



Thursday
September 9, 1999

Part II

**Department of the
Interior**

Fish and Wildlife Service

**50 Parts 25, 26 and 29
Proposed Compatibility Regulations
Pursuant to the National Wildlife Refuge
System Improvement Act of 1997 and
Draft Compatibility Policy Pursuant to the
National Wildlife Refuge System
Improvement Act of 1997; Proposed Rule
and Notice**

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****50 CFR Parts 25, 26, and 29**

1018-AE98

Proposed Compatibility Regulations Pursuant to the National Wildlife Refuge System Improvement Act of 1997

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We propose to establish in regulations, the process for determining whether or not a use of a national wildlife refuge is a compatible use. The National Wildlife Refuge System Improvement Act of 1997 (NWRISA-1997), that amends the National Wildlife Refuge System Administration Act of 1966 (NWRISA-1966) requires this rulemaking. Published concurrently in this issue of the **Federal Register** is our draft compatibility policy describing in more detail the process for determining whether or not a use of a national wildlife refuge is a compatible use.

DATES: Submit comments on or before November 8, 1999.

ADDRESSES: Send comments concerning this proposed compatibility regulation via mail, fax or email to: Chief, Division of Refuges, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 670, Arlington, Virginia 22203; fax (703) 358-2248; e-mail Compatibility_Regulations_Comments@fws.gov.

FOR FURTHER INFORMATION CONTACT: Jim Kurth, Chief, Division of Refuges, U.S. Fish and Wildlife Service, Telephone (703) 358-1744.

SUPPLEMENTARY INFORMATION: The NWRISA-1997 amends and builds upon the NWRISA-1966, providing an "Organic Act" for the National Wildlife Refuge System. It clearly establishes that wildlife conservation is the singular National Wildlife Refuge System Mission, provides guidance to the Secretary of the Interior (Secretary) for management of the National Wildlife Refuge System, provides a mechanism for national wildlife refuge planning, and gives Refuge Managers uniform direction and procedures for making decisions regarding wildlife conservation and uses of the National Wildlife Refuge System.

The NWRISA-1966 required the Secretary, before permitting uses, to ensure that those uses are compatible with the purposes of the national

wildlife refuge. We built this legal requirement into our policy and regulation. For 32 years, the compatibility standard for national wildlife refuge uses has helped us manage national wildlife refuge lands sensibly and in keeping with the general goal of putting wildlife conservation first. The NWRISA-1997 maintains the compatibility standard as provided in the NWRISA-1966, provides significantly more detail regarding the compatibility standard and compatibility determination process, and requires that we promulgate the compatibility process in regulations. These regulations will ensure that compatibility becomes a more effective conservation standard, more consistently applied across the entire National Wildlife Refuge System, and more understandable and open to involvement by the public.

Compatibility and the NWRISA-1997

The NWRISA-1997 includes a number of provisions that specifically address compatibility. The following is a summary of those provisions and how they apply to us.

We 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 we have determined that the use is a compatible use and that the use is not inconsistent with public safety. We may make compatibility determinations for a national wildlife refuge concurrently with the development of a Comprehensive Conservation Plan.

On lands added to the National Wildlife Refuge System after March 25, 1996, we will identify, prior to acquisition, withdrawal, transfer, reclassification, or donation of any such lands, existing compatible wildlife-dependent recreational public uses (if any) that we will permit to continue on an interim basis pending completion of a Comprehensive Conservation Plan for the national wildlife refuge.

We may authorize wildlife-dependent recreational uses on a national wildlife refuge when we determine they are compatible uses and are not inconsistent with public safety. We are not required to make any other determinations or findings to comply with the NWRISA-1966 or the Refuge Recreation Act of 1962 (RRA-1962) for wildlife-dependent recreational uses to occur except for consideration of consistency with State laws and regulations.

Compatibility determinations in existence on the date of enactment of the NWRISA-1997, October 9, 1997, will remain in effect until and unless

modified. In addition, we will make compatibility determinations prepared during the period between enactment of the NWRISA-1997 and the effective date of these compatibility regulations under the existing compatibility process. After the effective date of these regulations, we will make compatibility determinations and re-evaluations of compatibility determinations under the compatibility process in these regulations.

By October 9, 1999, we will issue final regulations establishing the process for determining whether or not a use of a national wildlife refuge is a compatible use. These regulations will:

1. Identify the refuge official responsible for making compatibility determinations;
2. Require an estimate of the time-frame, location, manner, and purpose of each use;
3. Require the identification of the effects of each use on national wildlife refuge resources and purposes of each national wildlife refuge;
4. Require that compatibility determinations be made in writing;
5. Provide for the expedited consideration of uses that will likely have no detrimental effect on the fulfillment of the affected national wildlife refuge's purposes or the National Wildlife Refuge System Mission;
6. Provide for the elimination or modification of any use as expeditiously as practicable after we make a determination that the use is not a compatible use;
7. Require, after an opportunity for public comment, reevaluation of each existing use, other than wildlife-dependent recreational uses, if conditions under which the permitted use change significantly or if there is significant new information regarding the effects of the use, but not less frequently than once every 10 years, to ensure that the use remains a compatible use. In the case of any use authorized for a period longer than 10 years (such as an electric utility right-of-way), the reevaluation will examine compliance with the terms and conditions of the authorization, not examine the authorization itself;
8. Require, after an opportunity for public comment, reevaluation of each existing wildlife-dependent recreational use when conditions under which the permitted use change significantly or if there is significant new information regarding the effects of the use, but not less frequently than in conjunction with each preparation or revision of a comprehensive conservation plan or at

least every 15 years, whichever is earlier; and

9. Provide an opportunity for public review and comment on each evaluation of a use, unless we have already provided an opportunity during the development or revision of a Comprehensive Conservation Plan for the national wildlife refuge or have already provided an opportunity during routine, periodic determinations of compatibility for wildlife-dependent recreational uses.

Purpose of This Proposed Rule

The purpose of this proposed rule is to establish in regulation, the process for determining compatibility of proposed national wildlife refuge uses and procedures for documentation and periodic review of existing uses, and to ensure that we administer proposed and existing uses according to the compatibility provisions of the NWRSA-1997. Published concurrently in this **Federal Register** is our draft compatibility policy, Part 603 Chapter 3 (draft) of the Fish and Wildlife Service Manual, which reflects this proposed rule and provides additional detail for each step in the compatibility determination process.

Specific Changes to 50 CFR Part 25

We are revising § 25.12(a) by adding 20 new definitions and revising 3 existing definitions. Of the 20 new definitions, the NWRSA-1997 provides 11 ("compatible use," "conservation, and management," "Director," "fish, wildlife, and fish and wildlife," "National Wildlife Refuge System Mission, and Refuge System Mission," "plant," "purpose(s) of the refuge," "Secretary," "sound professional judgment," "State, and United States," and "wildlife-dependent recreational use, and wildlife-dependent recreation") and we developed 9 ("compatibility determination," "comprehensive conservation plan," "Refuge Manager," "refuge use, and use of a refuge," "refuge management economic activity," "refuge management activity," "Regional Director," "Service, and we," and "you"). The 3 existing definitions ("coordination area," "national wildlife refuge, and refuge" and "National Wildlife Refuge System, and Refuge System") that we are revising are provided in the NWRSA-1997 and are not significantly different from the existing ones. These definitions are necessary to consistently determine compatibility of proposed national wildlife refuge uses.

