

**DRAFT-----COMPATIBILITY DETERMINATION-----DRAFT**

**Use:** Commercial Film, Video and Audio Production in Non-Wilderness

**Refuge Name:** Yukon Flats National Wildlife Refuge

**Establishment and Acquisition Authority:** In 1978, President Jimmy Carter established the 10.6 million-acre Yukon Flats National Wildlife Monument with Presidential Proclamation 4627. The monument was established from lands in the public domain. In 1980, the Alaska National Interest Lands Conservation Act (ANILCA; Public Law 96-487 Stat.2371) (Section 302) adjusted the boundary to 8.6 million acres, and established the Yukon Flats National Wildlife Refuge (Refuge) as part of the National Wildlife Refuge System (Refuge System).

**Refuge Purposes:** ANILCA established the purposes of Yukon Flats National Wildlife Refuge, as described in Section 302(9)(B), as follows:

- i) to conserve fish and wildlife populations and habitats in their natural diversity including, but not limited to, canvasbacks and other migratory birds, Dall sheep, bears, moose, wolves, wolverines and other furbearers, caribou (including participation in coordinated ecological studies and management of the Porcupine and Fortymile caribou herds) and salmon;
- ii) to fulfill the international treaty obligations of the United States with respect to fish and wildlife and their habitats;
- iii) to provide, in a manner consistent with the purposes set forth above, the opportunity for continued subsistence uses by local residents; and
- iv) to ensure, to the maximum extent practicable and in a manner consistent with the purposes set forth above, water quality and necessary water quantity within the refuge.

The Yukon Flats National Wildlife Refuge manages Beaver Creek, a designated Wild and Scenic River. Per the Wild and Scenic Rivers Act (1968), this river must be managed to ensure "certain selected rivers of the Nation which, with their immediate environments, possess outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural or other similar values, shall be preserved in free flowing condition, and that they and their immediate environments shall be protected for the benefit and enjoyment of present and future generations."

**National Wildlife Refuge System Mission:** The mission of the National Wildlife Refuge System (NWRS) is to administer a national network of lands and waters for the conservation, management, and, where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans (National Wildlife Refuge System Administration Act, as amended [16 U.S.C. 668dd-668ee]).

**Description of Use(s):** In 2000, Congress enacted Public Law 106-206 to allow the Secretary of the Interior and the Secretary of Agriculture to establish a fee system for commercial filming

activities on Federal land and for other purposes. This act describes commercial filming fees, recovery of costs, still photography, protection of resources, use of proceeds and processing of permit applications. To clarify the Department of Interior's commercial filming permit process and to provide definitions, regulations were promulgated in 43 CFR 5. The National Wildlife Refuge System (NWRS) also promulgated regulations for this use in 50 CFR 27.71. The law and following regulations provide specific legal requirements when considering commercial filming activities on Refuges.

This compatibility determination (CD) examines commercial filming activities to determine whether or not they may materially interfere with or detract from the purposes for which this Refuge was set aside or the NWRS mission as required by the National Wildlife Refuge System Improvement Act. In addition to meeting the requirements of the laws and regulations stated above, all considered commercial filming activities must meet the requirements of refuge regulation 50 CFR 29.1, which states "we may only authorize public or private economic use of the natural resources of any national wildlife refuge, in accordance with 16 U.S.C. 715s, where we determine that the use contributes to the achievement of the national wildlife refuge purposes or the National Wildlife Refuge System mission."

These commercial filming activities would also be covered by the DOI Categorical Exclusion 43 CFR 46.210 (j) which includes "activities which are educational, informational, advisory, or consultative to other agencies, public, and private entities, visitors, individuals, or the general public" and found to not meet any extraordinary circumstances listed under 43 CFR 46.215. This CD applies to news-gathering activities, although no special use permit is required for this activity unless two criteria are met (1) "to protect natural and cultural resources, to avoid visitor use conflicts, to ensure public safety or authorize entrance into a closed area;" and (2) "obtaining a permit will not interfere with the ability to gather the news" (43 CFR 5.4(a)).

