

recreational opportunities on refuges will have little industrywide effect.

We expect no changes in expenditures as a result of this document. We expect no change in recreational opportunities, so we do not expect the document to have a significant economic effect on a substantial number of small entities in any region or nationally.

#### *Small Business Regulatory Enforcement Fairness Act (SBREFA)*

This document is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This document:

1. Does not have an annual effect on the economy of \$100 million or more. This document will only affect visitors at refuges. It may result in increased visitation at refuges and provide for minor changes to the methods of public use permitted within the Refuge System. See "Regulatory Flexibility Act."

2. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. See "Regulatory Flexibility Act."

3. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. See "Regulatory Flexibility Act."

#### *Unfunded Mandates Reform Act*

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501, *et seq.*):

1. This document will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. See "Regulatory Flexibility Act."

2. This document will not produce a Federal mandate of \$100 million or greater in any year; it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. See "Regulatory Flexibility Act."

#### *Takings (E.O. 12630)*

In accordance with E.O. 12630, the document does not have significant takings implications. A takings implication assessment is not required. This policy may result in increased visitation at refuges and provide for minor changes to the methods of public use permitted within the Refuge System. Refer to "Regulatory Flexibility Act."

#### *Federalism (E.O. 13132)*

In accordance with E.O. 13132, the document does not have significant federalism effects. This document will not have substantial direct effects on the

States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with E.O. 13132, we have determined that this document does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

#### *Civil Justice Reform (E.O. 12988)*

In accordance with E.O. 12988, the Office of the Solicitor has determined that the document does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. This policy will expand upon established policy and result in better understanding of the policy by refuge visitors.

#### *Energy Supply, Distribution, or Use (E.O. 13211)*

On May 18, 2001, the President issued E.O. 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because this notice provides to refuge managers general information on the National Wildlife Refuge System Mission and Goals and Refuge Purposes, it is not a significant regulatory action under E.O. 12866 and is not expected to significantly affect energy supplies, distribution, and use. This notice does not designate any areas that have been identified as having oil or gas reserves, whether in production or otherwise identified for future use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

#### *Consultation and Coordination With Indian Tribal Governments (E.O. 13175)*

In accordance with E.O. 13175, we have evaluated possible effects on federally recognized Indian tribes and have determined that there are no effects. We coordinate recreational use on refuges with tribal governments having adjoining or overlapping jurisdiction before we propose the activities. This policy is consistent with and not less restrictive than tribal reservation rules.

#### *Paperwork Reduction Act*

This document does not include any new information collections that would require Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). An agency may not conduct or sponsor, and a person is not

required to respond to, a collection of information unless it displays a currently valid OMB control number.

#### *National Environmental Policy Act*

We ensure compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4347) when developing refuge policies. In accordance with 516 DM 2, appendix 1.10, we have determined that this document is categorically excluded from the NEPA process because it is limited to policies, directives, regulations, and guidelines of an administrative, financial, legal, technical, or procedural nature, the environmental effects of which are too broad, speculative, or conjectural to lend themselves to meaningful analysis. Site-specific proposals, as indicated above, will be subject to the NEPA process.

#### **Primary Author**

Don Hultman, Refuge Supervisor, Midwest Region, National Wildlife Refuge System, U.S. Fish and Wildlife Service, was the primary author of this notice.

#### **Availability of the Policy**

The Final National Wildlife Refuge System Mission and Goals and Refuge Purposes Policy is available at this Web site: <http://policy.fws.gov/ser600.html>. Persons without Internet access may request a hard copy by contacting the office listed under the heading **FOR FURTHER INFORMATION CONTACT**.

Dated: January 20, 2006.

#### **H. Dale Hall,**

*Director, U.S. Fish and Wildlife Service.*

**Note:** This document was received at the Office of the Federal Register on June 21, 2006.

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## **DEPARTMENT OF THE INTERIOR**

### **Fish and Wildlife Service**

**RIN 1018-AG46**

### **Final Appropriate Refuge Uses Policy Pursuant to the National Wildlife Refuge System Improvement Act of 1997**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability.

**SUMMARY:** This notice pertains to our final policy regarding the process we use to decide if a nonwildlife-dependent recreational use is an appropriate use of

a refuge. The National Wildlife Refuge System Improvement Act of 1997 (Improvement Act) amends the National Wildlife Refuge System Administration Act of 1966 (Administration Act) and defines six refuge uses (hunting, fishing, wildlife observation and photography, and environmental education and interpretation) as wildlife-dependent recreational uses. The Improvement Act states that when compatible these uses are appropriate refuge uses and are the priority general public uses of the National Wildlife Refuge System (Refuge System). The Improvement Act directs us to give priority consideration to and facilitate these uses. To do this, we will provide compatible wildlife-dependent recreational uses enhanced and priority consideration over other general public uses in refuge planning and management. This final policy establishes a process for determining when we may further consider other general public uses on refuges. We are incorporating this policy as part 603, chapter 1, of the Fish and Wildlife Service Manual (603 FW 1). This chapter (603 FW 1) will be available on the U.S. Fish and Wildlife Service's (Service) Web site at <http://policy.fws.gov/ser600.html>.

**DATES:** This policy is effective July 26, 2006.

**FOR FURTHER INFORMATION CONTACT:** Carol Carson, Refuge Program Specialist, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 670, Arlington, Virginia 22203 (telephone 703-358-2490, fax 703-358-2154).

**SUPPLEMENTARY INFORMATION:** We published the Draft Appropriate Refuge Uses Policy in the **Federal Register** on January 16, 2001 (66 FR 3673). We invited the public to provide comments on the draft policy. The initial comment period closed on March 19, 2001. On March 15, 2001, we extended the comment period to April 19, 2001 (66 FR 15136). On May 15, 2001, we reopened the comment period to June 14, 2001 (66 FR 26879), and on June 21, 2001, we reopened the comment period until June 30, 2001 (66 FR 33268). In our June 21, 2001, notice, we also corrected the May 15, 2001, notice to reflect that comments received between April 19 and May 15, 2001, would be considered and need not be resubmitted.

### Background

The Improvement Act (Pub. L. 105-57) amends and builds upon the Administration Act (16 U.S.C. 6688dd *et seq.*), providing an "organic act" for the Refuge System. The Improvement Act

clearly establishes the Refuge System mission, provides guidance to the Secretary of the Interior (Secretary) for management of the Refuge System, provides a mechanism for refuge planning, and gives refuge managers uniform direction and procedures for making decisions regarding uses of the Refuge System.

Previously, much Refuge System public recreation policy was promulgated from the Refuge Recreation Act of 1962 (Recreation Act), which authorized us to regulate or curtail public recreational uses in order to ensure that we accomplish our primary conservation objectives. The Recreation Act also authorizes us to allow public recreation on areas within the Refuge System when the use is an "appropriate incidental or secondary use." The Administration Act authorizes the Secretary to allow any use, but only if the use is compatible with the purposes of the area. The Improvement Act amended the Administration Act to define compatibility and to provide a Refuge System mission. It also includes specific directives and a clear hierarchy of public uses on the Refuge System.