We are revising and expanding § 25.21 in order to explain how we open

and close a national wildlife refuge to public access and use, and how we continue to allow an existing use of a national wildlife refuge. Currently, this part only addresses closing national wildlife refuges. We are expanding this section because this is the most appropriate place in this subchapter to state not only how we close a national wildlife refuge but how we open a national wildlife refuge and continue a use on a national wildlife refuge. This revision of § 25.21 consolidates existing regulations but does not change existing regulations regarding how we open and close national wildlife refuges or continue uses on national wildlife refuges. The following is a discussion of the specific sections we are adding.

Paragraph (a) of § 25.21—When and how do we open and close areas of the National Wildlife Refuge System to public access and use or continue a use?—states our long-standing policy and regulation under the NWRSA-1966 that presumes that national wildlife refuges are closed to public access and use until they are specifically opened to public access and use. Simply stated, the NWRSA-1966 closes national wildlife refuges until we administratively open them. This section also states that we may open national wildlife refuges by a number of methods. Depending on the type of allowed use, the Refuge Manager has several ways to open a given national wildlife refuge. For example, to open a national wildlife refuge to hunting, we revise a list of refuges allowing hunting found at 50 CFR part 32, whereas to open a national wildlife refuge to wildlife observation we may do so by posting a sign at an appropriate location. This revised section does not change the various ways we currently open a national wildlife refuge.

Paragraph (b) of § 25.21 states that we cannot allow a use of a national wildlife refuge unless we first determine that the use is a compatible use, except in emergencies when we may temporarily allow uses to protect the public or wildlife. This comes directly from the NWRSA-1997. In addition, this section states that the compatibility standard applies to the development and use of Alaska Native Claims Settlement Act, Section 22(g) village lands in Alaska national wildlife refuges. The Alaska Statehood Act of 1959 allowed the new state to select 104 million acres of Federal lands (outside of existing parks, national wildlife refuges, and military reservations) but left the matter of Native land claims "* * * for either future legislative action or judicial determination." Passage of the Alaska Native Claims Settlement Act (ANCSA)

(December 18, 1971) later settled Native land claims by providing a cash settlement over a number of years, together with 44 million acres to be selected from Federal public lands. Section 22(g) of ANCSA provides, that "[I]f a patent is issued to any Village Corporation for land in the National Wildlife Refuge System, the patent shall reserve to the United States the right of first refusal if the land is ever sold by the Village Corporation.

Notwithstanding any other provision of this Act, every patent issued by the Secretary pursuant to this Act—which covers lands lying within the boundaries of a National Wildlife Refuge on the date of enactment of this Act shall contain a provision that such lands remain subject to the laws and regulations governing use and development of such Refuge." The legislative history of ANCSA 22(g) clearly illustrates the Congressional intent that the national wildlife refuge compatibility standard applies as a protection to the basic integrity of the pre-1971 refuge lands from which ANCSA village conveyances may be made. S. Rep. No. 92-405, at 34 in a section-by-section analysis explains: "[T]his subsection provides that every patent issued by the Secretary pursuant to this section which covers lands lying within the boundaries of a Federal wildlife refuge on the date of Enactment of this Act, shall contain a provision that such lands shall remain subject to the laws and regulations governing use and development of refuges, as long as the lands continue within its boundaries. The purpose of this provision and limitation is to insure that the activities which take place within the refuges are compatible with the purposes for which the refuge was established. This section also assures continuing review by the appropriate Federal agencies."

Paragraph (c) of § 25.21 is a requirement to identify and inform the public, prior to adding lands to the National Wildlife Refuge System, as to which existing wildlife-dependent recreational public uses we will allow to continue on the newly added lands between the time we acquire the lands and completion of a Comprehensive Conservation Plan. This does not relieve us from the requirement that before we may allow a use on a national wildlife refuge, we must first determine that it is a compatible use. We will prepare a compatibility determination as we would for any other use, but in this case we will prepare the compatibility determination prior to adding the land to the National Wildlife Refuge System.

This comes directly from the NWRSA-1997.

Paragraph (d) of § 25.21 states that we may close a national wildlife refuge to public access and use. This is essentially the same language as currently exists in § 25.21 and does not change the way we currently close a national wildlife refuge.

Paragraphs (e), (f), and (g) of § 25.21 require that we must periodically re-evaluate uses to ensure that they continue to be compatible. The NWRSA-1997 provides specific criteria for re-evaluating three categories of uses (wildlife-dependent recreational uses, uses other than wildlife-dependent recreational uses except for uses authorized for more than 10 years, and uses authorized for more than 10 years). The re-evaluation schedule for wildlife-dependent recreational uses is tied closely to the Comprehensive Conservation Plan schedule. We must re-evaluate this category of uses at least every 15 years which is the same minimum requirement for revising Comprehensive Conservation Plans. The re-evaluation schedule for uses other than wildlife-dependent recreational uses is more stringent. We must re-evaluate this category of uses at least every 10 years. The third category is for special activities such as the granting of a utility line right-of-way which may require a term beyond ten years. The NWRSA-1997 limits the re-evaluation in these cases to whether the original terms and conditions of the permit had been complied with by the permittee.

We will most likely re-evaluate the first two categories of uses more often than the minimum requirement because new information may become available or the conditions for conducting the use may change that would engage the re-evaluation requirement.

As noted previously, the NWRSA-1997 specifically separates out uses authorized for a period longer than 10 years, and this will almost always involve a right-of-way use. The primary reason for this particular separation is to clarify that once we prepare a compatibility determination for a use specifically authorized for a relatively long period of time (greater than 10 years), we will not re-evaluate the use for compatibility until and unless the authorization has expired and we are considering extending or renewing the authorization. When we authorize a use for greater than 10 years, we develop terms and conditions associated with the use that the permittee must follow. We design terms and conditions to ensure that the authorized use will remain compatible, and we check

compliance regularly with these terms and conditions.

We are revising § 25.44 to incorporate the definition of compatibility from the NWRSA-1997 and to remove the option of using mitigation measures to make uses of easement areas of a national wildlife refuge compatible. We also changed the heading to comply with the plain language requirement for new regulations. The following is a discussion of the specific revised sections.

We are revising paragraph (b) of § 25.44 by placing a period after the word "compatible" and deleting "with the purposes for which the easement was acquired" in the third sentence. It is necessary to either end the sentence after the word "compatible" or repeat the entire definition of compatible which we now define in § 25.12. Since we use the term "compatible use" extensively throughout subchapter C, we will define this term in the definitions section and then only use the term without repeating the definition. We also made minor word changes to comply with the plain language requirement for new regulations.

We are revising paragraph (c)(1) of § 25.44 by placing a semicolon after the word "compatible" and deleting "with the purposes for which the Service's easement was acquired." This is necessary for the same reason described in the above paragraph.

We are removing paragraph (d) of § 25.44 for the reasons stated in the discussion of proposed paragraph (b) of § 26.41.

