

COMPATIBILITY DETERMINATION

The National Wildlife Refuge System Administration Act of 1966, as amended (16 U.S.C. 668dd-668ee) states that “The Secretary is authorized, under regulations as [s]he may prescribe, to – (A) permit the use of any area within the [National Wildlife Refuge] System for any purpose, including but not limited to hunting, fishing, public recreation and accommodations, and access wherever [s]he determines that such uses are compatible’ and that “... the Secretary shall not initiate or permit a new use of a refuge or expand, renew, or extend an existing use of a refuge, unless the Secretary has determined that the use is a compatible use and that the use is not inconsistent with public safety.” A compatible use is defined as “A proposed or existing wildlife-dependent recreational use or any other use of a national wildlife refuge that, based on sound professional judgment, will not materially interfere with or detract from the fulfillment of the National Wildlife Refuge System mission or the purposes of the national wildlife refuge.” The compatibility determination is to be a written determination signed and dated by the Refuge Manager and Regional Chief of the National Wildlife Refuge System, signifying that a proposed or existing use of a national wildlife refuge is a compatible use or is not a compatible use.

Applicable compatibility regulations in 50 CFR Parts 25, 26, and 29 were published in the Federal Register October 18, 2000 (Vol. 65, No. 202, pp 62458 – 62483).

Use: Commercial Film, Video, and Audio Production (Commercial Filming)

Refuge Name: Kenai National Wildlife Refuge

Establishing and Acquisition Authorities: Franklin D. Roosevelt established the Kenai National Moose Range (Moose Range) on December 16, 1941, for the purpose of “. . . protecting the natural breeding and feeding range of the giant Kenai moose on the Kenai Peninsula, Alaska, which in this area presents a unique wildlife feature and an unusual opportunity for the study, in its natural environment, of the practical management of a big-game species that has considerable local economic value...” (Executive Order 8979).

The Alaska National Interest Lands Conservation Act (ANILCA) substantially affected the Moose Range by modifying its boundaries and broadening its purposes to include conservation of a broad array of fish, wildlife, and habitats in their natural diversity, meeting international treaty obligations, protection of water quality and quantity, and providing opportunities for scientific research, land management training, and educational and recreational activities. ANILCA also redesignated the Moose Range as the Kenai National Wildlife Refuge (Refuge), added nearly a quarter of a million acres of land, and established the 1.32-million acre (534,349 hectare) Kenai Wilderness.

Refuge Purposes: ANILCA sets out purposes for each refuge in Alaska. The ANILCA purposes of the Refuge are described in Section 303(4)(B) of the Act. The purposes

identify some of the reasons why Congress established the Refuge and set the management priorities for it.

ANILCA purposes for the Refuge are as follows:

- (i) to conserve fish and wildlife populations and habitats in their natural diversity, including but not limited to moose, bears, mountain goats, Dall sheep, wolves and other furbearers, salmonoids and other fish, waterfowl and other migratory and nonmigratory birds;
- (ii) to fulfill the international treaty obligations of the United States with respect to fish and wildlife and their habitats;
- (iii) to ensure, to the maximum extent practicable and in a manner consistent with the purposes set forth in paragraph (i), water quality and necessary water quantity within the Refuge;
- (iv) to provide, in a manner consistent with subparagraphs (i) and (ii), opportunities for scientific research, interpretation, environmental education, and land management training; and
- (v) to provide, in a manner compatible with these purposes, opportunities for fish and wildlife-oriented recreation.

Policy (FWS 603 2.8) directs that pre-ANILCA purposes remain in force and effect, except to the extent that they may be inconsistent with ANILCA or the Alaska Native Claims Settlement Act, and that such purposes only apply to those areas of the Refuge in existence prior to ANILCA. The Executive Order purpose to protect Kenai moose, however, is treated as complementary to the broader ANILCA purpose of conserving fish and wildlife populations; therefore, no special attention is given the Executive Order purpose in this compatibility review process.

