

B. No. Go to Step II.

Step II. Was the unit established or authorized by unit-specific legislation?

A. Yes.

1. The legislation states the purpose(s) of the unit—DONE.

2. The legislation does not specify a purpose:

Further research is required including legislative history, agency testimony in the Congressional Record, or documents approved by the Director, or lacking these, the biological history of the area, resource inventories, or other resource-based documentation. Articulate the purpose(s) for Director's approval—DONE.

3. If any lands/waters at this unit were not included under any additional authorities—DONE.

4. If any lands/waters at this unit were included under additional authorities, go to Step III.

B. No. Go to Step III.

Step III. Was the unit established or acquired by the authority of one or more of the following 14 laws that grant the Service acquisition authority?

1. An Act Authorizing the Transfer of Certain Real Property
2. Bankhead-Jones Farm Tenant Act
3. Consolidated Farm and Rural Development Act
4. Colorado River Storage Act
5. Emergency Wetlands Resources Act of 1986
6. Endangered Species Act of 1973
7. Fish and Wildlife Act of 1956
8. Fish and Wildlife Coordination Act
9. Lea Act
10. Migratory Bird Conservation Act
11. Migratory Bird Hunting and Conservation Stamp Act
12. North American Wetlands Conservation Act
13. National Wildlife Refuge System Administration Act of 1966
14. Refuge Recreation Act

A. Yes.

1. The purpose for acquisition is stated in the law and becomes the purpose of the unit—DONE.

2. If any lands/waters at this unit were not included under any additional authorities—DONE.

3. If any lands/waters at this unit were included under additional authorities, go to Step IV.

B. No. Go to Step IV.

Step IV. Was the unit donated to the Service?

A. Yes.

1. Research is required, including legislation that grants authority for donations, any biological reports on the unit or adjacent area, a review of fish, wildlife, and plant species of significance using the unit, and any conditions set forth in the donation letter or memorandum that do not conflict with the mission of the System. Articulate the purpose(s) for Director's approval.

Dated: December 18, 2000.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 01-20 Filed 1-12-01; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[1018-AG18]

Draft Appropriate Refuge Uses Policy Pursuant to the National Wildlife Refuge System Improvement Act of 1997

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: We propose to establish, in policy, a procedure for determining when uses other than the six priority wildlife-dependent recreational uses are appropriate or not appropriate on a unit of the National Wildlife Refuge System (System). The National Wildlife Refuge System Improvement Act of 1997 (NWRISA-1997), that amends the National Wildlife Refuge System Administration Act of 1966 (NWRSA-1966), defines and establishes that wildlife-dependent recreational uses (hunting, fishing, wildlife observation and photography, and environmental education and interpretation) are the priority general public uses of the System and, if found compatible, will receive enhanced and priority consideration in refuge planning and management over other general public uses. This draft policy describes how we will provide priority to these uses, and establishes a process for deciding when it is appropriate to allow other, non-priority uses to occur on national wildlife refuges. We propose to incorporate this policy as Part 603 Chapter 1 of the Fish and Wildlife Service Manual.

DATES: Comments must be received by March 19, 2001.

ADDRESSES: You may submit comments on this draft appropriate refuge uses policy by mail, fax or e-mail: by mail to J. Kenneth Edwards, Refuge Program Specialist, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 670, Arlington, Virginia 22203; by fax to (703) 358-2248; or by e-mail to Appropriate_Uses_Policy_Comments@fws.gov.

FOR FURTHER INFORMATION CONTACT: J. Kenneth Edwards, Refuge Program Specialist, National Wildlife Refuge

System, U.S. Fish and Wildlife Service, Telephone (703) 358-1744.

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

The NWRISA-1997 identifies six wildlife-dependent recreational uses (hunting, fishing, wildlife observation and photography, and environmental education and interpretation) as the priority general public uses of the System. The NWRISA-1997 also provides a set of affirmative stewardship responsibilities regarding our administration of the System. These stewardship responsibilities direct us to ensure that these six wildlife-dependent recreational uses are provided enhanced consideration and priority over other general public uses.

The Refuge Recreation Act of 1962 (RRA-1962) also authorizes us to regulate or curtail public recreational uses in order to insure accomplishment of our primary conservation objectives. The RRA-1962 also directs us to administer the System for public recreation when the use is an "appropriate incidental or secondary use."

The determination of appropriateness is the first step in deciding whether we will permit a proposed or existing use on a refuge. After we decide a use is appropriate, we then must determine that it would be compatible before allowing. The six wildlife-dependent recreational uses are the priority public uses of the System and, when compatible, have been determined to be appropriate by law. Uses which are necessary for the safe, practical, and effective conduct of a priority public use are also appropriate. We will evaluate all other uses under a screening process established by this policy to determine their relationship to the System's wildlife conservation mission, individual refuge purposes, and the six priority public uses. This screening process, the "appropriate use" test contained in this policy, is a decision process that refuge managers will use to quickly and systematically decide which uses are not appropriate on a national wildlife refuge. We then more thoroughly review uses, which we have

determined to be appropriate, for compatibility before we allow them on a refuge. This appropriate use policy and our compatibility policy are key tools refuge managers use together to fortify our commitment to provide enhanced opportunities for the public to enjoy wildlife-dependent recreation while at the same time ensuring that no refuge uses compromise the System's wildlife conservation mission and the individual refuge purposes. Through careful planning, System-wide application of regulations and policies, diligent monitoring of the impacts of uses on natural resources, and by preventing or eliminating uses not appropriate to the System, we can achieve our wildlife conservation mission and individual refuge purposes while also providing people with lasting opportunities for the highest quality wildlife-dependent recreation.