Specific Changes to 50 CFR Part 26

We are adding § 26.41 to establish in regulations the process for determining whether or not a proposed or existing use of a national wildlife refuge is a compatible use. Rather than revise an existing section of part 26 to include this process, we believe it should be a separate section within part 26.

This section clearly states that we cannot allow a use of a national wildlife refuge unless we first determine that it is a compatible use. This has been a legal requirement since 1962 for recreational uses and since 1966 for all uses. This rule does not change that legal requirement; however, it more clearly states the requirement and provides additional detail of how we will make the determination. This section requires that we make all compatibility determinations in writing and include the following information which is necessary to make the determination:

(1) *The proposed or existing use being evaluated.* This may be an individual use or a group of closely related uses or a use program. Whenever practicable, the Refuge Manager will concurrently consider similar uses or uses that are likely to have similar effects, in order to facilitate analysis of cumulative effects. This includes, all uses as defined by the term "refuge use" to mean a recreational use, refuge management economic activity, refuge action undertaken principally to support a recreational or other general public use, or other use of a national wildlife refuge by the public or other non-Service entity.

(2) *The name of the national wildlife refuge.* We will state the name of the national wildlife refuge where the proposed use may occur or where the existing use is occurring.

(3) *The authorities used to establish the national wildlife refuge.* This could include a variety of authorities including Executive Orders, public land orders, Secretarial Orders, refuge-specific legislation, or general legislation. For example, the establishing authority for Archie Carr National Wildlife Refuge in Florida is the Endangered Species Act of 1973 and for Breton National Wildlife Refuge in Louisiana it is Executive Order 7938.

(4) *The major purposes of the national wildlife refuge.* This will be a statement of the major purposes for which the refuge was established and will be based on those things that are referenced in the definition of the term "purposes of the refuge." For example, the purposes of Okefenokee National Wildlife Refuge in Georgia are "* * * as a refuge and breeding ground for migratory birds and other wildlife: * * *" Executive Order 7593, dated March 30, 1937, "* * * for use as an inviolate sanctuary, or for any other management purpose, for migratory birds." 16 U.S.C. 715d (Migratory Bird Conservation Act) and "* * * to conserve (A) fish or wildlife which are listed as endangered species or threatened species * * * or (B) plants * * *" 16 U.S.C. 1534 (Endangered Species Act of 1973).

(5) *The National Wildlife Refuge System Mission.* The Mission of the National Wildlife 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." This is directly from the NWRSA-1997.

(6) *The nature and extent of the use including the following: (i) What is the use? (ii) Where would the use be*

conducted? (iii) When would the use be conducted? (iv) How would the use be conducted? This will include such things as specific areas of the national wildlife refuge where the use would take place, habitat types and acres involved, key species in the area, time of year and duration of the use, number of people involved, and facilities needed.

With regard to facilities, structures, or improvements constructed or installed by us (or at our direction) in conjunction with a use, and refuge management activities undertaken in conjunction with a use, Part 603 Chapter 3 (draft) Section 3.9 of the Service Manual makes it clear to Refuge Managers that they must consider these things when making compatibility determinations. This requirement will apply to all such facilities, structures, improvements, and refuge actions associated with uses that we approve on or after the effective date of these regulations and to the replacement or major repair or alteration of facilities, structures, and improvements associated with already approved uses.

It goes without saying that these facilities, structures, and improvements are and have been subject to compatibility determinations when proposed by an applicant as part of a requested use. It has not, however, been our clear policy to include these types of facilities, structures, or improvements in such analyses when we have built or installed them. We have historically viewed them as part of our management activities and, as a general matter, they have not specifically been the subject of the compatibility determinations.

The NWRSA-1997's amendments to the NWRSA-1966 have caused us to re-address this issue. Requiring Refuge Managers to ensure that our installed facilities and management activities that are associated with public uses are compatible will provide an additional measure of protection for each national wildlife refuge and for the National Wildlife Refuge System. It will further enable us to accomplish the Secretary's responsibilities under the NWRSA-1997's amendments to conserve fish, wildlife, plants, and their habitats; to ensure the biological integrity, diversity and environmental health of the National Wildlife Refuge System; and to ensure that we carry out the purposes of each national wildlife refuge and the National Wildlife Refuge System Mission.

With regard to refuge management economic activities (defined at § 25.12), we are also making it clear in Part 603 Chapter 3 (draft) Section 3.9 of the Service Manual that whenever an

activity designed to achieve a management objective but performed by a member of the public will result in the generation of income or in a commodity that is or can be sold or traded by them, a Refuge Manager must make a compatibility determination before allowing the activity. The issue here is that some management activities (timber harvesting in order to provide a certain type of habitat, for example) can also generate local economic dependency upon a continuation of the activity or create an appearance that it is a use, not a management activity. In some instances, such a dependency could outweigh and override the management needs of the refuge and in fact become more in the nature of a use. In some past instances, this local economic dependency ultimately outweighed and overrode the biological needs or interests of the affected national wildlife refuges and became not compatible. We believe that the local economic aspect of these refuge management economic activities enhances the possibility of compatibility problems, thereby warranting the preparation of compatibility determinations. This requirement will apply to all refuge management economic activities approved or extended on or after the effective date of these regulations.

We want to make it clear that because a compatibility determination is not being required for other Service management activities, those activities will not escape scrutiny. To properly manage a national wildlife refuge, a Refuge Manager must take actions that will lead toward accomplishing the purposes of that national wildlife refuge. This, in fact, is a different but higher standard than that applied to uses. Authorizing a use requires the Refuge Manager to find that it will "not materially interfere with or detract from" fulfilling the refuge purposes and Refuge System Mission, whereas management activities of a Refuge Manager must be for accomplishing those purposes. Refuge Managers are constantly engaging in the difficult job of marshaling the necessary resources and equipment, controlling uses, providing the necessary habitat, managing personnel, seeking enhanced budget allocations, and taking numerous other actions all with the ultimate goal of accomplishing those purposes. Each Refuge Manager is responsible for ensuring that what we do at each particular national wildlife refuge in the name of management is done with that goal in mind.

(7) *An analysis of costs for administering and managing each use.* This will be an analysis of adequate

resources (including financial, personnel, facilities, and other infrastructure) to properly develop, operate, and maintain the use at an acceptable level. It would include: resources involved in the administration and management of the use; special equipment, facilities or improvements necessary to support the use and comply with disabled access requirements, such as costs associated with special equipment, physical changes, or necessary improvements; maintenance costs associated with the use (e.g., trail maintenance and mowing, signing, garbage pickup or sanitation costs, parking areas, road repair or grading, building or structure repair, including blinds, boat ramps, kiosks, etc.); and monitoring costs to assess the impact of uses over time. This analysis of cost for administering and managing each use will only include the incremental increase above general operational costs that we can show as being directly caused by the proposed use.

