

Title 50: Wildlife and Fisheries

PART 25—ADMINISTRATIVE PROVISIONS

Subpart F—Concessions

§ 25.61 General provisions.

Public use facilities may be operated by concessionaires or cooperators under appropriate contact or legal agreement on national wildlife refuges where there is a demonstrated justified need for services or facilities including, but not limited to, boat rentals, swimming facilities, conducted tours of special natural attractions, shelters, tables, trailer lots, food, lodging, and related service.

PART 26—PUBLIC ENTRY AND USE

Subpart B—Public Entry

§ 26.22 General exception for entry.

(b) A permit shall be required for any person entering a national wildlife refuge, unless otherwise provided under the provisions of subchapter C. The permittee will abide by all the terms and conditions set forth in the permit.

PART 26—PUBLIC ENTRY AND USE

Subpart B—Public Entry

§ 26.25 Exception for entry to persons with an economic use privilege.

Access to and travel upon a national wildlife refuge by a person granted economic use privileges on that national wildlife refuge should be restricted to a specified area in accordance with the provisions of their agreement, lease, or permit.

PART 36—ALASKA NATIONAL WILDLIFE REFUGES

Subpart D—Other Refuge Uses

§ 36.33 What do I need to know about using cabins and related structures on Alaska National Wildlife Refuges?

(a) *Definitions.* As used in this section, the term:

Administrative cabin shall mean any cabin only used by refuge or other authorized personnel for the administration of the refuge.

Cabin shall mean a small, usually single-story, three or more sided structure that is permanently and completely enclosed with a roof and walls. The roof and walls are not fabric, cannot be easily disassembled, and are not removed seasonally.

Commercial cabin shall mean any cabin which is used in association with a commercial operation including but not limited to commercial fishing activities and recreational guiding services.

Existing cabin shall mean any cabin situated on Federal lands before December 2, 1980. A cabin legally situated on lands that subsequently become refuge will also be considered an "existing" cabin providing the applicant meets the appropriate application deadlines.

Family shall include the spouse (including what is known as a common-law relationship), children by birth or adoption, and other blood relatives within the second degree of kindred.

Guest shall mean a person who occasionally visits the permittee in the cabin. This term does not include clients using commercial cabins.

Immediate family shall include the spouse and children, either by birth or adoption, of the claimant residing in the cabin or structure.

New cabin shall mean any permitted cabin constructed on refuge lands after December 2, 1980. This may also include a cabin whose claimant failed to meet the application deadline for existing cabins but is otherwise a permitted cabin.

Other related structures shall mean those structures or devices essential to the activities for which the cabin special use permit is issued. This includes but is not limited to outdoor toilets, food caches, storage sheds, and fish drying racks.

Private recreational use shall mean a use associated with leisure activities, not including bona fide subsistence uses or authorized commercial uses.

Public use cabin shall mean a cabin owned and administered by the Fish and Wildlife Service and available for use by the public.

(b) *All cabins.* The regulations in this paragraph (b) shall apply to all cabins, claimants, occupants, and guests. The regulations in this paragraph (b) do not apply to temporary facilities: any structure or man-made improvement which can readily be completely dismantled and removed from the site when the period of authorized use is terminated.

(1) A special use permit is required to construct, use and/or occupy a cabin on Fish and Wildlife Service lands within the refuge. The permit may also authorize the use of related structures and other necessary appurtenances.

(2) After adequate public notice has been given, unclaimed cabins become the property of the Federal Government. Adequate public notice shall include: Posting notices of trespass on

unclaimed cabins; publication of notices of trespass in Anchorage and Fairbanks newspapers and in at least one local newspaper if available; and posting notices of trespass at appropriate community post offices. A Government-owned cabin may be used for refuge administration, used for emergency purposes by the public, permitted to another applicant, designated a public use cabin, or destroyed. Disposal of excess cabins and structures will be according to regulations pursuant to title 41, chapter 114 of the Code of Federal Regulations.

(3) Willful noncompliance with the conditions and stipulations of a special use permit shall be considered grounds to invoke the administrative process leading to notice and hearing, and possible revocation of the permit. The refuge manager will attempt to resolve problems of noncompliance with the permittee as soon as possible after the situation becomes known. If this effort fails, the refuge manager shall provide written notice to the permittee within 30 days of that date, informing the permittee of noncompliance, giving specific instructions for compliance and providing appropriate time for the permittee to comply.

(4) No special use permit will be issued for the construction of a cabin for private recreational use or for the private recreational use of an existing cabin.

(5) Guests are allowed to occupy a cabin only during the activity period identified on the special use permit. Guests occupying a cabin during the absence of the permittee shall obtain a letter of authorization from the permittee. The guest must have a copy of the letter in his/her possession. In commercial cabins, the permittee or another person listed on the permit must be present when the cabin is occupied by guests or clients.

(6) A person whose permit application (new or renewal) for a cabin has been denied or whose cabin permit has been revoked by the refuge manager may appeal to the Regional Director as described in §36.41(b).

(c) *Existing cabins.* In addition to paragraph (b) of this section, the regulations in this paragraph (c) shall apply to all existing cabins, claimants, occupants, and guests.

(1) Where a valid cabin permit or lease was in effect on December 2, 1980, or at the time the land was subsequently added to the refuge, the refuge manager shall provide for the continuation of the permit or lease under the same conditions. The new permit shall be nontransferable and renewable every five years unless the continuation would directly threaten or significantly impair the purposes for which the refuge was established. The cabin and related structures are the personal property of the claimant and can be removed by him/her upon non-renewal or revocation. The owner of a cabin may sell his/her interest in the cabin to another person; however, the new owner does not automatically qualify for a permit and must apply for a new one.

(2) To obtain a special use permit for a cabin that was not under permit or lease before December 2, 1980, or at the time the land was subsequently added to the refuge, a claimant should submit to the refuge manager an application that includes the following:

(i) Reasonable proof of possessory interest or right to occupy the cabin as shown by affidavit, bill of sale, or other document.

(ii) Date of construction or acquisition.

(iii) A sketch or photograph that accurately depicts the cabin and related structures.

(iv) The dimensions of the cabin and related structures.

(v) A U.S. Geological Survey topographic map that shows the geographic location of the cabin and related structures.

(vi) The claimant's agreement to vacate and remove all personal property from the cabin and related structures within one year from receipt of a non-renewal or revocation notice.

(vii) The claimant's acknowledgment that he/she has no legal interest in the real property on which the cabin and related structures are located.

(viii) A list of family members residing with the claimant in the cabin being applied for. It need only include those immediate family members who may be eligible to renew a permit for continued use and occupancy upon the original claimant's death (this is not applicable to cabins used for commercial purposes).

(3) Applications for permits for existing cabins, which are not currently under valid permits, will only be accepted for a period of one year following the effective date of these regulations. However, cabins that were legally located on lands that subsequently become refuge will also be considered "existing" cabins. The owners will have two years following the date the lands become refuge to apply for a permit. Following those dates, all applications for cabins will be for "new" cabins only, no matter when the cabin was built or first used. If ownership is not established within three years after the land becomes refuge, the cabin may be considered abandoned, and it will become Federal property in accordance with Federal regulations.

(4) The occupancy of a noncommercial cabin is limited to the permittee and his/her family, bona fide partners, and guests.