Appropriate Refuge Uses Policy

To ensure the primacy of the System wildlife conservation mission, the individual refuge purposes and to be sure we afford priority to the six wildlife-dependent recreational uses within the System, we are proposing to establish an appropriate refuge uses policy. This policy will apply to all proposed and existing uses of national wildlife refuges when we have jurisdiction over these uses. The following is a summary of the key provisions of this policy.

The Refuge Manager will not further consider allowing a new use, nor renewing, extending, or expanding an existing use on a national wildlife refuge without determining the use to be an appropriate use. The Refuge Manager will halt, as expeditiously as practicable, existing uses determined to be not appropriate.

An appropriate use of a refuge is a proposed or existing use that meets at least one of the following three conditions:

1. The use is a priority public use or is necessary for the safe, practical, and effective conduct of a priority public use on the refuge;
2. The use contributes to fulfilling the System mission, or the refuge purposes, goals, or objectives as described in a refuge management plan approved after October 9, 1997, the date the NWRSA-1997 was passed; or
3. The use has been determined to be appropriate in a documented analysis by the Refuge Manager, with the Refuge Supervisor's concurrence. This documented analysis will address the following 11 factors.
 - a. Does the use comply with applicable laws and regulations?

b. Is the use consistent with applicable Executive Orders and Department and Service policies?

c. Is the use consistent with refuge goals and objectives in an approved refuge management plan?

d. Has an earlier documented analysis not denied the use?

e. Is the use consistent with public safety?

f. Is the use manageable within available budget and staff?

g. Is the use consistent with other resource or management objectives?

h. Will the use be easy to control in the future?

i. Is the refuge the only place where this activity can reasonably occur?

j. Does the use contribute to the public's understanding and appreciation of the refuge's wildlife or cultural resources, or is the use beneficial to the refuge's wildlife or cultural resources?

k. Can the use be accommodated without impairing existing wildlife-dependent recreational uses or reducing the potential to provide quality wildlife-dependent recreation into the future?

If the answer is "no" to any of these questions, we will generally not allow the use. If the answers are consistently "yes" to these questions, or, if not, if there are compelling reasons why the Refuge Manager believes the use is appropriate on the refuge, the Refuge Manager then prepares a written justification, and obtains concurrence from the Refuge Supervisor. Requiring concurrence from the Refuge Supervisor will help us promote consistency within the System.

Uses determined to be appropriate are also reviewed for compatibility before they may be allowed on a refuge.

Some recreational activities, while wholesome and enjoyable, are not dependent on the presence of fish and wildlife, nor dependent on the expectation of encountering fish and wildlife. Many of these non-wildlife-dependent recreational activities are often disruptive or harmful to fish, wildlife or plants, or may interfere with the use and enjoyment of a refuge by others engaged in wildlife-dependent recreation. These uses may more appropriately be conducted on private land, or other public lands not specifically dedicated for wildlife conservation.

Purpose of This Draft Policy

The purpose of this draft policy is to modify the general guidance concerning proposed and existing uses of the System in compliance with the NWRSA-1997. This policy establishes a procedure we will use for determining when uses are appropriate or not

appropriate on a unit of the National Wildlife Refuge System, before we undertake assessing compatibility of the use.

Fish and Wildlife Service Directives System

Because many of our field stations are in remote areas across the United States, it is important that all employees have available and know the current policy and management directives that affect their daily activities. The Fish and Wildlife Service Directives System, consisting of the Fish and Wildlife Service Manual (Service Manual), Director's Orders, and National Policy Issuances, is the vehicle for issuing the standing and continuing policy and management directives of the Service. New directives are posted on the Internet upon approval, ensuring that all employees have prompt access to the most current guidance.

The Service Manual contains our standing and continuing directives with which our employees comply. We use it to implement our authorities and to "step down" our compliance with statutes, executive orders, and Departmental directives. It establishes the requirements and procedures to assist our employees in carrying out our authorities, responsibilities, and activities.

Director's Orders are limited to temporary policy, procedures, delegations of authority, emergency regulations, special assignments of functions, and initial functional statements on the establishment of new organizational units. All Director's Orders must be converted as soon as practicable to appropriate parts of the Service Manual or removed. Material appropriate for immediate inclusion in the Service Manual generally is not issued as a Director's Order.

National Policy Issuances promulgate the Director's national policies for managing the Service and its programs. These policies are necessarily broad and generally require management discretion or judgment in their implementation. They represent the Director's expectations of how the Service and its employees will act in carrying out their official responsibilities.

The Service Manual, Director's Orders, and National Policy Issuances are available on the Internet at <http://www.fws.gov/directives/direct.html>. When finalized, we will incorporate this appropriate refuge uses policy into the Service Manual as Part 603 Chapter 1.