(8) *The anticipated impacts of the use on the national wildlife refuge's major purposes and the National Wildlife Refuge System Mission.* This will include an assessment of the potential impacts of a proposed use on the national wildlife refuge purposes and the National Wildlife Refuge System Mission. Refuge Managers will use available sources of information to substantiate their analysis. Sources may include planning documents, environmental assessments, environmental impact statements, annual narratives, information from previously-conducted or ongoing research, data from refuge inventories or studies, published literature on related biological studies, State conservation management plans, field management experience, etc. We do not require Refuge Managers to independently generate new data on which to base compatibility determinations but rather to work with available information. The Refuge Manager may work at his or her discretion with the proponent of the use to gather additional information before making the determination. If the available information is insufficient to document that a proposed use will be compatible, the use is not compatible, and we will not authorize or permit the use.

(9) *A logical explanation describing how the proposed use affects fulfillment of the national wildlife refuge's major purposes and the National Wildlife Refuge System Mission.* After completing steps 1-8, the Refuge Manager will provide a written and logical explanation of the rationale for,

or the rational basis behind, the determination. The justification will describe how the proposed use affects the fulfillment of the national wildlife refuge's major purposes and the National Wildlife Refuge System Mission.

(10) *The amount of opportunity for public review and comment provided.* The Refuge Manager will provide an adequate opportunity for public review and comment on the proposed refuge use before issuing a final compatibility determination. Providing for public review and comment includes actively seeking to identify and inform individuals and organizations reasonably affected by or interested in the proposed refuge use. Additionally, review and comment will offer the public the opportunity to provide relevant information and express their views on whether or not a use is compatible. The Refuge Manager will determine the level of opportunity for public review and comment that is necessary or appropriate based upon the complexity or controversial nature of the use, the anticipated adverse impacts to the refuge and potential public interest. For compatibility determinations prepared concurrently with Comprehensive Conservation Plans, we can achieve public review and comment concurrently with the public review and comment of the draft Comprehensive Conservation Plan and associated NEPA document. For compatibility determinations prepared separate from a Comprehensive Conservation Plan, we will determine the appropriate level of opportunity for public review and comment through a tiered approach. For minor, incidental, or one-time uses which have been shown by past experience at this or other refuges in the Refuge System to result in no significant, cumulative, lingering or continuing adverse impacts to the refuge and would likely generate minimal public interest, the public review and comment requirement can be accomplished by posting a notice of the proposed determination at the refuge headquarters so as to maximize the opportunity for comment as is practicable. For all other uses, at a minimum, the Refuge Manager will solicit public comment by placing a public notice in a newspaper with wide local distribution. The notice must contain, at a minimum: a brief description of the compatibility determination process, a description of the use that is being evaluated, the types of information that may be used in completing the evaluation, how to provide comments, when comments are

due, and how people may be informed of the decision the Refuge Manager will make regarding the use. The public will be given at least 14 calendar days to provide comments following the day the notice is published. This period may be reduced by the Refuge Manager when there is not sufficient time to provide the full 14-days. For evaluations of controversial or complex uses, the Refuge Manager should expand the public review and comment process to allow for additional opportunities for comment. This may include newspaper or radio announcements, notices or postings in public places, notices in the **Federal Register**, letters to potentially interested people such as adjacent landowners, holding public meetings, or extending the comment period.

(11) *Whether the use is compatible or not compatible.* The Refuge Manager will simply identify whether the use is compatible or not compatible based on the explanation under (9), above.

(12) *Stipulations necessary to ensure compatibility.* This will include such protective stipulations, detailed and specific, that are necessary for a particular use to be compatible. They may include such things as: limitations on time (daily, seasonal, or annual) or space where the use would occur; the routes or forms of access for the use; restrictions on the types of equipment used; and the number of people involved.

(13) *The name of the Regional Office Supervisor or designee that was consulted with and date of consultation prior to approving each compatibility determination.* Prior to approving each compatibility determination, the Refuge Manager will consult with their Regional Office Supervisor or designee. The Refuge Manager will document the consultation by recording on the compatibility determination form the date and name of person consulted with.

(14) *The Refuge Manager's signature and date signed.* The Refuge Manager will sign and date the compatibility determination.

Paragraph (b) of § 26.41 states that we will not allow making proposed refuge uses compatible through replacement of lost habitat values or other compensation (sometimes referred to as "mitigation" or as a component of mitigation.) This does not change the current general application of the compatibility standard and represents a change only in our application of the standard with regard to rights-of-way and easement area uses. The review and analysis of current regulations that we conducted while complying with the mandate of the NWRSA-1997 to issue

compatibility regulations caused us to look into the right-of-way and easement area uses regulations. We found no authority in law to allow an incompatible use where the Service receives some sort of compensatory mitigation. In this regard, we are also proposing to delete paragraph (d) of § 25.44, which authorizes the Service to require "mitigation measures" within the easement area to "make the proposed use compatible" and paragraph (c) of § 29.21-7, which authorizes the Service to require "mitigation measures" on- or off-site to "make the proposed use compatible."

A use is either compatible or not, and the fact that some "incompatible" impact might be compensated for by doing something to make up for the impacts cannot make a use compatible for purposes of the NWRSA-1966. This change does not alter our current practice that if a use as proposed is deemed not compatible, the applicant can certainly re-propose or amend the original proposed use to avoid the troublesome impacts and render the use compatible.

Paragraph (c) of § 26.41 requires us to either terminate an existing use or modify an existing use to make it compatible as expeditiously as practicable whenever we determine an existing use is not compatible. For example, if a group of colonial nesting birds began nesting in an area open to fishing by motorized boats, and, consequently, we determined fishing in this area to be not compatible because of disturbance to the nesting birds, we would likely modify the fishing program (prohibit fishing from that particular portion of the area open to fishing or perhaps requiring non-motorized boats) in order to make it compatible.

Specific Changes to 50 CFR Part 29

We are revising § 29.1 by replacing "will not be incompatible with the purposes for which the refuge was established" with language consistent with the new definition of "compatible use." This revised language is consistent with the definition of compatible use in § 25.12. Since we use extensively the term "compatible use" throughout subchapter C, we define this term in § 25.12 and then only use the term without repeating the definition. We also made word changes throughout to comply with the plain language requirement for new regulations.

We are revising § 29.3 by replacing "compatible with the major purposes for which such areas are established" with language consistent with the new definition of "compatible use." This is necessary for the same reason described

in the above paragraph. We also made word changes throughout to comply with the plain language requirement for new regulations.

We are revising § 29.21 by removing the definitions of "Secretary," "Service," and "Regional Director," and revising the definition of "Compatible." The three definitions are not necessary because we include them in § 25.12. Part 25 is the first part of subchapter C and is the most appropriate place for definitions used throughout subchapter C. It is generally not necessary to repeat definitions in other parts of this subchapter. We are revising the definition of "Compatible" to be consistent with the NWRSA-1997. We define "Compatible use" in § 25.12; however, it is necessary to repeat it here because it explains the relationship between the terms "inconsistent" in the Mineral Leasing Act of 1920 and "compatible" in the NWRSA-1997. The term "inconsistent" means the same as "not compatible."

We are removing § 29.21-7(c) for the reasons stated in the discussion of proposed paragraph (b) of § 26.41.