(5) Major modification or rehabilitation of an existing cabin must be approved by the refuge manager before construction begins. The modifications will be done by the permittee or designated agent and will remain the property of the permittee. Major additions (e.g., larger than the original cabin) may fall under the ownership provisions for new cabins. Although cabins destroyed by accidents, vandalism or natural causes may be reconstructed, they must be approved by the refuge manager before construction and must meet the construction guidelines for new cabins, even though remaining the property of the claimant.

(d) *New cabins.* In addition to paragraph (b) of this section, the regulations in this paragraph (d) shall apply to all new cabins, claimants, occupants, and guests.

(1) A nontransferable, five year special use permit shall only be issued upon a determination that the proposed construction, use and maintenance of the cabin is compatible with refuge purposes and that the cabin use is either directly related to refuge administration or is needed for continuation of an ongoing activity or use otherwise allowed within the refuge where the applicant lacks a reasonable off-refuge site. In addition, these activities must have historically been supported by the construction and use of cabins in the geographic area. In general, new cabin permits will be given only to local residents to pursue a legitimate subsistence activity. In determining whether to permit the construction, use, and occupancy of cabins or other structures, the refuge manager shall be guided by factors such as other public uses, public health and safety, environmental and resource protection, research activities, protection of historic or scientific values, subsistence uses, endangered or threatened species conservation and other management considerations necessary to ensure that the activities authorized pursuant to a permit are compatible with the purposes for which the refuge was established.

(2) To obtain a special use permit for a new cabin, an applicant should submit to the refuge manager an application that includes the following:

(i) A sketch that accurately depicts the proposed cabin and related structures.

(ii) The dimensions of the proposed cabin and related structures.

(iii) A U.S. Geological Survey topographic map that shows the geographic location of the proposed cabin and related structures.

(iv) The applicant's agreement to vacate and remove all personal property from the cabin and related structures within one year from receipt of a non-renewal or revocation notice.

(v) The applicant's acknowledgment that he/she has no legal interest in the cabin and related structures or in the real property on which the cabin and related structures are located.

(vi) A list of family members residing with the applicant in the cabin being applied for. It need only include those immediate family members who may be eligible to renew a permit for continued use and occupancy upon the original claimant's death.

(3) The permitting instrument shall be a nontransferable renewable five year special use permit. It shall be renewed every five years (upon request) until the death of the original claimant's last immediate family member unless the special use permit has been revoked or the cabin has been abandoned.

(4) No new cabins will be constructed in designated wilderness areas unless they are built specifically for the administration of the area, for public safety, or for trapping where trapping has been a traditional and customary use.

(5) New trapping cabins in wilderness will be available for public use to ensure public health and safety.

(6) The occupancy of a noncommercial cabin is limited to the permittee, and his/her family, bona fide partners, and guests.

(e) *Commercial cabins.* In addition to paragraph (b) of this section, the regulations in this paragraph (e) shall apply to all commercial cabins, permittees, clients, guests, and occupants.

(1) A special use permit is required for all cabins used for commercial purposes. Refuge managers may also issue special use permits that authorize additional commercial use of an existing cabin used for guiding, etc. The use of a new cabin shall be limited to the type of use specified in the original permit. The refuge manager may permit the use of an existing cabin on non-wilderness refuge lands for the exercise of valid commercial fishing rights. Such a permit may be denied if, after conducting a public hearing in the affected locality, it is found that the use is inconsistent with refuge purposes and is a significant expansion of commercial fishing activities within the unit beyond 1979 levels.

(2) When the commercial fishing or guiding rights associated with a permittee's existing cabin are acquired by a new party, the privilege of using the cabin cannot be sold and the new party does not necessarily qualify for a cabin permit. He/she must apply for a permit and meet the criteria described in this paragraph (e) before issuance of a special use permit by the refuge manager. He/she may not occupy the cabin before issuance of a permit.

(3) No new commercial cabins will be permitted in wilderness areas.

(4) Commercial cabins may be occupied only by persons legitimately involved in the commercial 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.

(5) Special use permits for commercial cabins may be renewed annually in conjunction with the special use permit renewal for the commercial activity itself. The cabin permit may be issued for periods of up to five years and is a separate permit from one issued for the commercial activity.

(f) *Administrative and government-owned public use cabins.* In addition to paragraph (a) of this section, the regulations in this paragraph (f) apply to all administrative and government-owned cabins.

(1) The refuge manager can designate those cabins not under permit as administrative cabins to be used for official government business. Administrative cabins may be used by the public during life-threatening emergencies. On a case-by-case basis, they may also be designated as public use cabins when not needed for government purposes. In such cases, the refuge manager must inform the public and post dates or seasons when the cabins are available.

(2) The refuge manager may designate government-owned cabins as public use cabins. They are only intended for short-term public recreational use and occupancy. The refuge manager may develop an allocation system for managing public use cabins for short-term recreational use. No

existing public use cabins shall be removed or new public use cabins constructed within wilderness areas designated by the Alaska National Interest Lands Conservation Act of 1980 or subsequently designated wilderness areas until the Secretary of the Interior notifies the House Committee on Interior and Insular Affairs and the Senate Committee on Energy and Natural Resources.

[59 FR 38314, July 27, 1994, as amended at 64 FR 14151, Mar. 24, 1999]

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§ 36.37 Revenue producing visitor services.

(a) *Applicability.* (1) Except as otherwise provided for in this paragraph, the regulations contained in this section apply to new visitor services provided within all National Wildlife Refuge areas in Alaska.

(2) The rights granted by this section to historical operators, preferred operators, and Cook Inlet Region, Incorporated, are not exclusive. The Refuge Manager may authorize other persons to provide visitor services on refuge lands. Nothing in this section shall require the Refuge Manager to issue a visitor services permit if not otherwise mandated by statute to do so. Nothing in this section shall authorize the Refuge Manager to issue a visitor services permit to a person who is not capable of carrying out its terms and conditions in a satisfactory manner.

(3) This section does not apply to the guiding of sport hunting or sport fishing.

(b) *Definitions.* The following definitions shall apply to this section:

(1) *Best offer* means a responsive offer that best meets, as determined by the Refuge Manager, the selection criteria contained in a competitive solicitation for a visitor services permit.

(2) *Controlling interest, in the case of a corporation* means an interest, beneficial or otherwise, of sufficient outstanding voting securities or capital of the business, so as to permit exercise of final managerial authority over the actions and operations of the corporation, or election of a majority of the Board of Directors of the corporation.

(3) *Controlling interest in the case of a partnership, limited partnership, joint venture or individual entrepreneurship* means a beneficial ownership of or interest in the entity so as to permit the exercise of final managerial authority over the actions and operations of the entity.

(4) *Controlling interest in other circumstances* means any arrangement under which a third party has the ability to exercise general management authority over the actions or operations of the business.

(5) *Historical operator* means any person who:

(i) On or before January 1, 1979, was lawfully engaged in adequately providing any type of visitor service in a refuge within the scope of paragraph (c) of this section;

(ii) Has continued to lawfully provide that visitor service; and

(iii) Is otherwise determined by the Refuge Manager to have a right to continue to provide such services or similar services pursuant to paragraph (c) of this section.

(6) *Local area* means that area in Alaska within 100 miles of the location within a refuge where any of the visitor service is authorized.