Comment Solicitation

We seek public comments on this draft appropriate refuge uses policy and will take into consideration comments and any additional information received during the 60-day comment period. You may submit comments on this draft appropriate refuge uses policy by mail, fax or e-mail: by mail to J. Kenneth Edwards, Refuge Program Specialist, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 670, Arlington, Virginia 22203; by fax to (703) 358-2248; or by e-mail to Appropriate_Uses_Policy_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-AG18" 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. 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 record, which we will honor to the extent allowable by law. In some circumstances, we would withhold from the 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 published a notice in the **Federal Register** on January 23, 1998 (63 FR 3583) notifying the public that we would be revising the Service Manual, establishing regulations as they relate to the NWRSLA-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 this draft Service Manual appropriate refuge uses chapter to those who requested one. In addition, this draft Service Manual appropriate refuge uses chapter will be available on the Internet at <http://www.fws.gov/directives/library/frindex.html> during the 60-day comment period.

Required Determinations

Regulatory Planning and Review (E.O. 12866)

In accordance with the criteria in Executive Order 12866, this policy is not a significant regulatory action. The Office of Management and Budget (OMB) makes the final determination under Executive Order 12866.

(1) This policy 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 policy is administrative, legal, technical, and procedural in nature. This policy establishes the process for determining the appropriateness of proposed national wildlife refuge uses. This policy will have the effect of providing priority consideration for wildlife-dependent recreational uses involving hunting, fishing, wildlife observation and photography, and environmental education and interpretation. Existing policy has been in place since 1985 that encouraged the phase-out on refuges of non-wildlife-oriented recreation. The NWRSLA-1997 does not greatly change this direction in public use, but provides legal recognition of the priority we afford to wildlife-dependent recreational uses. We expect these new procedures to cause only minor modifications to existing national wildlife refuge public use programs. While we may curtail some non-priority refuge uses, we may provide new and expanded opportunities for priority public uses. We expect an overall small increase, at most a 5 percent annual increase, in the amount of public use activities allowed on refuges as a result of this policy.

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. We estimated total annual willingness to pay for all recreation at national wildlife refuges to be \$372.5 million in Fiscal Year 1995 (Banking on Nature: The Economic Benefits to Local Communities of National Wildlife Refuge Visitation, DOI/FWS/Refuges 1997). We expect the appropriate use determination process implemented in this policy to cause at most a 5 percent annual increase in recreational use System-wide. This does not mean that every refuge will have the same increase in public use. We will allow the increases only on refuges where increases in hunting, fishing, and other

wildlife-dependent recreational visitation are compatible. Across the entire System, we expect an increase in hunting, fishing, and non-consumptive visitation to amount to no more than a 5 percent overall increase. If the full 5 percent 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 percent. 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.

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 System mission and refuge purposes. Congress authorizes us to allow economic activities on national wildlife refuges, and we do allow some. But, for all practical purposes (almost 100 percent), we invite the economic activities to help achieve a refuge purpose or the 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 help achieve a national wildlife refuge purpose. This policy 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 policy will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency since the policy pertains solely to management of national wildlife refuges by the Service.

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

(4) This policy does not raise novel legal or policy issues; however, it does provide a new approach. It adds the NWRSLA-1997 provisions that ensure that wildlife-dependent recreational

uses are the priority public uses of the System, and adds consistency in application of public use guidelines across the entire System.

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 (hunting, fishing, 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 policy is administrative, legal, technical, and procedural in nature and provides more detailed instructions for the determination of the appropriateness of public use activities than have existed in the past. This policy may result in more opportunities for wildlife-dependent recreation on national wildlife refuges, and may result in the reduction of some non-wildlife-dependent recreation. For example, more wildlife observation opportunities may occur at Florida Panther National Wildlife Refuge in Florida or more hunting opportunities at Pond Creek National Wildlife Refuge in Arkansas. Conversely, we may no longer allow some activities on some refuges. For example, some refuges may currently allow water skiing on refuge-controlled waters or the use of off-road vehicles; we would likely curtail some of these uses as we implement this policy. The overall net effect of these regulations is likely to increase visitor activity near the national wildlife refuge. To the extent visitors spend time and money in the area that would not otherwise have been spent there, 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.

Expenditures as a result of this policy are a transfer and not a benefit to many small businesses. We expect the incremental increase of recreational opportunities to be marginal and scattered, so we do not expect the policy 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 policy is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This policy:

(1) Does not have an annual effect on the economy of \$100 million or more. This policy will affect only visitors at national wildlife refuges. It may result in increased visitation at refuges and provide for minor changes to the methods of public use permitted within the System. Refer to response under Regulatory Flexibility Act.

(2) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

(3) 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

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501, *et seq.*):

(1) This policy will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. See response to Regulatory Flexibility Act.

(2) This policy will not produce a Federal mandate of \$100 million or greater in any year, i.e., it is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

See response to Regulatory Flexibility Act.

Takings (E.O. 12630)

In accordance with Executive Order 12630, this policy does not have significant takings implications. A takings implication assessment is not required. This policy may result in increased visitation at refuges and provide for minor changes to the methods of public use permitted within the System. Refer to response under Regulatory Flexibility Act.

Federalism Assessment (E.O. 13132)

In accordance with Executive Order 13132, this policy does not have significant federalism effects. This policy will not have substantial direct effects on the States, in their relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, we have determined that this policy does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Civil Justice Reform (E. O. 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this policy does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. This policy will expand upon established policies, and result in better understanding of the policies by refuge visitors.

Paperwork Reduction Act

This policy does not require an information collection from 10 or more parties and a submission under the Paperwork Reduction Act of 1995 is not required.

Section 7 Consultation

We are in the process of reviewing the potential of this policy 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 policy.

