

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

Refuge Name: Togiak National Wildlife Refuge and the Hagemeister Island portion of Alaska Maritime National Wildlife Refuge (NWR)

Establishing and Acquisition Authorities

Togiak National Wildlife Refuge: Created with the passage of the Alaska National Interest Lands Conservation Act (ANILCA) on December 2, 1980 (Public Law 96-487 Stat. 2371).

Cape Newenham Refuge: Originally established January 20, 1969 (Public Law 4583).

Combined with additional land on March 9, 1972 (Public Land Order 5179) to form Togiak National Wildlife Refuge

Alaska Maritime National Wildlife Refuge: Originally established January 1, 1913.

Redesignated: December 2, 1980, P.L.O. 96-487, ANILCA.

Refuge Purposes

Section 303(1)(B) and 303(6)(B) of ANILCA established the purposes for the Refuges as follows:

- i. *to conserve fish and wildlife populations and habitat in their natural diversity including , but not limited to...*
 - o *[Togiak]... salmonids, marine birds and mammals, migratory birds, and large mammals (including their restoration to historic levels);*
 - o *[Alaska Maritime]... marine mammals, marine birds and other migratory birds, the marine resources upon which they rely, bears, caribou, and other mammals;*
- 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;*
- 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.*
- v. *[Alaska Maritime] to provide, in a manner consistent with the purposes set forth above, a program of national and international scientific research on marine resources;*

The Togiak Wilderness within Togiak National Wildlife Refuge has the additional purpose of assuring “that an increasing population, accompanied by expanding settlement and growing mechanization, does not occupy and modify all areas within the United States..., leaving no lands designated for preservation and protection in their natural condition, it is hereby declared to be the policy of Congress to secure for the American people of present and future generations the benefits of an enduring resource of wilderness” (Section 2(a) of The Wilderness Act of 1964 (Public Law 88-577)).

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 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)).

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 fishing and hunting 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. By policy, the Service generally prohibits commercial photography in wilderness areas unless it is necessary to

provide educational information about wilderness uses and values, and it does not degrade the wilderness character of the area.

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 this activity is requested in conjunction with other commercial activities, such as guiding or transporting.

The Togiak Refuge (4.7 million acres) is located in southwest Alaska. The Ahklun Mountain Range creates the divide between the Bristol Bay drainages and the Kuskokwim Bay drainages within the Refuge and is characterized by steep rocky peaks, glacial valleys, and mountain lakes. Three major watersheds that dominate the Refuge are drained by the Kanektok, Goodnews, and Togiak rivers.

Togiak Refuge is home to at least 283 species of wildlife, including 33 fish species, 201 birds, 31 land mammals, 17 species of marine mammals and 1 amphibian. More than 500 species of plants grow on the Refuge in a variety of habitats that include fresh and saltwater wetlands, open water, meadows, mountains, tundra, and forest. (Togiak NWR CCP, 2009)

The Cape Pierce wildlife viewing area has many marine mammals, seabirds, and other wildlife unique to this area and are very sensitive to human disturbance. The Togiak NWR Public Use Management Plan (revised 2010) recommends visitation in the viewing area be limited to six people at one time on a first come, first serve basis in order to minimize disturbance to wildlife and to maintain the area's primitive natural character. If walrus or seals are hauled out in lower Nanvak Bay or on Maggie Beach, access to the Cape Peirce Wildlife Viewing Area will be at Sangor Lake.

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.

The Refuge annually anticipates up to 4 commercial filming permit applications on refuge lands with the majority within Wilderness. The estimated number of staff hours to process a film

permit depends on the complexity and geographic extent of the application and whether it occurs in or out of designated Wilderness:

	Non-Wilderness	Wilderness
Normal	6 hr	16 hr
Complex	12 hr	40 hr

Normal applications would usually involve a single staff person. Actions involve phone conversations, written correspondence, and time needed to evaluate the proposal under refuge policies and regulations. Currently this is a GS-13 position so recovery costs would average \$350-\$1000 per permit. Complex applications across multiple refuge units or areas with special resource concerns usually involve more discussions and interactions with refuge managers, biological, and regional support. We expect average costs to be \$700-\$2500 per permit. These amounts are estimates only and the Refuge would seek cost recovery only for the hours actually needed to write and monitor the permit.