The Improvement Act defines wildlife-dependent recreation and wildlife-dependent recreational use as "a use of a refuge involving hunting, fishing, wildlife observation and photography, and environmental education and interpretation." The Improvement Act also provides a set of affirmative stewardship responsibilities regarding our administration of the Refuge System. These stewardship responsibilities direct us to ensure that these six wildlife-dependent recreational uses, where compatible, are provided enhanced consideration and priority over other general public uses.

We are committed to providing enhanced opportunities for the public to enjoy compatible wildlife-dependent recreation. We are also committed to ensuring that refuge uses do not compromise individual refuge purpose(s) or the Refuge System mission. We can achieve individual refuge purpose(s) and the Refuge System mission while providing people with lasting opportunities for quality, wildlife-dependent recreation. To do this we must carefully plan, apply regulations and policies uniformly throughout the Refuge System, diligently monitor impacts of uses on natural resources, and prevent or eliminate uses not appropriate in the Refuge System.

The finding of appropriateness is the first step in deciding whether we will allow a proposed use or continue, expand, renew, or extend an existing

use on a refuge. The Improvement Act states that, when compatible, the six wildlife-dependent recreational uses are appropriate and legitimate uses of the Refuge System and are the priority general public uses of the Refuge System. The Improvement Act directs us to facilitate these priority general public uses. We evaluate all other general public uses under a process established by this policy to determine their relationship to individual refuge purpose(s), the Refuge System mission, and priority general public uses. This screening process (i.e., the appropriateness finding contained in this policy) is a decision process that refuge managers will use to quickly and systematically find which uses are appropriate on a specific refuge. The outcome of the process will vary depending on refuge purpose(s) and conditions at the refuge, but the process will be applied consistently throughout the Refuge System. When we find a use is appropriate, we then thoroughly review the use for compatibility before allowing it on a refuge. This appropriate use policy and our compatibility policy (603 FW 2) are key tools refuge managers use together.

### Purpose of This Final Policy

The purpose of this final policy is to establish a procedure for finding when uses other than the six wildlife-dependent recreational uses are appropriate for further consideration to be allowed on a refuge. This policy also provides procedures for review of existing uses. The policy will help us fulfill individual refuge purpose(s) and the Refuge System mission, as well as afford priority to compatible wildlife-dependent recreational uses within the Refuge System. This policy will apply to all proposed and existing uses of refuges where we have jurisdiction over these uses. This policy does not apply where we do not have jurisdiction. This policy is intended to improve the internal management of the Service, and it is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its Departments, agencies, instrumentalities or entities, its officers or employees, or any other person.

### Summary of Comments Received

During public comment periods, we received 2,064 comment letters by mail, fax, or email on our draft policy from Federal, State, and local governments, nongovernmental organizations (NGOs), and individuals. Some comments addressed specific elements of the draft policy, while many comments

expressed general support without addressing specific elements. We considered all of the information and recommendations for improvement included in the comments and made changes to the draft policy where needed. The number of issues addressed in each comment letter varied widely. We identified 18 specific issues addressed in the comment letters. A summary of those issues and our responses follow. Several comments were not relevant to this policy, and we do not address them.

#### *Issue 1: Coordination With State Fish and Wildlife Agencies and Jurisdiction*

*Comment:* Several commenters were concerned the draft policy contained no language requiring us to coordinate with State or local government agencies. Some States felt that State authorities, jurisdictions, and responsibilities were “made vague, diminished, or \* \* \* ignored” in the draft policy. Two States were concerned that the draft policy may result in Federal infringement on State jurisdiction. One State commented that the policy should be rewritten to involve State agencies at an early stage. One commenter recommended that we implement a more formal process to solicit input from State agencies.

*Response:* In section 1.2 of the draft policy (What is the scope of this policy?), we stated the “policy applies to all proposed and existing uses of national wildlife refuges when we have jurisdiction over these uses.” In section 1.2.B., we acknowledge and consider the roles of the States in managing fish and wildlife management on refuge when such activities are consistent with the refuges purpose(s), refuge goals, and the Refuge System mission. To enhance our coordination with State fish and wildlife agencies, we include take of fish and wildlife under State regulations as an appropriate activity on refuges (section 1.3B.). However, before we allow a specific activity, we must determine if the activity is compatible.

Both the Service and the State fish and wildlife agencies have authorities and responsibilities for management of fish and wildlife on refuges as described in the Code of Federal Regulations (CFR), Title 43, part 24. Consistent with the Administration Act, as amended, the Director of the Service will interact, coordinate, cooperate, and collaborate with the State fish and wildlife agencies in a timely and effective manner on the acquisition and management of refuges. Under both the Administration Act, as amended, and 43 CFR 24.4(e), the Director of the Service, as the Secretary’s designee, will ensure that Refuge System regulations and

management plans are, to the extent practicable, consistent with State laws, regulations, and management plans. We charge refuge managers, as the designated representatives of the Director at the local level, with carrying out these directives. We will provide State fish and wildlife agencies timely and meaningful opportunities to participate in the development and implementation of programs conducted under this policy. These opportunities will most commonly occur through State fish and wildlife agency representation on comprehensive conservation plan (CCP) planning teams. However, we will provide other opportunities for the State fish and wildlife agencies to participate in the development and implementation of program changes that would be made outside of the CCP process (603 FW 2). Further, we will continue to provide State fish and wildlife agencies opportunities to discuss and, if necessary, elevate decisions within the hierarchy of the Service.

During the comment periods, we developed summaries of this and other policies and sent them to each State. We held numerous meetings with individual State fish and wildlife agencies, through the International Association of Fish and Wildlife Agencies, to explain the policy and discuss concerns. We extended the comment period three times to accommodate additional review and comment. To address concerns regarding input from State agencies, we added language to the final policy that stresses the importance of this coordination. We also modified section 1.6E. (Refuge Manager) in the draft policy (section 1.7E. in the final policy) to state the refuge manager must consult with State fish and wildlife agencies when a request for a use could affect fish, wildlife, or other resources that are of concern to the State fish and wildlife agency.

#### *Issue 2: Categories of Refuge Uses*

*Comment:* We received a variety of comments concerning the six wildlife-dependent recreational uses (hunting, fishing, wildlife observation and photography, and environmental education and interpretation) identified in the Improvement Act. Several commenters suggested that there is another legitimate category of uses that requires special consideration. That category would include other wildlife-dependent uses that are not specifically identified in the Improvement Act. Some commenters stated that these activities should be considered second after the six wildlife-dependent

recreational uses. A number of commenters suggested additional uses that should also be given priority, such as boating, swimming, and camping. One commenter stated the way “a quality experience” is discussed, hunting is made subservient to all other wildlife-dependent activities. Other commenters objected to any hunting or fishing on refuges and recommended these activities be banned.

*Response:* The Improvement Act is very specific where it states that “compatible wildlife-dependent recreational uses are the priority general public uses of the Refuge System and shall receive priority consideration in refuge planning and management.” The Act goes on to define “wildlife-dependent recreational uses” as uses “of a refuge involving hunting, fishing, wildlife observation and photography, or environmental education and interpretation.” The term “wildlife-dependent recreational use” is clearly defined in law, and we do not have the authority to change that definition and add categories of wildlife-dependent recreational uses. The intent of these provisions is to ensure that those types of uses most closely related to refuge purposes and the Refuge System mission would be available. While other uses might also be allowed, the Improvement Act does not prioritize them. In addition, the use of the term “quality experience” is in no way intended to make hunting subservient to any use. Finally, wildlife dependent recreational uses, including hunting and fishing, are the uses that the Improvement Act directs us to facilitate when they are compatible, “subject to such restrictions or regulations as may be necessary, reasonable, and appropriate.” Therefore, we have not made any changes to the policy based on these comments.

