

**FISH AND WILDLIFE SERVICE  
REFUGE MANAGEMENT**

Refuge Management

Part 601 National Wildlife Refuge System

**Chapter 6 Administration of National Wildlife Refuge System Conservation Easements 601 FW 6**

<b>TABLE OF CONTENTS</b>	
<b>TOPIC</b>	<b>Sections</b>
<a href="#"><u>Overview of the Policy</u></a>	<p>6.1 What is the purpose of this chapter?</p> <p>6.2 What is the scope of this chapter?</p> <p>6.3 What are the Service's authorities for acquiring and administering conservation easements?</p> <p>6.4 Why does the Service acquire conservation easements, and what is the official Service policy on them?</p> <p>6.5 What terms do you need to know to understand this chapter?</p> <p>6.6 Who is responsible for administering Refuge System conservation easements?</p>
<a href="#"><u>Planning and Acquisition</u></a>	<p>6.7 What are the steps the Service must take when planning a new easement acquisition area?</p> <p>6.8 What must the planning team do when developing an easement document for use in a new or existing easement acquisition area?</p> <p>6.9 Is there a requirement to use a standard easement document?</p> <p>6.10 What must easement documents include, and what is their duration?</p> <p>6.11 Does the Service ever acquire public access rights in conservation easements?</p> <p>6.12 From which types of landowners can the Service acquire conservation easements?</p> <p>6.13 Can the Service accept donations of conservation easements?</p> <p>6.14 Can the Service acquire conservation easements through statutorily required compensatory mitigation plans or mitigation banks?</p> <p>6.15 Can the Service modify or amend conservation easements?</p>
<a href="#"><u>Managing Easements and Uses</u></a>	<p>6.16 What are the requirements for posting the boundaries of conservation easements?</p> <p>6.17 How does the Refuge System conduct refuge management activities on conservation easement lands?</p> <p>6.18 How does a Refuge Manager determine what uses are allowed on easements?</p> <p>6.19 How does a Refuge Manager allow a use when he/she finds it compatible?</p> <p>6.20 How does the Refuge System administer subsurface mineral rights on conservation easements?</p> <p>6.21 What are the Service's responsibilities for documenting and recordkeeping at the field, Regional, and national levels?</p>
<a href="#"><u>Monitoring and Inspections</u></a>	<p>6.22 What is the purpose and priority of conservation easement monitoring and inspection?</p> <p>6.23 How can Refuge Managers and Federal Wildlife Officers reduce the incidence of conservation easement violations?</p> <p>6.24 How often should Refuge Managers monitor/inspect conservation easements?</p> <p>6.25 How do Refuge Managers monitor/inspect conservation easements for compliance?</p>
<a href="#"><u>Violations: Easement Investigations and Prosecution</u></a>	<p>6.26 What is the purpose of an easement investigation?</p> <p>6.27 Who may investigate easement violations?</p> <p>6.28 What activates an easement investigation?</p> <p>6.29 When should a Refuge Manager get a Federal Wildlife Officer to begin an easement investigation?</p> <p>6.30 What does an easement investigation include?</p> <p>6.31 How do the Refuge Manager and Federal Wildlife Officer document an easement investigation?</p> <p>6.32 How does a Refuge Manager close an easement violation?</p> <p>6.33 What is the procedure for easement investigations that require criminal or civil prosecution?</p>

## OVERVIEW OF THE POLICY

**6.1 What is the purpose of this chapter?** This chapter provides national policy for planning, acquisition, administration, and enforcement of all conservation easements and easement refuges the U.S. Fish and Wildlife Service (Service) acquires as a part of the National Wildlife Refuge System (NWRS or Refuge System) for conservation purposes.

**6.2 What is the scope of this chapter?** This policy applies only to easements that we acquire for conservation purposes. It does not apply to easements that we acquire as rights-of-way, such as easements that provide access, utility service, or water conveyance to Service lands.

**6.3 What are the Service's authorities for acquiring and administering conservation easements?**

- A. Alaska National Interest Lands Conservation Act (43 U.S.C. 1601-1624, as amended).
- B. Consolidated Farmers Home Administration Act of 1961 (also known as the Consolidated Farm and Rural Development Act) (P.L. 87-128, as amended).
- C. Emergency Wetlands Resources Act (16 U.S.C. 3901).
- D. Endangered Species Act (16 U.S.C. 1531-1543).
- E. Fish and Wildlife Act of 1956 (16 U.S.C. 742a-754d).
- F. Fish and Wildlife Coordination Act (16 U.S.C. 661-667e).
- G. Migratory Bird Conservation Act (16 U.S.C. 715-715r).
- H. Migratory Bird Hunting and Conservation Stamp Act (16 U.S.C. 718-718j).
- I. National Wildlife Refuge System Administration Act (also known as the Refuge Administration Act) (16 U.S.C. 668dd-668ee).
- J. Refuge Recreation Act (16 U.S.C. 460k-460k-4).
- K. Transfer of Certain Real Property and Administrative Services Act (16 U.S.C. 667b-667d, as amended).

**6.4 Why does the Service acquire conservation easements, and what is the official Service policy on them?**

**A. Why we have conservation easements:**

**(1)** Conservation easements offer an alternative to fee acquisition that can be ecologically effective, and may be more financially feasible and socially acceptable than fee acquisition.

**(2)** A significant portion of the wildlife habitat in the continental United States is privately owned. It is essential to achieving our mission and ensuring an enduring wildlife legacy for future generations of Americans to protect wildlife access to, and use of, some private lands.