(7) *Local resident* means:

(i) For *individuals*. Those individuals that have maintained their primary, permanent residence and business within the local area for the past twelve (12) consecutive months and whenever absent from this primary, permanent residence, have the intention of returning to it. Factors demonstrating the location of an individual's primary, permanent residence and business may include, but are not limited to, the permanent address indicated on licenses issued by the State of Alaska, tax returns, and voter registrations.

(ii) For *corporations*. A corporation in which the controlling interest is held by an individual or individuals who qualify as "local resident(s)" within the meaning of this section. For non-profit corporations a majority of the board members and a majority of the officers must qualify as "local residents."

(8) *Native Corporation* means the same as defined in section 102(6) of ANILCA.

(9) *Preferred operator* means a local resident or Native Corporation which is entitled to a preference under this section in the award of a permit, and as otherwise provided under section 1307(b) of ANILCA.

(10) A *responsive offer* means one which is timely made and meets the terms and conditions of the solicitation document.

(11) *Similar visitor service* means that visitor service authorized by the Refuge Manager to be provided on a refuge and determined by the Refuge Manager, on a case by case basis, to be similar to an established service being provided by a historical operator.

(12) *Visitor service* means any service or activity made available for a fee, commission, brokerage, or other compensation to persons who visit a refuge, including such services as

providing food, accommodations, transportation, tours, and guides excepting the guiding of sport hunting and fishing. This also includes any activity where one participant/member or group of participants pays more in fees than the other participants (non-member fees, etc.), or fees are paid to the organization which are in excess of the bona fide expenses of the trip.

(13) *Right of first refusal* means, as it relates to section 1307(a) of ANILCA, a reasonable opportunity for a historical operator to review a description of the new similar service and the terms and conditions upon which it is to be provided to determine if the historical visitor service operator wishes to provide the service. As it relates to section 1307(c) of ANILCA, it refers to the opportunity for Cook Inlet Region, Incorporated to have the first opportunity to provide new visitor services on the Kenai National Wildlife Refuge in the Cook Inlet Region.

(c) *Visitor services existing on or before January 1, 1979, "historical operators"*. (1) A historical operator shall have a right to continue to provide visitor services or similar services within such area, under appropriate terms and conditions, so long as such services are determined by the Refuge Manager to be consistent with the purposes for which the refuge was established. A historical operator must obtain a permit from the refuge manager to conduct the visitor services. The permit shall be for a fixed term and specified area, and shall contain such terms and conditions as are in the public interest. Failure to comply with the terms and conditions of the permit may result in cancellation of the authorization and consequent loss of historical operator rights under this section. Nothing in this section shall prohibit the Refuge Manager from permitting persons, in addition to historical operators, to provide visitor services in the refuge at the Refuge Manager's discretion so long as historical operators are permitted to conduct a scope or level of visitor services equal to or greater than those provided prior to January 1, 1979, under terms and conditions consistent with this section. A historical operator may be permitted by the Refuge Manager, under separate authority, to increase the scope or level of visitor services provided prior to January 1, 1979, but no historical operating rights shall be obtained in such increase.

(2) A historical operator may also apply to the Refuge Manager for a permit or amended permit to provide similar types of visitor services. Granting the request will not result in an increase in the scope or level of service in excess of those provided as of January 1, 1979, by the requesting historical operator. The Refuge Manager shall grant the request if such visitor services are determined by the Refuge Manager to be:

(i) Consistent with the management of refuge resources and the purposes for which the refuge area was established;

(ii) Similar to the visitor services provided by the historical operator prior to January 1, 1979; and

(iii) Consistent with the legal rights of any other person.

(3) When a historical operator permit has expired, and if the visitor services permitted by it were adequately provided and consistent with the purposes of the refuge as determined by the Refuge Manager, the Refuge Manager shall renew the permit for a fixed term consistent with such new

terms and conditions as are in the public interest. Should a historical operator decline to accept an offer of renewal, its rights as a historical operator shall be considered as terminated.

(4) If the Refuge Manager determines that permitted visitor services must be curtailed or reduced in scope or season to protect refuge resources, or for other purposes, the Refuge Manager shall require the historical operator to make such changes in visitor services. If more than one historical operator providing the same type of visitor services is required to have those services curtailed, the Refuge Manager shall establish a proportionate reduction of visitor services among all such historical operators, taking into account historical operating levels and other appropriate factors, so as to achieve a fair curtailment of visitor services among the historical operators. If the level of visitor services must be so curtailed that only one historical operator feasibly may continue to provide the visitor services, the Refuge Manager shall select one historical operator to continue to provide the curtailed visitor services through a competitive selection process.

(5) The rights of a historical operator shall terminate if the historical operator fails to provide the visitor services under the terms and conditions of a permit issued by the Refuge Manager or fails to provide the visitor services for a period of more than twenty four (24) consecutive months.

(6) The rights of a historical operator under this section shall terminate upon a change, after January 1, 1979, in the controlling interest of the historical operator through sale, assignment, devise, transfer or otherwise.

(7) The Refuge Manager may authorize other persons to provide visitor services in a refuge in addition to historical operators, as long as such other persons conduct the services in a manner compatible with the purposes of the refuge.

(d) *Visitor services initially authorized after January 1, 1979, "preferred operators"*. (1) In selecting persons to provide, and in permitting any type of visitor service, excepting guided hunting or fishing, the Refuge Manager will give a preference to preferred operators determined qualified to provide such visitor services. Preferences for most directly affected Native Corporation(s) and local residents are equal and are not additive.

(2) In selecting persons to provide any type of visitor service for refuges subject to a preferred operator preference under this section, the Refuge Manager will publicly solicit competitive offers for persons to apply for a permit, or the renewal of a permit, to provide such visitor service pursuant to Service procedures. Preferred operators must submit a responsive offer to such solicitation in order to effect their preference. If, as a result of the solicitation, an offer from a person other than a preferred operator is determined to be the best offer and that offeror is determined to be capable of carrying out the terms of the permit, the preferred operator which submitted the most responsive offer shall be given an opportunity to substantially equal the best offer received by amending its offer. If the amended offer of the preferred operator is considered by the Refuge Manager as being substantially equal to the terms of the best offer, the preferred operator, if determined to be capable of carrying out the terms of the permit, shall be awarded the visitor service permit. If the preferred operator fails to meet these requirements, the Refuge Manager shall award the permit to the person who submitted the best offer in response to the

solicitation. The Native Corporation(s) determined to be “most directly affected” under this section and local residents have equal preference.

(3) Nothing in this section shall prohibit the Refuge Manager from authorizing persons other than preferred operators to provide visitor services in refuge areas so long as the procedures described in this section have been followed with respect to preferred operators. Preferred operators are not entitled by this section to provide all visitor services in a qualified refuge.

(4) An offer from a Native Corporation or a local corporation under this section must document its controlling interest in the entity or in the case of a joint venture, all partners, making the offer.

(5) The preferences described in this section may not be sold, assigned, transferred, or devised, directly or indirectly.

(e) *Preference to Cook Inlet Region, Incorporated (CIRI).* (1) Cook Inlet Region, Incorporated, in cooperation with village corporations within Cook Inlet Region when appropriate, shall have a right of first refusal to provide new visitor services within that portion of the Kenai National Moose Range (Kenai National Wildlife Refuge) within the boundaries of Cook Inlet Region. The CIRI shall have ninety (90) days from receipt of a prospectus in which to exercise its right.