Comment Solicitation

If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to: Chief, Division of Refuges, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 670, Arlington, Virginia 22203. You may comment via the Internet to: Compatibility_Regulations_Comments@fws.gov. Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include: "Attn: 1018-AE98" and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at (703) 358-1744. You may also fax comments to: Chief, Division of Refuges, (703) 358-2248. Finally, you may hand-deliver comments to the address mentioned above.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this

prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

We seek public comments on this proposed compatibility regulation and will take into consideration comments and any additional information received during the 60-day comment period. When finalized, we will incorporate this regulation into Title 50 Code of Federal Regulations (50 CFR) parts 25, 26, and 29. Part 25 contains general administrative provisions which govern national wildlife refuges, part 26 contains provisions that govern public entry and use of the National Wildlife Refuge System, and part 29 contains provisions that govern land use management.

We published a notice in the **Federal Register** on January 23, 1998 (63 FR 3583) notifying the public that we would be revising the Fish and Wildlife Service Manual, establishing regulations as they relate to the NWRSA-1997, and offering to send copies of specific draft Service Manual chapters to anyone who would like to receive them. We will mail a copy of the draft compatibility Service Manual chapter published concurrently in this **Federal Register** to those who requested one, along with a copy of this proposed compatibility regulation. In addition, this proposed compatibility regulation and the draft compatibility Service Manual chapter will be available on the National Wildlife Refuge System web site (<http://refuges.fws.gov>) during the 60-day comment period.

Clarity of This Regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the rule in the "Supplementary Information" section of the preamble helpful in understanding the rule? (6) What else could we do to make the rule easier to understand?

Statutory Authority

The National Wildlife Refuge System Administration Act of 1966 (NWRSA-1966), (16 U.S.C. 668dd-668ee), and the Refuge Recreation Act of 1962 (RRA-1962), (16 U.S.C. 460k-460k-4) govern the administration and use of the National Wildlife Refuge System.

The NWRSA-1997 is the latest amendment to the NWRSA-1966. It amends and builds upon the NWRSA-1966 in a manner that provides an "Organic Act" for the National Wildlife Refuge System. It serves to ensure that we effectively manage the National Wildlife Refuge System as a national system of lands, waters and interests for the protection and conservation of our Nation's wildlife resources.

The NWRSA-1966 states, first and foremost, that the National Wildlife Refuge System Mission is the conservation of fish, wildlife, and plant resources and their habitat. The NWRSA-1966 prohibits the Secretary from initiating or permitting a new use of a national wildlife refuge or expanding, renewing, or extending an existing use of a national wildlife refuge, unless the Secretary has determined that the use is a compatible use and not inconsistent with public safety.

The RRA-1962 authorizes the Secretary to administer areas within the National Wildlife Refuge System for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary purpose(s) for which we established the areas. The RRA-1962 requires that any recreational use of national wildlife refuge lands be compatible with the primary purposes for which we established the national wildlife refuge and not inconsistent with other previously-authorized operations.

The Alaska National Interest Lands Conservation Act of 1980 (ANILCA), (16 U.S.C. 140hh-3233), (43 U.S.C. 1602-1784), requires that we administer national wildlife refuges in Alaska in accordance with the laws governing the administration of the National Wildlife Refuge System. Section 304 of the ANILCA adopted the compatibility standard of the NWRSA-1966 for Alaska national wildlife refuges.

The ANILCA establishes the same standard of compatibility for Alaska national wildlife refuges as for other national wildlife refuges but the NWRSA-1997 specifically requires that ANILCA take precedence if any conflict arises between the two laws. Additionally, the NWRSA-1997 did not affect the provisions of ANILCA that

are the primary guidance Refuge Managers must use regarding subsistence use in Alaska.

The Alaska Native Claims Settlement Act of 1971, Section 22(g), provides that patents issued to Native village corporations or groups for selected land within the boundaries of a national wildlife refuge existing on the December 18, 1971, signing date of the Act will contain provisions which indicate that the land shall remain subject to laws and regulations governing the use and development of such national wildlife refuges. This includes application of the compatibility standard before uses or development may occur on the land.

Alaska national wildlife refuges established before the passage of the ANILCA have two sets of purposes. Purposes for pre-ANILCA national wildlife refuges (in effect on the day before the enactment of the ANILCA) remain in force and effect, except to the extent that they may be inconsistent with the ANILCA or the Alaska Native Claims Settlement Act, in which case the provisions of those Acts control. However, the original purposes for pre-ANILCA refuges apply only to those portions of the national wildlife refuge established by the prior executive order or public land order, and not to those portions of the national wildlife refuge added by the ANILCA.

The NWRSA-1966 and the RRA-1962 authorize the Secretary to issue regulations to carry out the purposes of the Acts and regulate uses.

Required Determinations

Regulatory Planning and Review (E.O. 12866)

This document is a significant rule and has been reviewed by the Office of Management and Budget under Executive Order 12866.

(1) This rule will not have an annual economic effect of \$100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit or full economic analysis is not required. This rule is administrative, legal, technical, and procedural in nature. The regulation established the process for determining the compatibility of proposed national wildlife refuge uses as well as the procedures for documentation and periodic review of existing uses. We have been making compatibility determinations since passage of the NWRSA-1966 in 1966. The NWRSA-1997 passed in 1997 does not greatly change the compatibility standards so we expect these procedures to cause only minor modifications to existing

national wildlife refuge public use programs. We expect a small increase, up to 5%, in the amount of public use activities allowed on refuges as a result of this rule.

The appropriate measure of the economic effect of changes in recreational use is the change in the welfare of recreationists. We measure this in terms of willingness to pay for the recreational opportunity. Total annual willingness to pay for all recreation at national wildlife refuges was estimated to be \$372.5 million in FY 1995 (Banking on Nature: The Economic Benefits to Local Communities of National Wildlife Refuge Visitation, 1997). We expect the compatibility determination process implemented in this rule to cause at most a 5% increase in recreational use system-wide. This does not mean that every refuge will have the same increase in public use. Only refuges where increases in hunting, fishing, and non-consumptive visitation are compatible will we allow the increases. Across the entire Refuge System we expect an increase in hunting, fishing, and non-consumptive visitation to amount to no more than a 5% overall increase. If the full 5% increase in public use were to occur at national wildlife refuges, this would translate to a maximum additional willingness to pay of \$21 million (1999 dollars) annually for the public. However, we expect the real benefit to be less than \$21 million because we expect the final increase in public use to be smaller than 5%. Furthermore, if the public substitutes non-refuge recreation sites for refuges, then we would subtract the loss of benefit attributed to non-refuge sites from the \$21 million estimate. Even the conservative estimate of \$21 million annually is well below the \$100 million annual impact required for a significant regulatory action under Executive Order 12866.