The activities described in this CD include individuals and/or groups filming on the Refuge with the intent of producing a commercial film, video, or audio production. These individuals and groups primarily access the Refuge by fixed-wing aircraft, although some individuals or groups may use motorized or non-motorized boats, snowmachines and non-motorized surface transportation. Equipment used may include hand-held cameras, video recorders, audio recording equipment, sets, props, or drones. Models may only be used when endorsing compatible uses on the Refuge. The use of helicopters, personal jet-powered watercraft, off-road vehicles, and airboats for access or use during filming activities are excluded from evaluation in this CD.

The commercial filming activity could occur at any time of year. Associated activities such as camping, backpacking, hiking, boating (both motorized and non-motorized), and other incidental activities would be considered supporting uses. Often commercial filming activities are requested in conjunction with other commercial activities, such as guiding or transporting. Typically commercial filming occurs over the course of a few days to a few weeks total. Sometimes filming occurs during a single site-visit; other times filming occurs during multiple visits to multiple sites over the course of a season or year. Personnel (usually 1-3 people in a film crew) typically stay overnight on the refuge in a tent or other temporary accommodation. Filming occurs during any suitable filming conditions, day or night.

Commercial filming activities are authorized by special use permit with special conditions to minimize impacts to Refuge resources and disruption to subsistence users and visitors.

Yukon Flats National Wildlife Refuge is the nation's third largest Refuge, encompassing approximately 11.1 million acres of land (8.63 million acres in federal ownership) in the eastern interior of Alaska. Extending 220 miles east-west along the Arctic Circle, the refuge lies between the snowy Brooks Mountain Range to the north and the limestone peaks of the White Mountains to the south. The Trans-Alaska Pipeline corridor runs along the refuge's western boundary while the eastern boundary extends to within 30 miles of the Canadian border. The Yukon River flows through the refuge, sculpting the vast floodplain of lakes, ponds, and streams that dominate the landscape.

Tens of thousands of lakes and ponds dot the Yukon Flats Refuge, mostly concentrated in the floodplains along the Yukon River and some of its tributaries. The surrounding uplands, where there are fewer lakes, serve as important drainage systems from the bordering mountains, hills, and highlands.

Seven villages lie within or adjacent to the boundaries of the refuge where village residents participate in subsistence activities such as hunting, fishing, berry picking and wood gathering. According to the 2010 census, 995 people reside in these seven villages and depend on the Yukon Flats Refuge for subsistence. Most of these communities are only accessible by boat or airplane in the summer and snowmobile, dogsled, or airplane during winter. About 2.5 million acres of land within the refuge boundaries are under Village or Regional Corporation ownership.

The abundance of water in lakes, ponds, and streams provides important habitat for waterfowl from all four North American flyways. Though the refuge also supports a varied population of mammals, fish, and birds in their natural diversities. It is the waterfowl nesting and rearing habitats that are of national significance. The refuge hosts as many as two million ducks annually and supports the highest breeding densities in Alaska.

There are no roads on Yukon Flats Refuge. Access to the refuge lands generally occurs via aircraft equipped with wheels, floats, or skis; motorized or non-motorized watercraft; snowmachines; or occasionally dog teams. Due to these access limitations, visitation to the refuge is low. The refuge does not track visitation, but records from hunting, trapping, air operators, and recreation guides suggest that between 100-200 non-subsistence visitors visit Yukon Flats Refuge annually. On average, each visit to the Refuge lasts a few days to two weeks. Occasionally a visitor may stay longer than two weeks.

There are no Threatened or Endangered Species on Yukon Flats Refuge.

More information about the refuge may be found in the 1987 Comprehensive Conservation Plan.

**Availability of Resources:** Commercial filming permit requests vary greatly in scope, timing and duration. Per 43 CFR 5.8, the Refuge Manager is required to request cost recovery reimbursement for the actual direct and indirect costs to evaluate, manage, and monitor the activity. The availability of cost recovery reimbursement is part of the availability of resources evaluation.

Each complex commercial filming permit requires approximately 20 hours of staff time. This figure includes the time it takes to administer the permit paperwork, consult with the refuge manager and producer, conduct post-production follow-up (review of the film), and conduct an on-site compliance check. Additionally, filming operations may be complex enough to require the support of additional permittees who seek permits with the sole intent of supporting the filming operation. The average anticipated cost to the Refuge for each complex commercial filming permit is \$3,000.