(2) In order to exercise this right of first refusal, CIRI must submit an offer responsive to the terms of a visitor services solicitation. If CIRI makes such an offer and is determined by the Refuge Manager to be capable of carrying out the terms of the special use permit, it shall be awarded the permit. If it does not, the permit may be awarded to another person pursuant to a showing that such other person can carry out the conditions of the special use permit in a manner compatible with the purposes of the refuge. An offer being made by CIRI under this section must document controlling interest by CIRI when made in cooperation with village corporations within the Cook Inlet Region. The CIRI right of first refusal shall have precedence over the rights of preferred operators.

(3) The right of first refusal described in this section may not be sold, transferred, devised, or assigned, directly or indirectly.

(f) *Most directly affected Native Corporation determination.* (1) Prior to the issuance of a solicitation document for any new visitor service in a refuge, the Refuge Manager shall provide an opportunity for any Native Corporation interested in providing visitor services within that refuge to submit an application to the Refuge Manager to be determined “most directly affected” Native Corporation. The application shall include but not be limited to, the following information:

(i) The name, address, and telephone number of the Native Corporation, the date of incorporation, its articles of incorporation and structure, and the name of the applicable refuge area;

(ii) The location of the corporation's population center or centers;

(iii) An assessment of the socioeconomic impacts, including historical and traditional use, and their effects on the Native Corporation as a result of the expansion or establishment of the refuge; and

(iv) Any other information the Native Corporation believes is relevant.

(2) Upon receipt of all applications from interested Native Corporations, the Refuge Manager will determine the “most directly affected” Native Corporation based on, but not limited to, the following criteria:

(i) The number of acres of surface land within and adjoining the refuge that the Native Corporation owns, or which has been selected under the Alaska Native Claims Settlement Act, unless such selection is determined to be invalid or is relinquished;

(ii) The distance and accessibility from the Native Corporation's population center and/or business address to the applicable refuge; and

(iii) The socio-economic impacts, including historic and traditional use, and their effects as a result of the expansion or establishment of the refuge.

(3) In the event that more than one Native Corporation is determined to be equally affected, each such Native Corporation shall be considered as a preferred operator under this section.

(4) The Refuge Manager's “most directly affected” Native Corporation determination or when requested, the Regional Director's appeal decision for a refuge is applicable for all new visitor services in that refuge.

(5) Any Native Corporation that has not applied for a most directly affected Native Corporation determination may apply for a determination upon issuance of a future solicitation for a new visitor service. A corporation determined to be most directly affected for a refuge will maintain that status for all future visitor service solicitations.

(g) *Appeal procedures.* Any person(s) who believe that they have been improperly denied rights with respect to providing visitor services under this section may appeal the denial to the Regional Director. Such an appeal must be submitted in writing within forty-five (45) days of receipt of the denial from which an appeal is sought. The appeals process as defined in 50 CFR subpart F, 36.41(b) will apply with exception of the period of time allowed to file an appeal.

[62 FR 1842, Jan. 14, 1997]

§ 36.39 Public use.

(a) *General.* Public use of Alaska National Wildlife Refuges (NWR) is permitted subject to all other parts of 50 CFR part 36, those sections of 50 CFR subchapter C not supplemented by part 36, and the following refuge-specific requirements:

(b) *Alaska Maritime National Wildlife Refuge.* (1) Amchitka Island—closed to all public access, occupancy and use, unless specifically authorized by a special use permit issued jointly by the Refuge Manager and the U.S. Navy (Commanding Officer, Fleet Surveillance Support Command, Chesapeake, Virginia).

(c) *Alaska Peninsula/Becharof National Wildlife Refuge Complex.* (1) The Alaska Peninsula/Becharof National Wildlife Refuge (Complex) includes the Becharof National Wildlife Refuge, the Chignik and Ugashik Units of the Alaska Peninsula National Wildlife Refuge and the Seal Cape Area of the Alaska Maritime National Wildlife Refuge.

(2) Off-road vehicles are permitted on the refuge complex under §36.12(a), §36.39(c)(2)(ii) or §36.39(c)(2)(iii) and must meet the following conditions:

(i) Vehicles are limited to three or four-wheeled vehicles with a maximum gross weight of 650 pounds as listed by the manufacturer.

(ii) ORV's are permitted on the following trails only: Yantarni Bay Airstrip; Yantarni Bay Airstrip to beach trail; and Yantarni Bay Airstrip to oil well site trail. Maps of the above areas are available from the Refuge Manager.

(iii) Subject to the weight and size restrictions listed in (i) above, subsistence use of off-road vehicles, as authorized by 50 CFR 36.12(a) is allowed throughout the Alaska Peninsula/Becharof National Wildlife Refuge Complex.

(3) Camping is permitted on the Refuge Complex subject to the following restrictions:

(i) These camping limits do not apply to subsistence users except at Big Creek where they apply to all refuge complex users.

(ii) No permanent improvements may be made to campsites without a special use permit. All materials brought on to the refuge complex must be removed upon cessation of camping unless authorized by a special use permit.

(iii) Other than reserved sites authorized by special use permits, camping at one location is limited to seven consecutive nights from August 1 through November 15 within 1/4 mile of the following waters: Becharof Lake in the Severson Peninsula area (Island Arm); Becharof Lake Outlet; Ugashik Narrows; Big Creek; Gertrude Lake; and Gertrude Creek between Gertrude Lake and the King Salmon River. Maps of the above areas are available from the Refuge Manager.

(iv) Tent camps must be moved a minimum of one mile following each seven-night camping stay during the periods specified above.

(4) Temporary facilities may be authorized on the Alaska Peninsula/Becharof National Wildlife Refuge Complex by special use permit only, subject to the following conditions:

(i) Except for administrative or subsistence purposes, new temporary facilities are prohibited within 1/4 mile of the Becharof Lake shoreline.

(ii) Except for administrative purposes, new temporary facilities are prohibited in the following areas: within 1/4 mile of the shorelines of Gertrude Lake and Long Lake; within 1/4 mile of the airstrip on the south side of the King Salmon River approximately 1/2 mile above the confluence of Gertrude Creek and the King Salmon River; within 1/4 mile of the shoreline of Upper and Lower Ugashik Lakes; within 1/4 mile of the shoreline of Becharof Lake outlet; and within 1/4 mile of the shoreline of Big Creek. Maps of the above areas are available from the Refuge Manager.

(d)–(h) [Reserved]

(i) *Kenai National Wildlife Refuge—(1) Aircraft.* (i) The operation of aircraft on the Kenai NWR, except in an emergency, is permitted only as authorized in designated areas as described below. These areas are also depicted on a map available from the Refuge Manager.

(A) Within the Canoe Lakes, Andy Simons, and Mystery Creek units of the Kenai Wilderness, only the following lakes are designated for airplane operations:

Canoe Lakes Unit

Bedlam Lake

Bird Lake

Cook Lake

Grouse Lake

King Lake

Mull Lake

Nekutak Lake

Norak Lake

Sandpiper Lake

Scenic Lake

Shoepac Lake

Snowshoe Lake

Taiga Lake

Tangerra Lake

Vogel Lake

Wilderness Lake

Pepper, Gene, and Swanson Lakes are only open for sport ice fishing.