We measure the economic effect of commercial activity by the change in producer surplus. We can measure this as the opportunity cost of the change, i.e., the cost of using the next best production option if we discontinue production using the national wildlife refuge. National wildlife refuges use grazing, haying, timber harvesting, and row crops to help fulfill the National Wildlife Refuge System Mission and national wildlife refuge purposes. Congress authorizes us to allow economic activities of national wildlife refuges, and we do allow some. But, for all practical purposes, we invite (almost 100 percent) the economic activities to help achieve a national wildlife refuge purpose or National Wildlife Refuge

System Mission. For example, we do not allow farming per se, rather we invite a farmer to farm on the national wildlife refuge under a Cooperative Farming Agreement to achieve a national wildlife refuge purpose. Compatibility applies to these economic activities, and this rule will likely have minor changes in the amounts of these activities occurring on national wildlife refuges. Information on profits and production alternatives for most of these activities is proprietary, so a valid estimate of the total benefits of permitting these activities on national wildlife refuges is not available.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency since the rule pertains solely to management of national wildlife refuges by the Service.

(3) This rule does not alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. There are no grants or other Federal assistance programs associated with public use of national wildlife refuges.

(4) This rule does not raise novel legal or policy issues; however, it does provide a new approach. This rule continues the practice of requiring public use of national wildlife refuges to be compatible. It adds the NWRSA-1997 provisions that ensure that compatibility becomes a more effective conservation standard, more consistently applied across the entire National Wildlife Refuge System, and more understandable and open to involvement by the public.

Regulatory Flexibility Act

We certify that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Congress created the National Wildlife Refuge System to conserve fish, wildlife, and plants and their habitats and facilitated this conservation mission by providing Americans opportunities to visit and participate in compatible wildlife-dependent recreation, including fishing, hunting, wildlife observation and photography, and environmental education and interpretation as priority general public uses on national wildlife refuges and to better appreciate the value of, and need for, wildlife conservation.

This rule is administrative, legal, technical, and procedural in nature and provides more detailed instructions for the compatibility determination process than have existed in the past. This rule does not change the compatibility standard but implementation of the

National Wildlife Refuge System Improvement Act of 1997 may result in more opportunities for wildlife-dependent recreation on national wildlife refuges. For example, there may be more wildlife observation opportunities at Florida Panther National Wildlife Refuge in Florida or more hunting opportunities at Pond Creek National Wildlife Refuge in Arkansas. Such changes in permitted use are likely to increase visitor activity near the national wildlife refuge. To the extent visitors spend time and money in the area that would not have been spent there anyway, they contribute new income to the regional economy and benefit local businesses.

National wildlife refuge visitation is a small component of the wildlife recreation industry as a whole. In 1996, 77 million U.S. residents over 15 years old spent 1.2 billion activity-days in wildlife-associated recreation activities. They spent about \$30 billion on fishing, hunting, and wildlife watching trips (Tables 49, 54, 59, 63, 1996 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation, DOI/FWS/FA, 1997). National wildlife refuges recorded about 29 million visitor-days that year (RMIS, FY1996 Public Use Summary). A study of 1995 national wildlife refuge visitors found their travel spending generated \$401 million in sales and 10,000 jobs for local economies (Banking on Nature: The Economic Benefits to Local Communities of National Wildlife Refuge Visitation, DOI/FWS/Refuges, 1997). These spending figures include spending which would have occurred in the community anyway, and so they show the importance of the activity in the local economy rather than its incremental impact. Marginally greater recreational opportunities on national wildlife refuges will have little industry-wide effect.

Many small businesses will benefit from any increased national wildlife refuge visitation. We expect the incremental recreational opportunities to be marginal and scattered so we do not expect the rule to have a significant economic effect on a substantial number of small entities in any Region or nationally.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act as discussed in Regulatory Planning and Review section above. This rule:

a. Does not have an annual effect on the economy of \$100 million or more;

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; and

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

Since this rule applies to use of federally-owned and managed national wildlife refuges, it does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. This rule does not have a significant or unique effect on State, local, tribal governments, or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings (E.O. 12630)

In accordance with Executive Order 12630, this rule does not have significant takings implications. A takings implication assessment is not required. These regulations may result in increased visitation at refuges and provide for minor changes to the methods of public use permitted within the National Wildlife Refuge System.

Federalism Assessment (E.O. 12612)

As discussed in the Regulatory Planning and Review, and Unfunded Mandates Act sections above, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment under Executive Order 12612.

Civil Justice Reform (E.O. 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This regulation does not contain any information collection requirements for which Office of Management and Budget approval under the Paperwork Reduction Act (44 U.S.C. 3501) is required.

Section 7 Consultation

We are in the process of reviewing the potential of these regulations to affect species subject to the Endangered Species Act of 1973 (16 U.S.C. 1531–1543). The findings of that consultation

will be available as part of the administrative record for the final rule.

National Environmental Policy Act

We ensure compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(C)) when developing national wildlife refuge Comprehensive Conservation Plans and public use management plans, and we make determinations required by NEPA before the addition of national wildlife refuges to the lists of areas open to public uses. The revisions to regulations as proposed in this document resolve a variety of issues concerning compatibility of national wildlife refuge uses. In accordance with 516 DM 2, Appendix 1, we have determined that this rule is categorically excluded from the NEPA process because it is limited to “the issuance and modification of procedures, including manuals, orders and guidelines of an administrative nature.” 516 DM 2, Appendix 1, Sec. 1.4 A. (3) and (9). These proposed regulations qualify or otherwise define methods which we use for purposes of resource management.

Available Information for Specific National Wildlife Refuges

Individual national wildlife refuge headquarters retain information regarding public use programs and the conditions that apply to their specific programs, and maps of their respective areas.

You may also obtain information from the Regional Offices at the addresses listed below:

- Region 1—California, Hawaii, Idaho, Nevada, Oregon, and Washington. Program Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Eastside Federal Complex, Suite 1692, 911 N.E. 11th Avenue, Portland, Oregon 97232-4181; Telephone (503) 231-6214.
- Region 2—Arizona, New Mexico, Oklahoma and Texas. Program Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Box 1306, Albuquerque, New Mexico 87103; Telephone (505) 766-1829.
- Region 3—Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio and Wisconsin. Program Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111; Telephone (612) 713-5300.
- Region 4—Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Tennessee, South Carolina, Puerto Rico and the Virgin Islands. Program Assistant Regional Director—Refuges and

Wildlife, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Room 324, Atlanta, Georgia 30345; Telephone (404) 679-7152.

- Region 5—Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia and West Virginia. Program Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035-9589; Telephone (413) 253-8550.

- Region 6—Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah and Wyoming. Program Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Box 25486, Denver Federal Center, Denver, Colorado 80225; Telephone (303) 236-8145.

- Region 7—Alaska. Program Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 1011 E. Tudor Rd., Anchorage, Alaska 99503; Telephone (907) 786-3357.

Primary Author

J. Kenneth Edwards, Refuge Program Specialist, Division of Refuges, U.S. Fish and Wildlife Service, is the primary author of this proposed rule.

List of Subjects 50 CFR Part 25

Administrative practice and procedure, Concessions, Reporting and recordkeeping requirements, Safety, Wildlife refuges.

50 CFR Part 26

Recreation and recreation areas, Wildlife refuges.

50 CFR Part 29

Public lands-mineral resources, Public lands-rights-of-way, Wildlife refuges.

For the reasons set forth in the preamble, we propose to amend parts 25, 26, and 29 of Title 50, Chapter I, Subchapter C of the Code of Federal Regulations as follows:

PART 25—[AMENDED]

1. The authority citation for part 25 continues to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd, and 715i, 3901 *et seq.*; and Pub.L. 102-402, 106 Stat. 1961.

