

COMPATIBILITY DETERMINATION

Use: Commercial Fishing

Primary Use: Fishing (commercial)

Supporting Uses: Boating (electric and wind-driven), boating (human-powered), boating (motorized), fishing (general), fishing (other), hunting (big game), hunting (other migratory birds), hunting (upland game), hunting (waterfowl), hunting (other), plant gathering, natural resource collecting, camping, hiking and backpacking, pets, photography, swimming and beach use, outdoor recreation (other), fishing (subsistence), gathering (subsistence), hunting (subsistence), subsistence (other), photography (wildlife), wildlife observation, fixed-wing aircraft, tree harvest (firewood).

Refuge Name: Kodiak National Wildlife Refuge

Establishing and Acquisition Authorities

Original authority was Executive Order 8857 (1941); modified by Public Land Order 1634 (1958), Alaska Native Claims Settlement Act (1971), and Alaska National Interest Lands Conservation Act (1980).

Refuge Purposes

Executive Order 8857 established Kodiak National Wildlife Refuge “. . . for the purpose of protecting the natural feeding and breeding ranges of the brown bears and other wildlife on Uganik and Kodiak Islands . . .”

Section 303(5)(B) of ANILCA states the following:

“The purposes for which the Kodiak National Wildlife Refuge is established and shall be managed include

- (i) to conserve fish and wildlife populations and habitats in their natural diversity including, but not limited, to Kodiak brown bears, salmonids, sea otters, sea lions, and other marine mammals and migratory birds;
- (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 purposes set forth in subparagraphs (i) and (ii), 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 in subparagraph (i), water quality and necessary water quantity within the refuge.”

National Wildlife Refuge System Mission

The mission of the National Wildlife Refuge System 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 of 1966, as amended [16 U.S.C.668dd-668ee]).

Description of Use(s)

This determination re-evaluates commercial fishing and facilities related to commercial fishing on the Refuge as described in the 1987 Kodiak Refuge Management Plan for Commercial Fishing Activities. Section 304(d) of the Alaska National Interest Lands Conservation Act allows the exercise of valid commercial fishing rights and the use of refuge lands for structures and activities incident to the fishing rights as long as they are compatible with refuge purposes and not a significant expansion of the level of such commercial fishing activities within the refuge during 1979. The re-evaluation of the previously mentioned plan consists of 24 setnet site special use permits and authorizes the following types of facilities and uses:

- Primary type of facilities authorized per site:
 - One primary cabin for living quarters, cooking, food and dry goods storage, laundry, shower stall, and area for wet clothes
 - One structure for off-season gear storage and in-season overflow living quarters and workspace
 - One generator/ice machine storage building
 - One outhouse
 - One banya, if there is an inadequate fresh-water supply at the site
 - A small water storage tank (if necessary to build head for water supply)
- Size of facilities
 - Primary cabin—600 square feet
 - Utility cabin—400 square feet (for holders of 1–3 limited entry permits); 500 square feet (for holders of 4 limited entry permits), and 600 square feet (for holders of 5 limited entry permits)
 - Banya—64 square feet (if freshwater source is not adequate for shower)
 - Generator/ice machine building—100 square feet (for holders if 1 limited entry permit); 200 square feet (for holders of 2 or more limited entry permits)

The 2011 Commercial Fisheries Facilities Management Plan also authorizes issuance of up to three 1-year commercial fishing site permits for set net or beach seine activity using temporary facilities. The fishing site may be a set net or beach seine operation and must be located in a moderate management zone. The permit would authorize temporary facilities which must be removed at the end of the fishing season. Applications would be reviewed to ensure the proposed facility is compatible with refuge purposes. Permits would be assessed the permit administrative fee and the site use fee for tent platforms and other camp structures as per the U.S. Fish and Wildlife Service Annual Fee Schedule.

Facilities may be occupied from May 15 through September 15 annually. Occupancy at other times of the year must be authorized by the refuge manager. Commercial fisheries are managed by the State of Alaska to maintain healthy fish populations; one of the purposes of Kodiak Refuge. Therefore, facilitating continued commercial fishing directly contributes to achieving refuge purposes.

All changes regarding differences from the 1987 plan and the 2011 plan are compared in the table below.

Comparison of Commercial Fisheries Support Facilities Management Plans

Action	1987 Plan	2011 Plan
Season of Use	May 15 – September 15	Same
5-Year Permits	24 permits issued	Same
Annual Permits	None	3 annual permits available
Transfer of Permits	Not allowed	Same
Total Structures	4 structures per site	5 structures per site
Facility Repair	Permittee responsibility	Same
Ownership	Prior to December 2, 1980 Permit holder After December 2, 1980 New Cabins - Government	Same
Authorized Uses	Commercial Fishing	Same
Use of Refuge Lands	Existing garden plots authorized, no new plots authorized	200 square foot garden plot authorized for all sites

Availability of Resources

Adequate refuge personnel and base operational funds are available to manage the commercial fishing special use permit program. Administrative staff time is used to prepare the permits. Field staff visit sites and conduct inspections for compliance with the terms and conditions of the special use permits.