Andy Simons Unit

Emerald Lake

Green Lake

Harvey Lake

High Lake

Iceberg Lake

Kolomin Lakes

Lower Russian Lake

Martin Lake

Pothole Lake

Twin Lakes

Upper Russian Lake

Windy Lake

Dinglestadt Glacier terminus lake

Wusnesenski Glacier terminus lake

Tustumena Lake and all wilderness lakes within one mile of the shoreline of Tustumena Lake.

All unnamed lakes in sections 1 & 2, T. 1 S., R. 10 W., and sections 4, 5, 8, & 9, T. 1 S., R. 9 W., S.M., AK.

Mystery Creek Unit

An unnamed lake in section 11, T. 6 N., R. 5 W., S.M., AK.

(B) Airplanes may operate on all lakes outside the Kenai Wilderness, except those lakes with recreational developments, including, but not limited to, campgrounds, campsites, and public hiking trails connected to road waysides. The non-wilderness lakes closed to aircraft operations are as follows:

North of Sterling Highway

Afonasi Lake

Anertz Lake

Breeze Lake

Cashka Lake

Dabbler Lake

Dolly Varden Lake

Forest Lake

Imeri Lake

Lili Lake

Mosquito Lake

Rainbow Lake

Silver Lake

Upper Jean Lake

Watson Lake

Weed Lake

West Lake

All lakes in the Skilak Loop Area (South of Sterling Highway and North of Skilak Lake) are closed to aircraft except that airplanes may land on Bottenintnin Lake, which is open year-around and Hidden Lake, which is only open for sport ice fishing.

South of Sterling Highway

Headquarters Lake is restricted to administrative use only.

(ii) Notwithstanding any other provision of these regulations, the operation of aircraft is prohibited between May 1 and September 30, inclusive, on any lake where nesting trumpeter swans and/or their broods are present, except Windy and Lonesome Lakes where the closure is between May 1 and September 10 inclusive.

(iii) The operation of wheeled aircraft, at the pilot's own risk, is only authorized on the unmaintained Big Indian Creek Airstrip, on gravel areas within 1/2 mile of Wusnesenski Glacier terminus lake, and within the SE 1/4, section 16 and SW 1/4, section 15, T. 4 S., R. 8 W., Seward Meridian.

(iv) Unlicensed aircraft are permitted to operate on the refuge only as authorized by a special use permit from the Refuge Manager.

(v) Airplanes may operate only within designated areas on the Chickaloon Flats, as depicted on a map available from the Refuge Manager.

(vi) Airplane operation is permitted on the Kasilof River, the Chickaloon River outlet, and the Kenai River below Skilak Lake from June 15 through March 14. All other rivers on the refuge are closed to aircraft.

(2) *Motorboats.* Motorboats are authorized on all waters of the refuge except under the following conditions and within the following areas:

(i) Motorboats are not authorized on lakes within the Canoe Lakes Unit of the Kenai Wilderness, except those lakes designated for airplane operations as described on a map available from the Refuge Manager. Boat motor use is not authorized on those portions of the Moose and Swanson Rivers within the Canoe Lakes Unit of the Kenai Wilderness.

(ii) That section of the Kenai River from the outlet of Skilak Lake downstream for three miles is closed to motorboat use between March 15 and June 14, inclusive. However, any boat having a motor attached may drift or row through this section provided the motor is not operating.

(iii) That section of the Kenai River from the powerline crossing located approximately one mile below the confluence of the Russian and Kenai Rivers downstream to Skilak Lake is closed to motorboats. However, any boat having a motor attached may drift or row through this section provided the motor is not operating.

(iv) Motors in excess of 10 horsepower are not authorized on the Moose, Swanson, Funny, Chickaloon (upstream of river mile 7.5), Killey, and Fox Rivers.

(v) A "no-wake" restriction applies to Engineer, Upper and Lower Ohmer, Bottenintnin, Upper and Lower Jean, Kelly, Petersen, Watson, Imeri, Afonasi, Dolly Varden, and Rainbow Lakes.

(vi) Notwithstanding any other provision of these regulations, operation of a motorboat is prohibited between May 1 and September 30, inclusive, on any lake where nesting trumpeter

swans and/or their broods are present, except Windy and Lonesome Lakes where the closure is between May 1 and September 10, inclusive.

(3) *Off-Road Vehicles.* (i) The use of air cushion, airboat, or other motorized watercraft, except motorboats, is not allowed on the Kenai NWR, except as authorized by a special use permit from the Refuge Manager.

(ii) Off-road vehicle use, including operation on lake and river ice, is not permitted. Licensed highway vehicles are permitted on Hidden, Engineer, Kelly, Petersen, and Watson Lakes for ice fishing purposes only, and must enter and exit lakes via existing boat ramps.

(4) *Snowmobiles.* Operation of snowmobiles is authorized on the Kenai NWR subject to the following conditions and exceptions:

(i) Snowmobiles are permitted between December 1 and April 30 only when the Refuge Manager determines that there is adequate snowcover to protect underlying vegetation and soils. During this time, the Refuge Manager will authorize, through public notice, the use of snowmobiles less than 46 inches in width and less than 1,000 pounds (450 kg) in weight. Designated snowmobile areas are described on a map available from the Refuge Manager.

(ii) All areas above timberline, except Caribou Hills, are closed to snowmobile use.

(iii) The area within sections 5, 6, 7, and 8, T. 4 N., R. 10 W., S.M., AK., east of the Sterling Highway right-of-way, including the refuge headquarters complex, the environmental education/cross-country ski trails, Headquarters and Nordic lakes, and the area north of the east fork of Slikok Creek and northwest of a prominent seismic trail to Funny River Road, is closed to snowmobile use.

(iv) An area, including the Swanson River Canoe Route and portages, beginning at the Paddle Lake parking area, then west and north along the Canoe Lakes wilderness boundary to the Swanson River, continuing northeast along the river to Wild Lake Creek, then east to the west shore of Shoepac Lake, south to the east shore of Antler Lake, and west to the beginning point near Paddle Lake, is closed to snowmobile use.

(v) An area, including the Swan Lake Canoe Route, and several road-connected public recreational lakes, bounded on the west by the Swanson River Road, on the north by the Swan Lake Road, on the east from a point at the east end of Swan Lake Road south to the west bank of the Moose River, and on the south by the refuge boundary, is closed to snowmobile use.

(vi) Within the Skilak Loop Special Management Area, snowmobiles are prohibited, except on Hidden, Kelly, Petersen and Engineer lakes for ice fishing access only. Upper and Lower Skilak Lake campground boat launches may be used as access points for snowmobile use on Skilak Lake.

(vii) Snowmobiles may not be used on maintained roads within the refuge. Snowmobiles may cross a maintained road after stopping and when traffic on the roadway allows safe snowmobile crossing.

(viii) Snowmobiles may not be used for racing or for the harassment of wildlife.

(5) *Hunting and Trapping.* (i) Firearms may not be discharged within 1/4 mile of designated public campgrounds, trailheads, waysides, buildings or the Sterling Highway from the east refuge boundary to the east junction of the Skilak Loop Road.

(ii) A special use permit, available from the Refuge Manager, is required prior to baiting black bears.

(iii) Hunting with the aid or use of a dog for taking big game is permitted only for black bear, and then only under the terms of a special use permit from the Refuge Manager.