The Wilderness Act of 1964 (Public Law 88-577) created additional purposes for the Kenai National Wildlife Refuge. Section 4.(3)(b) of the Wilderness Act provides, “*Except as otherwise provided in this chapter, each agency administering any area designated as wilderness shall be responsible for preserving the wilderness character of the area and shall so administer such area for such other purposes for which it may have been established as also to preserve its wilderness character. Except as otherwise noted in this Act, wilderness areas shall be devoted to the public purposes of recreational, scenic, scientific, educational, conservation, and historical use.*”

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

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, 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 Kenai National Wildlife Refuge.

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. This CD does not apply to news gathering activities as defined in 43 CFR 5.12. In addition to meeting the requirements of the laws and regulations stated above, 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.

The activities described herein 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 would utilize the same access to the Refuge allowed for the general public which would primarily be by automobile, boat and on foot although fixed-wing aircraft, snowmachines (during periods of adequate snow cover) are allowed. Other allowable surface modes of transportation, such as horseback or skiing, may also be employed. Equipment used would include hand-held cameras, video recorders, and audio recording equipment. In accordance with 43 CFR 5, models, sets, and props may be used when endorsing appropriate and compatible uses but may not imply endorsement by the Service. 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 this activity is requested in conjunction with other commercial activities, such as guiding or transporting.

Pursuant to the provisions of the Wilderness Act, we prohibit commercial filming in Wilderness areas unless we determine through a minimum requirement analysis (MRA) process that it is necessary to provide needed educational information about wilderness uses and values and does not degrade the wilderness character of the area. Drones or other equipment may only be used if they are determined through the minimum

requirements analysis to be the minimum tool necessary to complete the project.

When filming in Wilderness, the intent of the producer is important. The primary purpose of media productions should be to capture wilderness values, character, and experiences that may be incidental to hunting, fishing, and ecotourism activities (i.e., non-consumptive uses) and other “public purposes” of wilderness (e.g., recreational, scenic, scientific, educational). The opposite may also be true: capturing “Big Six” activities may be the primary purpose of a media production, with wilderness purposes and values of secondary importance, because documenting consumptive uses can provide popular media products. Service policy on filming in wilderness (610 FW 2.12 D) make a distinction between the two intentions described above.

Refuge Habitats

This section describes the refuge in general to assist the reader in understanding the setting and possible effects of this use.

Kenai National Wildlife Refuge (Refuge, Kenai Refuge) lies on the western Kenai Peninsula (Peninsula). This 10,039-square-mile (26,000-square-kilometer) peninsula is connected to mainland Alaska by a 10-mile (16-kilometer) wide isthmus and is flanked by Prince William Sound to the east, Cook Inlet to the north and west, and the Gulf of Alaska to the south.

Flora and fauna on Kenai NWR are unusually diverse for this latitude because of the juxtaposition of two biomes on the Kenai Peninsula: the northern fringe of the Sitka spruce-dominated coastal rainforest on the eastern side of the Kenai Mountains and the westernmost reach of boreal forest in North America on the western side of the Kenai Mountains. The forests on the Refuge are dominated by white and black spruce with an admixture of aspen and birch. Extensive peatlands are interspersed among spruce in the Kenai Lowlands on the northern part of the Refuge. Lichen-dominated tundra replaces hemlock and subalpine shrub above tree line in the Kenai Mountains and Caribou Hills.

The eastern one-third of the Refuge lies within the Kenai Mountains, which range in elevation from 3,000–6,600 feet (900–1,800 meters). The mountains are heavily glaciated, and many of the high valleys are buried beneath the vast Harding Icefield, which covers approximately 720 square miles (1,865 square kilometers) at elevations of 4,000–5,300 feet (1,200–1,600 meters). The remaining two-thirds of the Refuge lie in the Kenai Lowlands, which is part of the Cook Inlet–Susitna Lowlands. These lowlands consist of ground moraine and stagnant ice terrain with low ridges, hills, and muskeg.

The Kenai River flows through the Refuge and drains much of it. Other primary watersheds include those of the Swanson River, Chickaloon River, and Kasilof River. There are thousands of lakes on the Kenai Peninsula—nearly all of them are on the Refuge. The largest are two glacial lakes, Tustumena Lake (73,000 acres or 29,500 hectares) and Skilak Lake (25,000 acres or 10,110 hectares). More than 4,600 smaller lakes dot the Refuge, mostly in the Moose, Swanson, and Chickaloon river drainages.

