

Law 104-6), which took effect on April 10, 1995, stipulated that no funds could be used to make final listing or critical habitat determinations. Now that funding has been restored, the Service is proceeding with a final determination for these three animal species.

Due to the length of time that has elapsed since the close of the initial comment period, changing procedural and biological circumstances and the need to review the best scientific information available during the decision-making process, the comment period is being reopened. The Service now believes that the effects of fire suppression, a factor not identified in the proposed rule as a threat to the Alameda whipsnake and its habitat, may be a significant factor in the determination of the final status for the whipsnake. For this reason, the Service particularly seeks information concerning:

(1) the known or potential effects of fire suppression and general fire management practices on the Alameda whipsnake and its habitat.

In addition, the Service seeks information that has become available in the last two years concerning:

(2) other biological, commercial, or other relevant data on any threat (or lack thereof) to any of these species; and

(3) the size, number, or distribution of populations of any of these species.

Written comments may be submitted until December 2, 1996 to the Service office in the **ADDRESSES** section.

Author

The primary author of this notice is Diane Windham (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: October 25, 1996.

Thomas Dwyer,

Acting Regional Director, Region 1.

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50 CFR Part 36

RIN 1018-AD93

Regulations for the Administration of Special Use Permits on National Wildlife Refuges in Alaska

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) proposes these regulations to

clarify, update, and add to existing regulations for the administration of all special use permits (permits) on national wildlife refuges (refuges) in Alaska. These regulations are being revised to provide the Service with the necessary regulatory authority to administer the recent changes in the refuges' commercial visitor service programs and to ensure proper and uniform management of all permits on refuges in Alaska.

DATES: For written comments to be considered, they must be received by December 31, 1996.

ADDRESSES: Comments should be sent to the Regional Director, Attention: Daryle R. Lons, U.S.F.W.S., 1011 Tudor Rd., Anchorage, AK 99503.

FOR FURTHER INFORMATION CONTACT: Daryle R. Lons, telephone (907) 786-3354.

SUPPLEMENTARY INFORMATION:

Background

The Alaska National Interest Lands Conservation Act of 1980 (ANILCA, Pub.L. 96-487; 94 Stat. 2371) and the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd-668ee) authorize the Secretary of Interior to prescribe regulations as necessary to administer permits for compatible activities on refuges in Alaska.

The current regulations governing issuance of permits on units of the National Wildlife Refuge System in Alaska, codified at 50 CFR 36.41, and originally published in the Federal Register in 1981 (46 FR 40192, August 7, 1981), and were amended in 1986 (51 FR 44794, December 12, 1986). Since then, the permit administration program on refuges in Alaska has continued to evolve and grow in both size and complexity. Although special use permits were issued for a variety of economic and other privileged specialized uses, most permits issued on Alaska Refuges are for commercial visitor service activities involving guide-outfitters.

The primary purpose of the revised regulations is to provide better guidance to Service employees and permittees concerning the administration of commercial visitor service permits on refuges in Alaska. Regulations implementing Section 1307 of ANILCA (see 60 FR 20374-20378, April 25, 1995) are currently being promulgated separately from this rulemaking. The 1307 regulations will establish procedures for granting historical use, Native Corporation, and local preferences in the selection of commercial operators who provide

visitor services other than hunting and fishing guiding on refuges in Alaska. The 1307 regulations will supplement these proposed regulations.

Since the original regulations were promulgated, the program has evolved due to significant changes in State of Alaska guiding regulations and programs, increases in commercial visitor services on refuges, and changes in the economic environment of the guiding industry.