A permittee may be required to pay for a project site monitor at the sole discretion of the Refuge Manager exercising sound professional judgement. This may be Refuge staff or an approved designee of the Refuge Manager, if the filming activities:

- Require more monitoring due to the scope of the project;
- There are specific resource concerns that are not easily met with special conditions; or,
- The project involves UAS (drones), helicopters, or other activities or tools with heightened concern for wildlife disturbance.

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:

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 would be negligible because the anticipated use from commercial filming activities would be dispersed and infrequent. Subsequently, human waste accumulation and localized soil compaction/disturbance will have only very minor impacts because group sizes are anticipated to be small. Group size limits described in the Togiak National Wildlife Refuge Public Use Management Plan Revision (2010) will be followed. Implementation of existing Region 7 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.

Wildlife, Fish & Plants – The Service does not anticipate any measurable changes to fish, wildlife or plants due to this activity. The likelihood that refuge habitats will be damaged is very low considering that the Refuge is accessed primarily by airplanes landing on lakes; hardened,

non-vegetated areas, or areas with little vegetation such as gravel bars or pre-existing landing strips; and that no structures will be authorized. We require trash to be secured while on the Refuge and disposed of properly off-refuge. Permittees must use clean equipment to decrease the likelihood of an introduction of invasive species. In the event that non-native species are detected on the Refuges, new stipulations for public uses to minimize the risk of establishment and spread of invasive species may be established.

Based on current demand, levels of this use are expected to be low. Given that, and the fact that permittees are prohibited from disturbing or attempting to disturb wildlife by regulation, impacts to wildlife are anticipated to be minimal.

Threatened and Endangered Species and Marine Mammals – The Service anticipates no effect to threatened and endangered species and marine mammals from this activity. Impacts to protected species will be avoided by providing permittees guidelines for appropriate behavior to eliminate marine mammal disturbance and “take,” including information on actions which constitute a violation of the Marine Mammal Protection Act and/or the Endangered Species Act.

Public Uses – The Service does not anticipate any negative impacts between guided and unguided recreational users, transportation users, and those taking part in the proposed use. Our determination is based on the current very low levels of reported user group conflicts on the Refuges and low demand for participation in the proposed use. The remoteness and vast size of the Refuges decreases the likelihood of user group conflict. 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. In addition, there are specific regulations in place in certain areas, such as restrictions on fly-in access for non-resident moose hunters in the Togiak River drainage, that minimize potential conflicts between local subsistence moose hunters. Existing laws and standard permit stipulations currently in place to maintain refuge resource integrity will help avoid these impacts. In addition, permit applications are reviewed on a case-by-case basis by the refuge management and will be modified if necessary to protect refuge resources.

Visitor Safety – A number of precautions are widely recommended for visitor safety when travelling in bear habitat. While primarily focused on human safety, many of these practices also serve to reduce impacts to bears. Perhaps the most basic of these “best practices” is informing visitors of appropriate behavior around bears, such as staying together in a group and making noise when traveling through dense brush.

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 this use since most commercial filming activity is expected to occur outside of subsistence hunting seasons and locations. We expect that some requests will coincide with fall

moose and spring/fall brown bear hunts but probably not winter hunts. The Refuge staff can direct the use away from primary subsistence use areas during the permitting process.

Cultural Resources – The Refuges do not anticipate any negative effects to the integrity of cultural resources from commercial filming activities. There is a possibility that commercial filming activities could result in photography of sensitive cultural resources. This is unlikely because it is rare to encounter cultural resources; Refuge staff would screen permit requests for areas in which known cultural resources occur, and would use care in deciding whether or not to issue a SUP and what Special Conditions to apply. In addition, an existing Region 7 standard stipulation 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. 470ee).

