

## **Natural and Cultural Resources Management, Part 610 Wilderness Stewardship**

### **Chapter 2 Wilderness Administration and Resource Stewardship, 610 FW 2**

#### **2.12 May the Service authorize commercial enterprises and services in wilderness?**

A. Section 4(c) of the Wilderness Act prohibits commercial enterprises in wilderness.

B. Section 4(d)(6) of the Act includes a special provision for commercial services when such services are “necessary for activities which are proper for realizing the recreational or other wilderness purposes of the areas.” For example, guiding and outfitting services may provide opportunities for the public to enjoy wilderness and may enhance visitor appreciation of wilderness values. We may authorize commercial services, such as guiding and outfitting, if we determine that they:

- (1) Are appropriate and compatible,
- (2) Necessary for the public enjoyment of wilderness,
- (3) Provide opportunities for primitive and unconfined types of recreation,
- (4) Preserve wilderness character, and
- (5) Are managed in concert with our other policies and enabling legislation.

C. Commercial service providers may not use motor vehicles, motorized equipment, motorboats, or other forms of mechanical transport; permanent structures or installations; land aircraft; or establish temporary roads. We regulate commercial services through special use permits. See 610 FW 5 for some of the additional provisions applicable in Alaska.

D. We generally prohibit commercial photography 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 we manage the use through an audiovisual productions permit. (See 43 CFR 5.)

E. Wilderness areas may incorporate commercial-free zones where we prohibit all commercial services. We determine the need for use limitations and commercial-free zones through the unit’s WSP or CCP. In cases where it is necessary for us to limit use, we will seek to provide a fair balance between commercial and private uses of wilderness, recognizing that in extreme cases, accommodating both types of uses may not always be possible. See 610 FW 5 for some of the additional provisions applicable in Alaska.

F. We conduct and document an MRA for all proposed commercial services in wilderness to determine whether allowing a commercial service is the minimum requirement for administering the area as wilderness and is necessary to accomplish the purposes of the refuge, including Wilderness Act purposes. The MRA clarifies the need for and impacts of a proposed action.

#### **2.13 How does the Service manage permits for commercial services?**

A. If the refuge has an approved WSP less than 15 years old, and it includes a written MRA for each proposed commercial service, we may authorize those services as described in the plan. The analysis in the WSP must include an estimate of the extent of the services.

(1) If circumstances associated with the service or its effects significantly change, or we want to allow the same service in a different part of the wilderness, we may need to reevaluate the service for appropriateness and compatibility and conduct a new MRA.

(2) If we did not identify a proposed service in the WSP, we must ensure that appropriateness and compatibility determinations are current, and we must conduct an MRA before we allow the proposed service.

(3) If the refuge does not have an approved WSP or has one more than 15 years old, we must ensure that appropriateness and compatibility determinations are current, and we must conduct a new MRA before renewing a special use permit for commercial services.

B. When we determine a commercial service is necessary, we must then determine parameters (such as location, timing, extent, etc.) so that there will be the least possible impact on all of the area's wilderness character, including the natural conditions and cultural resources, outstanding opportunities for solitude, and potential for the public to have a primitive and unconfined type of recreational experience.

C. We consider not only the direct impacts of the commercial service, but also the indirect impacts associated with the service. We also consider the cumulative impacts of the service when conducted in conjunction with other existing or planned uses or actions in the wilderness areas. Following the nondegradation principle, the conditions prevailing in an area at the time of wilderness designation establish a benchmark for assessing the significance of a proposed service's impacts on wilderness character.

D. Commercial operators must employ all applicable Leave No Trace (LNT) standards and techniques. We generally allow only temporary structures and facilities (such as tents) that are the minimum necessary to support wilderness recreation. We require their removal at the end of the actual use period, unless specifically permitted otherwise. We will determine the distance the structures must be located away from main trails; sensitive habitats such as riparian zones, wetlands, streams, rivers, ponds, and lakes; significant cultural resources; other key interest features; and public use areas not used for commercial services, as well as other restrictions that may be necessary to preserve wilderness character. We generally prohibit commercial service providers from permanently storing equipment and supply caches in wilderness areas. See 610 FW 5 for special provisions applicable in Alaska.