*Comment:* Three commenters stated uses that directly support priority uses should be subject to the appropriateness finding. Also, several comments concerned the lack of justification for identifying public uses that facilitate priority public uses as “second priority uses of the System.”

*Response:* The Improvement Act directs us to provide increased opportunities for families to experience compatible wildlife-dependent recreation. The Act defines compatible wildlife-dependent recreational uses as the priority general public uses of the Refuge System. The Act directs us to ensure that we provide opportunities within the Refuge System for these uses and to facilitate these uses. Priority general public uses may require additional activities to ensure that we

can provide the public with safe, quality, compatible wildlife-dependent recreational opportunities. However, we agree with the commenters that uses supporting the priority general public uses should also be evaluated under this policy to ensure they are appropriate, and we revised the final policy to reflect this. Supporting uses, if truly necessary for the safe, practical, and effective conduct of a wildlife-dependent use, should readily meet the requirements of this policy. Supporting uses that are found appropriate must also undergo review for compatibility before being allowed on a refuge.

*Comment:* One commenter stated uses that contribute to refuge purposes or to the Refuge System mission should not automatically be considered appropriate uses. Two commenters stated it was not clear if the policy applies to refuge management activities.

*Response:* We consider uses that help us fulfill our legally mandated Refuge System mission to be appropriate on refuges. However, these uses must also meet the compatibility requirements of the Improvement Act.

The Improvement Act requires us to manage each refuge to fulfill the specific purpose(s) for which the refuge was established as well as the Refuge System mission. The Act defines management activities, which we conduct to achieve refuge purposes and the Refuge System mission, to include methods and procedures such as "protection, research, census, law enforcement, habitat management, propagation, live trapping and transplantation, and regulated taking." The Act clearly differentiates between management activities and uses of refuges. Based on the requirements of the Act, this policy provides procedures to follow in finding if a use of a refuge is appropriate. It does not apply to refuge management activities. We added a paragraph in section 1.2B. to the final policy to clarify that it does not apply to management activities (see the compatibility policy, 603 FW 2.9 and 2.10). We also described the types of activities we consider to be refuge management activities based on the Improvement Act.

### *Issue 3: Factors Used To Make an Appropriateness Finding*

*Comment:* We received a wide range of comments concerning the factors we will use to decide if a refuge use is appropriate. Some commenters stated the factors we use should be based solely on whether the proposed activity is consistent with fulfilling the purpose(s) for which the refuge was established.

*Response:* We are responsible for managing each refuge to fulfill its establishing purpose(s) and the Refuge System mission. In addition, the Improvement Act requires us to manage refuges as a nationwide system. To do this, we need standard procedures that are followed throughout the Refuge System. This policy provides standard procedures in the form of a process for all refuge managers to follow when deciding whether or not a use is appropriate on a specific refuge. The process each refuge manager uses is the same, but the outcome of the process will usually vary because the refuge manager evaluates the use in relation to the refuge purpose(s), the Refuge System mission, and conditions at the refuge.

*Comment:* Some commenters fully supported the factors used to make an appropriateness finding in the draft policy and stated the Service should use the factors to strictly evaluate all uses. Other commenters suggested we use some of the factors, but not others. Some commenters suggested that few uses would meet all of the factors and recommended that the factors should be more flexible, and some suggested revisions to specific factors. However, the commenters had no consensus on what changes should be made. Some commenters thought certain factors were too restrictive; others thought the same factors should be more restrictive.

*Response:* The Improvement Act requires we facilitate compatible wildlife-dependent recreational uses (the priority general public uses). We must carefully review other refuge uses to ensure they are appropriate, meet the compatibility requirements, and would not conflict with the priority general public uses, refuge purposes, the Refuge System mission, and other refuge and Refuge System management goals and objectives. Our aim is to provide quality, compatible, wildlife-dependent recreation to enable the American public to develop an appreciation for fish and wildlife. If the response is "no" to any of the factors dealing with jurisdiction, public safety, and compliance with laws, regulations, Executive orders, and policies, we will immediately stop consideration of the use. Although we will generally not allow a use when the answer to one of the other factors is "no," we state that there may be exceptions. Each refuge situation will be different. We provide a process to follow to ensure consistency in the way we manage refuges. However, we will immediately reject any use that is illegal, inconsistent with existing policy, unsafe, or over which we do not have jurisdiction. Refuge managers must use sound

professional judgment in making these evaluations and should consult with the refuge supervisor when they receive requests for uses that may be sensitive or controversial. The refuge manager is also responsible for consulting with State fish and wildlife agencies when a request could affect fish, wildlife, or other resources that are of concern to the State fish and wildlife agency. We modified section 1.6E. in the draft policy (Refuge Manager) (section 1.7E. in the final policy) to clarify the requirement for State consultation.

*Comment:* One commenter asked if the first factor regarding compliance with applicable laws and regulations referred to both Federal and State laws and regulations.

*Response:* This factor refers to all laws and regulations, when applicable, including State, local, and tribal requirements. We revised the text in section 1.11A. (section 1.10 of the draft policy) and in exhibit 1 to clarify this.

*Comment:* Two commenters objected to the use of such words as "believe" or "feel" in relation to the refuge manager's review of an activity.

*Response:* We agree that the use of terms such as "believe" or "feel" should not be included in the final policy. We therefore eliminated these terms.

*Comment:* Several commenters, including a number of State agencies, expressed concern that inclusion of the factor in section 1.10A.(3)(i) ("Is the refuge the only place this activity can reasonably occur?") in the draft policy would preclude legitimate activities, such as hunting and fishing, on a refuge if the answer is "no." With respect to uses other than wildlife-dependent recreational uses, commenters stated that this factor should also consider whether the refuge affords a quality public setting for persons who could not otherwise attain access or afford to engage in the activity. They stated refuge managers should not disregard uses simply because opportunities already exist on nearby State lands and recommended this factor be deleted or rewritten.

*Response:* After considering all the comments, we again reviewed this factor concerning location. Under the Improvement Act, wildlife-dependent recreational uses (hunting, fishing, wildlife observation and photography, or environmental education and interpretation) are considered appropriate uses by this policy (section 1.11A.(1) in the final policy). These activities are, however, subject to a compatibility determination before they can occur on a refuge. Compatible wildlife-dependent recreational uses are the priority general public uses of the

Refuge System. For other general public uses, whether or not the refuge is the only place the use can occur is an important factor that should be considered by refuge managers. The proximity of other public or private lands that allow a proposed use may reduce the public's need for an activity other than a wildlife-dependent recreational use to be conducted on the refuge.

We are trying to ensure that the conduct of uses other than wildlife-dependent recreational uses does not compromise our ability to offer opportunities for priority general public uses or to properly manage the refuge for its establishing purposes. We originally introduced this factor in the context of considering whether a nonwildlife-dependent use, such as cave exploring or rock climbing, is appropriate on the refuge if it was not available anywhere nearby. These uses now occur on some refuges, and the public has no other opportunity to engage in these activities for hundreds of miles. This factor introduces an opportunity whereby we might consider such an activity appropriate. However, we deleted this factor as a criteria in the checklist and incorporated it into section 1.11B of the final policy.