Wilderness – Under the Wilderness Act, commercial services may be permitted within designated Wilderness “*to the extent necessary for activities which are proper for realizing . . . the purposes of the areas.*” To ensure compliance with this requirement, requests for commercial filming in the Togiak Wilderness will be reviewed to determine whether or not the proposed film 1) could be made outside of Wilderness, and 2) is likely to promote the purposes of the Wilderness area. Given this criteria, the level of activity within the Wilderness area is unlikely to impair wilderness values. Permittees will be given guidance to ensure that all provisions of the Wilderness Act (with exceptions in ANILCA) will be followed.

Public Review and Comment

This CD will be made available for public comment starting on XXX, 2019 for 30 days. Electronic copies can be found on the Refuges’ website at <https://www.fws.gov/refuge/Togiak> and on the Togiak Refuge Facebook page.

This CD is also being advertised via flyers posted in the following communities: Dillingham, Togiak, Aleknagik, Twin Hills, Platinum, Goodnews Bay, and Quinhagak; and through the *Bristol Bay Times* and *The Delta Discovery*. Printed copies will be available for review at the Togiak Refuge Office, 6 Main Street, Dillingham, Alaska and at the Dillingham Public Library.

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 plus the following stipulations 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. No more than six persons including clients and guides are permitted into the Cape Peirce Wildlife Viewing Area at one time. (2010 Public Use Management Plan)
2. If walrus or seals are hauled out in lower Nanvak Bay or on Maggie Beach, access to the Cape Peirce Wildlife Viewing Area will be at Sangor Lake. (2010 Public Use Management Plan)
3. For visitors' safety and to prevent disturbance to raptors and nesting seabirds, climbing on cliffs in the Cape Peirce Wildlife Viewing Area is prohibited.
4. Intentional product endorsement and placement within films is prohibited.
5. Credit will be given to the Department of the Interior and the U.S. Fish and Wildlife Service, Togiak National Wildlife Refuge with an appropriate title or announcement, unless there is a written statement that no such courtesy credit is desired.
6. The use of Unmanned Aerial Systems (UAS or drones) must be approved in advance and in writing by the refuge manager.
7. 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).
8. 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.
9. 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.

Proposed Justification

I find commercial filming to be Compatible with Refuge purposes and the NWRS mission. Commercial filming does not materially interfere with or detract from the Refuge's primary purpose to conserve fish and wildlife populations and habitats in their natural diversity. At the level of use anticipated, there could be minimal, short-term disturbance and/or displacement of wildlife, but the effects to fish and wildlife populations do not rise to the level of incompatibility.

Commercial filming does 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 because there would be no loss of migratory bird habitat from this activity.

Commercial filming does not materially interfere with or detract from the Refuges' purpose to provide the opportunity for continued subsistence uses by local residents. The ANILCA Section 810 analysis concluded that there would be negligible effects to subsistence resources or uses from this activity.

Commercial filming does 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.

Commercial filming does not materially interfere with or detract from the Refuge's purpose to provide a program of national and international scientific research on marine resources because there are no anticipated effects to scientific research on marine resources.

To protect Wilderness areas, commercial filming in Wilderness is managed differently. Any commercial filming must meet the guidelines under Section 4(d)(6) of the Wilderness Act, which states that "commercial services may be performed to the extent necessary for activities which are proper for realizing the recreational or other wilderness purposes of the areas," the provisions of Service policy 610 FW 2, and Alaska-specific Service policy 610 FW 5. Commercial filming proposals 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 best way to allow the use causing the least affect to Wilderness character.

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

Supporting Documents

USFWS. 2009. Comprehensive Conservation Plan: Togiak National Wildlife Refuge. Anchorage, Alaska: U.S. Fish and Wildlife Service, Region 7, Division of Conservation Planning and Policy.

USFWS. 2010. Public Use Management Plan Revision: Togiak National Wildlife Refuge. U.S. Fish and Wildlife Service, Togiak National Wildlife Refuge.

USFWS. 2018. Section 810 Analysis for Draft Compatibility Determination for Commercial Filming on Togiak National Wildlife Refuge, Alaska.

Signature Refuge Manager: _____
(Signature & Date)

Concurrence Regional Chief: _____
(Signature & Date)

Mandatory 10-Year Re-Evaluation Date: _____