## **Chapter 5 Special Provisions for Alaska Wilderness, 610 FW 5**

### **5.13 What provisions apply to commercial enterprises and services in Alaska wilderness areas?**

A. Except as described in section 4(d)(6) of the Wilderness Act, commercial enterprises are prohibited in wilderness (see 610 FW 2.12). However, sections 304(d) and 707 of ANILCA in conjunction with section 4(c) of the Wilderness Act authorize the exercise of valid commercial fishing rights in Alaska refuge system wilderness.

(1) We may restrict or prohibit the exercise of these rights or privileges pertaining to the use of Federal lands if, after conducting a public hearing in the affected locality, we determine that they are inconsistent with the purposes of the refuge and that they

constitute a significant expansion of the commercial fishing activities within the refuge beyond the level of such activities during 1979.

(2) Under section 1316(a), we allow, subject to reasonable regulation, temporary campsites, tent platforms, shelters, and other temporary facilities and equipment (including the use of motorized vehicles) and aircraft landings (also see section 4(d) of the Wilderness Act) directly related to the exercise of valid commercial fishing rights (see section 5.15 for guidance on temporary facilities and equipment related to the taking of fish and wildlife).

(3) We issue special use permits for existing commercial cabins associated with commercial fishing operations following the regulation at 50 CFR 36.33(e)(3). We do not allow new commercial cabins in wilderness areas. (See section 5.14 for guidance on management of structures and installations.)

B. We manage visitor services using special use permits following section 1307 of ANILCA and the regulations at 50 CFR 36.37 and 36.41.

## **603 FW 2 Compatibility, FWS Manual**

[www.fws.gov/policy/603fw2.html](http://www.fws.gov/policy/603fw2.html)

2.1 What is the purpose of this chapter? This chapter provides policy for determining compatibility of proposed and existing uses of national wildlife refuges.

2.2 What does this policy apply to? This policy applies to all proposed and existing uses of national wildlife refuges where we have jurisdiction over such uses.

2.3 What is the compatibility policy? The refuge manager will not initiate or permit a new use of a national wildlife refuge or expand, renew, or extend an existing use of a national wildlife refuge unless the refuge manager has determined that the use is a compatible use.

2.6 What do these terms mean?

A. Compatibility determination. A written determination signed and dated by the refuge manager and Regional Chief signifying that a proposed or existing use of a national wildlife refuge is a compatible use or is not a compatible use. The Director makes this delegation through the Regional Director.

B. Compatible use. A proposed or existing wildlife-dependent recreational use or any other use of a national wildlife refuge that, based on sound professional judgment, will not materially interfere with or detract from the fulfillment of the National Wildlife Refuge System mission or the purposes of the national wildlife refuge.

M. Refuge management activity. An activity conducted by the Service or a Service-authorized agent to fulfill one or more purposes of the national wildlife refuge, or the National Wildlife Refuge System mission. Service-authorized agents include contractors, cooperating agencies, cooperating associations, refuge support groups, and volunteers.

Q. Refuge use, and Use of a refuge. A recreational use (including refuge actions associated with a recreational use or other general public use), refuge management economic activity, or other use of a national wildlife refuge by the public or other non-National Wildlife Refuge System entity.

2.10 When is a compatibility determination not required?

A. Refuge management activity. We do not require a compatibility determination for refuge management activities as defined by the term "refuge management activity" except for "refuge management economic activities." Examples of refuge management activities that do not require a compatibility determination include: prescribed burning; water level management; invasive species control; routine scientific monitoring, studies, surveys, and censuses; historic preservation activities; law enforcement activities; and maintenance of existing refuge facilities, structures, and improvements. In addition, we do not require compatibility determinations for State wildlife management activities on a national wildlife refuge pursuant to a cooperative agreement between the State and the Fish and Wildlife Service where the refuge manager has made a written determination that such activities support fulfilling the refuge purposes or the System mission.