2. We propose to amend § 25.12 by:

- Revising the heading;
- Amending paragraph (a) by revising and placing in alphabetical order the definitions of “Coordination area,” “National wildlife refuge, and refuge” and “National Wildlife Refuge System, and Refuge System;” and

c. Adding the definitions of “Compatible use,” “Compatibility determination,” “Comprehensive Conservation Plan,” “Conservation, and Management,” “Director,” “Fish, Wildlife, and Fish and wildlife,” “National Wildlife Refuge System Mission, and Refuge System Mission,” “Plant,” “Purpose(s) of the refuge,” “Refuge Manager,” “Refuge use, and Use of a refuge,” “Refuge management economic activity,” “Refuge management activity,” “Regional Director,” “Secretary,” “Service, and We” “Sound professional judgment,” “State, and United States,” “Wildlife-dependent recreational use, and Wildlife-dependent recreation,” and “You” in alphabetical order to read as follows:

§ 25.12 What do the following terms mean?

(a) * * *

Compatible use means a proposed or existing wildlife-dependent recreational use or any other use of a national wildlife refuge that, in the sound professional judgment of the Refuge Manager, will not materially interfere with or detract from the fulfillment of the National Wildlife Refuge System Mission or the major purposes of the affected national wildlife refuge.

Compatibility determination means a written determination signed and dated by the Refuge Manager, signifying that a proposed or existing use of a national wildlife refuge is either a compatible use or a not compatible use. The Director delegates authority to make this determination through the Regional Director, to the Refuge Manager.

Comprehensive Conservation Plan means a document that describes the desired future conditions of a national wildlife refuge, and provides long-range guidance and management direction for a Refuge Manager to accomplish the purposes of the affected national wildlife refuge, contribute to the National Wildlife Refuge System Mission, and to meet other relevant mandates.

Conservation, and Management mean to sustain and, where appropriate, restore and enhance, healthy populations of fish, wildlife, and plants utilizing, in accordance with applicable Federal and State laws, methods, and procedures associated with modern scientific resource programs. Such methods and procedures include, consistent with the provisions of the National Wildlife Refuge System Administration Act (16 U.S.C. 668dd-668ee), protection, research, census, law enforcement, habitat management,

propagation, live trapping and transplantation, and regulated taking.

Coordination area means a wildlife management area made available to a State: by cooperative agreement between the U. S. Fish and Wildlife Service and a State agency having control over wildlife resources pursuant to section 4 of the Fish and Wildlife Coordination Act (16 U.S.C. 664); or by long-term leases or agreements pursuant to title III of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1010 *et seq.*). The States manage coordination areas as a part of the National Wildlife Refuge System.

Director means the Director, U.S. Fish and Wildlife Service or the authorized representative of such official.

* * * * *

Fish, Wildlife, and Fish and wildlife mean any member of the animal kingdom in a wild, unconfined state, whether alive or dead, including a part, product, egg, or offspring of the member.

* * * * *

National wildlife refuge, and Refuge mean a designated area of land, water, or an interest in land or water located within the external boundaries of the National Wildlife Refuge System but does not include coordination areas.

National Wildlife Refuge System, and Refuge System mean all lands, waters, and interests therein administered by, or subject to the jurisdiction of, the U.S. Fish and Wildlife Service as wildlife refuges, wildlife ranges, wildlife management areas, waterfowl production areas, and other areas administered by the U.S. Fish and Wildlife Service for the protection and conservation of fish and wildlife, including those that are threatened with extinction.

National Wildlife Refuge System Mission, and Refuge System Mission mean 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.

* * * * *

Plant means any member of the plant kingdom in a wild, unconfined state, including any plant community, seed, root, or other part of a plant.

Purpose(s) of the refuge means the purposes specified in or derived from the law, proclamation, executive order, agreement, public land order, donation document, or administrative memorandum establishing, authorizing, or expanding a national wildlife refuge,

national wildlife refuge unit, or national wildlife refuge subunit.

Refuge Manager means the person who is directly in charge of a national wildlife refuge.

Refuge use, and *Use of a refuge* mean 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-Service entity.

Refuge management economic activity means any refuge management activity on a national wildlife refuge which results in generation of income or in a commodity which is or can be sold for income or revenue or traded for goods or services. Examples include: farming, grazing, haying, timber harvesting, and trapping. Specifically excluded from this definition are refuge management activities which generate commodities not sold for income or revenue and not traded for goods or services, on or off a national wildlife refuge.

Refuge management activity means an activity conducted by the Service or a Service-authorized agent to fulfill all purposes or at least 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, friends organizations, and volunteers.

Regional Director means the official in charge of a region of the U.S. Fish and Wildlife Service or the authorized representative of such official.

Secretary means the Secretary of the Interior or the authorized representative of such official.

Service, and *We* means the U.S. Fish and Wildlife Service, Department of the Interior.

Sound professional judgment means a finding, determination, or decision that is consistent with principles of sound fish and wildlife management and administration, available science and resources, and adherence to the requirements of the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd-668ee), and other applicable laws. Included in this finding, determination, or decision is a Refuge Manager's field experience and a Refuge Manager's knowledge of the particular affected refuge's resources.

State, and *United States* mean one or more of the States of the United States, Puerto Rico, American Samoa, the Virgin Islands, Guam, and the territories and possessions of the United States.

* * * * *

Wildlife-dependent recreational use, and *Wildlife-dependent recreation* mean

a use of a national wildlife refuge involving hunting, fishing, wildlife observation and photography, or environmental education and interpretation. The National Wildlife Refuge System Administration Act of 1966, as amended, specifies that these are the six priority general public uses of the National Wildlife Refuge System.

* * * * *

You means the public.

3. We propose to revise § 25.21 to read as follows:

§ 25.21 When and how do we open and close areas of the National Wildlife Refuge System to public access and use or continue a use?

(a) Except as provided below, all areas acquired or withdrawn for inclusion in the National Wildlife Refuge System are closed to public access until and unless we open the area for a use or uses in accordance with the NWRSA-1966, the RRA-1962 and this subchapter C. We may open an area by regulation, individual permit, or public notice, in accordance with § 25.31 of this subchapter.

(b) We may open an area in the National Wildlife Refuge System for any refuge use, or expand, renew, or extend an existing refuge use only after the Refuge Manager determines that it is a compatible use and not inconsistent with any applicable law. Lands subject to the patent restrictions imposed by Section 22(g) of the Alaska Native Claims Settlement Act are subject to the compatibility requirements of Part 25 and Part 26 of 50 CFR. The Refuge Manager may temporarily allow or initiate any refuge use without making a compatibility determination if it is necessary to protect the health and safety of the public or any fish or wildlife population.

(c) When we add lands to the National Wildlife Refuge System, the Refuge Manager will identify, prior to acquisition, withdrawal, transfer, reclassification, or donation of those lands, existing wildlife-dependent recreational public uses (if any) determined to be compatible that we will permit to continue on an interim basis, pending completion of the Comprehensive Conservation Plan for the national wildlife refuge. We will make these compatibility determinations in accordance with procedures in § 26.41 of this subchapter.