**(3)** Acquisition and management of conservation easements is a valuable tool to protect working landscapes and habitat values for our wildlife trust resources. Changes in rural economies, human

**FISH AND WILDLIFE SERVICE  
REFUGE MANAGEMENT**

**Refuge Management**

**Part 601 National Wildlife Refuge System**

**Chapter 6 Administration of National Wildlife Refuge System Conservation Easements 601 FW 6**

population demographics, and new technologies for accessing energy sources and producing crops are changing human uses of the land and threatening the wildlife and habitat values of working landscapes.

**B. Our policy on acquiring conservation easements:** When acquiring real property interests, it is our policy to acquire the minimum interest necessary to reach wildlife conservation objectives. (See 341 FW 1.)

**C. Our policy on administering and enforcing conservation easements:** Conservation easements encumber private property, are subject to ownership changes, are typically perpetual in nature, and are often dispersed on the landscape. As a result, they are especially vulnerable to activities that violate Refuge System property rights and damage habitat values.

(1) It is necessary for us to regularly monitor/inspect conservation easements, maintain adequate records, and rigorously enforce easement provisions to preserve their value to trust resources and wildlife.

(2) Within the Refuge Law Enforcement program, easement enforcement is a high priority.

**6.5 What terms do you need to know to understand this chapter?**

**A. Approved Acquisition Boundary** – The boundary within which we have authority to acquire lands or interests in lands. This may encompass both public and private lands, and does not imply that we are targeting all parcels within the boundary for acquisition.

**B. Conservation Easement** – An interest in land that a property owner has voluntarily sold, donated, or otherwise granted to the Service. The purpose of a conservation easement is to protect or restore ecologically significant areas. They often include agreements to restrict development or particular uses (see 341 FW 6, Minimally Restrictive Conservation Easement Acquisitions). Our definition includes minimally restrictive conservation easements, such as grassland easements, habitat easements, and wetland easements, and also more restrictive conservation easements.

**C. Easement Acquisition Area** – An area of the Refuge System that we are planning to acquire and that will be comprised primarily of conservation easements. This may, but will not always, include conservation areas, limited-interest refuges, Waterfowl Production Areas (WPA), Wildlife Management Areas (WMA), and units within a national wildlife refuge. This term does not encompass individual conservation easements unless the individual easement will encompass the entire unit.

**D. Easement Document** – The legal document used to convey a conservation easement or right of use from a landowner to the Service and that describes the exact provisions of the conservation easement. The document often contains restrictions on the use or development of the land to protect its conservation values.

**E. Easement Refuge** – A project area that we have acquired or plan to acquire that is comprised primarily of conservation easements. Easement refuges include conservation areas, limited-interest refuges, WPAs, WMAs, and, in some cases, national wildlife refuges.

**F. Federal Wildlife Officers** – Commissioned law enforcement officers within the Refuge System.

**G. Ground Check** – An on-site visit of the easement tract to inspect for violations or collect evidence of violations.

**H. Landowner** – The owner of the land upon which the Service holds an easement.

**FISH AND WILDLIFE SERVICE  
REFUGE MANAGEMENT**

**Refuge Management**

**Part 601 National Wildlife Refuge System**

**Chapter 6 Administration of National Wildlife Refuge System Conservation Easements 601 FW 6**

**I. Land Protection Plan (LPP)** – The document that proposes an acquisition area boundary and outlines resource protection needs and an implementation schedule. See Part 602 of the Service Manual for the full definition and more information on LPPs and the planning process.

**J. Law Enforcement Case File** – A file Federal Wildlife Officers develop from pertinent documents in the easement file. We give it to the U.S. Attorney’s office for criminal or civil prosecution.

**K. Law Enforcement Database** – The approved, secure, Web-based database that Refuge System Federal Wildlife Officers use to track, store, and manage case file information.

**L. Operator** – A person who farms land and typically is the landowner or a lessee.

**M. Realty Tract File** – The file the Division of Realty prepares that contains the signed easement document and all other necessary documentation. The Regional Realty Office prepares and retains this file in accordance with 342 FW 4, Title Evidence, Curative Action, and Conveyancing.

**N. Right-of-Way Permit** – A permit we use to authorize the use of or grant access over, across, upon, through, or under any areas within the Refuge System. Before we grant a permit, we must determine that such uses are compatible with the purposes for which the areas were established. See 340 FW 3 for more information on rights-of-way.

**O. Special Use Permit (SUP)** – A permit that enables the public to engage in activities on a national wildlife refuge. There are three types of SUPs— those for commercial activities, research and monitoring activities, or general activities.

**P. Station File** – The permanent file kept at the field station, which includes a history of all records and correspondence about an easement tract. Also may be called an easement file.

**6.6 Who is responsible for administering Refuge System conservation easements? See Table 6-1.**

<b>Table 6-1: Responsibilities for Refuge System Conservation Easements</b>	
<b>This official...</b>	<b>Is responsible for...</b>
<b>A. The Director</b>	Overseeing the management of all Service programs, including the Refuge System, to ensure they are fulfilling the Service mission.
<b>B. The Chief – NWRS</b>	<p><b>(1)</b> Administering the Refuge System, including conservation easements and easement acquisition areas;</p> <p><b>(2)</b> Establishing policy for the Refuge System, including policy on conservation easements and easement refuges; and</p> <p><b>(3)</b> Developing the budget to support the mission of the Refuge System.</p>
<b>C. Regional Directors</b>	Administering the Refuge System units in the geographic area of their assigned Regions, including conservation easements and easement refuges.
<b>D. Regional Chiefs, NWRS</b>	<p><b>(1)</b> Ensuring that every property interest, including conservation easements, that is part of the Refuge System is assigned to a Refuge Manager for management, monitoring/inspection, planning, and enforcement;</p> <p><b>(2)</b> Ensuring that we monitor/inspect conservation easements on a regular basis, as needed, and not less than once every 3 years; and</p>