### **603 FW 1 Appropriate Refuge Uses**

[www.fws.gov/policy/603fw1.html](http://www.fws.gov/policy/603fw1.html)

1.1 What is the purpose of this chapter? This chapter provides a national framework for determining appropriate refuge uses. In addition, this chapter provides the policy and procedure for refuge managers to follow when deciding if uses are appropriate on a refuge. This policy also clarifies and expands on the compatibility policy ([603 FW 2.10D](#)), which describes when refuge managers should deny a proposed use without determining compatibility. When we find a use is appropriate, we must then determine if the use is compatible before we allow it on a refuge.

1.2 What does this policy cover? This policy applies to all proposed and existing uses in the National Wildlife Refuge System (Refuge System) only when we have jurisdiction over the use. This policy does not apply to:

A. Situations Where Reserved Rights or Legal Mandates Provide We Must Allow Certain Uses. For example, we usually will not apply this policy to proposed public uses of wetland or grassland easement areas of the Refuge System. The rights we have acquired on these areas generally do not extend to control over such public uses except where those uses would conflict with the conditions of the easement.

B. Refuge Management Activities. Refuge management activities are designed to conserve fish, wildlife, and plants and their habitats and are conducted by the Refuge System or a Refuge System-authorized agent to fulfill a refuge purpose(s) or the Refuge System mission. These activities fulfill refuge purpose(s) or the Refuge System mission, and we base them on sound professional judgment. Refuge management activities are fish and wildlife population or habitat management actions including, but not limited to: prescribed burns, water level management, invasive species control, routine scientific monitoring, law enforcement activities, and maintenance of existing refuge facilities. We consider State fish and wildlife agency activities refuge management activities that are not subject to this policy when they:

(1) Directly contribute to the achievement of refuge purpose(s), refuge goals, and the Refuge System mission, as determined by the refuge manager in writing,

(2) Are addressed in a document such as a Regional or California/Nevada Operations Office (CNO) memorandum of understanding or a comprehensive conservation plan (CCP), or

(3) Are approved under national policy.

A. Appropriate Use. A proposed or existing use on a refuge that meets at least one of the following four conditions.

(1) The use is a wildlife-dependent recreational use as identified in the Improvement Act.

(2) The use contributes to fulfilling the refuge purpose(s), the Refuge System mission, or goals or objectives described in a refuge management plan approved after October 9, 1997, the date the Improvement Act was signed into law.

(3) The use involves the take of fish and wildlife under State regulations.

(4) The use has been found to be appropriate as specified in [section 1.11](#).

D. Specialized Uses. These uses require specific authorization from the Refuge System, often in the form of a special use permit, letter of authorization, or other permit document. These uses do not include uses already granted by a prior existing right. We make appropriateness findings for specialized uses on a case-by-case basis. Before we will consider a specialized use, we must make an appropriateness finding as defined in [section 1.11A\(3\)](#) of this chapter. Any person whose request for a specialized use is denied or who is adversely affected by the refuge manager's decision relating to a permit may appeal the decision. In these situations, the person should follow the appeal process outlined in [50 CFR 25.45](#) and, for Alaska refuges, in [50 CFR 36.41\(i\)](#). The appeal process for denial of a right-of-way application is in 50 CFR 29.22. The appeal process for persons who believe they have been improperly denied rights with respect to providing visitor services on Alaska refuges is in [50 CFR 36.37\(g\)](#). Some common examples of specialized uses include:

(8) Commercial uses. Commercial uses of a refuge may be appropriate if they are a refuge management economic activity (see [50 CFR 25.12](#)), if they directly support a priority general public use, or if they are specifically authorized by statute (such as ANILCA). See [50 CFR 29.1](#) for additional information on economic uses of the natural resources of refuges. An example of a commercial use that may be appropriate is a concession-operated boat tour that facilitates wildlife observation and interpretation. We will review all commercial uses to decide if they are appropriate as defined in [section 1.11](#).