The most visible and significant change in the Service's administration of refuge permits in Alaska was caused by the decision of the Alaska Supreme Court in *Owsichuk v. State Guide Licensing and Control Board*, 763 P. 2d 488 (Alaska 1988). That ruling overturned as unconstitutional the State of Alaska's (State) system of assigning exclusive big game guide areas. Until that ruling, the Service depended upon the State's system for selecting big game guides for use areas within refuge lands in Alaska. To allow the State an opportunity to develop a constitutionally acceptable system that would meet Service needs, the Service imposed a moratorium on issuance of permits to new big game guide applicants. After a period of operating under this moratorium, it became apparent that the State would not be able to adopt and implement a program for selection of big game guide outfitters which also would satisfy Service requirements and mandates. Therefore, the Service developed its own interim program in order to provide an equal opportunity for all registered big game guide-outfitters to compete for permits to operate on refuges in Alaska. After soliciting public comment on a draft system, and making revisions based on those comments, an interim program was implemented in June 1992. Requests for proposals were then solicited and applicants were notified of selections in January 1993. Successful applicants were awarded 5-year permits effective July 1, 1993.

It appears unlikely the State will be able to implement a suitable competitively-based system for selection of guides to start in time to allow the reissuance of permits in 1998. These revised regulations will provide the proper authority to allow the Service's big game guide permitting program to continue.

Another factor in the evolution of the permit program has been the significant increase in the number of permits being issued by the refuges. Increase in

demand for activities such as sport fish guiding and river floating reached the maximum capacity on several refuges during the late 1980's and early 1990's. Where the Service has had to limit the numbers of permittees for certain activities, this was done by awarding permits through competitive selection processes or by annually renewing permits for existing permittees until a competitive selection process could be implemented.

The existing system also needs to be modified to respond to the changing economic conditions affecting commercial visitor services. Guides started voicing their concerns in the late 1980's that changing economic factors and business requirements made it more and more difficult for commercial visitor service businesses to operate in a professional and safe manner with the limited financial security offered by annual permits. Guides have offered strong arguments that they needed the financial security associated with longer term permits and the right to transfer their permits when they retired. They also sought survivor rights for family members and business partners. The Service addressed their concerns in part by initiating programs to issue competitively awarded, 5-year permits for sport fish guides on Togiak National Wildlife Refuge in 1991 and for big game guide outfitters on all Alaska refuges in 1992. Policy was also revised to establish a right of survivorship.

As a result of the changes associated with awarding permits competitively, there has been an apparent overall improvement in permittee compliance with terms of permits, a reduction in impacts to refuge resources and other users, and an increase in the quality of visitor services provided to the public.

Early in 1995, Congress directed the Service to reinstate a short-lived and effectively unimplemented 1992 policy directive issued by former Secretary of the Interior Lujan. The 1992 policy required competitively issued hunting and fishing guide permits to have 5-year terms with 5-year renewal rights, allowed the privileges of the permits to be transferable under certain conditions, and required existing competitively awarded permits to be reissued consistent with the policy. Shortly after Secretary of the Interior Babbitt's appointment, he reviewed the 1992 policy and determined that it was inappropriate to implement such policy without public notice and comment. Subsequently, Congress supported a return to the earlier policy by including language in a conference report (H.R. 1977), regarding the Department's Fiscal Year 1996 appropriations, which

directed the Service to reinstate the 1992 policy. The Service is complying with the directive by publishing these proposed regulations. To meet the intent of the directive, the proposed regulations also provide a phase-in period of the competitive system to those permittees who have been conducting a commercial activity in a refuge where the Service has historically limited the numbers of permits issued. Although the Service has only been issuing annual permits to these permittees, the Service, until recently, has given them a reasonable expectation that they would continue to receive permits each year as long as they provided good service and met the terms of their permits. Many of these permittees have invested a significant amount of time and money and built their lives around a business which is dependent upon receiving a permit.

The proposed regulations make the 1992 policy applicable to all competitively awarded commercial visitor service permits, not just sport fishing and big game hunting guide permits and will provide the Service with the proper regulatory authority to administer its permit program. The existing regulations do not address the competitive award of all big game guide-outfitter permits nor any of the other refuge-specific, competitively awarded permits. In a recent lawsuit concerning implementation of the big game guide-outfitter program, the U.S. District Court's 1994 finding in favor of the Service was influenced by the Service's commitment to developing regulations addressing administration of the program.