Anticipated Impacts of the Use

With the levels of use and related facilities described in the Commercial Fisheries Support Facilities Management Plan, no long-term major adverse effects on refuge resources are anticipated. Most of the facilities have been in place for a number of years. The potential for adverse human-bear encounters always exists on Kodiak Refuge, especially where people congregate and especially associated with fishing. Stipulations in special use permits are designed to minimize this danger. Reported defense of life or property bear kills are considered when the State of Alaska is establishing the number of brown bear

hunting permits to be issued so no long-term adverse impacts would occur even if there are bear kills associated with these permits.

Invasive plants could become established at these sites because of the continued presence of visitors and existing vegetation and soil disturbance. These sites would be relatively easy to monitor for the presence of invasive plants, and eradication efforts could be undertaken prior to invasive plants spreading beyond the immediate vicinity.

Public Review and Comment

Public comment was solicited concurrently with the revision of the Refuge's Commercial Fisheries Support Facilities Management Plan (CFSFMP). Set net site permittees, state and federal agencies and other interested entities were notified via a letter dated November 29, 2007, of a public scoping meeting to be held on January 15, 2008. The intent of the meeting was to collect public input on changes needed to the 1987 plan. A public comment period was open from November 29, 2007, to February 15, 2008. A final public meeting was held April 27, 2010. Written and oral input was received and used to determine changes in management of these issues. Comments received included requests for the plan to allow opportunities for beach seiners, new garden plots, number of structures, additional permits, season of use, and to define what constitutes "significant expansion of commercial fishing activities beyond the level of such activities during 1979" as described in ANILCA section 304(d), as well as others which were not relevant to the CFSFMP.

Responses to all comments have been included in the Refuge's final CFSFMP. They are located in the "Summary of Public Comments Received and Refuge Response" section of the CFSFMP.

Determination

Use is Not Compatible

Use is Compatible With the Following Stipulations

Stipulations Necessary to Ensure Compatibility

- Primary facilities permitted per permit site are one cabin (600 square feet), one utility structure (400 square feet), one generator/ice machine storage building (100 square feet if one permit fished; 200 square feet if two or more permits fished), one outhouse, and one banya (64 square feet) if a fresh water source is not adequate for a shower. (Set Net Site – Commercial Fishing)
- Buildings must be single story, and the exterior must be a dull color that blends with the surroundings. (Set Net Site – Commercial Fishing)
- If existing facilities contain less square footage than allowed in the Commercial Fisheries Facilities Management Plan, the size of facilities may be increased up to the maximum. However, the increase will only be allowed if the total number of structures on site is brought into conformance with the Management Plan. (Set Net Site – Commercial Fishing)
- If existing facilities contain more square footage than allowed in the cabin management plan and these facilities are removed, replacement facilities must conform to specifications of the plan. (Set Net Site – Commercial Fishing)

- New garden plots up to 200 square feet are allowed. (Set Net Site – Commercial Fishing)
- A special use permit is required. (Set Net Site – Commercial Fishing)

The management direction provided in the revised Comprehensive Conservation Plan for the refuge will be implemented. The step-down plan for commercial fisheries activities (Commercial Fisheries Facilities Management Plan) will be revised as necessary to identify specific management to ensure that this activity continues to remain compatible with refuge purposes. This includes monitoring of these and other compatible activities. Findings from monitoring would be used to determine what additional management actions, if any, were needed to ensure compatibility. Continuing law enforcement and administrative monitoring of permits will be carried out to ensure compliance with the following conditions that are incorporated into all permits in order to minimize impacts on Refuge lands and resources.