(iv) Hunting and trapping within sections 5, 6, 7, and 8, T. 4 N., R. 10 W., S.M., AK., encompassing the Kenai NWR headquarters/visitor center and associated environmental education trails, are prohibited. The boundary of these administrative and environmental education areas is depicted on a map available from the Refuge Manager.

(6) *Fishing.* Fishing is prohibited June 1 to August 15, on the south bank of the Kenai River from the Kenai-Russian River Ferry dock to a point 100 feet downstream.

(7) *What do I need to know about other public uses on Kenai National Wildlife Refuge? (i) What are the camping restrictions? We allow camping subject to the following restrictions:*

(A) Camping may not exceed 14 days in any 30-day period anywhere on the refuge.

(B) Campers may not spend more than two consecutive days at the Kenai-Russian River access area, more than seven consecutive days at Hidden Lake Campground, or more than seven consecutive days in refuge shelters.

(C) Within developed campgrounds, camp only in designated areas and use open fires only in portable, self-contained, metal fire grills, or fire grates provided by us.

(D) Do not camp within 1/4 mile of the Sterling Highway, Ski Hill, or Skilak Loop roads except in designated campgrounds.

(E) Campers may cut only dead and down timber for campfire use.

(F) Pets must be on a leash no longer than nine feet in developed campgrounds.

(ii) *May I cut and remove timber? You may remove timber, including the cutting of firewood for home use, only if you have obtained a special use permit from the Refuge Manager.*

(iii) *May I leave personal property on the refuge?* Yes, however, if you leave personal property unattended for longer than 72 hours outside of a designated area, obtain a special use permit from the Refuge Manager.

(iv) *If I find research marking devices, what do I do?* Turn in all radio transmitters, neck and leg bands, ear tags, or other research marking devices recovered from wildlife to the Refuge Manager or the Alaska Department of Fish and Game within five days after recovery.

(v) *May I use non-motorized wheeled vehicles on the refuge?* Yes, but only on refuge roads designated and open for public vehicular access.

(vi) *May I use motorized equipment on the refuge?* You may not use motorized equipment, including but not limited to chainsaws, generators, and auxiliary power units, within the Kenai Wilderness, except snowmobiles, airplanes and motorboats in designated areas.

(vii) *Must I register to canoe on the refuge?* Only canoeists on the Swanson River and Swan Lake Canoe Routes must register at entrance points. Maximum group size is 15 persons.

(viii) *Are any areas of the refuge closed to public use?* (A) We close rock outcrop islands in Skilak Lake used by nesting cormorants and gulls and the adjacent waters within 100 yards to public entry and use from March 15 to September 30. You may obtain maps showing these areas from the Refuge Manager.

(B) From July 1 to August 15 the public may not use or access any portion of the 25-foot wide public easements along both banks of the Kenai River within the Moose Range Meadows area; or along the Homer Electric Association Right-of-Way from Funny River Road and Keystone Drive to the downstream limits of the streamside easements. You may obtain maps showing these closed areas from the Refuge Manager by referring to Sections 1, 2, and 3 of Township 4 North, Range 10 West, Seward Meridian.

(j) *Kodiak National Wildlife Refuge—(1) Seasonal public use closure of the O'Malley River Area.* That area within the Kodiak National Wildlife Refuge described in this paragraph (j)(1) is closed to all public access, occupancy and use from June 25 through September 30. The area subject to seasonal closure consists of lands and waters located within Township 33 South, Range 30 West, Seward Meridian, Alaska, consisting of approximately 2,560 acres, and more particularly described as follows: Township 33 South, Range 30 West, Seward Meridian, Alaska, all of Section 25; all of Section 26, excluding U.S. Survey 10875 and the adjacent riparian ownership (Koniag Inc.) fronting the survey and extending to the center of Karluk Lake; and all of Sections 35 and 36, excluding U.S. Survey 10876 and the adjacent riparian ownership (Koniag Inc.) fronting the survey and extending to the center of Karluk Lake. Maps of the closure area are available from the Refuge.

(2) Access easement provision. Notwithstanding any other provision of this paragraph (j), there exists a twenty-five foot wide access easement on an existing trail within the Koniag Inc. Regional Native Corporation lands within properties described in paragraph (j)(1) of this section in favor of the United States of America.

(3) *Permit requirement for Conservation Easement lands.* Pursuant to the terms of a Conservation Easement held by the United States and the State of Alaska, we manage public use of certain lands owned by Koniag, Inc. These lands are inholdings within the exterior boundaries of the Kodiak National Wildlife Refuge. The Conservation Easement was recorded in the Kodiak Recording District, Alaska, on December 6, 2002, as document number 2002–003448–0. The lands subject to the Conservation Easement to which the permit requirement in this paragraph apply are all lands within 1/2 mile of the west shore of Karluk Lake, from the lake outlet to the southern boundary of T. 32 S., R. 30 W. (surveyed), Seward Meridian; all lands within 1/2 mile of the east shore of Karluk Lake, from the lake outlet to a point due east of the north end of Camp Island; and all lands within a 1/2-mile band of land on either side of the Karluk River, from the Karluk Lake outlet downstream to the refuge boundary. A map is available from the refuge showing the location of the easement lands that are subject to the permit requirement. You are prohibited from using these lands unless:

- (i) You have a nontransferable permit from the refuge;
- (ii) You are a concessionaire or a client of a concessionaire authorized by Koniag, Inc., to provide revenue-producing visitor services;
- (iii) You are an authorized user in accordance with section 7(d) of the Conservation Easement; or
- (iv) You are limiting your use of the property to public access easements established under section 17(b) of the Alaska Native Claims Settlement Act.

[51 FR 32332, Sept. 11, 1986, as amended at 51 FR 41509, Nov. 17, 1986; 60 FR 37311, July 19, 1995; 61 FR 29497, June 11, 1996; 64 FR 14154, Mar. 24, 1999; 71 FR 33259, June 8, 2006]

[PART 36—ALASKA NATIONAL WILDLIFE REFUGES](#)
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§ 36.41 Permits.

(a) *Applicability.* The regulations contained in this section apply to the issuance and administration of competitively and noncompetitively issued permits for economic and/or other privileged uses on all national wildlife refuges in Alaska. Nothing in this section requires the refuge manager to issue a special use permit if not otherwise mandated by statute to do so. Supplemental procedures for granting historical use, Native Corporation, and local preferences in the selection of commercial operators to hold permits to provide visitor services, other than hunting and fishing guiding on refuges in Alaska, are addressed in §36.37, Revenue producing visitor services.

(b) *Definitions.* As used in this section, the term or terms:

Commercial visitor service means any service or activity made available for a fee, commission, brokerage or other compensation to persons who visit a refuge, including such services as providing food, accommodations, transportation, tours, and guides. Included is any activity where one participant/member or group of participants pays more in fees than the other participants (non-member fees, etc.), or fees are paid to the organization which are in excess of the bona fide expenses of the trip;

Entire business means all assets including, but not limited to, equipment, facilities, and other holdings directly associated with the permittee's type of commercial visitor service authorized by permit. This term also includes assets held under the name of separate business entities, which provide the same specific type of commercial visitor services authorized by permit, that the permittee has a financial interest in. The term does not include related enterprises owned by the permittee such as taxidermy and travel services;

Immediate family means the spouse and children, either by birth or adoption, of the permittee.