(d) In the event of a threat or emergency endangering the health and safety of the public or property or to protect the resources of the area, the Refuge Manager may close or curtail refuge uses of all or any part of an opened area to public access and use in

accordance with the provisions in § 25.31, without advance notice. See 50 CFR 36.42 for procedures on closing Alaska national wildlife refuges.

(e) We will re-evaluate compatibility determinations for existing wildlife-dependent recreational uses when conditions under which the permitted use change significantly, or if there is significant new information regarding the effects of the use, or concurrently with the preparation or revision of a Comprehensive Conservation Plan, or at least every 15 years, whichever is earlier.

(f) Except for uses specifically authorized for a period longer than 10 years (such as rights-of-way), we will re-evaluate compatibility determinations for all other existing uses when conditions under which the permitted use change significantly, or if there is significant new information regarding the effects of the use, or concurrently with the preparation or revision of a Comprehensive Conservation Plan, or at least every 10 years, whichever is earlier.

(g) For uses specifically authorized for a period longer than 10 years (such as rights-of-way), our re-evaluation will examine compliance with the terms and conditions of the authorization, not the authorization itself. We will monitor and review the activity to ensure that the permittee carries out all permit terms and conditions. We will make a new compatibility determination prior to extending or renewing such long-term uses at the expiration of the authorization.

4. We propose to amend § 25.44 by:

- a. Revising the heading and paragraphs (b) and (c)(1);
- b. Removing paragraph (d); and
- c. Redesignating paragraph (e) as paragraph (d) to read as follows:

§ 25.44 How do we grant permits for easement area uses?

* * * * *

(b) We require permits for use of easement areas administered by us where proposed activities may affect the property interest acquired by the United States. Applications for permits will be submitted in writing to the Regional Director or a designee. We may grant special use permits to owners of servient estates, or to third parties with the owner's agreement, by the Regional Director or a designee, upon written determination that such permitted use is compatible. If we ultimately determine that the requested use will not affect the United States' interest, the Regional Director will issue a letter of non-objection.

(c) * * *

(1) The permitted use is compatible; and

* * * * *

PART 26—[AMENDED]

5. The authority citation for part 26 continues to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd, 715i; Pub. L. 96–315 (94 Stat. 958) and Pub. L. 98–146 (97 Stat. 955).

6. We propose to add § 26.41 to read as follows:

§ 26.41 What is the process for determining if a use of a national wildlife refuge is a compatible use?

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. This section provides guidelines for making compatibility determinations, and procedures for documenting compatibility determinations and for periodic review of compatibility determinations. We will make all compatibility determinations in writing.

(a) *Steps for preparing compatibility determinations.* All compatibility determinations will include the following information:

- (1) The proposed or existing use;
- (2) The name of the national wildlife refuge;
- (3) The authorities used to establish the national wildlife refuge;
- (4) The major purposes of the national wildlife refuge;
- (5) The National Wildlife Refuge System Mission;
- (6) The nature and extent of the use including the following:
 - (i) What is the use?
 - (ii) Where would the use be conducted?
 - (iii) When would the use be conducted?
 - (iv) How would the use be conducted?;
- (7) An analysis of costs for administering and managing each use;
- (8) The anticipated impacts of the use on the national wildlife refuge's major purposes and the National Wildlife Refuge System Mission;
- (9) A logical explanation describing how the proposed use affects fulfilling the national wildlife refuge's major purposes and the National Wildlife Refuge System Mission;
- (10) The amount of opportunity for public review and comment provided;

(11) Whether the use is compatible or not compatible (does it or will it materially interfere with or detract from the fulfillment of the National Wildlife Refuge System Mission or the major purposes of the national wildlife refuge);

(12) Stipulations necessary to ensure compatibility;

(13) The name of the Regional Office Supervisor or designee that was consulted with and date of consultation prior to approving each compatibility determination; and

(14) The Refuge Manager's signature and date signed.

(b) *Making a use compatible through replacement of lost habitat values or other compensation.* We will not allow making proposed refuge uses compatible through replacement of lost habitat values or other compensation. If we cannot make the proposed use compatible through stipulations we cannot allow the use.

(c) *Termination of uses that are not compatible.* When we determine an existing use is not compatible, we will terminate or modify the use to make it compatible as expeditiously as practicable.

PART 29—[AMENDED]

7. The authority citation for part 29 continues to read as follows:

Authority: Sec. 2, 33 Stat. 614, as amended, sec. 5, 43 Stat. 651, secs. 5, 10, 45 Stat. 449, 1224, secs. 4, 2, 48 Stat. 402, as amended, 1270, sec. 4, 76 Stat. 645; 5 U.S.C. 301, 16 U.S.C. 668dd, 685, 725, 690d, 715i, 664, 43 U.S.C. 315a, 16 U.S.C. 460k; 80 Stat. 926.

8. We propose to revise § 29.1 to read as follows:

§ 29.1 May we allow economic uses on national wildlife refuges?

We may authorize public or private economic use of the natural resources of any wildlife refuge area, in accordance with 16 U.S.C. 715s, where the use may contribute to the administration of the area. We may authorize economic use by appropriate permit only when we have determined the activity on a wildlife refuge area to be compatible. Persons exercising economic privileges on refuge areas will be subject to the applicable provisions of this subchapter and of other applicable laws and regulations governing wildlife refuge areas. Permits for economic use will contain such terms and conditions that we determine to be necessary for the proper administration of the resources.

Economic use in this section includes but is not limited to grazing livestock, harvesting hay and stock feed, removing timber, firewood or other natural products of the soil, removing shell, sand or gravel, cultivating areas, or engaging in operations that facilitate approved programs on wildlife refuge areas.

9. We propose to revise § 29.3 to read as follows:

§ 29.3 What are nonprogram uses of national wildlife refuges?

Uses of wildlife refuge areas that make no contribution to the primary objectives of the refuge or to the objectives of the National Wildlife Refuge System are nonprogram uses. We may grant permission for such uses only when we determine they are compatible.

10. We propose to amend § 29.21 by:

- a. Revising the heading;
- b. Removing the paragraph designations;
- c. Revising and placing in alphabetical order the definition of "Compatible use";
- d. Removing "Secretary," "Service," and "Regional Director"; and
- e. Placing the remaining definitions in alphabetical order to read as follows:

§ 29.21 What do the following terms mean?

Compatible use means a proposed or existing wildlife-dependent recreational use or any other use of a national wildlife refuge that, in the sound professional judgment of the Refuge Manager, will not materially interfere with or detract from the fulfillment of the National Wildlife Refuge System Mission or the major purposes of the affected national wildlife refuge. The term "inconsistent" in section 28(b)(1) of the Mineral Leasing Act of 1920, as amended by Pub. L. 93–153, means a use that is not compatible.

* * * * *

11. We propose to amend § 29.21–7 by removing paragraph (c) and revising the heading to read as follows:

§ 29.21–7 What payment do we require for use and occupancy of national wildlife refuge lands?

Dated: May 26, 1999.

Donald J. Barry,

Assistant Secretary, Fish, Wildlife and Parks.
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