The Refuge has documented 1,086 species of flora and fauna: 151 birds, 20 fish, 30 mammals, 164 arthropods, 484 vascular plants, 97 fungi, 35 lichens, 14 liverworts, 90 mosses, and 1 other invertebrate. Eighteen formations have been classified on the Refuge under the National Vegetation Classification System.

The Refuge now hosts more than 1 million annual visitor use days, and an estimated 300,000 visitors spend extended periods of time on the Refuge enjoying a variety of outdoor activities, including fishing, camping, hunting, hiking, wildlife viewing and photography, canoeing and river floating. Refuge environmental education and interpretive programs provide education and outreach to over 12,000 students and/or visitors annually.

A more detailed description of the Refuge environment is found in the 2010 Revised Comprehensive Conservation Plan, which can be found at the following website: <https://www.fws.gov/alaska/pages/refuge-management/planning-policy/refuge-plans/list-refuge-plans#kenai>

Availability of Resources

Commercial filming permit requests vary greatly in scope, timing and duration. Because of these differences, each permit request will be evaluated by the Refuge Manager to determine whether the current Refuge resources are adequate to evaluate and monitor the requested permit. 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 will be part of the availability of resources evaluation.

Administration of the permit process involves phone conversations, written correspondence, and time needed to evaluate the proposal under Refuge policies and regulations. These costs may vary from no cost for adding commercial filming to an existing commercial visitor services permit to \$2,400 for a complex commercial filming proposal within a remote or Wilderness area.

In addition to the administrative costs, a permittee may be required to pay for a project monitor and associated monitoring costs. This may be Refuge staff or other designee of the Refuge Manager, if the filming activities:

- Require monitoring due to the scope of the project; or,
- There are other resource concerns.

Costs for monitoring are also highly variable from no cost for an existing commercial visitor services permit holder operating an already monitored activity to \$5,400 or more for a multi-day project that requires air transportation and the cost for the monitor. Upon review of the permit application a signed cost recovery agreement may be necessary prior to processing the application if the cost to process and administer the permit is estimated to be greater than the currently established special use permit administration fee. After an analysis of the monitoring needed for a given commercial filming project,

a documented lack of available resources or the inability to monitor the project effectively may be grounds for denial.

Anticipated Impacts of the Use:

Wildlife, Fish & Plants - For commercial filming associated with an otherwise permitted activity (such as fishing or hunting) and where the number of participants is not increased due to the commercial filming, we do not anticipate impacts beyond short-term and localized disturbance which would not result in any measurable changes to fish, wildlife or plant populations or habitats within the Refuge. For commercial filming where these operations would lead to an increase in the group size or length of stay to produce the film, impacts from disturbance to fish and wildlife or potential for habitat impacts would increase. Specific project management strategies aimed at limiting disturbance to species vulnerable to disturbance impacts during key periods and within key habitats such as nesting trumpeter swans and bald eagles or wintering concentrations of Dall sheep or mountain goats would be implemented to ensure such impacts do not result in measurable changes to fish, wildlife and plant populations. For commercial filming activities covered by this CD, the refuge manager would need to document that the likelihood for Refuge habitats to be damaged or wildlife to be impacted will be low.

Fish and Wildlife Oriented Recreation - Commercial filming may occur in areas occupied by refuge visitors not associated with the filming. This could lead to crowding in certain locations or disturbance to visitors. Commercial filming and the associated disturbance may prohibit some recreation users from fully enjoying their refuge experience. For commercial filming activities covered by this CD, the refuge manager would need to document that the likelihood for visitors to be impacted is low.

Subsistence - No proposed or foreseen significant restriction of subsistence uses and needs is envisioned. We anticipate most commercial filming requests will coincide with summer fishing periods primarily during the June to August period.