**FISH AND WILDLIFE SERVICE  
REFUGE MANAGEMENT**

<b>Table 6-1: Responsibilities for Refuge System Conservation Easements</b>	
<b>This official...</b>	<b>Is responsible for...</b>
	<p><b>(3)</b> Establishing any supplemental Regional policy and procedures necessary to implement this chapter effectively and efficiently in their Regions.</p>
<b>E. Regional Realty Officers</b>	<p><b>(1)</b> Coordinating with the Refuge Managers in the Regions to make the initial contact and establish and maintain a working relationship with potential sellers of conservation easements;</p> <p><b>(2)</b> Working collaboratively with Refuge Managers and the Regional Solicitors to ensure that the terms of any new conservation easements are appropriate and consistent with existing laws and policies;</p> <p><b>(3)</b> Working with the planning team to develop easement documents for use in new or existing easement acquisition areas;</p> <p><b>(4)</b> Acquiring conservation easements in accordance with the existing procedures and policies for land acquisition;</p> <p><b>(5)</b> Ensuring that Realty Tract Files are developed, and the appropriate versions are transferred to Refuge Managers;</p> <p><b>(6)</b> Entering all conservation easement acquisitions into the cadastral and land record databases; and</p> <p><b>(7)</b> Working with Refuge Managers, Federal Wildlife Officers, and the Regional Solicitors to resolve any realty-related disputes that might arise after acquisition of conservation easements.</p>
<b>F. Refuge Managers</b> assigned management responsibilities for conservation easements	<p><b>(1)</b> Administering conservation easements in accordance with this policy and regulations governing the Refuge System;</p> <p><b>(2)</b> Working collaboratively with the appropriate Refuge Supervisor and Regional Realty Officer on acquisition of new conservation easements, including recommending property suitable for protection by conservation easement;</p> <p><b>(3)</b> Maintaining easement records as required by this policy;</p> <p><b>(4)</b> Monitoring/inspecting conservation easements for compliance with the easement document;</p> <p><b>(5)</b> Maintaining communications with landowners;</p> <p><b>(6)</b> Managing uses of conservation easements, including:</p> <p style="padding-left: 40px;"><b>(a)</b> Compliance with compatibility regulations and with the National Environmental Policy Act (NEPA), and</p>

**FISH AND WILDLIFE SERVICE  
REFUGE MANAGEMENT**

Refuge Management

Part 601 National Wildlife Refuge System

**Chapter 6 Administration of National Wildlife Refuge System Conservation Easements 601 FW 6**

<b>Table 6-1: Responsibilities for Refuge System Conservation Easements</b>	
This official...	Is responsible for...
	<p style="text-align: center;"><b>(b)</b> Issuance, monitoring, and administration of refuge permits for uses of conservation easements;</p> <p><b>(7)</b> Ensuring that we monitor/inspect easement tracts for compliance as needed and not less than once every 3 years;</p> <p><b>(8)</b> Coordinating with Federal Wildlife Officers to ensure that they address easement violations expeditiously according to this chapter; and</p> <p><b>(9)</b> Ensuring that habitat values lost or damaged as a result of easement violations are restored as quickly and effectively as possible.</p>
<b>G. Federal Wildlife Officers</b>	<p><b>(1)</b> Assisting Refuge Managers to communicate with easement landowners and operators, and with State and other Federal agencies on issues related to conservation easement administration and enforcement;</p> <p><b>(2)</b> Assisting Refuge Managers with monitoring conservation easements for compliance with easement documents;</p> <p><b>(3)</b> Investigating potential easement violations; and</p> <p><b>(4)</b> Working with Refuge Managers and Regional law enforcement management to coordinate prosecution of easement violations with the servicing U.S. Attorney's office.</p>

## PLANNING AND ACQUISITION

### **6.7 What are the steps the Service must take when planning a new easement acquisition area?**

**A.** As is the case when developing new fee acquisition programs, the planning team must develop Land Protection Plans (LPPs) that articulate clear and concise goals for new easement programs (see 341 FW 1, 341 FW 2, and Part 602 of the Service Manual).

**B.** During the planning process, the planning team should consider the totality of resources in the planning area, and analyze which resources the Refuge System must protect to accomplish our conservation goals. Rights we should consider encumbering and resources we should consider protecting with conservation easements include, but are not limited to:

**(1) Overhead rights**, including:

- (a)** Overhead transmission lines,
- (b)** Overhang from wind turbines, and
- (c)** The view shed;

**(2) Surface resources**, including:

FISH AND WILDLIFE SERVICE  
REFUGE MANAGEMENT

**Refuge Management**

**Part 601 National Wildlife Refuge System**

**Chapter 6 Administration of National Wildlife Refuge System Conservation Easements 601 FW 6**

- (a) Habitat,
- (b) Vegetation,
- (c) Wetlands,
- (d) Surface waters (e.g., water rights, water quality, and water quantity),
- (e) Development rights,
- (f) Subdivision rights,
- (g) Structures,
- (h) Agricultural practices (e.g., animal confinement facilities, manure handling, seasonality of haying and grazing, and planting of wildlife-friendly crops), and
- (i) Silvicultural practices; and

**(3) Subsurface resources**, including:

- (a) Groundwater, and
- (b) The mineral estate.

*State laws defining subsurface rights vary greatly, and we should make sure our easement documents reflect those requirements accurately. For example, in some States, sand, gravel, clay, and soil are part of the mineral estate, while in other States, those resources are included in the estate of the surface owner.*

**C.** The planning team may share the easement document with the public as needed.

**D.** Once the planning team has determined which rights to acquire in the new easement acquisition area, they must work closely with Regional Realty staff, Regional Refuge management, and others with easement expertise to develop the easement document we will use in the easement acquisition area.