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. In accordance with 516 DM 2, Appendix 1.10, we have determined that this policy is categorically excluded from the NEPA process because it is limited to policies, directives, regulations and guidelines of an administrative, financial, legal, technical, or procedural nature; or the environmental effects of which are too broad, speculative, or conjectural to lend themselves to meaningful analysis. Site-specific proposals, as indicated above, will be subject to the NEPA process.

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. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, Eastside Federal Complex, Suite 1692, 911 N.E. 11th Avenue, Portland, Oregon 97232-4181; Telephone (503) 231-6214; <http://pacific.fws.gov>.
- Region 2—Arizona, New Mexico, Oklahoma and Texas. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, Box 1306, Albuquerque, New Mexico 87103; Telephone (505) 248-7419; <http://southwest.fws.gov>.
- Region 3—Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio and Wisconsin. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111; Telephone (612) 713-5300; <http://midwest.fws.gov>.
- Region 4—Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Puerto Rico and the Virgin Islands. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Room 324, Atlanta, Georgia 30345; Telephone (404) 679-7166; <http://southeast.fws.gov>.
- Region 5—Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia and West Virginia. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035-

9589; Telephone (413) 253-8306; <http://northeast.fws.gov>.

- Region 6—Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah and Wyoming. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 134 Union Blvd., Lakewood, Colorado 80228; Telephone (303) 236-8145; <http://www.r6.fws.gov>.
- Region 7—Alaska. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 1011 E. Tudor Rd., Anchorage, Alaska 99503; Telephone (907) 786-3545; <http://alaska.fws.gov>.

Primary Author

Tom C. Worthington, Refuge Program Specialist, Region 3, National Wildlife Refuge System, U.S. Fish and Wildlife Service, is the primary author of this notice.

Draft Appropriate Refuge Uses Policy Fish and Wildlife Service

National Wildlife Refuge System Uses

Refuge Management—Part 603 National Wildlife Refuge System Uses Chapter 1 Appropriate Refuge Uses—603 FW 1

1.1 What is the purpose of this chapter? This chapter establishes policy that refuge managers will apply when determining the appropriateness of proposed and existing uses of national wildlife refuges before they undertake assessing compatibility in accordance with 603 FW 2. Through this policy, we establish a procedure for determining when uses other than the six wildlife-dependent recreational uses are appropriate or not appropriate on a refuge. This policy clarifies and expands upon 603 FW 2.10(D), which describes when refuge managers should deny a proposed use without determining compatibility. This policy also underscores that the fundamental mission of the National Wildlife Refuge System (System) is wildlife conservation: "Wildlife First."

A. National wildlife refuges are first and foremost national treasures for wildlife. Through careful planning, System-wide application of regulations and policies, diligent monitoring of the impacts of uses on wildlife resources, and by preventing or eliminating uses not appropriate to the System, we can achieve our wildlife conservation mission while also providing the public with lasting opportunities to enjoy the highest quality wildlife-dependent recreation.

B. Through consistent application of this policy, we will establish an administrative record and build public

understanding and consensus regarding the types of public uses that are legitimate and appropriate within the System.

1.2 What is the scope of this policy? This policy applies to all proposed and existing uses of national wildlife refuges when we have jurisdiction over these uses. In situations where reserved rights or legal mandates provide that we must allow certain uses, the requirements of this policy will not apply. For example, we will not apply this policy to proposed public uses of wetland or grassland easement areas of the System because the rights we have acquired on these areas generally do not extend to control over public uses.

1.3 What is the policy regarding the appropriateness of uses on a national wildlife refuge? At the initial stage of considering a use, Refuge Managers will not further consider allowing a new use on a national wildlife refuge, nor renewing, extending, or expanding an existing use on a national wildlife refuge, unless the Refuge Manager has determined the use to be an appropriate use. We will halt, as expeditiously as practicable, existing uses determined to be not appropriate.

1.4 What is our statutory authority for this policy? A. The National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997, 16 U.S.C. 668dd-668ee (Refuge Administration Act). This law provides authority for establishing policies and regulations governing national wildlife refuge uses, including the authority to prohibit certain harmful activities. The Refuge Administration Act does not authorize any particular use but rather authorizes the Secretary to permit uses only when compatible and "under said regulations as he may prescribe." This law specifically identifies certain public uses that when compatible, are legitimate and appropriate uses within the System. The law states "* * * it is the policy of the United States that * * * compatible wildlife-dependent recreation is a legitimate and appropriate general public use of the [National Wildlife Refuge] System * * *, * * * compatible wildlife-dependent recreational uses are the priority general public uses of the [National Wildlife Refuge] System and shall receive priority consideration in national wildlife refuge planning and management; and * * * when the Secretary determines that a proposed wildlife-dependent recreational use is a compatible use within a national wildlife refuge, that activity should be facilitated * * * the Secretary shall

* * * ensure that priority general public uses of the [National Wildlife Refuge] System receive enhanced consideration over other general public uses in planning and management within the [National Wildlife Refuge] System * * * The law also states "In administering the [National Wildlife Refuge] System, the Secretary is authorized to take the following actions: * * * Issue regulations to carry out this Act." This policy fortifies the standards set in the Refuge Administration Act, by showing how we will assure that the priority public uses are provided enhanced consideration over other public uses.