Each standard commercial filming permit requires approximately 3 hours of staff time. This figure includes the time it takes to administer the permit paperwork, inform the refuge manager, and conduct post-production follow-up. On occasion, an on-site compliance check would be conducted. The average anticipated cost to the Refuge for each standard commercial filming permit is \$500.

The Refuge anticipates receiving 1-2 complex permit requests and 1-3 standard permit requests annually for an annual cost of \$3500 to \$7500

**Anticipated Impacts of the Use:** Commercial filming activities could occur at any time of year, although the peak typically occurs during summer and fall. Associated activities such as camping, backpacking, hiking, boating (both motorized and non-motorized), and other incidental activities would be considered supporting uses. Often commercial filming is requested in conjunction with other commercial activities, such as guiding or transporting, and does not materially add to on-the-ground impacts of already permitted or ongoing activities.

*Geology, Soil & Water Resources* – The Service does not anticipate any measurable changes to geology, soil, or water resources due to this activity. Impacts to these resources are anticipated to be negligible because anticipated use would be dispersed, infrequent, and of short duration. Subsequently, human waste accumulation and localized soil compaction/disturbance will have only very minor impacts because group sizes are anticipated to be small. Implementation of existing Region 7 regulations, policies and Special Use Permit (SUP) stipulations regarding the maintenance of sanitary conditions, trash removal, and prohibition of ground disturbance (i.e., runway or cabin construction) will greatly assist in assuring effects to soil and water quality and quantity remain a minor concern. Therefore, impacts to geology, soil and water resources would be negligible.

*Wildlife, Fish and Plants* – The Service does not anticipate any measurable changes to fish, wildlife or plants within the Refuge due to this activity. The likelihood that Refuge habitats will be damaged is very low. Yukon Flats Refuge is primarily accessed by airplanes landing on lakes; motorboats; or snowmachines used during periods of adequate snow cover. Impacts from access are minimal and transient. Waterfowl and other migratory birds may be flushed occasionally during filming activities, but based on professional judgement and observation, they would quickly return to their behaviors and locations prior to disturbance. Additionally, commercially filming activities would occur in such minimal and dispersed locations that the overall impact to waterfowl across 8.63 million acres would be negligible. Permit conditions and Codes of Federal Regulation prohibit the intentional disturbance or harassment of wildlife on Refuge lands.

Building of permanent structures is prohibited. Trash must be secured while on the Refuge and disposed of properly off Refuge. Permittees are informed of the risk of introducing invasive species and are instructed to use best practices and to clean equipment to decrease the likelihood of transporting invasive species to refuge habitats. Compliance with regulations and permit conditions may be checked by Refuge staff, including law enforcement personnel. Based on current demand, levels of this use are expected to be low. Therefore, impacts to wildlife, fish and plants would be negligible.

*Public Uses* – The Service does not anticipate any negative impacts between user groups, including but not limited to guided and unguided recreational users, air operators, permitted cabin holders, and those taking part in commercial filming activities. Our determination is based on the current very low levels of visitation and low demand for participation in the proposed use. The remoteness of the Refuge decreases the likelihood of individual user groups overlapping. There is also evidence that suggests user groups have and will continue to self-regulate to avoid overlap, seeking quality visitor experiences by avoiding other user groups. Therefore, anticipated impacts to public uses would be negligible.

*Subsistence* – Consistent with Title VIII, Section 810 of the Alaska National Interest Lands Conservation Act (ANILCA) the Refuge has evaluated the potential impacts of the proposed use on subsistence uses and needs. No significant restriction of subsistence uses and needs is anticipated from permitted commercial filming. Refuge personnel can and do direct the use away from primary subsistence use areas during the permitting process, should this be necessary. We anticipate most commercial filming requests will coincide with either permitted big game guided hunting operations or permitted trapping operations, which occur in locations generally not accessed by subsistence users. Therefore, impacts to subsistence would be negligible.