**6.8 What must the planning team do when developing an easement document for use in a new or existing easement acquisition area?**

**A.** To develop a model easement document that other teams can use for the easement acquisition area in the future, the planning team must:

**(1)** Consider the resources we want to conserve and protect (see section 6.7B) and the threats to those resources. Examples of potential threats to resources include, but are not limited to:

- (a) Changes in land use patterns, such as conversion of range land to crop land;
- (b) Subdivision for housing development;
- (c) Transfer of surface water or groundwater resources to another watershed or from traditional agricultural use to municipal use; and

**FISH AND WILDLIFE SERVICE  
REFUGE MANAGEMENT**

**Refuge Management**

**Part 601 National Wildlife Refuge System**

**Chapter 6 Administration of National Wildlife Refuge System Conservation Easements 601 FW 6**

(d) Subsurface mineral rights that allow resource extraction activities.

(2) Work closely with Regional Realty staff, Regional Refuge management, and others with easement expertise to carefully select the language to include in the document. This process should include:

(a) Reviewing existing easement documents and other resources at Regional and Headquarters offices and examining examples of easement language that have been both helpful and problematic to Refuge Managers so you know what to include and avoid in the easement document.

(b) Consulting with Realty staff, Refuge Managers, Federal Wildlife Officers, and, where appropriate, other Federal agencies (such as the U.S. Department of Agriculture's (USDA) Natural Resources Conservation Service) and non-governmental organizations that have experience developing, administering, and enforcing easements. These consultations will help the planning team make more informed decisions about what resources to protect, what rights to encumber, and how to craft the easement document.

B. Although it is our policy to acquire only the minimum real property interest necessary to achieve our conservation goals (see section 6.4B and 341 FW 1), nothing in this or any other section restricts Regions from acquiring easements that facilitate priority public uses of the Refuge System so that we continue to meet our goal of promoting our relevancy to the American people.

**6.9 Is there a requirement to use a standard easement document?** Although it is not a requirement, whenever possible we use a standard easement document within easement acquisition areas. Standardization of easement documents, especially within a project area, leads to:

A. Better public understanding of our conservation goals, which helps us to more easily achieve those conservation goals;

B. The landowners' better understanding of the terms and conditions of easement documents, which subsequently improves easement compliance; and

C. More effective monitoring of, enforcement of, and compliance with our conservation easements.

**6.10 What must easement documents include, and what is their duration?**

**A. Content:** All easement documents must:

(1) List the legal authorities for acquiring the conservation easement;

(2) State the goals of the project;

(3) Include a legal description and, if appropriate, a survey-grade map of the lands encumbered by the conservation easement;

(4) Define, to the extent possible, the uses, activities, and rights the landowner retains, including landowner activities that require no Service approval;

(5) Define the uses and activities the landowner must refrain from pursuing without Service authorization;

(6) Define the uses, activities, and rights the Service acquires. We may consider acquiring, but are not limited to the rights to:

**FISH AND WILDLIFE SERVICE  
REFUGE MANAGEMENT**

**Refuge Management**

**Part 601 National Wildlife Refuge System**

**Chapter 6 Administration of National Wildlife Refuge System Conservation Easements 601 FW 6**

- (a) Drain, fill, burn, or otherwise impact wetlands;
- (b) Plow or otherwise convert grasslands to cropland or other uses;
- (c) Build structures such as buildings, fences, roads, or ditches;
- (d) Apply water rights to a particular parcel of land;
- (e) Harvest or manipulate native or non-native vegetation;
- (f) Restore wetlands, grasslands, forests, or other habitats; and
- (g) Implement refuge management activities, such as habitat restoration and management and ecological monitoring; and

(7) Include provisions for us to access the property for monitoring/inspection and enforcement.

**B. Duration:** The easement document must explain that the easement will exist in perpetuity. We may only acquire perpetual conservation easements for conservation purposes. If meeting our conservation goals requires less than perpetual land protection, we must use other methods for protection, such as leases, cooperative agreements, or overlay refuges.

**C. Subsurface Minerals:** To ensure the greatest possible protection of trust resources, we should, whenever possible, include in the easement document authority for the Service to require and approve a permit to access any associated subsurface minerals. (See section 6.20 for more information on administering subsurface mineral rights on conservation easements.)

**6.11 Does the Service ever acquire public access rights in conservation easements?** The Service does not require acquisition of public access rights to private lands in our conservation easement programs. Generally the landowner retains the right to determine who may enter the property for wildlife-dependent recreation or other recreational uses.

**A.** To provide public access rights to private lands, we should:

(1) Use our fee simple acquisition programs to acquire lands and waters for public access on national wildlife refuges;

(2) Work with State fish and wildlife agencies (many of whom have less-than-perpetual programs), land trusts, and other conservation organizations/agencies, that can purchase, lease, or provide incentives for public hunting, fishing, or other recreational access to private property;

(3) When it meets our needs and the needs of the State and the landowner, look for opportunities to combine our easement acquisition with shorter term, State-owned access leases onto the underlying fee; and

(4) Coordinate, when feasible, with other Federal agency access programs (such as USDA's Natural Resources Conservation Service).

**B.** When public access is necessary to meet landscape-scale conservation goals:

**FISH AND WILDLIFE SERVICE  
REFUGE MANAGEMENT**

**Refuge Management**

**Part 601 National Wildlife Refuge System**

**Chapter 6 Administration of National Wildlife Refuge System Conservation Easements 601 FW 6**

(1) If we are partnering with States, tribes, local governments, or non-government organizations to conserve landscapes and provide, for example, regional multi-jurisdictional trail systems, there may be a valid need to provide some public access across our conservation easements.