Wilderness - Leave-no-trace practices are promoted by the Refuge, improper management of human waste and littering with toilet paper are recurrent impacts associated with backcountry use of the refuge regardless of the activity. Deposition of solid human waste within 100 feet of the annual mean high water level of any wetland, lake, pond, spring, river or stream and within 100 feet of a campsite or trail is prohibited. In the Swan Lake and Swanson River Canoe Systems, solid human waste must be buried at least six inches. Monitoring of sites utilized by a film crew may be necessary to ensure they are effectively using leave-no-trace practices and to ensure their actions are not negatively affecting the untrammeled, undeveloped and natural qualities of the Congressionally-designated Wilderness.

Public Review and Comment

Legal notice of the draft compatibility determination is planned to be published in the Anchorage Daily News and the Kenai Peninsula Clarion which will initiate a 30-day public comment period. A notice is also planned for the Refuge's website <<https://www.fws.gov/refuge/kenai>> and on the refuge Facebook page. A press release

will be prepared and sent to our standard mailing list during the same time period.

Proposed Determination

Use is Not Compatible

Use is Compatible with the Following Stipulations

Stipulations Necessary to Ensure Compatibility

A special use permit with the mandatory regional stipulations, the following stipulations and stipulations associated with supporting activities (e.g. camping) is required for commercial filming. These stipulations are intended to minimize effects and ensure compatibility. Specific permits may also include other special conditions as necessary or appropriate for the specific operations or activities that are proposed. These stipulations will be updated periodically to reflect management needs or policy changes.

- 1) Locations available for filming are subject to the approval of the Refuge Manager.
- 2) Permits do not grant the exclusive use of any area of the refuge by the commercial filming permittee.
- 3) The permit applicant must provide a plan to address human and other waste disposal. These facilities must be approved by the Refuge Manager and shall not create a nuisance to wildlife and shall not impede or detract from the experience of current or future visitors to the site.
- 4) Credit will be given to the Department of the Interior and the U.S. Fish and Wildlife Service, Kenai National Wildlife Refuge through the use of an appropriate title or announcement, unless there is a written statement that no such courtesy credit is desired.
- 5) The use of Unmanned Aerial Systems (UAS or drones) as a filming platform may be allowed subject to monitoring and subsequent permit conditions.
- 6) The use of UAS must be approved in advance and in writing by the refuge manager.
- 7) Permittee must submit an operations safety plan to the Refuge Manager, and this plan must be approved by the Refuge Manager prior to commencing activities on the Refuge authorized under this permit. The plan should be submitted as early as practicable; a minimum 30-day lead time is recommended.
- 8) Intentional product endorsement and placement within films is prohibited.
- 9) 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).

10) 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.

11) 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.

12) 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 this permit.

13) 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.

14) The permittee's special use permit application, as amended and accepted by the U.S. Fish and Wildlife Service, is hereby incorporate in its entirety as a special condition. All deviations from the application must receive prior written approval by the Refuge Manager of his designee.

Proposed Justification

Commercial filming is managed by Special Use Permit and regulations found in 43 CFR, Subtitle A §5.1. Commercial filming on national wildlife 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.

Commercial filming proposals within Wilderness will be evaluated using a Minimum Requirements Analysis to determine if they are necessary for the administration of the Wilderness, and if so, to determine the minimum tool required to complete the project.

The proposed use would not materially interfere with or detract from the Kenai NWR's primary purpose to conserve fish and wildlife populations and habitats in their natural diversity. Although there could be minimal, short-term disturbance and/or displacement of wildlife, the effects to fish and wildlife populations do not rise to the level of incompatibility.

The proposed use would not materially interfere with or detract from the Kenai NWR'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 bird habitat from this

activity.

The proposed use would not materially interfere with or detract from the Kenai NWR'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 of quantity of water on the refuge.

The proposed use would not materially interfere with or detract from the Kenai NWR's purpose to provide opportunities for scientific research, interpretation, environmental education, and land management training.

The proposed use would not materially interfere with or detract from the Kenai NWR's purpose to provide opportunities for fish and wildlife-oriented recreation.

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 Refuges or the mission of the NWRS. These activities will remain compatible with the implementation of the listed stipulations.

Supporting Documents

ANILCA Section 810 Analysis

Signature Refuge Manager:

(Signature & Date)

Concurrence Regional Chief:

(Signature & Date)

Mandatory 10-Year Re-Evaluation Date:
