

COMPATIBILITY DETERMINATION

Use: Commercial Videography and Audio Recording

Refuge Name: Arctic National Wildlife Refuge

Establishment and Acquisition Authority: The Arctic National Wildlife Refuge (Refuge, Arctic Refuge) was established by the Alaska National Interest Lands Conservation Act (ANILCA) (Public Law 96-487 Stat. 2371) on December 2, 1980. The Refuge boundary encompassed 19.64 million acres of land, including the 8.83-million acre Arctic National Wildlife Range (Range), which was established on December 6, 1960, by Public Land Order 2214. ANILCA re-designated the Range as part of Arctic Refuge, designated 7.16 million acres of the Refuge as Wilderness, and designated three wild rivers. In 1988, Public Law 100-395 added 325,000 acres of lands managed by the Bureau of Land Management (BLM) to the Refuge. An additional 1.3 million acres of land, originally selected by the State of Alaska under the Alaska Statehood Act (Public Law 85-508) but later relinquished, was added to the Refuge in two actions occurring in 1983 and 1985. Both these additions were of lands already within the boundaries of the Refuge.

Refuge Purposes: ANILCA established four purposes for the Refuge (including lands and waters in the original Range):

- i. *to conserve fish and wildlife populations and habitats in their natural diversity including, but not limited to, the Porcupine caribou herd (including participation in coordinated ecological studies and management of this herd and the Western Arctic caribou herd), polar bears, grizzly bears, muskox, Dall's sheep, wolves, wolverines, snow geese, peregrine falcons and other migratory birds and Arctic char and grayling;*
- 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 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 paragraph (i), water quality and necessary water quantity within the Refuge.*

Public Land Order 2214 established the original Arctic National Wildlife Range “for the purpose of preserving unique wildlife, wilderness and recreational values....” These pre-ANILCA purposes apply only to those lands and waters in the original Range, and they remain in force and effect only to the extent they are not inconsistent with ANILCA or the Alaska Native Claims Settlement Act (ANILCA Section 305; 603 FW 2.8).

The Wilderness Act of 1964 (Public Law 88-577) creates the following additional purposes for the designated Wilderness area within the Refuge’s boundaries; these purposes are within and

supplemental to the Refuge's ANILCA and Range purposes: secure an enduring resource of Wilderness; protect and preserve the Wilderness character of areas within the National Wilderness Preservation System (NWPS); administer the NWPS for the use and enjoyment of the American people in a way that will leave these areas unimpaired for future use and enjoyment as Wilderness; and gather and disseminate information regarding the use and enjoyment of Wilderness areas.

National Wildlife Refuge System Mission: The mission of the National Wildlife Refuge System (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): Commercial videography and audio recording are existing uses on the Refuge. The use facilitates interpretation and environmental education. The activity was found compatible in the Refuge's 1988 Comprehensive Conservation Plan and again in 1994. This document re-examines the compatibility of this activity.

Commercial videography and audio recording involve solo or small groups (seven or fewer) accessing the Refuge by fixed-wing aircraft and either staging in one spot or hiking or floating anywhere in the Refuge. Sound-recording devices and batteries are small and are removed after the recording period. This evaluation does not examine the compatibility of a large-scale movie production involving more than seven people or productions using temporary structures or stages. The peak period for this activity is in the summer, though it may be permitted at any time of the year and has occurred in winter in the past. These activities are authorized by special use permit with special conditions to avoid impacts to Refuge resources and disruption to subsistence users and visitors.

Availability of Resources: Adequate Refuge personnel and base operational funds are available to manage activities at existing and projected levels. Administrative staff time (approximately 10 staff days per year) is used to prepare special use permits, involving telephone conversations, written correspondence, and personal interaction with permittees regarding ongoing activities. Field work associated with administering the program primarily involves monitoring (when applicable) activities to ensure all activities remain compatible.

Anticipated Impacts of Use(s): We anticipate minimal impacts to fish and wildlife resources, other Refuge resources, or other Refuge users. Compliance with regulations and permit conditions will be routinely checked by Refuge staff. Refuge law enforcement personnel will also help minimize direct impacts from commercial audio-visual activities by enforcing compliance with special use conditions.

Direct impacts to Refuge habitats may be minimal and transitory because access to the Refuge would be primarily by landing aircraft on gravel bars. Operations on vegetated lowland tundra and disturbance to vegetation would be limited under the stipulations of the

special use permit. The introduction of invasive species could affect Refuge resources, although it is not known to have occurred by this activity in the Refuge to date, and staff will continue to monitor for such occurrences. Temporary displacement and/or disturbance to wildlife can occur, but impacts would likely be short-term and minimal. Impacts to designated Wilderness would be negligible because these activities are restricted Wilderness areas per the Wilderness Act of 1964 and U.S. Fish and Wildlife Service Wilderness Policy (610FW2.12.D).

Public Review and Comment:

Public comments on compatibility determinations were solicited concurrently with the draft of the Refuge's Revised Comprehensive Conservation Plan (Revised Plan, Plan) and environmental impact statement. Public comments on compatibility determinations were accepted during the public review period for the draft Plan, which was announced in the Federal Register, on local radio stations, and in local newspapers. The 90-day public comment period began on August 15, 2011, and ended on November 15, 2011. We mailed the full draft Plan, and a summary of the Plan, to the individuals and organizations on our mailing list and posted both on the Refuge's web site. Six public hearings were held in Anchorage, Arctic Village, Fairbanks, Fort Yukon, Kaktovik, and Venetie, during which the Service received comments on the draft Plan. We received one public comment regarding commercial videography on the Refuge.

The commenter was concerned that filmmaking would temporarily displace caribou during migration. Stipulations in this compatibility determination mandate permittees take no action that interferes with subsistence activities of rural users and prohibits wildlife harassment by aircraft. Only minor editorial changes were made to the compatibility determination as a result of internal review.

Refuge Determination (check one below):

- ☐ Use is not compatible
☒ Use is compatible

Stipulations Necessary to Ensure Compatibility: A special use permit with the following stipulations is required for commercial filming and audio recording. These stipulations are intended to minimize impacts and ensure compatibility. Refuge 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. Failure to abide by any part of this special use permit; violation of any refuge related provision in Titles 43 (Part 36) or 50 (subchapters B and C) Code of Federal Regulations; or violation of any pertinent state regulation (e.g., fish or game violation) will, with due process, 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). Appeals of decisions relative to permits are handled in accordance with 50 Code of Federal Regulations 36.41.

2. The permittee is responsible for ensuring that all employees, party members, 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.
3. This permit may be cancelled or revised at any time by the Refuge manager in case of emergency (e.g., high fire danger, flooding, unusual resource problems, etc.).
4. 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.
5. Prior to beginning any activities allowed by this permit, the permittee shall provide the Refuge manager with: (1) the name and method of contact for the field party chief/supervisor; (2) aircraft and other vehicle types to be used and identification information for these vehicles; (3) names of assistant guides and helpers; and (4) any changes in information provided in the original permit application.
6. The Refuge manager, upon request, shall be afforded the opportunity and logistical support from the nearest commercial transportation site to accompany the permittee for the purpose of inspecting and monitoring permittee activities. A final inspection trip provided by the permittee of the areas of use may be required by the Refuge manager to determine compliance with the terms of this permit.
7. This permit authorizes use only on Arctic Refuge lands. Use of land selected by or conveyed to the State of Alaska or North Slope Borough; or a Native corporation or individual is not authorized by this permit.
8. The permittee and permittee's clients do not have the exclusive use of the site(s) or lands covered by this permit.
9. The permittee must 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.
10. In accordance with the Archaeological Resources Protection Act (16 U.S.C. 470 ee), no person may excavate, remove, damage or otherwise alter or deface, or attempt to excavate, remove, damage, or otherwise alter or deface any archaeological resource located on public lands or Indian lands unless permitted or exempted (see 16 U.S.C 470cc for permit or exception guidance). No person may sell, purchase, exchange, transport, receive, or offer to sell, purchase, or exchange any archaeological resource if such resource was excavated or removed from public lands.
11. In accordance with the Wilderness Act (16 U.S. C. 1131-1136) and U.S. Fish and Wildlife Service Wilderness Policy (610 FW 12.2), commercial filming within designated Wilderness is prohibited unless previously evaluated and approved by the Refuge manager as appropriate, compatible, and necessary to provide educational information about uses and values and does not degrade the Wilderness character of the area.

12. Construction of cabins, platforms, or other permanent structures is prohibited.
13. Use of off-road vehicles is prohibited in designated Wilderness areas. Off-road vehicle use in areas not designated as Wilderness is limited to events specifically authorized in writing and in advance of and in direct support of the permitted activity. The use of snowmobiles, dog teams, and other means of surface transportation may only be used when adequate snow cover is present and in such a manner as to prevent waste or damage to the Refuge. The phrase “adequate snow cover” means snow is of a depth to protect the underlying vegetation and soil.
14. In accordance with Marine Mammals Management Act (16 U.S.C. 1374), filming of polar bears for education or commercial purposes is not authorized without Department of Management Authority approval and/or permits (Section 104(c)(6)).
15. The operation of aircraft at altitudes and in flight paths resulting in the herding, harassment, hazing, or driving of wildlife is prohibited. It is recommended that all aircraft, except for take-off and landing, maintain a minimum altitude of 2,000 feet above ground level.
16. Helicopter landings are not authorized.
17. Snowmobiles, dog teams, watercraft, and other means of transportation shall be operated in such a manner as to prevent the herding, harassment, hazing, or driving of wildlife for viewing or other purposes.
18. Any human wildlife interactions that have resulted in animals obtaining food, destroying property, or posing a threat to human safety must be reported to the Refuge manager immediately at (907) 456-0250, as soon as communication becomes available. You are required to submit a written report within 30 days to the Refuge manager for all interactions with grizzly bears that have resulted in bears obtaining food, destroying property, or posing a threat to human safety; or the death of a grizzly bear so that this data can be used to help prevent future human-bear conflicts. You may use the Bear Incident Report form (Service 2008). Animals taken in defense of life or property must be reported to the Refuge manager immediately, and to the Alaska State Troopers at (907) 451-5350, and salvaged in accordance with State regulations.
19. Use of fuel stoves is encouraged over use of wood for cooking and heating. Only dead and down wood may be used for fires and other purposes. Live and standing dead wood must not be altered or used in a way that causes damage to it.
20. In general and where possible, camps must be located on durable surfaces (snow, sand or gravel). Camps located on vegetation must be relocated at intervals adequate to prevent site impacts. Sites at popular aircraft access points that are already heavily impacted can continue to be used. Along high use rivers and lakes, camps must not be located on vegetated sites that show human caused scuffing or matting of vegetation.
21. All garbage, litter, and debris must be removed from the Refuge. Food, garbage, and other materials must be stored to minimize attraction to bears and other wildlife. All evidence of your camp must be obliterated prior to your departure from the site. Equipment and other property must be removed from the Refuge upon completion of the permitted activities.

22. Human waste must not be left less than 200 feet from springs, lakes, and streams. Bury waste under soil (or under snow at the ground level during periods when the ground is frozen). Paper toilet tissue, if used, must be packed out or burned completely to ash. Moist towelettes or sanitary products must be removed as trash.
23. The preeminent value of Arctic Refuge lies in its unsurpassed wilderness condition. The permittee must ensure that all employees and clients seek to minimize the effect of their activities on the wilderness characteristics of the land, wildlife, and the unique experience available there.

All permitted activities that occur within 25 miles of the Beaufort Sea coastline will have the following additional condition:

- The permittee must read the Polar Bear Interaction Guidelines (Guidelines) (Arctic Refuge 2010) to these permit Special Conditions. The Guidelines must also be distributed to all employees and clients of the permittee before engaging in any activities on the Refuge. In addition, the following conditions shall be met:
 - Protection of den sites and minimizing disturbance to sows with small cubs is of critical importance. Guides operating under this permit must become knowledgeable of the signs and behaviors indicating the presence of a den and avoid those areas. No person shall approach or remain within one mile of a polar bear den or of a sow with small cubs. If, at any time, the permittee becomes aware of signs indicating close proximity to a polar bear den or encounters a sow with small cubs, all members of the guided party must immediately retreat to a distance of at least one mile. If, at any time, the location of a den becomes known to the permittee, no approach shall be made closer than one mile. When operating within 25 miles of the Beaufort Sea coastline, the permittee will store attractants (human food, dog food, garbage, etc.) in “bear-resistant” containers to minimize attracting polar bears and avoid conditioning bears to human food. Containers must be approved as “bear-resistant.” Information about certified “bear resistant” containers can be found at www.igbconline.org/html/container.html.
 - Legal take and harassment of polar bears is limited to defense of life or subsistence harvest by coastal-dwelling Native Alaskan situations only. Any killing or harassment of a polar bear in defense of life must be reported to the Refuge manager and to the U.S. Fish and Wildlife Service Office of Law Enforcement at (907) 456-2335 immediately, as soon as communication becomes available. You are also required to submit a completed copy of the Bear Incident Report form (Service 2008) to the Refuge manager for all interactions with polar bears that have resulted in bears obtaining food, destroying property, or posing a threat to human safety; or the death of a polar bear so that this data can be used to help prevent future human-bear conflicts.

Justification: Audio-visual production on the Refuge can increase public understanding of wildlife in the Refuge, its history, and its role in managing and protecting natural resources. The policy of the U.S. Fish and Wildlife Service (Service) is to provide Refuge access and/or assistance to legitimate producers of audio and/or visual recordings. Such assistance or access will not be provided if production operations are incompatible with Refuge purposes. Priority consideration is extended to producers of wildlife and natural resource related audio or visual

materials (8RM16.1). Regulations concerning filming and recording activities are established in 43 CFR, Subtitle A, Section 5.1. To protect Wilderness areas, commercial audio-visual productions in Wilderness are managed differently. Section 4(c) of the Wilderness Act of 1964 prohibits commercial enterprises in designated Wilderness. Commercial videography is generally prohibited in Wilderness areas unless we determine it is necessary to provide educational information about Wilderness uses and values and does not degrade the Wilderness character of the area. In cases where we allow such photography as a commercial service, we first evaluate it for appropriateness and compatibility, and—like all commercial audio-visual activities—we manage the use through an audio-visual productions permit (610FW2.12.D). After fully considering the impacts of these activities, as described previously in the “Anticipated Impacts of Use(s)” section of this document, it is my determination that commercial audio-visual activities within the Refuge do not materially interfere with or detract from the purposes of the Refuge or the mission of the Refuge System.

Supporting Documents:

- Arctic National Wildlife Refuge. 2010. Polar bear interaction guidelines. U.S. Fish and Wildlife Service, Fairbanks, Alaska. Unpublished. 3pp.
- Interagency Grizzly Bear Committee. IBG Certified bear resistant products webpage. <http://www.igbconline.org/html/container.html>, Accessed August 23, 2012.
- U.S. Fish and Wildlife Service. 1988a. Arctic National Wildlife Refuge Final Comprehensive Conservation Plan, Environmental Impact Statement, Wilderness Review, and Wild River Plans. U.S. Fish and Wildlife Service. Anchorage, Alaska. 609 pp.
- U.S. Fish and Wildlife Service. 1988b. Record of Decision: Arctic National Wildlife Refuge Final Comprehensive Conservation Plan, Environmental Impact Statement, Wilderness Review, and Wild River Plans. U.S. Fish and Wildlife Service, November 10, 1988. Anchorage, Alaska, USA.
- U.S. Fish and Wildlife Service. 2008. Region 7: Bear awareness and firearms safety training policy, Appendix F. U.S. Fish and Wildlife Service. Anchorage, Alaska. Unpublished. 36 pp.
- U.S. Fish and Wildlife Service. 2011. Arctic National Wildlife Refuge Draft Revised Comprehensive Conservation Plan, Draft Environmental Impact Statement, Wilderness Review, and Wild and Scenic River Review. U.S. Fish and Wildlife Service, June 2011. Anchorage, Alaska, USA.

Refuge Determination:

Refuge Manager/ Project Leader Approval	<u>/signed/ Richard Voss</u>	<u>August 4, 2012</u>
		Date

Concurrence:

Regional Chief
National Wildlife
Refuge System

/signed/ Mike Boylan (acting)

August 15, 2012

Date

Mandatory 10-year Re-Evaluation Date: 2022

Mandatory 15-year Re-Evaluation Date (for priority public uses): 2027

NEPA Compliance for Refuge Use Decision:

 Categorical Exclusion without Environmental Action Memorandum

 Categorical Exclusion and Environmental Action Memorandum

 Environmental Assessment and Finding of No Significant Impact

 X Environmental Impact Statement and Record of Decision