(2) In these instances, the planning team should consider other options during the LPP/NEPA analysis process. For instance:

- (a) Recommending acquisition of a special right-of-way easement, held by the Service or others, to provide connectivity.
- (b) Providing for a small degree of fee acquisition authority within the project area. This might include specific acreage limits or acreage percentages of the total easement acquisition area. We encourage the planning team to involve the public so that we can make a more informed decision about whether or not to include fee acquisition authority.

**6.12 From which types of landowners can the Service acquire conservation easements?**

**A. Private Ownership.** In most circumstances we only acquire conservation easements from willing landowners on property that either an individual or private entity owns.

**B. Units of Local Government.** We may acquire conservation easements on lands that units of local government own, but any decision to do so must be thoroughly vetted through the public planning process that establishes the easement acquisition area.

**C. State and Tribal Lands.** We must not acquire or attempt to acquire conservation easements on lands owned by States or tribes. Most State and tribal constitutions prohibit selling perpetual easements. If they do not prohibit it and we plan to include State or tribal lands in the Refuge System, we must use leases, cooperative agreements, or other tools.

**D. Federal Lands.** We cannot acquire conservation easements on other Federal lands. When the United States already owns the underlying fee, any easement interest the United States acquires merges into the underlying fee ownership, essentially dissolving the easement. There are other ways, such as through cooperative agreements or permits, to protect resources owned by other Federal agencies.

**6.13 Can the Service accept donations of conservation easements?** Yes, we may accept donations of conservation easements under certain conditions. When determining whether or not to accept a donation of a conservation easement, we must consider:

**A.** Whether the proposed donation is within an approved acquisition boundary.

**B.** What rights the landowner is willing to donate. Typically, we may only accept donations of conservation easements that include the same rights we would seek to acquire if we were purchasing the easement from a willing seller. We should not accept a donation if it does not include all of the rights necessary to achieve our conservation goals.

**C.** The enforcement and administration concerns associated with accepting the proposed donation.

**D.** Whether the donation meets Departmental donation guidelines (see 374 DM 6) and Service donation guidelines (see 212 FW 8 and 342 FW 5).

**FISH AND WILDLIFE SERVICE  
REFUGE MANAGEMENT**

**Refuge Management**

**Part 601 National Wildlife Refuge System**

**Chapter 6 Administration of National Wildlife Refuge System Conservation Easements 601 FW 6**

**6.14 Can the Service acquire conservation easements through statutorily required compensatory mitigation plans or mitigation banks?**

**A.** Yes, but only:

**(1)** If the property lies within an approved acquisition boundary, and the acquisition is in compliance with existing acquisition and mitigation policies (see 501 FW 2 and 46 FR 49229-49232), or

**(2)** The acquisition is specifically authorized by statute.

**B.** We cannot establish authority to acquire conservation easements through:

**(1)** An Endangered Species Recovery Plan,

**(2)** A Clean Water Act permitting process, or

**(3)** A memorandum of understanding or a memorandum of agreement.

**6.15 Can the Service modify or amend conservation easements?**

**A.** We cannot modify or amend provisions of a conservation easement document without completing the full acquisition process established in Service policy (see Parts 341 and 342). This involves meeting appraisal requirements, negotiating to acquire more rights or exchange rights or real property interests, and ensuring the Office of the Solicitor reviews the modification/amendment.

**B.** It may be appropriate in some situations to acquire new conservation easement lands through a formal land exchange. When exchanging a conservation easement, we should follow the same procedures we follow when exchanging any type of real property interest (see 342 FW 3, 342 FW 4, and 342 FW 5).

## **MANAGING EASEMENTS AND USES**

**6.16 What are the requirements for posting the boundaries of conservation easements?** See 343 FW 1 for the current boundary posting requirements for less than fee boundaries. There is no restriction against posting if the easement document gives us the right to do so, and we determine it is necessary.

**6.17 How does the Refuge System conduct refuge management activities on conservation easement lands?**

**A.** When we acquire management rights (e.g., the right to restore wetlands or grasslands, to inventory or monitor biological resources), those management activities are Federal actions or Federal undertakings. As a result, the Refuge Manager responsible for the conservation easement must ensure compliance with NEPA, Section 7 of the Endangered Species Act, Section 106 of the National Historic Preservation Act, and all other applicable laws and regulations in the same way that he/she would for refuge lands held in fee simple.

**B.** Refuge Managers also must notify the landowner and any operators in advance of our proposed management activities. For large or complex projects, Refuge Managers should provide them with regular progress updates.

**FISH AND WILDLIFE SERVICE  
REFUGE MANAGEMENT**

**Refuge Management**

**Part 601 National Wildlife Refuge System**

**Chapter 6 Administration of National Wildlife Refuge System Conservation Easements 601 FW 6**

**6.18 How does a Refuge Manager determine what uses are allowed on easements?**

**A.** Because easement interests are part of the Refuge System, Service policy and regulations (e.g., appropriateness and compatibility) apply to the interests that we acquire through the easement document. To determine what uses are allowed on easement lands, first we have to determine if the requested use affects the interests that we acquired in the easement document, or if it is a retained right of the landowner.

**(1)** Any uses the landowner retains as a real property right, and that we do not purchase, acquire, or otherwise limit in the easement document, are not refuge uses and are outside our jurisdiction. These uses are allowed as retained rights of the landowner.

**(2)** Any uses the landowner does not retain as a real property right, or that we purchase, acquire, or otherwise limit in the easement document, are refuge uses and are within our jurisdiction.