B. The Refuge Recreation Act of 1962, 16 U.S.C. 460k (Refuge Recreation Act). This law authorizes the Secretary of the Interior to " * * * administer such areas [of the National Wildlife Refuge System] or parts thereof for public recreation when in his judgment public recreation can be an appropriate incidental or secondary use."

C. Activities on lands conveyed from the System pursuant to Section 22(g) of the Alaska Native Claims Settlement Act are not subject to this policy, but are subject to compatibility (see 603 FW 2).

D. When allowing off-road vehicle use on refuges we comply with Executive Order 11644 which requires that we: designate areas as open or closed to off-road vehicles in order to protect refuge resources, promote safety, and minimize conflict among the various refuge users; monitor the effects of these uses, once they are allowed; and amend or rescind any area designation on the basis of the information gathered. Furthermore, Executive Order 11989 requires that we close areas to these types of uses when we determine that the use causes or will cause considerable adverse effects on the soil, vegetation, wildlife, habitat, or cultural or historic resources.

1.5 What do these terms mean? A. Appropriate use. A proposed or existing use on a refuge that meets at least one of the following three conditions.

(1) The use is a priority public use or is necessary for the safe, practical, and effective conduct of a priority public use on the refuge.

(2) The use contributes to fulfilling the System mission, or the refuge purposes, goals, or objectives as described in a refuge management plan approved after October 9, 1997, the date the National Wildlife Refuge System Improvement Act of 1997 was passed.

(3) The use has been determined to be appropriate as specified in section 1.10 of this chapter.

B. *Native American.* American Indians in the conterminous United States, and Alaska Natives (including

Aleuts, Eskimos, and Indians) who are members of federally recognized tribes.

C. *Priority public use.* A wildlife-dependent recreational use involving hunting, fishing, wildlife observation and photography, or environmental education and interpretation.

1.6 What are our responsibilities? A. Director. Provides national policy for determining the appropriateness of uses within the System to ensure that such determinations comply with all applicable authorities.

B. *Regional Director.* (1) Ensures that refuge managers follow laws, regulations, and policies when determining appropriateness.

(2) Notifies the Director regarding controversial or complex appropriateness determinations.

C. *Regional Chief.* (1) Makes the final decision on appropriateness determinations when the Refuge Supervisor does not concur with the Refuge Manager.

(2) Notifies the Regional Director regarding controversial or complex appropriateness determinations.

D. *Refuge Supervisor.* (1) Reviews the Refuge Manager's determination that an existing or proposed use is appropriate when that use is not a priority public use, or does not support a priority public use, or is not already described in a refuge management plan approved after October 9, 1997.

(2) Refers an appropriateness determination to the Regional Chief if the Refuge Supervisor does not concur with the Refuge Manager. Discusses non-concurrence with the Refuge Manager for possible resolution before referring to the Regional Chief.

(3) Notifies the Regional Chief regarding controversial or complex appropriateness determinations.

E. *Refuge Manager.* (1) Determines if a proposed or existing use is subject to this policy.

(2) Determines whether a use is appropriate or not appropriate.

(3) Documents all determinations under this policy as described in section 1.10 of this chapter in writing.

(4) Refers all findings of appropriateness for any proposed use which is not a priority public use, or which does not directly support a priority public use, or which is not already described in a refuge management plan approved after October 9, 1997 to the Refuge Supervisor for concurrence.

1.7 What is the relationship between appropriateness and compatibility? This policy describes the initial decision process the Refuge Manager follows when first considering whether to allow or not allow a proposed use on a refuge.

This appropriateness decision occurs before the Refuge Manager undertakes a compatibility review of the use. This policy clarifies and expands upon 603 FW 2.10(D), which describes when refuge managers should deny a proposed use without determining compatibility. If we find a proposed use to be not appropriate, we will not allow the use, and there is no need to prepare a compatibility determination. By screening out proposed uses which are not appropriate to the System, the Refuge Manager avoids an unnecessary compatibility review. By following the process for determining the appropriateness of a use, we strengthen the System and help fulfill our wildlife conservation mission. We describe this appropriateness determination process in section 1.10 of this chapter. It is important to remember that although a refuge use may be determined to be both appropriate and compatible, the Refuge Manager retains the authority not to allow the use. For example, there may be occasions when two appropriate and compatible uses are in conflict with each other. In these situations, even though both uses are appropriate and compatible, the Refuge Manager may need to limit or entirely curtail one of the uses in order to optimize the greatest benefit to the public and to refuge resources. See 603 FW 2 for detailed policy on compatibility.

1.8 How are uses considered in the comprehensive conservation planning process? A. We will manage all refuges in accordance with an approved Comprehensive Conservation Plan (CCP). The CCP describes the desired future conditions of the refuge or refuge planning unit and provides long-range guidance and management direction to accomplish the purposes of the refuge and the System mission. The CCP is prepared with public involvement, and will include a review of the appropriateness and the compatibility of existing refuge uses and of any planned future uses. If during the CCP preparation we identify prior approved uses which we can no longer consider appropriate on the refuge, we will clearly explain to the public our reasons and describe how we will eliminate the use.

B. We prepare CCPs with full public involvement, and provide the public an opportunity to review and comment on our decisions about which uses we will allow. For proposed new uses which we did not consider during the CCP preparation process, we will apply the guidelines contained in this policy and make an appropriateness determination without additional public review and comment. However, if we determine

that a proposed use is appropriate, the use must still pass the compatibility standard, which includes an opportunity for public review and comment. See 602 FW 1–4 for detailed policy on refuge planning.