In summary, the goals of this rulemaking are to provide the public, commercial service industry, and Service employees with better guidance for the administration of special use permits on refuges in Alaska; to enhance the conservation of wildlife resources by establishing a system in which operators have a more direct, continuing and long-term interest in conserving and protecting these valuable resources; and to obtain the most capable operators available to provide safe, high quality services to the general public.

Analysis of Comments Received

Department of Interior policy is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Prior to drafting these regulations, individual letters were sent to all known interested parties and an advance notice was published in the Federal Register which requested public comments on several issues, including:

(1) Whether the existing 180-day period allowed for filing appeals of decisions by refuge managers denying permit applications to the Regional Director of the Service is appropriate under present circumstances. By way of comparison, the appeal period in the rest of the United States is 30 days (50 CFR 25.45);

(2) To what extent should the existing interim system used for selecting big game guide-outfitters be made part of the regulations;

(3) Whether a different appeal procedure should be used where permit awards are based upon a competitive selection system such as that used to select big game guide-outfitters under the existing interim system; and

(4) Whether provision should be made for suspending the Service's big game guide-outfitter selection system if the State develops and implements a system meeting Service requirements.

The Service received 14 letters in response to the advance notice. These included one letter from the State of Alaska, two letters from Alaska Native village councils, one letter from a national environmental organization, one letter from a big game guiding association, and nine letters from individuals. In addition, the Service received additional informal follow up comments, mostly from those who had responded to the advance notice with substantial comments. The following is an analysis of the written comments received in response to the notice:

Length of Appeal Period

Four comments were received on the appeal period. One respondent stated the existing 180-day period is appropriate. Two respondents recommended that the appeal period be shortened to 30-60 days. Stated rationale included that a longer period places existing permittees in an awkward position for a longer period than necessary and prevents them from committing resources to their operations until the time for filing an appeal has run or is resolved. One respondent recommended extending the appeal period up to 1-year because guide-outfitters are often in isolated areas without access to immediate communication. The proposed regulations provide for a 45-day appeal period.

Incorporation of Big Game Guide-Outfitter Selection Process Into Regulations

Six comments were received on making the existing selection process part of the regulations. Two respondents recommended suspending the existing

big game guide selection process completely in favor of the State of Alaska's existing system. Three respondents supported making the existing policy, with revisions, part of the regulations. One respondent recommended that any changes in the administration of special use permits should be made in policy form instead of revised regulations. The proposed regulations establish a framework the Service considers the minimum necessary to provide proper legal authority to administer the program.

Appeal Procedure

Three respondents commented on the appeal procedure. Two commenters urged the Service to develop a more objective appeal procedure which is less biased than the existing system. One respondent proposed that the issuance of certain types of permits should be subject to public notice with an appeal process to contest the awarding of permits which are construed to be controversial.

The regulations establish a revised appeal process including different allowed time frames from the existing regulations. The proposed regulations do not establish an appeal mechanism for the general public to contest the issuance of permits. The Service believes this would be an unjustifiable administrative burden for most routine permits. The issuance of future permits authorizing controversial activities, not within the scope of decisions made during prior public planning processes in compliance with National Environmental Protection Act (NEPA) requirements, will be subject to public comment during the development of appropriate NEPA documentation.

Provision for Suspending Big Game Guide-Outfitter Selection Provisions

Four comments favored establishing a provision in the regulations that would suspend the Service's administration of selecting big game guide-outfitters if the State of Alaska develops satisfactory competitive selection regulations. The proposed regulations include a provision for State selection of big game guide-outfitters as well as sport fishing guides.

Other

The Service received numerous other comments concerning other administrative aspects of the special use permit program. Most of these comments were more relevant to upcoming policy development issues rather than the rule itself. Examples include:

- (1) Revising competitive selection criteria;
- (2) Structure of selection panels;
- (3) Comprehensive review of permit program;
- (4) Cumulative impacts of authorized permittee activities; and
- (5) Permit fees.