**B.** Then, if the landowner or a third-party applicant requests a particular temporary use that is not within the retained rights of the landowner, we apply existing policy, including our Appropriate Refuge Uses policy (603 FW 1), our Compatibility policy (603 FW 2), and associated regulations (50 CFR 25.21) to determine if we can authorize the requested use. The following rules apply:

**(1)** The Refuge Manager may issue a permit for the addition of portable, temporary structures on a conservation easement if the structure is found to be appropriate and compatible according to existing regulations (see 50 CFR 25.21) and policy (see 603 FW 1 and 603 FW 2).

**(2)** We will not allow (by permit or other authorization) construction of any permanent alterations on a conservation easement. Permanent alterations include the addition of a residence or other permanent structure. If the landowner expressly reserves the right in the easement document to construct a permanent structure, it is allowable. This section in no way affects our administration of rights-of-way under 50 CFR 29.21.

**C.** If the landowner requests a refuge use that falls within our jurisdiction, but that does not pass the appropriateness finding or compatibility determination or is otherwise not permissible, a land exchange might be suitable. When exchanging a conservation easement, we should follow the same procedures we follow when exchanging any type of real property interest (see 342 FW 3, 342 FW 4, and 342 FW 5).

**D.** See section 6.20 for the requirements related to mineral rights.

**6.19 How does a Refuge Manager allow a use when he/she finds it compatible?**

**A.** When a Refuge Manager finds a use appropriate and compatible and decides to authorize it on conservation easement lands, he/she must use or seek the appropriate permit or easement. The only types of permits or easements available for authorizing compatible uses of conservation easements are:

**(1)** A right-of-way permit or right-of-way easement (see 340 FW 3), or

**(2)** A refuge Special Use Permit (SUP) (see 50 CFR 25.44).

**B.** For all existing conservation easements that include language that requires “written authorization” from the Service to allow a use, the “written authorization” must be in the form of a permit. This requirement does not nullify previously issued Letters of Authorization; it just replaces that requirement with a permit.

**C.** We will administer the use of conservation easement lands with SUPs of up to 5 years duration.

**FISH AND WILDLIFE SERVICE  
REFUGE MANAGEMENT**

**Refuge Management**

**Part 601 National Wildlife Refuge System**

**Chapter 6 Administration of National Wildlife Refuge System Conservation Easements 601 FW 6**

(1) In limited circumstances, we can authorize temporary uses for longer than 5 years. For example:

(a) To deal with health and safety issues, such as rising water levels in an easement-protected wetland that is flooding basements or driveways at home sites in areas unencumbered by our conservation easements, or

(b) To authorize activities that we would consider a refuge management activity if we conducted them on lands held in fee simple, such as installing fencing or water tanks to implement an improved grazing system.

*In these situations, the Refuge Manager may issue a SUP for a period of no more than 10 years.*

(2) The SUP must include a provision that its continued validity is contingent on meeting permit conditions and compatibility of use over the life of the permit.

**6.20 How does the Refuge System administer subsurface mineral rights on conservation easements?**

**A.** Because acquisition of mineral rights is typically cost prohibitive, we rarely acquire the mineral estate on easement refuges or fee refuges. On many conservation easements, the underlying fee owner or one or multiple third parties own the mineral estate. Subsurface minerals may include oil and gas, hard rock minerals, coal, sand/gravel/clay, or rock/mineral materials.

**B.** We must not deny the mineral estate owner access to their property. When the Service's surface interests could be impacted by subsurface mineral access, the Refuge Manager should work with the subsurface mineral rights owner to outline conditions for access. Access to the mineral estate should avoid impacts to the easement interest wherever possible. If impacts are unavoidable, the Refuge Manager should use a SUP that sets restrictions, minimizes impacts, and administers full restoration efforts.

**C.** The extent of input into the exploration for and extraction of subsurface minerals on a conservation easement depends on the language in the easement document. (See section 6.10 for information on developing an easement document.)

**D.** It is important for the Refuge Manager to engage with the mineral owner/lessee and encourage them to use best management practices to avoid or minimize impacts to our portion of the surface estate and to return the surface back to the condition it was in when we acquired the conservation easement. The Refuge Manager should seek mitigation (e.g., land exchange) for impacts to our interest if State or Federal law allows it.

**E.** If an easement document gives us "approval authority" or states or implies that we have some discretion in allowing the owner/lessee to exploit the mineral estate, the Refuge Manager must consult with the Office of the Solicitor. If the Solicitor advises us that we have discretion, or if there is any permit contemplated, this is a Federal action and requires us to comply with NEPA, Section 7 of the Endangered Species Act, Section 106 of the National Historic Preservation Act, and all other applicable laws and regulations.

**FISH AND WILDLIFE SERVICE  
REFUGE MANAGEMENT**

**Refuge Management**

**Part 601 National Wildlife Refuge System**

**Chapter 6 Administration of National Wildlife Refuge System Conservation Easements 601 FW 6**

**6.21 What are the Service's responsibilities for documenting and recordkeeping at the field, Regional, and national levels?**

**A. Realty Tract Files** (see also 342 FW 4, Title Evidence, Curative Action, and Conveyancing). These files are kept in the Division of Realty at the Regional Office, and should include such information as:

- (1) The easement agreement,
- (2) The vesting deed,
- (3) The Preliminary Title Opinion (see 342 FW 4, Title Evidence, Curative Action, and Conveyancing),
- (4) A map of the interest acquired, and
- (5) A survey of the interest acquired, if applicable.

**B. Permanent Station Files.** These files are kept at the field station responsible for managing the easement area and should include:

- (1) The same documents contained in the Realty Tract File;
- (2) A baseline report that documents the condition of the subject property at the time the easement is recorded;
- (3) The name of the current landowner;
- (4) Documentation of monitoring and inspection activities, either in individual files or as a collective report;
- (5) Landowner contact and correspondence documentation;
- (6) Notes to the file and other management information, such as:
  - (a) Condition on the ground—both with compliance issues and if no issues are found,
  - (b) Other management issues (e.g., invasive weeds, posting condition, fences), and
  - (c) Photographic documentation of monitoring and inspection activities; and
- (7) A map or photo, or both, of the easement area at the time of acquisition, including excluded areas or inholdings.

