of whether the permittee actually occupies the cabin during a given fee period.

## 5. CABIN PERMIT ADMINISTRATION

### a. Cabin Permit Decisions and Appeals

The *Cabin Permit Application Decision Guide* (Exhibit 1) provides a step-by-step guide to assist refuge managers in evaluating applications for the construction and/or use of cabins on refuge lands.

Cabin permit decisions are subject to appeal in accordance with regulations at 50 CFR 36.41 (i). Refuge managers must follow the specific procedures found in these regulations when making any adverse permit decision.

### b. Permit Duration and Renewal

Cabin permits are issued for a period of five (5) years, are not transferable, and are renewable at the request of the permittee as long as the permittee continues to comply with permit terms and conditions, demonstrates a qualifying need for the cabin, and uses the cabin for the specific authorized purpose. For non-commercial cabins, upon the death of the original permittee, a qualifying immediate family member is entitled to renew the permit for use of the cabin. To qualify, an immediate family member must have been listed on the original permit as having resided in the cabin. The permit will be renewed or reissued until the death of the last qualifying immediate family member of the original permittee, unless the permit has been revoked or the cabin abandoned [50 CFR 36.33 (c)(2)(viii) and (d)(3)].

A commercial cabin permit may not be renewed by an immediate family member upon the death of the original permittee [50 CFR 36.33 (c)(2)(viii)].

### c. Cabin Ownership

Existing cabins permitted under the regulations at 50 CFR 36.33 (c) are the personal property of the permittee, and can be removed by the permittee or the permittee's heirs upon non-renewal or revocation of the permit [50 CFR 36.33 (c)(1)]. In the event that an existing cabin is rebuilt or replaced (and the original specifications are maintained), ownership remains with the permittee. However, major additions to an existing cabin may only be permitted under the regulations for a new cabin at 50 CFR 36.33 (d),

whereby the entire cabin would become the property of the United States. A major addition is defined as any expansion of the original cabin living area.

The ownership of a permitted cabin includes any other related structures that may be authorized by the permit. The authorized construction of other related structures would not be considered a major addition for the purpose of determining ownership.

New cabins permitted under regulations at 50 CFR 36.33 (d) are the property of the United States.

d. Sale of Personal Property/Interest

Cabin permits are not transferable. For existing cabins, the owner may sell his/her interest in the cabin to another person; however, the buyer does not automatically qualify for a permit and must apply for a new one [50 CFR 36.33 (c)(1)]. Prior to a sale, prospective buyers are encouraged to discuss with the refuge manager the likelihood of receiving a cabin permit.

New cabins are the property of the United States, and interest therein may not be sold [50 CFR 36.33 (d)(2)(v)].

Regardless of whether a commercial cabin is the personal property of a permittee, or owned by the government, the privilege of using the cabin cannot be sold to a new party who has acquired the associated commercial fishing or guiding rights. The new party must apply for a new permit [50 CFR 36.33 (e)(2)]. The cabin permit is separate from the permit authorizing the commercial activity [50 CFR 36.33 (e)(5)].

e. Abandoned or Trespass Cabins

A cabin on the refuge may be considered abandoned or in trespass if the cabin remains unclaimed in accordance with regulations at 50 CFR 36.33 (b)(2) or 50 CFR 36.33 (c)(3), or if a permittee fails to renew a cabin permit within a reasonable amount of time. Refuge managers must exercise due diligence in attempting to notify permittees of an impending permit expiration, and the requirements for renewal. Cabins determined to be abandoned or in trespass may be disposed of in accordance with regulations at 50 CFR 36.33 (b)(2).

**6. SPECIAL PROVISIONS**

a. Construction Specifications

All new, or rebuilt cabins will be constructed of materials that blend with, or are compatible with, the immediate surrounding landscape. The refuge manager must approve the types of materials used.



The size of new cabins and other related structures will be limited to that which is necessary to conduct the activity. For commercial fishing cabins, the size of the cabins and the type and size of other related structures will be determined by what is considered to be minimally necessary to carry out the activity in compliance with section 304 (d)(2) of ANILCA.