The Service also received several comments regarding permit terms, transferability, and renewal rights. All but one of these comments favored longer term permits with renewal rights and allowances for transferability. The proposed rule provides for 5 year terms with renewal rights and limited transferability.

One respondent recommended that the Service thoroughly assess the activities occurring under past and present permits and provide this information to the public prior to publishing this proposed rule. The Service does not feel additional assessments are needed because these regulations focus on the administrative process, not on management decisions relating to the number and types of permits to be authorized. Such assessments will be needed during the development or revision of public use management plans and/or comprehensive conservation plans for individual refuges.

One respondent recommended changes in the Service's emergency closure process. These recommendations are applicable to another section of existing regulations and do not pertain to this proposed rule.

One respondent recommended that the proposed rule require written compatibility determinations before any secondary use is allowed. Compatibility determinations are statutorily required for activities requiring a special use permit. Written determinations are routinely completed by every Refuge Manager in Alaska. If the Service determines there is a need for a regulation on this subject, it will be included in the next revision of Part 25, Subpart D of Title 50 of the Code of Federal Regulations which applies to all national wildlife refuges, not just refuges in Alaska.

Request for Additional Comments

In accordance with Department policy, interested persons may submit written comments concerning this proposed rule by any of the following:

- (1) Mailing to Daryle R. Lons, U.S. Fish and Wildlife Service; 1011 East Tudor Road, Anchorage, AK 99503-6199;
- (2) Faxing to Daryle Lons at (907) 786-3657; or

(3) Electronically mailing to daryle-lons@mail.fws.gov.

The Service scheduled public meetings to receive comments in Anchorage and Fairbanks, Alaska and reviewed and considered all substantive comments before this proposed rule was published.

Paperwork Reduction Act

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Service has applied for its expired authorization and clearance number 1018-0077 to be re-instated by the Office of Management and Budget (OMB). The Service is applying for an emergency extension and is likewise working on a long-term 3-year authorization request which will be submitted before the emergency authorization expires. No information collection will be made until this authorization is obtained and current.

This collection of information will be achieved through the use of a USFWS Application Form, which will be modified pursuant to 50 CFR 13.12(b), to address the specific requirements of the final rule. The information collection requirements needed for the proper use and management of all Alaska National Wildlife Refuges is contained in 50 CFR 36.3. The information is being collected to assist the Service in administering economic and other privileged use programs and, particularly, in the issuance of permits and the granting of statutory or administrative benefits.

This collection of information will establish whether the applicant is fully qualified to receive the benefits of a refuge permit. The information such as name, address, phone number, depth of experience, qualifications, time in residence, knowledge of function, and affiliations requested in the application form is required to obtain a benefit.

The likely respondents to this collection of information will be individual Alaska citizens and native corporations who wish to be considered to receive a refuge permit. This information will be needed by the USFWS to determine whether a given individual or corporation qualifies. A refuge permit will be approved for 3 years, at which time renewal of approval will be considered by the Service. The public reporting burden for this collection of information is estimated to average 1.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining data needed, and completing and reviewing the collection of information. The estimated number of

likely respondents is less than ten, yielding a total annual reporting and recordkeeping burden of 15 hours or less.

Direct comments regarding the burden estimate or any other aspect of the form to the Service Information Collection Clearance officer, Fish and Wildlife Service, Mail Stop 224, Arlington Square, U.S. Department of the Interior, 1849 C Street, N.W., Washington, D.C. 20240, and to the Office of Information and Regulatory Affairs, OME, Attention: Desk officer for the Interior Department (1018-0077), Washington, D.C. 20503.

Environmental Considerations

In accordance with 516 DM 2, Appendix 2, the Service has determined that this action is categorically excluded from the NEPA process as it contains "policies, directives, regulations and guidelines of an administrative, financial, legal, technical or procedural nature" that will have no potential for causing substantial environmental impact.