**C. Digital Information.** We maintain digital spatial records in the cadastral geodatabase, and other authoritative digital data in a land record database (such as Land Record System (LRS) or Financial and Business Management System (FBMS), or both) as follows:

- (1) The Cadastral Data Working Group (CDWG) creates and manages spatial data representing boundary and tract information for all of our land interests, including conservation easements, as spatial data in our cadastral geodatabase. The CDWG is comprised primarily of cartographers from Regional Divisions of Realty and Planning. The Service's Chief Cartographer (in the Headquarters Division of Realty) is the team lead and data steward and is responsible for maintaining the cadastral geodatabase, which is available to anyone in the Service who needs to access it.

FISH AND WILDLIFE SERVICE  
REFUGE MANAGEMENT

**Refuge Management**

**Part 601 National Wildlife Refuge System**

**Chapter 6 Administration of National Wildlife Refuge System Conservation Easements 601 FW 6**

(2) Regional Realty Specialists are responsible for recording, updating, and retaining the appropriate data for each interest in land in the land record database.

## **MONITORING AND INSPECTIONS**

### **6.22 What is the purpose and priority of conservation easement monitoring and inspection?**

**A.** We complete easement monitoring and inspections to ensure that the United States' interests in these lands are protected and that we and the landowner are in compliance with the Refuge Administration Act (16 U.S.C. 668dd, as amended).

**B.** Monitoring and inspection of conservation easements for compliance and the prompt investigation and restoration of easement violations is one of the highest priorities for Refuge Law Enforcement and land protection programs. These lands are especially vulnerable because:

(1) They remain privately owned and often support traditional economic land uses, which may accidentally or intentionally degrade the conservation value of the interest we own, and

(2) They are often distant from the Refuge System field station responsible for their administration.

### **6.23 How can Refuge Managers and Federal Wildlife Officers reduce the incidence of conservation easement violations?**

**A.** Because most Refuge System conservation easements are perpetual, we assume that ownership of the underlying property will change many times. With passage of time and ownership changes, future landowners are more likely to misunderstand their easement obligations and, subsequently, there likely will be more violations.

**B.** To help minimize the types of misunderstandings that often lead to conservation easement violations, Refuge Managers and Federal Wildlife Officers should communicate with landowners frequently using one or more of the following methods:

(1) Contacting new owners of easement-protected lands and giving them a copy of the easement document and applicable maps.

(2) Creating and disseminating an annual newsletter to each easement landowner in a particular project area. Potential subject matter for the newsletter includes:

(a) Pertinent local conservation issues, conservation programs, and wildlife and habitat management issues;

(b) Lists of contact information for technical assistance; and

(c) Reminders of easement obligations.

(3) Sending a direct mailing to each easement landowner with a summary or update about relevant easement information. For example, if a new farming technology might damage our conservation easement interest, we could advise landowners to consult with us prior to changing their operations to include the new technology.

**C.** Refuge Managers and Federal Wildlife Officers may also work with other Federal and State agencies by:

**FISH AND WILDLIFE SERVICE  
REFUGE MANAGEMENT**

**Refuge Management**

**Part 601 National Wildlife Refuge System**

**Chapter 6 Administration of National Wildlife Refuge System Conservation Easements 601 FW 6**

(1) Regularly providing easement location information to the appropriate USDA agency (typically the Natural Resource Conservation Service);

(2) Establishing memorandums of understanding with USDA offices to share information when:

(a) Landowners or operators express interest in modifications to the land/operations that may affect our easement-protected interests,

(b) Land uses are observed that may affect a landowner's eligibility for Farm Bill benefits, and

(c) Violations of State law are suspected.

D. Federal Wildlife Officers (as designated by the Regional Chief, Refuge Law Enforcement) will work with the appropriate U.S. Attorneys to:

(1) Regularly evaluate collateral schedule amounts (the amount of the fine as established by the local Federal District Court) for balance, fairness, and effectiveness; and

(2) Modify, when necessary, the fines or penalties for easement violations.

**6.24 How often should Refuge Managers monitor/inspect conservation easements?** Refuge Managers must monitor/inspect (or assign staff to do so) conservation easements for compliance at appropriate intervals. Regions must develop their specific monitoring documentation guidelines, which might include requirements for documentation in annual reports and other local databases, and a process to record and recall easement monitoring activities. Typically, Refuge Managers arrange for monitoring/inspection at the time of year when violations most commonly occur or are most easily detected (e.g., during the State's hunting season, in mid-winter when there's little foliage). The Refuge Manager needs to monitor/inspect many conservation easements annually, and they must be monitored/inspected at least every 3 years.

**6.25 How do Refuge Managers monitor/inspect conservation easements for compliance?** Refuge Managers, their employees, or Federal Wildlife Officers should look for any irregularities or activity that may be a violation of the provisions in the easement document by:

A. Performing on-site visits,

B. Using aerial reconnaissance,

C. Reviewing current year aerial imagery, or

D. Using other remote sensing technology (e.g., satellite imagery, trail cameras, environmental sensors) that is effective and approved by appropriate line officers and the Office of the Solicitor.

## **VIOLATIONS: EASEMENT INVESTIGATIONS AND PROSECUTION**

**6.26 What is the purpose of an easement investigation?** We investigate potential violations of easement provisions to:

A. Determine if a violation has occurred, and

B. If a violation has occurred:

**FISH AND WILDLIFE SERVICE  
REFUGE MANAGEMENT**

**Refuge Management**

**Part 601 National Wildlife Refuge System**

**Chapter 6 Administration of National Wildlife Refuge System Conservation Easements 601 FW 6**

- (1) Identify the responsible party,
- (2) Determine damages,
- (3) Determine restoration requirements,
- (4) Communicate restoration requirements to the responsible party, and
- (5) Ensure that compliance is achieved.