1.9 What are the different types of refuge uses? For the purposes of this policy, there are five types of uses.

A. Priority public uses. These are uses involving hunting, fishing, wildlife observation and photography, and environmental education and interpretation. They are legitimate, appropriate, and are the first priority uses of the System. See 605 FW 1–7 for detailed policy on the priority public uses.

B. Public uses that directly support a priority public use. These are uses necessary for the safe, practical, and effective conduct of priority public uses. When determined to be compatible, these are the second priority uses of the System. Uses that directly relate to and facilitate one of the six priority public uses are generally appropriate.

Typically, these activities occur at the same time and place as the priority public use and are used either as a practical mode of access, or as an effective way to support a priority public use. In these cases, the primary reason for this use is to enable a person to enjoy one of the priority public uses. For example, boating on a refuge lake may be necessary to enjoy fishing or birdwatching; in this case the boating is an appropriate support activity. Conversely, speed boating for the pleasure of traveling on the open water is not an activity that supports one of the priority public uses. As another example, horseback riding and camping on the Charles M. Russell National Wildlife Refuge in Montana may be appropriate in support of big game hunting. In this case, horseback riding is a practical mode of access to remote, roadless areas, and camping is a necessary part of hunting in the remote parts of this vast refuge. On this refuge, or on other large or remote refuges, both horseback riding and camping may directly and appropriately support other priority public uses. As a contrasting example, camping on Necedah National Wildlife Refuge in Wisconsin, even if part of a hunting program, is not appropriate because the size of the refuge is such that camping is not necessary for reasonable access to its hunt areas, and there are camping and lodging accommodations nearby off the refuge. In order to ensure accessibility to refuge programs and activities for people with disabilities, we may authorize specialized means of access that are not normally allowed. We will

provide these accommodations on a case-by-case basis, depending on the nature of the individual's disability, and our needs to protect refuge resources. See 605 FW 1–7 for detailed policy on the priority public uses.

C. Public uses not related to a priority public use. These public uses are not necessary to support a priority public use. Public uses not directly related to the priority public uses or that do not contribute to the fulfillment of refuge purposes, goals or objectives as described in current refuge management plans are the lowest priority for refuge managers to consider. Because these uses are likely to divert refuge management resources from higher priority public uses, or away from our wildlife conservation activities, there is general presumption, in both law and policy, against allowing such uses within the System. Before we will allow these uses, regardless of their frequency or duration, we must first determine that these public uses are appropriate as defined in section 1.10 of this chapter.

D. Specialized uses. These are uses not usually allowed that require specific authorization from the Service, 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 determine the appropriateness of specialized uses on a case-by-case basis. Before we will allow a specialized use, we must determine it to be appropriate as defined in section 1.10 of this chapter. Any person denied a request for a specialized use, or adversely affected by the Refuge Manager's decision relating to a person's permit, may appeal the decision by following the procedures outlined in 50 CFR 25.45, and in 50 CFR 36.41(i). The appeals process for the denial of a right-of-way application is found in 50 CFR 29.22. The appeals process for persons who believe they have been improperly denied rights with respect to providing visitor services on Alaska refuges is found in 50 CFR 36.37(g). Some common examples of specialized uses include the following.

(1) *Right-of-ways.* See 340 FW 3 and 603 FW 2 for detailed policy on right-of-ways.

(2) *Telecommunications facilities.* We process a request to construct a telecommunication facility on a refuge the same way as any other right-of-way request. The Telecommunications Act of 1996 does not supersede any existing laws, regulations, or policy relating to right-of-ways on refuges. The Refuge Manager should continue to follow the procedures found in 340 FW 3.

(3) *Military, NASA, border security, and other national defense uses.* The following guidelines apply to refuge lands owned in fee title by the Service or lands to which the Service has management rights that provide for the control of such uses.

(a) We will continue to honor existing, long-term written agreements such as Memorandum of Understanding (MOU) between the Service, the military, NASA, and other Federal agencies with national defense missions. Only the Director may approve any modification to existing agreements. We do not anticipate entering into any new agreements permitting military preparedness activities on national wildlife refuges. Where joint military/NASA—Service jurisdiction occurs by law, an MOU negotiated by the principal parties, and subject to the approval of the Director, will specify the roles and responsibilities, terms, and stipulations of the refuge uses. Wherever possible, we will work to find practical alternatives to the use of refuge lands, and to minimize the impacts to wildlife resources.

(b) For routine or continuous law enforcement and border security activities, an MOU between the Service and the specific enforcement agency will clearly define roles and responsibilities of the enforcing agency and will specify steps they must take to minimize impacts to refuge resources. For emergency or undercover operations, reasonable notification must be given to and approval must be received from the Refuge Manager.

(c) We consider military activities on refuge lands that directly benefit refuge purposes to be refuge management activities, and they are not subject to this policy. For example, in a case where a national guard unit is assisting the refuge with the construction of a water control structure, or helping to repair a refuge bridge, we consider these uses to be refuge management activities and do not consider them to be specialized uses.

(4) *Research.* As a leader in wildlife management, we actively encourage cooperative wildlife resource-related research activities that address our management needs. We also encourage research related to the management of priority public uses. Wildlife resource-related research activities are generally appropriate. Research that directly benefits refuge management has priority over other research. These uses must be determined to be appropriate as defined in section 1.10 of this chapter.