Economic Effects/Regulatory Flexibility Act Compliance

This rulemaking was not subject to review by the Office of Management and Budget under Executive Order 12866. A review under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) has revealed that this proposed rulemaking would not have a significant effect on a substantial number of small entities, which include businesses, organizations, or governmental jurisdictions. The proposed rule will maintain an overall economic status quo without changes in either the number or type of permits being issued.

Unfunded Mandates

The Service has determined and certifies pursuant to the Unfunded Mandates Act (2 U.S.C. 1502 *et seq.*), that this rulemaking will not impose a cost of \$100 million or more in any given year on local or State governments or private entities.

Civil Justice Reform

The Department has determined that these proposed regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

Primary Author: Daryle R. Lons, Refuge Program Specialist, Fish and Wildlife Service, Alaska Region.

List of Subjects in 50 CFR Part 36

Alaska, Recreation and recreation areas, Reporting and recordkeeping requirements, Wildlife refuges.

Accordingly, Part 36 of Chapter I of Title 50 of the Code of Federal Regulations is proposed to be amended as follows:

PART 36—[AMENDED]

1. The authority citation for Part 36 continues to read as follows:

Authority: 16 U.S.C. 460(k) *et seq.*, 668dd *et seq.*, 742(a) *et seq.*, 3101 *et seq.*, and 44 U.S.C. 3501 *et seq.*

2. Section 36.41 is revised to read as follows:

§ 36.41 Permits.

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

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

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

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

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

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

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

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

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

Use area shall mean the designated area that a permittee is authorized to conduct commercial services in.

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

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

Refuge	Office location
Alaska Peninsula National Wildlife Refuge.	King Salmon.
Alaska Maritime National Wildlife Refuge.	Homer.
Aleutian Islands Unit, Alaska Maritime NWR.	Homer.
Arctic National Wildlife Refuge.	Fairbanks.
Becharof National Wildlife Refuge.	King Salmon.

Refuge	Office location
Innoko National Wildlife Refuge.	McGrath.
Izembek National Wildlife Refuge.	Cold Bay.
Kanuti National Wildlife Refuge.	Fairbanks.
Kenai National Wildlife Refuge.	Soldotna.
Kodiak National Wildlife Refuge.	Kodiak.
Koyukuk National Wildlife Refuge.	Galena.
Nowitna National Wildlife Refuge.	Galena.
Selawik National Wildlife Refuge.	Kotzebue.
Tetlin National Wildlife Refuge.	Tok.
Togiak National Wildlife Refuge.	Dillingham.
Yukon Delta National Wildlife Refuge.	Bethel.
Yukon Flats National Wildlife Refuge.	Fairbanks.

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

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

(4) Application period deadlines for individual refuges may be established for both competitively and noncompetitively issued permits. Notification of availability for commercial opportunities and application deadlines will be sent to existing and/or the previous year's permittees, published in at least one newspaper of general circulation in the State and in at least one local newspaper if available, and made available for broadcast on local radio stations in a manner reasonably calculated to inform local prospective applicants.

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

(e) *Competitively awarded permits.* (1) Where the number of available permits is limited, permits will be awarded competitively. A prospectus with

invitation to bid system will be the primary competitive method used for selecting commercial visitor services. Where justified, other selection methods, including but not limited to lotteries, may be used. Such circumstances may include, but not be limited to, the timely refilling of use areas that have become vacant during regularly scheduled terms to prevent commercial visitor service opportunities from going unused, and initiating trial programs on individual refuges. The refuge manager has discretionary authority to issue noncompetitive permits on a one-time, short-term basis to accredited educational institutions and nonprofit, environmental organizations for activities in use areas where permits are otherwise limited to competitive award.

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

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

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

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

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

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

minimum scores will be identified in the prospectus.