**6.27 Who may investigate easement violations?**

- A.** Only Service Federal Wildlife Officers (and rarely, if necessary, Office of Law Enforcement Special Agents) may investigate potential easement violations.
- B.** Non-commissioned employees may accompany and assist Federal Wildlife Officers during investigations if the Federal Wildlife Officer agrees and the Refuge Manager approves it.
- C.** Only Federal Wildlife Officers (and, if necessary, Special Agents) may lead site visits for enforcement purposes and make investigatory contacts with landowners and operators.

**6.28 What activates an easement investigation?** The triggers for an easement investigation are:

- A.** Easement monitoring/inspections that indicate irregularities or possible violations, or
- B.** Reports or information received about irregularities or possible violations.

**6.29 When should a Refuge Manager get a Federal Wildlife Officer to begin an easement investigation?** The investigation should begin as soon as practical after potential violations are detected or reported. The following guidelines apply:

- A.** Ground checks of suspected violations should occur within 30 days of detection.
- B.** The Federal Wildlife Officer should:
- (1) Contact the landowner/operator within 30 days of the ground check,
  - (2) Follow up with the landowner/operator within 7 days from the initial contact, and
  - (3) Complete a return compliance check within 1 to 3 days from the established due date for compliance or restoration completion.
- C.** If the correction or restoration is inadequate, the Federal Wildlife Officer must contact the landowner/operator again within 1 to 3 days of the initial return compliance check.
- D.** Within 7 days after the established compliance date, if the Federal Wildlife Officer determines that the violation has not been corrected, the Refuge Manager or designee, which is often a Federal Wildlife Officer, should sign and mail a follow-up letter to the landowner or operator explaining the consequences of noncompliance. All correspondence sent to the landowner or operator pertaining to a violation should be certified with a return receipt

**FISH AND WILDLIFE SERVICE  
REFUGE MANAGEMENT**

**Refuge Management**

**Part 601 National Wildlife Refuge System**

**Chapter 6 Administration of National Wildlife Refuge System Conservation Easements 601 FW 6**

E. Once compliance is achieved, the Refuge Manager and Federal Wildlife Officer should mail a closure letter within 14 days after the objectives are met.

**6.30 What does an easement investigation include?** The requirements for an investigation depend on the nature of the suspected violation and development of the case. As the investigation proceeds, it typically includes the following actions:

- A. Review the easement document and station file prior to a site visit,
- B. Ground check with photo documentation of any violations,
- C. Interview suspects or witnesses involved in the violations—these interviews must be documented in writing,
- D. Determine (either the Refuge Manager or designee) the restoration requirements needed to bring the easement back into compliance,
- E. Document restoration with photos, and
- F. Case disposition.

**6.31 How do the Refuge Manager and the Federal Wildlife Officer document an easement investigation?**

A. The Refuge Manager must ensure that all information is documented during the investigation. Depending on the nature of the violation and results of the investigation, information may include:

- (1) Photographs (aerial, ground checks, before/after, etc.);
- (2) Field notes and sketches;
- (3) Survey or GPS data;
- (4) Restoration plans;
- (5) Notes of all interviews with the landowner, operator, contractor, etc.; and
- (6) Copies of correspondence, including the violation letter and closure letter, and return receipts.

B. The Federal Wildlife Officer records easement investigations through the Service's approved law enforcement database. The field station responsible for administering the easement must maintain all paper copies in the local easement files.

**6.32 How does a Refuge Manager close an easement violation?** Once a Refuge Manager or Federal Wildlife Officer makes the landowner/operator aware of actions necessary to correct the violation and bring them into compliance, they must also establish a compliance date and complete a follow-up inspection to ensure that restoration requirements are met. The Refuge Manager or Federal Wildlife Officer must notify the landowner/operator that either:

- A. The restoration(s) is satisfactory and the case is closed, or
- B. The restoration is not satisfactory and additional work is needed to close the case.

**FISH AND WILDLIFE SERVICE  
REFUGE MANAGEMENT**

**Refuge Management**

**Part 601 National Wildlife Refuge System**

**Chapter 6 Administration of National Wildlife Refuge System Conservation Easements 601 FW 6**

**6.33 What is the procedure for easement investigations that require criminal or civil prosecution?**

**A.** Refuge Managers or Federal Wildlife Officers should contact the appropriate Federal Wildlife Zone Officer to determine procedures for having easement cases prosecuted. Procedures will vary among different U.S. District Courts.

**B.** Each U.S. Attorney handles cases differently. It is important that we follow the appropriate U.S. Attorney's recommendations when planning to request criminal or civil prosecution and when issuing a Violation Notice for easement violations.

**C.** Although a Federal Wildlife Officer has discretion about issuing Violation Notices for easement violations, he/she must not issue one until:

**(1)** Restoration requirements are satisfied,

**(2)** He/she has conducted a complete review of the easement file, and

**(3)** He/she has coordinated with the Federal Wildlife Zone Officer for consistency and to determine if it is necessary to coordinate with the U.S. Attorney's office.

**D.** Factors to consider when issuing Violation Notices for easement violations include:

**(1)** The landowner's/operator's knowledge of the conservation easement and its provisions,

**(2)** Whether or not the violation is a repeat offense, and

**(3)** The severity of the violation and amount of damage to the interests of the United States.

/sgd/ Stephen Guertin  
DEPUTY DIRECTOR

Date: January 12, 2015