Operations plan means a narrative description of the commercial operations which contains all required information identified in the prospectus;

Permit means a special use permit issued by the refuge manager which authorizes a commercial visitor service or other activity restricted by law or regulation on a national wildlife refuge;

Prospectus means the document that the Service uses in soliciting competition to award commercial visitor services on a refuge;

Subcontracting means any activity in which the permittee provides financial or other remuneration to anyone other than employees to conduct the specific commercial services authorized by the Service. The permittee's primary authorized activities must be conducted in a genuine employer/employee relationship where the source of all remuneration for services provided to clients is from the permittee. Subcontracting does not apply to booking services or authorized secondary services provided to clients in support of the permittee's primary authorized activities (e.g., a guide paying a marine or air taxi operator to transport clients);

Subletting means any activity in which the permittee receives financial or other remuneration in return for allowing another commercial operator to conduct any of the permittee's authorized activities in the permittee's use area; and

Use area means the designated area where commercial services may be conducted by the permittee.

(c) *General provisions.* In all cases where a permit is required, the permittee must abide by the conditions under which the permit was issued. Refuge managers will provide written notice to the permittee in all cases where documentation of noncompliance is prepared for use in any administrative proceeding involving the permittee.

(d) *Application.* (1) This section and other regulations in this part 36, generally applicable to the National Wildlife Refuge System, require that permits be obtained from the refuge manager. For activities on the following refuges, request permits from the respective refuge manager in the following locations:

Refuge	Office location
Alaska Peninsula National Wildlife Refuge.	King Salmon.
Alaska Maritime National Wildlife Refuge	Homer.
Aleutian Islands Unit, Alaska Maritime NWR.	Homer.
Arctic National Wildlife Refuge.....	Fairbanks.
Becharof National Wildlife Refuge.....	King Salmon.
Innoko National Wildlife Refuge.....	McGrath.
Izembek National Wildlife Refuge.....	Cold Bay.
Kanuti National Wildlife Refuge.....	Fairbanks.
Kenai National Wildlife Refuge.....	Soldotna.
Kodiak National Wildlife Refuge.....	Kodiak.
Koyukuk National Wildlife Refuge.....	Galena.
Nowitna National Wildlife Refuge.....	Galena.
Selawik National Wildlife Refuge.....	Kotzebue.
Tetlin National Wildlife Refuge.....	Tok.
Togiak National Wildlife Refuge.....	Dillingham.
Yukon Delta National Wildlife Refuge....	Bethel.
Yukon Flats National Wildlife Refuge....	Fairbanks.

(2) For noncompetitively issued permits, the applicant may present the application verbally if he/she is unable to prepare a written application. The refuge manager will keep a written record of such verbal application. For competitively issued permits, the applicant must submit a written application in the format delineated in the prospectus or other designated format of the Service.

(3) The refuge manager will grant or deny applications for noncompetitively issued permits in writing within 45 days, except for good cause. For competitively issued permits, the refuge manager will grant or deny applications in accordance with the time frame established in the prospectus, except for good cause.

(4) Refuge managers may establish application period deadlines for individual refuges for both competitively and noncompetitively issued permits. The refuge manager will send notification of availability for commercial opportunities and application deadlines to existing and/or the previous year's permittees. He/she will publish the notice in at least one newspaper of general circulation in the State and in at least one local newspaper if available, and will make available for broadcast on local radio stations in a manner reasonably calculated to inform local prospective applicants.

(5) The Service may limit the number of applications that an individual may submit for competitively awarded offerings.

(e) *Competitively awarded permits.* (1) Where the number of available permits is limited, refuge managers will award permits competitively. A prospectus with invitation to bid system will be the primary competitive method used for selecting commercial visitor services. Where justified, other selection methods, including but not limited to lotteries, may be used. Such circumstances may include, but not be limited to, the timely refilling of

use areas that have become vacant during regularly scheduled terms to prevent commercial visitor service opportunities from going unused, and initiating trial programs on individual refuges. The refuge manager has discretionary authority to issue noncompetitive permits on a one-time, short-term basis to accredited educational institutions and other nonprofit organizations to conduct primarily environmental education-related activities that also may be recreational in nature in use areas where permits for that type of guided recreational activity are otherwise limited to competitive award.

(2) Where numbers of permits have been limited for an activity prior to the promulgation of these regulations and a prospectus with invitation to bid system has not yet been developed, refuge managers may issue noncompetitive five-year permits consistent with the terms set forth in paragraph (e)(16) of this section on a one-time basis to existing permittees.

(3) The Service will publish notice of all solicitations for competition in accordance with paragraph (d)(4) of this section and include reasonable application periods of not less than 60 days. When competitively selecting permittees for an activity in a use area where permits for that activity were not previously competitively awarded, the Service will publish notice of the upcoming opportunity a minimum of 18 months prior to the effective date of the permit term.

(4) All prospectuses will identify the selection criteria that the Service will use to evaluate the proposals. All prospectuses involving commercial visitor services must include experience and performance in providing the same or similar services as a criterion. In evaluating the experience of an applicant, the Service will specifically consider knowledge of the specific area covered by the prospectus and the nature of the technical skills required to provide quality service to the public.

(5) A panel of Service employees who use a scoring process based on the selection criteria will evaluate and rank applications received in response to a prospectus.

(6) The Service has discretionary authority to not evaluate or consider proposals that are incomplete or improperly submitted.

(7) The Service may establish minimum scores to qualify for the award of permits. If established, these minimum scores will be identified in the prospectus.

(8) The Service may establish limits on the number of use areas within an individual refuge, or on refuges statewide, in which a permittee is authorized to operate. This limit applies to different corporations in which the same individual has any ownership interests.

(9) When vacancies occur in competitively filled use areas, the procedure for reissuing the permits will depend on how long it has been since the permit originally was issued. The Service will award the permit to the next highest ranking interested applicant in the original solicitation, if a vacancy occurs within the first 12 months of the permit's effective date.

Resolicited competition for the area will occur as soon as practicable if:

(i) A vacancy occurs after 12 months of the permit's effective date; and

(ii) At least 24 months of the original permit term is available for a new permittee after completion of the solicitation, application, evaluation and awards period. If less than 24 months of the term of the permit is available, the Service has the discretion to solicit competition during the regularly scheduled solicitation period. The Service may annually issue noncompetitive permits for vacant areas, where there has not been significant permittee interest, until competition can be solicited in conjunction with other solicitations for vacant areas.

(10) Terms of permits awarded under the prospectus with invitation method are valid for 5 years except in those instances where the Service issues permits to fill vacancies occurring during a scheduled award cycle. In these instances, the permit duration is limited to the expiration date of the original award period. Permits awarded under the prospectus by invitation method must be renewed noncompetitively by the refuge manager for a period of 5 additional years upon application and a showing of permittee compliance with all applicable permit terms and conditions and a satisfactory record of performance. After one renewal, the Service shall not extend or noncompetitively renew another permit.