*Cultural Resources* – The Service does not anticipate negative effects to the integrity of cultural resources from commercial filming activities. Given the rarity and dispersed nature of these resources on the landscape, it is unlikely that they would be encountered during commercial filming activities. In the unlikely event that cultural resources are encountered, they could be filmed or photographed, which could be considered a temporary, negative impact. However, long-term negative impacts are mitigated by an existing Region 7 standard condition that informs all permittees that it is unlawful to disturb or remove archaeological or historic artifacts from Refuge lands under the Archaeological Resources Protection Act (16 U.S.C. 470 ee). Therefore, impacts to cultural resources would be unlikely at best, and minimal in the short-term at worst.

**Public Review and Comment:** This draft Compatibility Determination (CD) is advertised via flyers in the following communities: Fort Yukon, Venetie, Beaver, Stevens Village, Chalkyitsik, Circle, Birch Creek, and Fairbanks. It will also be advertised in the Fairbanks Daily News-Miner newspaper. Copies of this draft CD have been provided to the State of Alaska and local tribes in the Yukon Flats Refuge area. This draft CD is also available for public comment at the Refuge Headquarters and on the Refuge website at

[https://www.fws.gov/refuge/Yukon\\_Flats/what\\_we\\_do/resource\\_management.html](https://www.fws.gov/refuge/Yukon_Flats/what_we_do/resource_management.html)

The comment period opens August 25<sup>th</sup> 2019 and closes September 24<sup>th</sup> 2019.

**Proposed Determination (check one below):** The subject uses at the currently occurring levels are compatible.

Use is not compatible

Use is compatible

**Conditions Necessary to Ensure Compatibility:** A special use permit with the following stipulations (along with Region 7 Alaska's standard conditions) is required for commercial filming. These stipulations are intended to minimize impacts and ensure compatibility. Refuge permits may also include other stipulations as necessary or appropriate for the specific operations or activities that are proposed. The stipulations will be updated periodically to reflect management needs or policy changes.

Yukon Flats Refuge Conditions:

- A copy of this permit shall be in the permittee's or field party chief's possession at all times while exercising the privileges of the permit.
- The permittee's special use permit application, as amended and accepted by the U.S. Fish and Wildlife Service, is hereby incorporated in its entirety as a special condition. All deviations from the application must receive prior written approval by the Refuge Manager or his designee.
- All aircraft operating under this permit must have 12 inch identification numbers in easily visible contrasting colors.
- The use of helicopters is prohibited.
- The use of off-road vehicles (except snow machines) is prohibited.
- Fuel storage sites shall be approved in advance and in writing by the Refuge Manager. Fuel storage sites shall be identified on a USGS map with specified latitude and longitude. Preparations to prevent and respond to a fuel spill shall be fully adequate at all sites for the amount of fuel stored on site. Fuel storage sites shall conform to the following:
  - No more than 60 gallons can be stored per site.
  - Storage shall be above the high water line.
  - Storage shall be in containers approved for gasoline and labeled with the permittee's name, phone number, and type of fuel.
- The construction of landing strips or pads is prohibited. Incidental hand removal of rocks and other minor obstructions is permitted.
- For all floatplane landings on Yukon Flats Refuge, the permittee must collect, fill out, and submit within 30 days of permit expiration all of the information contained in the attached floatplane landing record sheet. This information will help us identify priority sites to survey for the presence of aquatic invasive species.