Regional Special Conditions

- Failure to abide by any part of this special use permit; violation of any refuge-related provision in Titles 43 or 50, Code of Federal Regulations; or violation of any pertinent state regulation (e.g., fish or game violation) will be considered grounds for immediate revocation of this permit and could result in denial of future permit requests for lands administered by the U.S. Fish and Wildlife Service. This provision applies to all persons working under the authority of this permit (e.g., assistants or contractors). Appeals of decisions relative to permits are handled in accordance with 50 Code of Federal Regulations 36.41.
- The permittee is responsible for ensuring that all employees, party members, contractors, aircraft pilots, and any other persons working for the permittee and conducting activities allowed by this permit are familiar with and adhere to the conditions of this permit.
- Any problems with wildlife and/or animals taken in defense of life or property must be reported immediately to the refuge manager, the Alaska Department of Fish and Game, and the Alaska State Troopers. Animals taken must be salvaged in accordance with state regulations.
- The permittee and permittee's employees do not have the exclusive use of the site(s) or lands covered by the permit.
- This permit may be cancelled or revised at any time by the refuge manager for noncompliance or in case of emergency (e.g., public safety, unusual resource problems).
- The permittee or party chief shall notify the refuge manager during refuge working hours in person or by telephone before beginning and upon completion of activities allowed by this permit.
- Prior to beginning any activities allowed by this permit, the permittee shall provide the refuge manager with: (1) name and method of contact for the field party chief/supervisor; aircraft and other vehicle types to be used, identification information for these vehicles; and names of crew members, and (2) any changes in information provided in the original permit application.
- In accordance with the Archaeological Resources Protection Act (16 U.S.C. 470aa), the disturbance of archaeological or historical sites, and the removal of artifacts are prohibited. The excavation, disturbance, collection, or purchase of historical, ethnological, or archaeological specimens or artifacts is prohibited.

- Permittees shall maintain their use areas in a neat and sanitary condition. Latrines must be located at least 150 feet from springs, lakes, and streams. All property of the permittee except for cabins and tent frames is to be removed from refuge lands upon completion of permitted activities.
- The construction of landing strips or pads is prohibited.
- The use of motorized vehicles is prohibited on all Refuge lands.
- Unauthorized caches of fuel are prohibited. Fuel storage, if any, will be in compliance with regional Service fuel storage policy.
- Subject to available suppression resources, all permitted cabins will be protected from wildfire to the extent possible. Human safety will receive the highest priority consideration by land managers and fire-suppression personnel.

Kodiak Refuge Conditions

- Visitors will be required to comply with any temporary restrictions, emergency orders or other types of regulatory actions promulgated by the Refuge Manager to prevent resource problems or conflicts, in cases of emergency, public safety, or unusual resource problems.
- The use of Native or State lands that have been conveyed (patented) is not authorized by this permit.
- Use of Native or State lands that have been selected but not yet conveyed is prohibited unless a letter of concurrence is submitted to the refuge manager prior to beginning any activities allowed by this permit.
- A copy of this special use permit must be in the permittee's possession at all times while exercising the privileges of the permit.
- Food or garbage attractive to bears or other wildlife will be immediately disposed of. No attractive nuisance for bears or other wildlife shall be created by food storage, improper disposal of garbage (includes of burying of garbage), fish smoking, salting, drying, or other uses.
- Combustibles (paper, wood, etc.) may be burned, but all other debris, including cans, bottles, fuel containers, and any other noncombustible material shall be removed and disposed of off refuge when departing camps.
- Additions or alterations to existing structures and construction of new facilities must have the refuge manager's prior approval in writing.
- The discharge of firearms is prohibited, except in conjunction with authorized hunting seasons or for protection of life or property.
- This is a permit for the specific approved commercial use from a designated site. Set net cabins may be occupied only by persons legitimately involved in the commercial fishing enterprise, assistants, employees, their families, guests and clients and only during the time that the authorized activity is occurring. The names of those individuals, excluding guests and clients, will be listed on the permit. The permittee or another individual listed on the permit must be present when the cabin is occupied. (50CFR 36.33(e)(4)) (Set Net Site – Commercial Fishing)
- Any major exterior rehabilitation of or additions to existing structures must have the refuge manager's prior approval in writing. This does not include minor remodeling or routine maintenance. (Set Net Site – Commercial Fishing)

- Cabins on refuge lands shall not be used by the permittee without the permission of the refuge manager except in cases of dire emergency for survival purposes. Construction of cabins or other permanent structures is prohibited. (Beach Seiner or Temporary Camp Permit)
- Compliance with provisions of the Eagle Protection Act resides with the permittee. Camps must be established at least 1,320 feet (0.25 miles) from eagle nests. Indications of significantly disturbed behavior include the giving of alarm calls, flushing birds from the nest or perch, and aggressive behavior by the birds. (Beach Seiner or Temporary Camp Permit)
- Construction of cabins or other permanent structures is prohibited. (Beach Seiner or Temporary Camp Permit)
- One temporary facility will be authorized for each permit. All temporary facilities must be removed from Refuge lands at the end of the fishing season. (Beach Seiner or Temporary Camp Permit)
- For overnight tent camps, maximum party size may not exceed six (6) persons, including the permittee and assistants. The refuge manager may restrict use of some sites for overnight camping to prevent resource problems or conflicts. (Beach Seiner or Temporary Camp Permit)
- Permittee must notify the Refuge Manager three days in advance of each move of campsite. This may be done through the tender or one of the canneries. Permittee will also leave word as to where the Refuge can return a message. (Beach Seiner or Temporary Camp Permit)
- The introduction of non-native plants is prohibited except for annual garden vegetables. (Set Net Site – Commercial Fishing)
- The introduction of wildlife is prohibited. (Beach Seiner or Temporary Camp Permit)
- Domestic Livestock including, but not limited to cows, horses, goats, sheep, poultry, and swine are prohibited on the refuge.
- Pets are allowed but no more than two dogs and two cats. Pets must be under the immediate supervision of their owner and not allowed to roam unconfined or disturb wildlife.
- Endorsement of this permit signifies the permittee's understanding and concurrence with all the conditions set forth in the General Conditions found on the reverse side of the permit and the above Special Conditions.