Cabin locations will be determined by the refuge manager and the permittee. Considerations will be given to resource values, visibility, pollution controls, access, and impacts on refuge resources. If possible, new cabins will not be located directly on the banks of rivers, and will be set back from the shoreline of a water body by a minimum of 100 feet, leaving at least a 50-foot buffer of standing vegetation. The refuge manager must verify the location of all cabins on the refuge, and maintain an accurate map and location coordinates for each cabin.

b. Other Related Structures

Cabin permits may authorize the construction of specific other related structures, following a determination that such structures are compatible and are essential to the activities for which the cabin permit was issued.

c. Incidental Uses

An incidental use of a cabin is defined as an activity conducted incidental to the use authorized by the special use permit, and which is otherwise allowed on the refuge without a permit. Incidental uses may include subsistence uses or recreational activities. No incidental commercial use of any cabin is allowed. Incidental uses may only occur during the period of cabin occupancy authorized by the permit. Special use permits for cabins will not specifically authorize any incidental uses. Refuge managers must monitor the use of cabins under permit to verify that the cabin is being used primarily for the authorized purposes.

d. Department of the Interior Employees

Regulations at 5 CFR 3501.103(c) prohibit employees of the Department of the Interior from acquiring or retaining any rights in federal lands granted by the Department, which includes a refuge special use permit for the use and occupancy of a cabin. However, refuge managers may process an application for a cabin permit from an employee of the Department who has obtained an appropriate waiver in accordance with the regulations at 5 CFR 3501.103(e).

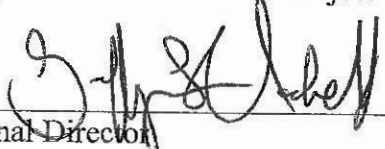
e. Fire Protection

The Service does not guarantee protection of a permitted cabin or its contents in the event of fire. Public and firefighter safety is the first priority in wildland fire activities and decisions. Firefighter safety will not be compromised for structure protection.

Current cabin permittees will be authorized to establish defensible space around the permitted cabin/structure using Alaska Wildland Fire Coordinating Group Fire Wise standards. New permits for cabins constructed after the date of this policy may be issued without authorizing Fire Wise standards because of other resource considerations. In all cases, the cabin permit must clearly state that the permittee understands the inherent risk in wildfire and that the cabin and its contents may not be protected in the event of a wildfire.

f. Land Acquisition

During negotiations associated with the potential acquisition of private lands on which a cabin is located, the seller may not be offered the possibility of receiving a special use permit to use the cabin after the sale has been completed. A cabin obtained through a land acquisition from a private seller may be disposed of in accordance with regulations at 50 CFR 36.33 (b)(2), except that the cabin may not be permitted to the seller or members of the seller's family, for private use. For a period of five years following a sale closing, permits will also not be issued to a seller, or members of the seller's family, to construct a cabin on the acquired lands. This provision does not affect the opportunity to acquire land with a cabin subject to a life estate.

  
\_\_\_\_\_  
Regional Director

8/20/10  
\_\_\_\_\_  
Date

**Exhibit 1**  
**Cabin Permit Application Decision Guide**

This guide is intended to be used in association with the regulations at 50 CFR 36.33 and the *Region 7 Policy for Management of Permitted Cabins on National Wildlife Refuges in Alaska* when reviewing an application to construct, use and/or occupy a cabin on refuge lands.

1. Is the applicant an employee of the Department of the Interior who has received a waiver from the Department in accordance with the regulations at 5 CFR 3501.103 (e)?
  - Yes – Go to 2
  - No – Deny permit request
2. Is the proposed cabin for private recreational use?
  - Yes – Deny permit request
  - No – Go to 3
3. Is the proposed cabin directly incident to the exercise of valid commercial fishing rights, where such activities would be at or below 1979 levels?
  - Yes – Issue the permit (except wilderness; subject to reasonable regulation)
  - No – Go to 4
4. Is the proposed cabin directly incident to the exercise of valid commercial fishing rights, where such activities have been determined to be a significant expansion beyond 1979 levels?
  - Yes – Go to 9
  - No – Go to 5
5. Is the applicant authorized to conduct a commercial activity on the refuge (e.g., guiding)?
  - Yes – Go to 8
  - No – Go to 6
6. Is the applicant an Alaska rural resident as defined in 50 CFR Part 100?
  - Yes – Go to 8
  - No – Go to 7
7. Is the proposed use of the cabin for trapping?
  - Yes – Go to 8
  - No – Deny permit request
8. Is the cabin necessary to provide for a continuation of an ongoing activity or use otherwise allowed on the refuge?
  - Yes – Go to 9
  - No – Deny permit request
9. Have the proposed activities historically been supported by the construction and use of cabins in the geographic area?
  - Yes – Go to 10
  - No – Deny permit request
10. Does the applicant lack a reasonable off-refuge site?
  - Yes – Go to 11
  - No – Deny permit request
11. Is the proposed cabin sited in a designated wilderness area?
  - Yes – Go to 12

No - Go to 13

12. Is the proposed cabin needed for trapping?

Yes - Go to 13

No - Deny permit request

13. Will the construction and use of the cabin be compatible with refuge purposes, including Wilderness Act purposes, and be acceptable under section 810 of ANILCA?

Yes - Issue permit

No - Deny permit request