- Refuge regulated services that are sub-contracted shall be provided by a service with a Refuge Special Use Permit. For example, if a research permittee requires air transportation services for their gear and scientists, the air operator shall have or obtain a Refuge Special Use Permit.
- Credit will be given to the Department of the Interior and the U.S. Fish and Wildlife Service, Yukon Flats National Wildlife Refuge with an appropriate title or announcement, unless there is a written statement that no such courtesy credit is desired.
- Intentional product endorsement and placement within films is prohibited.
- The use of Unmanned Aerial Systems (UAS or drones) must be approved in advance and in writing by the refuge manager.
- Filming is permitted at archaeological and paleontological sites over 100 years old only in a manner that does not reveal the specific locations and is general in nature. The confidentiality of these sites is protected under section 9(a) of the Archaeological Resources Protection Act (Public Law 96-95) and section 6309 of the Paleontological Resources Protection Act (Public Law 111-01).
- It is illegal to introduce invasive species onto a National Wildlife Refuge (50 CFR 27.52) and Alaska (5 AAC 92.141). Best management practices shall be taken so that no invasive plants, insects, other invertebrates, or animals are introduced to refuge habitats.
- The permittee will take no action that interferes with subsistence activities of rural users or restricts the reasonable access of subsistence users to refuge lands. This may include, but is not limited to, disturbance of wildlife and their movements near subsistence hunters, and damage to cabins, trails, traditional campsites or caches used by subsistence users.
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**Proposed Justification:** I find commercial filming to be compatible with Refuge purposes and the National Wildlife Refuge System mission. Commercial filming is managed by Special Use Permit and regulations found in 43 CFR, Subtitle A §5.1. Commercial filming on Refuges can increase public understanding of wildlife, history, and natural resource management. The policy of the Service (8 RM 16.1) is to provide refuge access and/or assistance to legitimate producers of audio and/or visual recordings, provided that the production supports refuge purposes.

The proposed use would not materially interfere with or detract from the Refuge's primary purpose to conserve fish and wildlife populations and habitats in their natural diversity. Permittees are required through Regional permit stipulations to follow all Refuge System regulations in 50 Code of Federal Regulations (CFR). This includes 50 CFR Part 27.51 which prohibits disturbance or attempting to disturb wildlife on a national wildlife refuge. Although just the presence of individuals on the landscape could disturb or displace wildlife, we anticipate that these disturbances would only lead to animals leaving the immediate area for a short amount of time and not change an animal's overall use of the landscape. This site-specific,

minimal, and temporary effect to fish and wildlife populations does not rise to the level of incompatibility.

The proposed use would not materially interfere with or detract from the Refuge's purpose to fulfill international treaty obligations of the United States with respect to fish and wildlife and their habitats. There would be no loss of migratory birds or migratory bird habitat or impact to Chinook salmon or salmon habitat because of this activity.

The proposed use would not materially interfere with or detract from the Refuge's purpose to provide the opportunity for continued subsistence uses by local residents. The ANILCA Section 810 analysis evaluated the impact to subsistence and concluded that there are negligible effects to subsistence resources and access.

The proposed use would not materially interfere with or detract from the Refuge's purpose to ensure water quality and necessary water quantity within the Refuge. Although some commercial filming activities may occur on and near Refuge waters, there are no anticipated effects to either the quality or quantity of water on the Refuge.

After fully considering the impacts of this activity, it is my determination that this use would not materially interfere with or detract from the purposes of the Refuge or the mission of the National Wildlife Refuge System. These activities would remain compatible with the implementation of the listed stipulations.

### **Supporting Documents:**

43 CFR, Subpart A, Section 5.1: Making Pictures, Television Productions or Sound Tracks on Certain Areas under the Jurisdiction of the Department of the Interior: Areas Administered by the National Park Service, the Bureau of Land Management, and the U.S. Fish and Wildlife Service. <https://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&sid=ccb9a8a36b8e2c45776c1029182d9555&rgn=div5&view=text&node=43:1.1.1.1.5&idno=43#sp43.1.5.a>

Alaska National Interest Lands Conservation Act; Public Law 96-487 Stat. 2371.  
<https://www.gpo.gov/fdsys/pkg/STATUTE-94/pdf/STATUTE-94-Pg2371.pdf>

U.S. Fish and Wildlife Service. 1987. Record of Decision: Yukon Flats National Wildlife Refuge Final Comprehensive Conservation Plan, Environmental Impact Statement, and Wilderness Review. U.S. Fish and Wildlife Service. Anchorage, Alaska. 422 pp.

U.S. Fish & Wildlife Service. 2006. Policy 603 FW 1: Appropriate Refuge Uses.  
<https://www.fws.gov/policy/603fw1.html>

**Signature Refuge Manager:** \_\_\_\_\_  
(Signature & Date)

**Concurrence Regional Chief:** \_\_\_\_\_  
(Signature & Date)

**Mandatory 10-Year Reevaluation Date:** \_\_\_\_\_