(11) Permit privileges may be transferred to other qualified entities that demonstrate the ability to meet Service standards, as outlined in the prospectus upon which the existing permit was based, subject to approval by the refuge manager. Requests for transfers must be made in writing to the refuge manager. A permittee who transfers his/her privileges will not be eligible to be considered for competitively awarded permits for the same type of activity on the same national wildlife refuge for a period of three years following the authorized transfer. The Service retains complete discretion in allowing transfers. In general, the Service approves transfers only upon demonstrating that it is to the government's benefit and if all the following criteria are satisfied:

(i) The transfer is part of the sale or disposition of the current permittee's entire business as earlier defined;

(ii) The current permittee was either conducting the commercial operation in the refuge under authorization of a permit for a minimum of 12 years or owns significant real property in the area, the value of which is dependent on holding a refuge permit. Consideration of the last element will include, but is not limited to:

(A) The relationship of the real property to permitted refuge activities as documented in the operations plan;

(B) The percentage that the authorized refuge activities comprise of the total commercial use associated with the real property; and

(C) The appraised value of the real property.

(iii) The transferee must be independently qualified to hold the permit under the standards of the prospectus of the original existing permit.

(iv) The transferee has an acceptable history of compliance with State and Federal fish and wildlife and related permit regulations during the past 5 years. An individual with any felony conviction is an ineligible transferee. Transfer approval to an individual having any violations, convictions, or pleas of nolo contendere for fish and wildlife related federal misdemeanors or State violations will be discretionary. Denial is based on, but not limited to, whether the individual committed any violation in which the case disposition resulted in any of the following:

(A) Any jail time served or probation;

(B) Any criminal fine of \$250 or greater;

(C) Forfeiture of equipment or harvested animal (or parts thereof) valued at \$250 or greater;

(D) Suspension of privileges or revocation of any fish and wildlife related license/permits;

(E) Other alternative sentencing that indicates the penalty is of equal severity to the foregoing elements; or

(F) Any multiple convictions or pleas of nolo contendere for fish and wildlife-related Federal misdemeanors or State fish and wildlife-related violations or misdemeanors irrespective of the amount of the fine.

(12) The transferee must follow the operations plan of the original permittee. The transferee may modify the operations plan with the written consent of the refuge manager as long as the change does not result in increased adverse impacts to refuge resources or other refuge users.

(13) Upon timely approval of the transfer, the Service will issue the new permittee a permit for the remaining portion of the original permit term. The refuge manager retains the right to restrict, suspend, revoke, or not renew the permit for failure to comply with its terms and conditions.

(14) Permit privileges issued under this paragraph (e) may be transferred, subject to refuge manager approval, to a former spouse when a court awards permit-associated business assets in a divorce settlement agreement to that person. The recipient must independently qualify to hold the originally issued permit under the minimum standards identified by the Service, and the permittee must have an acceptable history of compliance as set forth in paragraph (e)(11)(iv) of this section.

(15) Permit privileges issued under this paragraph (e) may be transferred in the case of death or disability of the permittee, subject to refuge manager approval, as provided in this paragraph (e). In these cases, the permit privileges may pass to a spouse who can demonstrate he/she is capable of providing the authorized services and who has an acceptable history of compliance as set forth in paragraph (e)(11)(iv) of this section. A spouse who lacks any required license(s) but otherwise qualifies may hire an employee, who holds the required license(s) and who has an acceptable history of compliance as set forth in paragraph (e)(11)(iv) of this section, to assist in the operation. Permit privileges may also pass to another member of the immediate family or a person who was a business partner at the time of original permit issuance. This person must be independently qualified under the minimum standards identified by the Service at the time of original permit issuance and have an acceptable history of compliance as set forth in paragraph (e)(11)(iv) of this section.

(16) Upon September 26, 1997, refuge managers will amend existing competitively-awarded permits through the prospectus method to make the terms fully consistent with this section, including eligibility for a 5-year non-competitive renewal.

(f) *Fees.* Permittees must pay fees formally established by regional and/or nation-wide Service policy. The refuge manager must document any fee exemption.

(g) *Subletting and subcontracting.* A permittee may not sublet any part of an authorized use area. Subcontracting any service authorized by the permit requires written approval from the refuge manager unless the subcontracted service is specifically identified in the permittee's approved operations plan.

(h) *Restriction, suspension and revocation of permits.* The refuge manager may suspend, revoke, or reasonably restrict the terms of a permit for noncompliance with the terms and conditions of the regulations in this subchapter C; for nonuse of the permit; for violations/convictions (including pleas of nolo contendere) of any law or regulation pertaining to the same type of activity authorized by the permit, whether or not the activity occurred on or off the refuge; to protect public health or safety; or if the refuge manager determines the use to be incompatible with refuge purposes or is inconsistent with the Service's obligations under Title VIII of the Alaska National Interest Lands Conservation Act. All actions pertaining to this paragraph are subject to the appeal process as set forth in paragraph (i) of this section.

(i) *Appeals.* (1) Any person adversely affected by a refuge manager's decision or order relating to the person's permit, or application for a permit, has the right to have the decision or order reviewed by the regional director. This section does not apply to permits or applications for rights-of-way. See 50 CFR 29.22 for the hearing and appeals procedure on rights-of-way.

(2) Prior to making any adverse decision or order on any permit or an application for a noncompetitively issued permit, the refuge manager will notify the permittee or applicant,

verbally or in writing, of the proposed action and its effective date. A permittee or applicant of noncompetitively issued permits, shall have 45 calendar days after notification in which to present to the refuge manager, orally or in writing, a statement in opposition to the proposed action or effective date. Notification in writing to a valid permit holder shall occur within 10 calendar days after receipt of the statement in opposition to the refuge manager's final decision or order. An applicant for a noncompetitively issued permit shall be notified in writing within 30 calendar days after receipt of the statement in opposition, of the refuge manager's final decision or order. An applicant for a competitively issued permit who is not selected will not receive advance notice of the award decision. Such applicants, who wish to appeal the decision must appeal directly to the regional director within the time period provided for in paragraph (i)(3) of this section.

(3) The permittee or applicant shall have 45 calendar days from the postmarked date of the refuge manager's final decision or order in which to file a written appeal to the regional director. In appeals involving applicants who were not selected during a competitive selection process, the selected applicant concurrently will have the opportunity to provide information to the regional director prior to the final decision. Selected applicants who choose to take advantage of this opportunity, will retain their right of appeal should the appeal of the unsuccessful applicant result in reversal or revision of the original decision. For purposes of reconsideration, appellants shall present the following information:

(i) Any statement or documentation, in addition to that included in the initial application, permit or competitive prospectus, which demonstrates that the appellant satisfies the criteria set forth in the document under which the permit application/award was made;

(ii) The basis for the permit applicant's disagreement with the decision or order being appealed; and

(iii) Whether or not the permit applicant requests an informal hearing before the regional director.

(4) The regional director will provide a hearing if requested by the applicant. After consideration of the written materials and oral hearing, and within a reasonable time, the regional director shall affirm, reverse, or modify the refuge manager's decision or order and shall set forth in writing the basis for the decision. The applicant must be sent a copy of the decision promptly. The decision will constitute final agency action.

(5) Permittee compliance with any decision or order of a refuge manager shall be required during the appeal process unless the regional director makes a preliminary finding contrary to the refuge manager's decision, and prepares a written determination that such action is not detrimental to the interests of the United States, or upon submission and acceptance of a bond deemed adequate by the refuge manager to indemnify the United States from loss or damage.

(j) *State selection of guide-outfitters.* Nothing in this section will prohibit the Service from

cooperating with the State of Alaska in administering the selection of sport fishing guides and big game hunting guide-outfitters operating on national wildlife refuges should the State develop a competitive selection process which is acceptable to the Service.

[62 FR 45340, Aug. 27, 1997]