(5) *Public safety training.* We may assist local government agencies with

health, safety, and rescue training operations on the refuge if we determine the use to be appropriate. Examples include fire safety training, search and rescue training, and boat operations safety training. General law enforcement training exercises usually are not appropriate. We will evaluate these requests on a case-by-case basis, considering the availability of other local sites and the nature of other local resources. To the extent practicable, we will develop written agreements with the requesting agencies. These uses must be determined to be appropriate as defined in section 1.10 of this chapter, although it is unlikely that this type of use will pass the 10 criteria listed there.

(6) *Native American ceremonial, religious, and traditional gathering of plants.* We will review specific requests and provide reasonable access to Native Americans to refuge lands and waters for gathering plants for ceremonial, religious, medicinal, and traditional purposes. We may issue use permits if the use is consistent with treaties, judicial mandates, or Federal and Tribal law. These uses must be determined to be appropriate as defined in section 1.10 of this chapter.

(7) *Natural resource extractions.* Although most refuges are withdrawn from the mining and mineral leasing laws (i.e., closed to mining activities), several are at least partially open. It is incumbent upon refuge managers to know if these laws affect their particular refuge. Where a refuge is closed, we will prohibit prospecting, exploration, development, extraction, or removal of leaseable (e.g., oil, gas, coal) and locatable (hardrock) minerals (see 50 CFR 27.61 and .64). We only allow the extraction of certain mineral resources (such as gravel) that supports a refuge management activity when there is no practical alternative. We will not justify such activity by citing budgetary constraints, rather we will seek appropriate funding through our normal budgetary process for projects that require gravel or other such resources found on the refuge. In some instances, individual refuges may be subject to valid existing mineral rights reserved during the acquisition process or rights vested prior to our acquisition of the lands. The owners of valid mining rights have the right to extract the minerals, even if they do not own the surface, and we may not unduly interfere with this right. Activities or uses relative to prior existing rights are generally outside the scope of this chapter. In the case of reserved rights, the Refuge Manager should work with the owner of the property interest to develop stipulations in a special use permit or other access

agreement to alleviate or minimize adverse impacts to the refuge (see 50 CFR 29.32). ANILCA provides specific guidance for oil and gas leasing on Alaska refuges.

(8) *Commercial uses.* Commercial uses on a refuge may be appropriate if they directly support a priority public use or are a refuge management economic activity. See 50 CFR 29.1 for additional information on economic uses of refuges. An example of an appropriate commercial use would be a concession-operated boat tour that facilitates wildlife observation and interpretation. All commercial uses are subject to appropriateness determinations. These uses must be determined to be appropriate as defined in section 1.10 of this chapter. The following is a list of references for more detailed policy on commercial uses.

(a) Administration of commercial and economic uses 604 FW 2.

(b) Administration of commercial guiding of wildlife observation, hunting and fishing 604 FW 2.

(c) Concession management 604 FW 2.

(d) Commercial audio-visual management 604 FW 7, and 43 CFR 5.

(e) Commercial visitor services on Alaska Refuges 43 CFR 36.37.

E. *Prohibited uses.* Regulations prohibiting certain activities on national wildlife refuges are listed in 50 CFR part 27.

1.10 *How do we determine the appropriateness of a use on a national wildlife refuge?* A. A refuge use is appropriate if the use meets at least one of the following three conditions.

(1) A use is appropriate if it is a priority public use or is necessary for the safe, practical, and effective conduct of a priority public use on the refuge. This finding does not require Refuge Supervisor concurrence.

(2) A use is appropriate if it contributes to fulfilling the System mission, or the refuge purposes, goals, or objectives as described in a refuge management plan approved after October 9, 1997, the date the National Wildlife Refuge System Improvement Act of 1997 was passed. This finding does not require Refuge Supervisor concurrence.

(3) A use is appropriate if the Refuge Manager documents in writing reasons why the use should be considered appropriate and obtains concurrence from the Refuge Supervisor (see Exhibit 1). The Refuge Manager will base this finding of appropriateness in consideration of the following 11 factors. If the answer is "no" to any of the following questions, we will generally not permit the use. If the

answers are consistently "yes" to these questions, and if there are compelling reasons why the Refuge Manager believes the use is appropriate for the refuge, the Refuge Manager then prepares a written justification (Exhibit 1), and obtains the Refuge Supervisor's written concurrence before proceeding with preparation of a compatibility determination. Concurrence from the Refuge Supervisor will promote System consistency and will help us avoid establishing precedents that may be difficult to overcome in the future. Furthermore, refuge supervisors will usually consult with their Regional Chief as these decisions are made. This section specifically clarifies and expands upon 603 FW 2.10(D) Denying a proposed use without determining compatibility.

(a) Does the use comply with applicable laws and regulations? The proposed use must be consistent with all applicable laws and regulations (e.g., Wilderness Act, Endangered Species Act, Marine Mammal Protection Act, 50 CFR part 27). Uses that are prohibited by law are immediately rejected.

(b) Is the use consistent with applicable Executive Orders and Department and Service policies? If the proposed use conflicts with an applicable executive order, or Department or Service Policy then the use should be rejected.

