

Compatibility Determination

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

Refuge Name: Togiak National Wildlife Refuge, and the Hagemester Island portion of Alaska Maritime National Wildlife Refuge.

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;*

Supplemental Purposes of the Togiak Wilderness Area: *The Wilderness Act of 1964 (16*

U.S.C. 1131-1136 § 2a), defines supplemental purposes of all designated wilderness areas. These apply to the Togiak Wilderness Area and are as follows:

- vi. *to administer the wilderness for the use and enjoyment of the American people in such a manner as will leave it unimpaired for future use and enjoyment as wilderness, to provide for the protection of the area, for the preservation of its wilderness character, and for gathering and dissemination of the information regarding its use and enjoyment as wilderness.*

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

This compatibility determination (CD) examines commercial filming activities that have been found to be appropriate uses of the Refuges according to U.S. Fish & Wildlife Service (Service) Policy 603 FW 1 and do not have an effect on subsistence opportunities as defined in ANILCA Section 810. Additionally, the commercial filming activities being examined in this CD are covered under DOI Categorical Exclusion 43CFR 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 are found to not meet any extraordinary circumstances listed under 43 CFR 46.215.

The activities described here include individuals and/or groups filming on the Refuges with the intent of producing a commercial film, video, or audio production (commercial filming). Access by these individuals and groups will be primarily by fixed-wing aircraft but could also include motorized or non-motorized boats, hiking, snow machine, snow shoes, or skiing. Equipment used would include hand-held cameras, video recorders, and audio recording equipment. The use of helicopters, personal jet-powered watercraft, off-road vehicles, and airboats for access or use during filming activities and the use of structures, props, models, mechanized or wheeled filming-equipment, drones, or stages are excluded from evaluation in this CD. The use of any of the excluded equipment would require a project-specific 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.

Examples of activities examined in this CD include, but are not limited to the following:

- A filmmaker who is selling film footage of the refuge to another company;
- A refuge permit holder or client of a refuge permit holder who would like to make a film that may be used for commercial purposes;
- A Refuge permit holder who wants to have a film made to promote his/her Refuge-based business or research project;
- A filmmaker who wants to film a refuge project or resource, when the filming is not initiated by the refuge.

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 current refuge resources are adequate to evaluate and monitor the requested permit. Administrative staff time primarily involves phone conversations, written correspondence, and time needed to evaluate the proposal under refuge policies and regulations.

Adequate refuge personnel and base operational funds are currently available to manage on-refuge activities at expected levels. However, the Service may need to redirect and reprioritize existing resources to increase public use monitoring and law enforcement to ensure compatibility of the proposed use in the long-term.

A permittee may be required to pay for a project monitor. This may be refuge staff or other designee of the Refuge Manager, if the filming activities:

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

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 in dense brush.

Another widely accepted practice is storage of all food, garbage and other scented items in bear proof containers (or hanging between two trees, where available). This practice aims to avoid allowing bears to learn that people can be a potential source of food. Such “food conditioned” bears have been shown to be more likely to injure people, and to be killed as nuisance bears. Even with every precaution of proper behavior and best practices, aggressive bear encounters may still occur. Firearms and pepper spray are commonly used deterrents to avoid bear attacks. Analysis of past bear attacks indicate that pepper spray overall is more effective in avoiding injury from bears, and it does not carry the potential for serious injury or death from accidental discharge as firearms do. Carrying pepper spray when engaging in activities such as commercial filming and guided wildlife viewing is a prudent safety measure.

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. However, this is unlikely because it is rare to encounter cultural resources, Refuge staff are expected to 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 May 7, 2018 for 14 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. Comments are being specifically solicited from the State of Alaska and Alaska Native Tribes and Corporations.

Determination

Use is Not Compatible

Use is Compatible with the Following Stipulations:

Stipulations Necessary to Ensure Compatibility

Permits authorizing this use will be subject to standard stipulations for SUPs in Region 7. Additional stipulations may be added depending on the location of the proposed filming, timing of the filming, and the sensitivity of resources in the area.

Justification

Commercial filming is managed by SUP 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.

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 of 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.*" Proposed commercial filming activities which do not meet this criterion will not be allowed.

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: _____

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
- _____ Environmental Impact Statement and Record of Decision