Justification

Analysis conducted as part of the Refuge's original comprehensive conservation planning process found that commercial fishing-related activities on Kodiak Refuge had expanded beyond the 1979 level and that any further expansion of facilities would not be compatible with Refuge purposes. Since 1979, some facilities on selected refuge lands were conveyed to private ownership. Commercial fishing activities continue on these sites, but are no longer administered by the Refuge. Other new facility sites include several recently constructed on private land and on islands administered by Alaska Maritime Refuge. The Kodiak Refuge, with substantial input from commercial fishing setnet permit holders and others, prepared the 1987 plan to address concerns that had been raised relative to adverse effects of facilities on refuge resources. The plan was crafted to ensure that commercial fishing

activities could continue without materially interfering with or detracting from the purposes of Kodiak Refuge. Comments received from refuge setnet site operators during revision of the comprehensive conservation plan and re-evaluation of the 1987 plan indicated they strongly support this decision to not issue additional refuge special use permits for commercial fishing support facilities.

Because most sites have been occupied for many years, adverse impacts on habitat have already occurred. Very little other refuge habitat has been affected by human activities. The small footprint of facilities minimizes habitat damage and concentrates physical and biological impacts. The 2011 revision of the Commercial Fishing Facilities Management Plan would allow one additional structure at set net sites - a shed to house a generator and ice machine and new gardens up to 200 square feet. This would result in a small additional degree of impact; however, impact is minimized by limiting the size of the structure and requiring that it be sited within or immediately adjacent to the current footprint of the set-net site. Garden plots may only be used for the purpose of growing annual garden vegetables. The Refuge will annually issue up to three 1-year commercial fishing site permits for set net or beach seine activity using temporary facilities. The fishing site may be a set net or beach seine operation and must be located in a moderate management zone. The permit would authorize temporary facilities which must be removed at the end of the fishing season. Applications would be reviewed to ensure the proposed facility is not located in an area of high importance to wildlife or public use and is compatible with refuge purposes. Because facilities associated with these permits would only be present seasonally, it is anticipated that impacts to the refuge or its resources would be minimal. Stipulations contained in special use permits are intended to protect bears and other refuge resources from adverse impacts; especially defense of life or property kills of bears.

Monitoring conducted by Refuge personnel ensures compliance with permit conditions and rapid resolution of problems before they become serious.

Supporting Documents

- U.S. Fish and Wildlife Service. 1987. Kodiak National Wildlife Refuge Management Plan for Commercial Fishing Activities. Kodiak, Alaska. 23 pp.
- U.S. Fish and Wildlife Service. 1987. Kodiak National Wildlife Refuge Final Comprehensive Conservation Plan, Wilderness Review, and Environmental Impact Statement. U.S. Fish and Wildlife Service. Anchorage, Alaska. 533 pp.
- U.S. Fish and Wildlife Service. 1993. Kodiak National Wildlife Refuge, Final Public Use Management Plan and Environmental Assessment. U.S. Fish and Wildlife Service. Kodiak, Alaska. 202 pp.

Refuge Determination

Refuge Manager /

Project Leader Approval:

Harry O. Wheeler

(Signature)

8-31-11

(Date)

Concurrence

Regional Chief,
National Wildlife
Refuge System:

M. A. See

(Signature)

9-12-2011

(Date)

Mandatory 10-Year Re-Evaluation Date (provide month and year for allowed uses only): X

Mandatory 15-Year Re-Evaluation Date (for priority public uses): ___

NEPA Compliance for Refuge Use Decision

___ Categorical Exclusion without Environmental Action Memorandum

___ Categorical Exclusions and Environmental Action Memorandum

___ Environmental Assessment and Finding of No Significant Impact

X Environmental Impact Statement and Record of Decision