(c) Is the use consistent with refuge goals and objectives in an approved refuge management plan? Refuge goals and objectives are documented in approved refuge management plans (e.g., Comprehensive Conservation Plans, comprehensive management plans, master plans, step-down management plans). If the proposed use, either directly or in combination with other uses or activities, conflicts with a refuge goal, objective or management strategy, the use should not be considered further. If a plan which addresses this use has not been developed or yet approved, refer to 1.10.A(1)(g) of this chapter.

(d) Has an earlier documented analysis not denied the use? If we have already considered the proposed use in a refuge planning process and rejected it as not appropriate, then the use should not be considered further. If circumstances have changed significantly, then we may consider the use further. If we did not raise the proposed use as an issue during a refuge planning process, we may further consider the use.

(e) Is the use consistent with public safety? If the proposed use creates an unreasonable level of risk to visitors or refuge staff, or if the use requires refuge

staff to take unusual safety precautions to assure the safety of the public or other refuge staff, then the use should be rejected.

(f) Is the use manageable within available budget and staff? Priority public uses take precedence over other public uses. If a proposed use diverts management efforts or resources away from the proper and reasonable management of a priority use, or from a refuge management activity, the proposed use should be rejected.

(g) Is the use consistent with other resource or management objectives? If the Refuge Manager cannot articulate why a proposed use would be consistent with a stated wildlife conservation or other resource or public use management objective of the refuge, then the use should be rejected.

(h) Will the use be easy to control in the future? If the use would lead to recurring requests for the same or similar activities that will be difficult to control in the future, then the request should be rejected. If we can manage the use so that impacts to wildlife resources are minimal or inconsequential, or if we can establish clearly defined limits, then we may further consider the use.

(i) Is the refuge the only place this activity can reasonably occur? If there are other nearby public or private lands that can reasonably accommodate the

use, then the use should be rejected. If the proposed use involves or commemorates a culturally or historically significant event or activity that has direct connection to the refuge, then we may further consider the use.

(j) Does the use contribute to the public's understanding and appreciation of the refuge's wildlife or cultural resources, or is the use beneficial to the refuge's wildlife or cultural resources? We generally will not allow other uses that are not beneficial to or which do not lead to greater public understanding or appreciation of the refuge's cultural or wildlife resources.

(k) Can the use be accommodated without impairing existing wildlife-dependent recreational uses or reducing the potential to provide quality wildlife-dependent recreation into the future?

B. If the Refuge Manager finds that a proposed use is not appropriate, the finding must be documented for the refuge files (Exhibit 1). This finding does not require Refuge Supervisor concurrence.

C. Following the issuance of this policy, refuge managers must review all existing uses for appropriateness within 1 year. If the Refuge Manager finds that an existing use is not appropriate, the use must be modified so it is appropriate, or it must be terminated or phased out as expeditiously as

practicable. This finding must be documented for the refuge files (Exhibit 1). A finding of "not appropriate" does not require Refuge Supervisor concurrence. However, the decision to modify or terminate a use may be subject to the National Environmental Policy Act (NEPA). Refuge managers should consult with their Regional NEPA Coordinator to see if this decision would be subject to NEPA.

D. The System Headquarters will maintain a database of refuge uses. This database will include a refuge-by-refuge listing of all uses that have been approved and not approved by refuge managers. With this information, refuge managers will know when proposed uses have already been approved or denied at any other unit of the System. This information will help strengthen the System by reinforcing consistency and integrity in the way we consider refuge uses.

Determination of Appropriateness of a Proposed Refuge Use

Refuge Name: _____
Proposed Use: _____

This form is not required for priority public uses, uses that support a priority public use, or uses already described in a current CCP.

	Yes	No
The proposed refuge use:		
Does the use comply with applicable laws and regulations?
Is the use consistent with applicable Executive Orders and Department and Service policies?
Is the use consistent with refuge goals and objectives in an approved refuge management plan?
Has an earlier documented analysis not denied the use?
Is the use consistent with public safety?
Is the use manageable within available budget and staff?
Is the use consistent with other resource or management objectives?
Will this use be easy to control in the future?
Is the refuge the only place this activity can reasonably occur?
Does the use contribute to the public's understanding and appreciation of the refuge's wildlife or cultural resources, or is the use beneficial to the refuge's wildlife or cultural resources?
Can the use be accommodated without impairing existing wildlife-dependent recreational uses or reducing the potential to provide quality wildlife-dependent recreation into the future?

If the answer to any of these questions is no, the proposed use is probably not appropriate and we should generally not consider it further. However, if there are compelling reasons why the Refuge Manager believes the use should be considered, the Refuge Manager must justify the use in writing on an attached sheet, and obtain the Refuge Supervisor's concurrence.

Based on an overall assessment of these factors, my summary conclusion is that the proposed use is:

Not Appropriate _____
Appropriate _____
Refuge Supervisor: _____
Date: _____

If determined to be Not Appropriate, the Refuge Supervisor does not need to sign concurrence:

If determined to be Appropriate, the Refuge Supervisor must sign concurrence:
Refuge Supervisor: _____
Date: _____

Compatibility determination is required before the use may be allowed.

Dated: December 18, 2000.

Jamie Rappaport Clark,
Director, Fish and Wildlife Service.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service 1018-AG20

[1018-AG20]

Draft Wildlife-Dependent Recreational Uses Policy Pursuant to the National Wildlife Refuge System Improvement Act of 1997

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: We propose to adopt a policy that will explain how we will provide