*Issue 4: Refuge Managers, the Appropriate Use Process, and Oversight*

*Comment:* We received comments ranging from the opinion that the refuge manager is given too much authority, to the opinion that the refuge manager should have more authority. Some commenters on this issue were concerned about the amount of autonomy given to the refuge manager, especially when the draft policy did not specifically require coordination with the States. Some commenters did not think refuge managers should have the discretion to allow a use that does not meet all of the factors included in section 1.10A.(3) of the draft policy, while others stated that the factors leave a refuge manager with little or no discretion. Comments ranged from seeing no value in letting local refuge managers make appropriate use decisions themselves, to the perception the decisionmaking authority of the individual refuge manager is usurped. One commenter stated citizens (neighbors) could exert pressure on a local manager; therefore, the refuge manager should not be allowed to consider each case on its merits. Concern was also expressed that, if a refuge manager were biased for or against a certain activity, then nothing would check that bias. Several commenters stated refuge managers

should have to provide documentation on all uses found not appropriate as well as documentation on uses found appropriate. In addition, one commenter recommended the review process for all appropriate use findings, both positive and negative, should be the same. Various commenters thought that a refuge manager might try to get out of having to provide documentation by declaring a use not appropriate. Several commenters recommended there be oversight on all appropriate use decisions. Most who commented on this issue suggested the refuge supervisor review appropriateness findings, while one commenter suggested that the Regional Director provide final approval.

*Response:* Refuge managers are responsible for using sound professional judgment when making findings of appropriateness and documenting those findings in writing. A refuge manager's field experience and knowledge of the refuge's resources are essential to making the appropriateness finding. In any situation having unusual factors, such as pressure from local citizens, the refuge manager should discuss the situation with his/her refuge supervisor. Section 1.10A.(3) of the draft policy (1.11A.(3) of the final policy) requires a refuge manager to document findings that a use is appropriate in writing by completing exhibit 1 and to obtain concurrence from the refuge supervisor. Section 1.10B. of the draft policy (1.11C. of the final policy) requires that, when a refuge manager finds a proposed use is not appropriate, the finding must also be documented using exhibit 1. Thus, the policy requires refuge managers to complete the same form (exhibit 1) for all uses subject to an appropriateness finding, regardless of whether the finding is positive or negative.

To ensure consistency and oversight and to balance any potential bias on the part of the refuge manager, we revised the responsibilities of the refuge manager to include a requirement to consult with the refuge supervisor on all findings. When a request could affect fish, wildlife, or other resources of concern to a State fish and wildlife agency, the refuge manager is required to coordinate with the State fish and wildlife agency. In addition, we revised the draft policy to clarify that the refuge manager must submit all findings of appropriateness to Refuge System Headquarters, through the refuge supervisor, for inclusion in a national reference database on refuge uses. However, only uses a refuge manager finds to be appropriate require refuge supervisor concurrence. We revised the responsibilities of the refuge supervisor

to include a periodic review of findings where a use is considered not appropriate. With these changes, all findings are seen by the refuge supervisor at least annually. This should help achieve consistency within the Region. We need to try and ensure that we apply relevant laws, regulations, and policies consistently in similar situations. This policy represents a balance by providing clear standards that all managers will use, as well as the flexibility they need, to make judgments applicable in specific situations.

*Comment:* One commenter stated the draft policy should be rewritten to give clear criteria and a detailed, step-by-step approach for refuge managers to follow. One commenter considered the process to decide appropriateness too complex and suggested it be streamlined and simplified.

*Response:* We consider the guidance in this policy to be clear and easy to follow. Exhibit 1, which must be completed for each proposed use, provides a checklist of each factor the refuge manager must consider and presents a simple, streamlined framework for making these decisions. We did not make revisions to the policy based on these comments.

*Comment:* Two States commented there were no provisions in the draft policy for State agencies to appeal decisions made by refuge managers.

*Response:* The Improvement Act directs us to ensure that we effectively coordinate, interact, and cooperate with the fish and wildlife agencies of the States in which refuges are located. One of the ways we do this is by inviting State fish and wildlife agencies to participate on the CCP team for each refuge. We added an element to the refuge manager's responsibilities to require consultation with State fish and wildlife agencies when requests for uses could affect fish, wildlife, or other resources of concern to the State agency, whether within or outside of the CCP process. In any instance where State fish and wildlife agencies have concerns they do not think have been addressed, they should contact Refuge System representatives first at the refuge and then, if they consider it necessary, at the Regional level.

*Comment:* One commenter suggested exhibit 1 should be modified to include the statements contained in sections 1.10A.(1) and (2) of the draft policy. The commenter stated that having an easy documentation process for these activities will allow refuge managers to comply with the annual review of uses identified in the draft policy.

*Response:* Section 1.10A.(1) in the draft policy identified as appropriate

both wildlife-dependent recreational uses as defined in the Improvement Act and activities “necessary for the safe, practical, and effective conduct of a priority public use on the refuge.” The Act states that compatible wildlife-dependent recreational uses are appropriate and legitimate refuge uses. For those uses, a refuge manager does not need to complete exhibit 1. We revised the final policy to require appropriateness findings for general public uses that are not wildlife-dependent recreational uses as defined by the Improvement Act, but that may support such uses. The refuge manager must complete exhibit 1 for these uses.

Section 1.10A.(2) in the draft policy identifies as appropriate activities that contribute to fulfilling the Refuge System mission or the refuge purposes, goals, or objectives as described in a refuge management plan. Because the uses covered in this section have already been found appropriate, the refuge manager does not need to complete additional documentation (such as exhibit 1). However, the CCP process includes a review of the appropriateness and compatibility of all existing refuge uses and of any planned future public uses. The documentation for both appropriateness findings and compatibility determinations should be included in the documentation for the CCP.

The commenter mentioned a requirement for an “annual review” of uses identified in the draft policy. There is no requirement for such a review. Section 1.10C. of the draft policy (section 1.11D. of the final policy) contains a requirement that refuge managers review all existing uses for appropriateness within 1 year of the issuance of the final appropriate uses policy. However, this would be a one-time review to ensure that current uses are appropriate. Once current uses have been reviewed, there is no requirement, nor is there a need, for an annual review of uses for appropriateness.

*Comment:* One commenter stated exhibit 1 should also include the line “Would this use be manageable by using volunteers or other resources available from cooperating partners?” This would remind managers of the potential opportunity to obtain additional resources from cooperators.

*Response:* Volunteers and other resources are, and will continue to be, valuable assets to refuge managers. When a refuge manager makes a determination of whether or not a requested use is manageable, such resources should be considered. However, the refuge manager is also responsible for anticipating the long-

term effects of use decisions. The resources available at one point may not be available the next time someone requests the same or a similar use of the refuge. The refuge manager needs to be aware of precedents that may be set by allowing a use the refuge staff alone could not manage. If a requested use would rely heavily on volunteer and other resources, the refuge manager should consider discussing the situation with the refuge supervisor before making an appropriateness finding. We revised section 1.10A.(3)(f) of the draft policy (section 1.11A.(3)(g) in the final policy) to remind the refuge manager to consider the use of volunteers and other resources. The compatibility policy (603 FW 2) also addresses the question of available resources in its section 2.12A.(7).

*Comment:* One commenter recommended a list of responsibilities, by job title, be included in appropriate sections of each of the policies. The commenter also recommended that an appeal process should be identified within these job categories.

*Response:* A list of responsibilities, by job title, is already included in section 1.6 (What are our responsibilities?) in the draft policy (section 1.7 in the final policy). We added a statement in section 1.10C. of the final policy pointing out that persons who are denied a special use permit for an activity may appeal the denial by following the procedures outlined in 50 CFR 25.45 and in 50 CFR 36.41.

#### *Issue 5: Consistency*

*Comment:* Several commenters stressed the need for uniformity among refuges in the same geographic area. In addition, they stated we should give a high priority to ensuring Refuge System policies, management activities, and recreational uses are consistent with State laws, regulations, and policy.

*Response:* We clarified in the final policy that, when reviewing requests for refuge uses, we must ensure the uses are consistent with applicable State law (section 1.11A.(3)(b) of the final policy). This policy provides a consistent process for refuge managers to follow in making appropriateness findings on refuge uses. In making these findings, the refuge manager must consider the specific purpose(s) for which that refuge was established as well as the Refuge System mission. Because the establishing purposes of all refuges in a Region are usually not the same and local conditions and needs vary, decisions on what is appropriate on one refuge may not be the same for other refuges in that Region. Also, the national database, which will have

appropriateness findings filtering through refuge supervisors, may provide additional consistency.

#### *Issue 6: Public Involvement*

*Comment:* Several commenters recommended the public be actively involved in making management decisions for refuges.

*Response:* Most decisions to allow particular public use activities on a refuge currently are or will soon be made in the refuge CCP process which provides significant opportunity for public involvement. New uses may also be allowed or existing uses discontinued based upon specific step-down plans derived from CCPs. These step-down plans may include a public involvement process in accordance with the National Environmental Policy Act (42 U.S.C. 4321–4347). If an activity is not addressed in these plans, the refuge manager must first find if that activity is appropriate. If the activity is appropriate, the refuge manager then must determine whether the activity is compatible with refuge purposes and the System mission. The compatibility determination includes an opportunity for public involvement. The refuge manager must be allowed some discretion in making timely decisions on behalf of the resource, while balancing the need to seek public input on significant or sensitive requests for uses of a refuge. We rely on refuge managers to use their sound professional judgment when making these decisions. When a specific request for a permit to conduct an activity is denied because of a decision by a refuge manager under this policy, the requestor may appeal the decision by following the procedures outlined in 50 CFR 25.45 and 50 CFR 36.41. The CCP and compatibility determination processes provide meaningful opportunities for public involvement in refuge management decisions. Therefore, we did not make any changes to this policy regarding public involvement.

#### *Issue 7: Conflict Resolution Between Priority Uses*

*Comment:* Several commenters stated the policy should incorporate guidance for resolving conflicts among priority uses.

*Response:* This policy focuses on finding whether or not a proposed refuge use is appropriate. The compatibility policy provides guidance for managing conflicting uses (603 FW 2.11G.). The issue is also addressed in our policies on recreational refuge uses (605 FW 1–7).

*Issue 8: Trapping*

*Comment:* Many commenters expressed concern that trapping was not mentioned in this policy. Several commenters suggested trapping be identified as a wildlife-dependent recreational use and that it is an appropriate, legitimate, and compatible use on most Refuge System units. Several commenters also requested the Service "clearly articulate its process for permitting and regulating trapping within System holdings." Some commenters stated refuge managers should have to justify why uses dependent on the presence of wildlife not included in the Improvement Act definition, such as trapping, may not be allowed on a specific refuge. Two commenters stated trapping should not be ruled out as a management tool. One commenter assumed that, since recreational trapping was not mentioned, it is considered a form of hunting and recommended we state this in the final policy.

*Response:* The Improvement Act defines wildlife-dependent recreation as "a use of a refuge involving hunting, fishing, wildlife observation and photography, or environmental education and interpretation." The statutory definition of wildlife-dependent recreation does not include trapping. However, we recognize trapping as a form of regulated take and consider it an important management tool. We address trapping in our regulations in 43 CFR 24.4, 50 CFR 31.2, and 50 CFR 31.16, as well as in the Refuge Manual (7 RM 15). We coordinate and cooperate with State fish and wildlife agencies. To further this relationship, we include the take of fish and wildlife under State regulations, including trapping, as an appropriate refuge use. However, before allowing this use on a particular refuge, we must first determine if it is compatible with the purposes of that refuge.

*Issue 9: Upper Mississippi National Wildlife Refuge (NWR)*

*Comment:* Several commenters expressed concern regarding the many overlapping jurisdictions, the history of multiple use, and how this policy would apply to the Upper Mississippi NWR. Some commenters were concerned the proposed policy would impose limits on power boating, fishing, or other water recreation on the Mississippi River. Other commenters suggested the policy should have more flexibility and recognize the unique history of recreational uses on the Upper Mississippi River. Several commenters stated the policy should be

strictly applied to uses on the Upper Mississippi NWR.

*Response:* Section 1.2 of both the draft and final policies states that the policy applies *only* to uses which are under the jurisdiction and control of the Service. This policy apply to areas or activities where we do not have jurisdiction. For example, the policy does not apply where the States have jurisdiction over the waterways near the Upper Mississippi NWR. This policy provides a consistent process for refuge managers to follow to decide if a use is an appropriate refuge use. The results of this process are based on refuge purpose(s), the Refuge System mission, and refuge conditions. We invite and encourage public participation at several points during refuge planning, such as during the CCP and the compatibility determination processes. In the final policy (section 1.11A.(3)(a)), we added a criterion concerning jurisdiction over a use as a factor to be considered when making an appropriateness finding. We also included this as the first criterion in exhibit 1.

*Issue 10: Use of Snowmobiles, Off-Highway Vehicles, Boats, and Personal Watercraft on Refuges*

*Comment:* We received a variety of comments concerning use of snowmobiles on refuges. Some commenters supported the use of snowmobiles on refuges as an alternate form of transportation, to gain access for wildlife-dependent recreational uses, or because the use conforms with terms and conditions outlined within an environmental impact statement or an environmental assessment. Other commenters objected to the use of snowmobiles on refuges because of noise pollution, habitat damage, and wildlife disturbance.

*Response:* The draft policy did not specifically address the appropriateness of snowmobiling as a refuge use. The policy outlines the process that the refuge manager must follow in making the appropriateness finding of any proposed refuge use, including snowmobiling. Because refuges have different establishing purposes and local conditions vary, a proposed refuge use may be found to be appropriate on one refuge, but not appropriate on another. Individual refuge managers will make the appropriateness finding on snowmobiling as a refuge use on a case-by-case basis. We must also comply with Alaska National Interest Lands Conservation Act of 1980 (ANILCA) (16 U.S.C. 410hh-410hh-5, 460mm-460mm-4, 539-539e, and 3101-3233;

43 U.S.C. 1631 et seq.) and any refuge-specific legislation.

The policy states that, before we can allow any off-road vehicle use (including snowmobiles), we must comply with Executive Order (E.O.) 11644, which requires we designate areas as open or closed to off-road vehicles in order to protect refuge resources, promote safety, and minimize conflict among various refuge users; monitor the effects of these uses once they are allowed; and amend or rescind any area designation as necessary based on the information gathered. Furthermore, E.O. 11989 requires we close areas to these types of uses when we determine the use causes or will cause considerable adverse effects on the soil, vegetation, wildlife, habitat, or cultural or historic resources. This policy allows flexibility and consideration at the local level based upon specific, on-site needs for accessibility and transportation. However, we must protect wildlife and habitat from unwarranted damage. We did not make changes to the final policy based on these comments.

*Comment:* The majority of comments received were form letters supporting the use of off-highway vehicles (OHVs) on refuges. However, we received comments from many individuals recommending we ban all OHV use on refuges. One commenter suggested we restrict their use. Commenters supporting use of OHVs on refuges felt access opportunities provided by OHV use were legitimate uses and that limitations were too restrictive and unnecessary. Commenters opposing their use stated OHVs cause habitat damage as well as air and noise pollution.

*Response:* The draft policy did not specifically address the use of OHVs on refuges. The policy outlines the process the refuge manager must follow in making an appropriateness finding on a proposed refuge use, including uses involving OHVs. Because refuges have different establishing purposes, a proposed refuge use may be found to be appropriate on one refuge, but not appropriate on another. Individual refuge managers will make appropriateness findings on proposed OHV use on a refuge on a case-by-case basis.

Current refuge policy (8 RM 7) and regulations (50 CFR 26.27) generally allow OHV use on established roadways or designated trails open for public vehicular use if the vehicle complies with State requirements. Both the draft policy and final policy reaffirm current policy and regulations, including E.O. 11644 and E.O. 11989. For Alaska,

ANILCA contains provisions concerning use of OHVs.

*Comment:* We received comments ranging from requests that we ban all watercraft to requests that we allow all watercraft. Some commenters recommended restrictions on certain types of watercraft (such as motorized and personal watercraft); others supported the inclusion of sailing as a priority use.

*Response:* The draft policy did not specifically address the use of any particular type of watercraft. The policy provides a standard procedure for all refuge managers to follow when making appropriateness findings for refuge uses including the use of watercraft. The Improvement Act specifically defines the wildlife-dependent recreational uses as hunting, fishing, wildlife observation and photography, and environmental education and interpretation. Wildlife-dependent recreational uses that are compatible are the priority general public uses. We do not have the authority to add other uses to those defined by law. Therefore, we did not make changes to the final policy based on these comments. Refuge managers, however, do have the latitude to consider any type of watercraft use under this policy. Where there is a strong nexus between the use of watercraft and a wildlife-dependent recreational use, the use of that watercraft may be both appropriate and compatible. For example, the use of canoes may be allowed on a refuge to facilitate fishing. On the other hand, conducting boat races on refuge waters would likely not be determined either appropriate or compatible.

#### *Issue 11: General Support*

We received over 1,400 comments supporting the policy. Comments came from a Federal agency, States, nongovernmental organizations, and individuals. Commenters supported the development of the policy to provide guidance and standardization for management of the Refuge System. The strongest themes in the comments were recognition of the need to limit human activities on refuges and for the policy to be grounded in law.

#### *Issue 12: Rights-of-Way*

*Comment:* We received one comment concerning corridor preservation and the importance of accommodating future roadway widening and other modifications. The commenter pointed out the importance of incorporating public transportation needs for refuge users in refuge management policy.

*Response:* We agree that corridor preservation is important to

accommodate future right-of-way requests when appropriate, compatible, and practical. Rights-of-way will continue to be handled through the compatibility and right-of-way permit processes, not this policy. We did not make any changes to the final policy based on this comment.

#### *Issue 13: Research on Refuges*

*Comment:* Three organizations commented that all research should be considered appropriate and should not be subject to the appropriateness review. Two commenters supported the requirement that research should be subject to the appropriate uses policy. One commenter stated research should be defined as a refuge management activity, regardless of what the research is or who conducts it.

*Response:* Not all research may be appropriate. Some research may affect fish, wildlife, and plants in a manner neither consistent with refuge management plans nor compatible with refuge purposes or the Refuge System mission. Some research may interfere with or preclude refuge management activities, appropriate and compatible public uses, or other research. Some research may be appropriate off the refuge, but not on the refuge. For example, some natural and physical research may not be wildlife-dependent and may be accomplished successfully at locations off the refuge. Because not all research supports the establishing purposes of refuges or the Refuge System mission, we cannot define research as a refuge management activity. Therefore, we did not exempt all research from evaluation under this policy.

#### *Issue 14: Accessibility*

*Comment:* Some commenters recommended we allow motorized travel to provide persons with disabilities the opportunity to participate in outdoor recreational opportunities.

*Response:* We are committed to identifying and developing, where appropriate, opportunities for persons with disabilities to enjoy national wildlife refuges. A refuge manager can make decisions concerning the use of a motorized vehicle to accommodate a person with a disability who would like to participate in an approved recreational activity. The refuge manager will make this type of decision either on a case-by-case basis or programmatically through the CCP or stepdown management plans. The chapters on recreation in Part 605 of the Service Manual provide a more comprehensive discussion on providing

opportunities to individuals with disabilities.

#### *Issue 15: Dogs on Refuges*

*Comment:* One commenter stated dogs were becoming a problem on the Upper Mississippi NWR. We also received comments from two organizations that exist to train or otherwise promote use of dogs. These organizations proposed that field trials, raccoon hunting, and other dog-related activities be allowed on refuges.

*Response:* Provisions are already in place requiring dogs on refuges to be on a leash or otherwise under control. Anyone who is aware of a problem with dogs on a refuge should notify the refuge manager so that there can be better enforcement of existing provisions. The specific issue of field trials is addressed in another chapter of the Service Manual (631 FW 5). No changes were made to the final policy based on these comments.

#### *Issue 16: Clarify Goals*

*Comment:* One commenter stated the policy does not clearly and specifically spell out the goals of the policy.

*Response:* We disagree and direct the reader to section 1.1 (What is the purpose of this chapter?) which describes the purpose of this policy. We do not see a need to break down the purpose into goals.

#### *Issue 17: Resource Extraction*

*Comment:* One commenter supported our intention to honor valid existing mining rights. Some commenters encouraged us to ban all mining and oil exploration on refuges, while other commenters stated we should allow some resource extraction.

*Response:* We revised section 1.9D.(7) (Natural resource extractions) in the draft policy (section 1.10C.(7) in the final policy) to clarify when natural resources may be extracted. Part 612 of the Fish and Wildlife Service Manual provides detailed information on minerals management on refuges, and we refer the refuge manager to that chapter. We have a legal obligation to honor any valid existing rights and will continue to do so. Where there are no existing legal rights and activities do not support a refuge management activity, refuge purposes, or the Refuge System mission, we will generally find them not appropriate. Under current Department of the Interior and Service policy, we only allow oil and gas leasing on refuges outside of Alaska in cases where these resources under the refuge are being extracted from a site outside the refuge (drainage).

*Issue 18: Required Determinations*

*Comment:* One commenter stated the curtailment of some activities on some refuges could affect smaller user groups, affect the local economy, and place additional pressure on nearby State-owned sites. The commenter did not agree the “document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act.” The commenter expressed concern about the impact of policy changes on businesses in the vicinity of the Upper Mississippi NWR, especially businesses related to boating.

*Response:* In determining whether or not a document will have a significant impact (an annual effect on the economy of \$100 million or more) under the Regulatory Flexibility Act, we consider the amount of change that may occur due to any alteration in policy. This policy applies only to activities where we have jurisdiction. Most waterways in the vicinity of the Upper Mississippi NWR are under State jurisdiction and not subject to this policy. Therefore, this policy would have little or no effect on boating businesses near the Upper Mississippi NWR. In addition, we may be able to provide other wildlife-dependent recreational opportunities on the refuge that could increase income to some businesses.

*Comment:* One State expressed concern the policy will have a substantial direct effect on the relationship between States and the Federal Government (under E.O. 13132, Federalism) and that the draft has the Federal Government intruding into areas of State jurisdiction concerning navigable waters near the Upper Mississippi NWR.

*Response:* The policy only applies where we have jurisdiction. This policy does not apply where we do not have jurisdiction. Therefore, there will be no effect on the relationship between States and the Federal Government. We amended section 1.2 to clarify and emphasize that the policy only applies where we have jurisdiction.

*Comment:* One commenter disagreed with our statement that the overall net effect of the policy is likely to increase visitor activity at the Upper Mississippi NWR. The commenter suggested we should examine the effects on each refuge to make a valid determination of the potential impact of this policy.

*Response:* Refuge visitation is a small component of the wildlife recreation industry as a whole. We expect changes in expenditures as a result of this policy to be marginal and scattered. Because

this is a relatively small proportion of recreational spending, we do not agree we need to do a refuge-by-refuge evaluation. We do not expect the policy to have a substantial or significant economic effect (over \$100 million) and have made no changes in the final notice concerning this issue.

**Required Determinations***Regulatory Planning and Review (E.O. 12866)*

In accordance with the criteria in E.O. 12866, the Office of Management and Budget (OMB) has determined that this policy is a significant regulatory action.

1. This document will not have an annual economic effect of \$100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit or full economic analysis is not required. This document is administrative, legal, technical, and procedural in nature. This policy establishes the process for making an appropriateness finding for proposed refuge uses. This policy will have the effect of providing priority consideration for compatible wildlife-dependent recreational uses involving hunting, fishing, wildlife observation and photography, and environmental education and interpretation. Existing policy has been in place since 1985 that encourages the phase-out of nonwildlife-oriented recreation on refuges. The Improvement Act does not greatly change this direction in public use, but provides legal recognition of the priority we afford to compatible wildlife-dependent recreational uses. We expect these new procedures to cause only minor modifications to existing refuge public use programs. While we may curtail some nonpriority refuge uses, we may also provide new and expanded opportunities for priority public uses. We expect an overall small increase, at most a 5 percent annual increase, in the amount of public use activities allowed on refuges as a result of this policy.

The appropriate measure of the economic effect of changes in recreational use is the change in the welfare of recreationists. We measure this in terms of willingness to pay for the recreational opportunity. We estimated total annual willingness to pay for all recreation at refuges to be \$792.1 million in fiscal year 2001 (*Banking on Nature: The Economic Benefits to Local Communities of National Wildlife Refuge Visitation*, DOI/FWS/Refuges, 2003). We expect the appropriate use process implemented in this policy to cause at most a 5 percent

annual increase in recreational use Refuge Systemwide. This does not mean that every refuge will have the same increase in public use. We will allow the increases only on refuges where increases in hunting, fishing, and other wildlife-dependent recreational visitation are compatible. Across the entire Refuge System, we expect an increase in hunting, fishing, and nonconsumptive visitation to amount to no more than a 5 percent overall increase. If the full 5 percent increase in public use were to occur at refuges, this would translate to a maximum additional willingness for the public to pay \$39.6 million annually. However, we expect the real benefit to be less than \$39.6 million because we expect the final increase in public use to be smaller than 5 percent. Furthermore, if the public substitutes nonrefuge recreation sites for refuges, then we would subtract the loss of benefit attributed to nonrefuge sites from the \$39.6 million estimate.

We measure the economic effect of commercial activity by the change in producer surplus. We can measure this as the opportunity cost of the change; *i.e.*, the cost of using the next best production option if we discontinue production using the refuge. Refuges use grazing, haying, timber harvesting, and farming to help fulfill refuge purposes and the Refuge System mission. Congress authorizes us to allow economic activities on refuges, and we do allow some. But, for all practical purposes (almost 100 percent), we invite the economic activities to help achieve a refuge purpose or the Refuge System mission. For example, we do not allow farming *per se*; rather, we invite an individual farmer to farm on the refuge under a cooperative agreement to help achieve a refuge purpose. This policy will likely have minor changes in the number of these activities occurring on refuges. Information on profits and production alternatives for most of these activities is proprietary, so a valid estimate of the total benefits of permitting these activities on refuges is not available.

2. This policy will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency since the policy pertains solely to management of refuges by the Service.

3. This policy does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. No grants or other Federal assistance programs are associated with public use of refuges.

4. OMB has determined that this policy raises novel legal or policy issues. This policy incorporates the Improvement Act provisions that ensure that compatible wildlife-dependent recreational uses are the priority general public uses of the Refuge System, and adds consistency in application of public use guidelines across the entire Refuge System.

#### *Regulatory Flexibility Act*

We certify this document will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Congress created the Refuge System to conserve fish, wildlife, and plants and their habitats and facilitated this conservation mission by directing us to provide Americans opportunities to visit and participate in compatible wildlife-dependent recreation (hunting, fishing, wildlife observation and photography, and environmental education and interpretation) as priority general public uses on refuges and to better appreciate the value of and need for conservation of fish, wildlife, and plants and their habitats.

This document is administrative, legal, technical, and procedural in nature and provides more detailed instructions for making a finding of appropriateness for public use activities than have existed in the past. This policy may result in more opportunities for wildlife-dependent recreation on refuges and may result in the reduction of some nonwildlife-dependent recreation. For example, more wildlife observation opportunities may occur at Florida Panther National Wildlife Refuge in Florida or more hunting opportunities at Pond Creek National Wildlife Refuge in Arkansas. Conversely, we may no longer allow some activities on some refuges. The overall net effect of these regulations is likely to increase visitor activity near the refuge. To the extent visitors spend time and money in the area that would not otherwise have been spent there, they contribute new income to the regional economy and benefit local businesses.

Refuge visitation is a small component of the wildlife recreation industry as a whole. In 2001, 82 million U.S. residents 16 years old and older spent 1.2 billion activity-days in wildlife-associated recreation activities. They spent about \$108 billion on fishing, hunting, and wildlife watching trips (Tables 1, 50, 52, and 68, 2001 *National Survey of Fishing, Hunting, and Wildlife-Associated Recreation*, DOI/FWS/FA, 2002). Refuges recorded

about 39 million visitor-days in fiscal year 2003 (Refuge Management Information System, FY2003 Public Use Summary). A 2003 study of refuge visitors found their travel spending generated \$809 million in sales and 19,000 jobs for local economies (*Banking on Nature: The Economic Benefits to Local Communities of National Wildlife Refuge Visitation*, DOI/FWS/Refuges, 2003). These spending figures include spending which would have occurred in the community anyway, and so they show the importance of the activity in the local economy rather than its incremental impact. Marginally greater recreational opportunities on refuges will have little industrywide effect.

Expenditures as a result of this policy are a transfer and not a benefit to many small businesses. We expect the incremental increase of recreational opportunities to be marginal and scattered, so we do not expect the policy to have a significant economic impact on a substantial number of small entities in any region or nationally.

#### *Small Business Regulatory Enforcement Fairness Act (SBREFA)*

This policy is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This policy:

1. Does not have an annual effect on the economy of \$100 million or more. This document will affect only visitors at refuges. It may result in increased visitation at refuges and provide for minor changes to the methods of public use permitted within the Refuge System. See response under the Regulatory Flexibility Act.

2. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

3. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

#### *Unfunded Mandates Reform Act*

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501, *et seq.*):

1. This policy will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. See response to Regulatory Flexibility Act.

2. This policy will not produce a Federal mandate of \$100 million or greater in any year; *i.e.*, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

See response to Regulatory Flexibility Act.

#### *Takings (E.O. 12630)*

In accordance with E.O. 12630, this policy does not have significant takings implications. A takings implication assessment is not required. This policy may result in increased visitation at refuges and provide for minor changes to the methods of public use permitted within the Refuge System. Refer to response under Regulatory Flexibility Act.

#### *Federalism (E.O. 13132)*

In accordance with E.O. 13132, this document does not have significant federalism effects. This document applies only to areas where we have jurisdiction. It will not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with E.O. 13132, we have determined that this policy does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

#### *Civil Justice Reform (E.O. 12988)*

In accordance with E.O. 12988, the Office of the Solicitor has determined that this policy does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. This policy will expand upon established policies, and result in better understanding of the policies by refuge visitors.

#### *Energy Supply, Distribution, or Use (E.O. 13211)*

On May 18, 2001, the President issued E.O. 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare statements of energy effects when undertaking certain actions. This policy is administrative, legal, technical, and procedural in nature. Because this policy establishes the process for making an appropriateness finding for proposed refuge uses, it is not a significant regulatory action under E.O. 12866 and is not expected to significantly affect energy supplies, distribution, and use. This notice does not designate any areas that have been identified as having oil or gas reserves, whether in production or otherwise identified for future use. Therefore, this action is not a significant energy action and no statement of energy effects is required.

### *Consultation and Coordination With Indian Tribal Governments (E.O. 13175)*

In accordance with E.O. 13175, we have evaluated possible effects on federally recognized Indian tribes and have determined that there are no effects. We coordinate recreational use on refuges with tribal governments having adjoining or overlapping jurisdiction before we propose the activities. This policy is consistent with and not less restrictive than tribal reservation rules.

### *Paperwork Reduction Act*

This document does not include any new information collection that would require Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

### *Section 7 Consultation*

We determined the policy established by this notice will not affect listed species or designated critical habitat. Therefore, consultation under section 7 of the Endangered Species Act is not required. The basis for this conclusion is this final policy establishes the process for making a finding of whether or not a use of a refuge is an appropriate use. The appropriateness process described in this final policy is only one step in the decisionmaking process for deciding whether or not to allow a use of a refuge. The ultimate decision to allow or otherwise implement a particular use is the causative agent with respect to affecting listed species or their critical habitat. We will conduct section 7 consultations when actions that the decision authorizes, funds, or carries out may affect listed species or their critical habitat.

### *National Environmental Policy Act*

We ensure compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4347) when developing refuge CCPs and visitor services plans, and we make determinations required by NEPA before the addition of refuges to the lists of areas open to public uses. In accordance with 516 DM 2, appendix 1.10, we have determined this policy is categorically excluded from the NEPA process because it is limited to policies, directives, regulations, and guidelines of an administrative, financial, legal, technical, or procedural nature; or the environmental effects of which are too broad, speculative, or conjectural to lend themselves to meaningful analysis.

Site-specific proposals, as indicated above, will be subject to the NEPA process.

### *Available Information for Specific Refuges*

Individual refuge headquarters offices retain information regarding public use programs, the conditions that apply to their specific programs, and maps of their respective areas. You may also obtain information from the Regional Offices at the addresses listed below:

- *Region 1*—California, Hawaii, Idaho, Nevada, Oregon, and Washington. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, Eastside Federal Complex, Suite 1692, 911 NE 11th Avenue, Portland, Oregon 97232–4181; Telephone (503) 231–6214; <http://pacific.fws.gov>.
- *Region 2*—Arizona, New Mexico, Oklahoma, and Texas. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, Box 1306, Albuquerque, New Mexico 87103; Telephone (505) 248–7419; <http://southwest.fws.gov>.
- *Region 3*—Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111; Telephone (612) 713–5400; <http://midwest.fws.gov>.
- *Region 4*—Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Puerto Rico, and the Virgin Islands. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Room 324, Atlanta, Georgia 30345; Telephone (404) 679–7166; <http://southeast.fws.gov>.
- *Region 5*—Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035–9589; Telephone (413) 253–8550; <http://northeast.fws.gov>.
- *Region 6*—Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 134 Union Blvd., Lakewood, Colorado 80228; Telephone (303) 236–8145; <http://mountain-prairie.fws.gov>.
- *Region 7*—Alaska. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 1011 E.

Tudor Rd., Anchorage, Alaska 99503; Telephone (907) 786–3545; <http://alaska.fws.gov>.

### **Primary Author**

Tom C. Worthington, Chief, Division of Refuge Operations, Region 3, National Wildlife Refuge System, U.S. Fish and Wildlife Service, is the primary author of this notice.

### **Authority**

Our authority for issuing these manual chapters is derived from 16 U.S.C. 668dd *et seq.*

### **Availability of the Policy**

The Final Appropriate Refuge Uses Policy is available at this Web site: <http://policy.fws.gov/ser600.html>.

Persons without Internet access may request a hard copy by contacting the office listed under the heading **FOR FURTHER INFORMATION CONTACT**.

Dated: January 20, 2006.

### **H. Dale Hall,**

*Director, U.S. Fish and Wildlife Service.*

**Note:** This document was received at the Office of the Federal Register on June 21, 2006.

[FR Doc. 06–5645 Filed 6–23–06; 8:45 am]

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## **DEPARTMENT OF THE INTERIOR**

### **Fish and Wildlife Service**

**RIN 1018–AU25**

### **Final Wildlife-Dependent Recreational Uses Policy Pursuant to the National Wildlife Refuge System Improvement Act of 1997**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability.

**SUMMARY:** This policy explains how we will provide visitors with quality hunting, fishing, wildlife observation and photography, and environmental education and interpretation opportunities on units of the National Wildlife Refuge System (Refuge System). The National Wildlife Refuge System Improvement Act of 1997 (Improvement Act) that amends the National Wildlife Refuge System Administration Act of 1966 (Administration Act) defines and establishes that compatible wildlife-dependent recreational uses (hunting, fishing, wildlife observation and photography, and environmental education and interpretation) are the priority general public uses of the Refuge System and will receive