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

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

(i) A vacancy occurs after 12 months of the permits effective date; and

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

(10) Terms of permits awarded under the prospectus with invitation method are valid for 5 years except in those instances where permits are issued to fill vacancies occurring during a scheduled award cycle. In these instances, the duration of the permit may be limited to the expiration date of the original award period. Permits awarded under the prospectus with invitation method may be noncompetitively renewed by the refuge manager for a period of 5 additional years upon showing permittee compliance with all applicable permit terms and conditions and a satisfactory record of performance. No other extensions or noncompetitive renewals shall be awarded after one renewal.

(11) Permit privileges may be transferred to other qualified entities that demonstrate the ability to meet Service standards, as outlined in the prospectus upon which the existing permit was based, subject to approval by the refuge manager. Requests for transfers must be made in writing to the refuge manager. A permittee who transfers his/her privileges will not be

eligible to be considered for competitively awarded permits for the same type of activity on the same national wildlife refuge for a period of 3 years following the authorized transfer. Transfers may be approved if all the following criteria are satisfied:

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

(ii) The current permittee was: either conducting the commercial activity in the area prior to establishment of the refuge; conducting the commercial operation in the refuge under authorization of a permit for a minimum of 15 years; or owns significant real property in the area, the value of which is dependent on holding a refuge permit. Consideration of the last element will include, but not be limited to:

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

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

(C) The appraised value of the real property.

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

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

(A) Any jail time served;

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

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

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

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

(F) Any multiple misdemeanor violations.

(12) The transferee shall follow the operations plan of the original permittee. The transferee's operations plan may be modified with the written consent of the refuge manager as long as the change does not result in increased

adverse impacts to refuge resources or other refuge users.

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

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

(15) Privileges of permits issued under this paragraph (e) may be transferred in the case of death or disability of the permittee, subject to regional director approval, as provided in this paragraph (e). In these cases, the permit privileges may pass to a person who was a business partner when the permit was issued, a spouse, or an immediate family member who is independently qualified to hold the permit under the minimum standards identified by the Service when the permit was originally issued, and has an acceptable history of compliance as set forth in paragraph (e)(11)(iv) of this section.

(16) Upon [the effective date of the final regulations], refuge managers shall amend existing competitively-awarded permits through the prospectus method to make the terms fully consistent with this section, including eligibility for a 5-year noncompetitive renewal. Managers must be careful not to break existing legal contracts.

(f) *Fees.* Permittees must pay fees formally established by regional and/or nation-wide Service policy. Any fee exemption must be documented by the refuge manager.

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

(h) *Restriction, suspension and revocation of permits.* A permit may at any time be suspended, revoked, or its terms may be reasonably restricted for noncompliance with the terms and conditions thereof, or the regulations in,

this subchapter C: for nonuse; for violation of any law, regulation or order applicable to the refuge; to protect public health or safety; or if the refuge manager determines the use to be incompatible with refuge purposes or is inconsistent with the Service's obligations under Title VIII of the Alaska National Interest Lands Conservation Act.

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

(2) Prior to making any adverse decision or order on a permit or application, the refuge manager will notify the permittee or applicant, verbally or in writing, of the proposed action and its effective date. The permittee or applicant of noncompetitively issued permits shall have 45 calendar days after notification in which to present to the refuge manager, orally or in writing, a statement in opposition to the proposed action or effective date. A holder of a valid permit shall be notified in writing, within 10 calendar days after receipt of the statement in opposition of the refuge manager's final decision or order. An applicant for a permit shall be notified in writing within 30 calendar days after receipt of the statement in opposition, of the refuge manager's final decision or order. Applicants, who wish to appeal permit awards made by competitive selection must appeal the refuge manager's decision directly to the regional director within the time period provided for in paragraph (i)(3) of this section.

(3) The permittee or applicant shall have 45 calendar days from the postmarked date of the refuge manager's final decision or order in which to file a written appeal to the regional director. In appeals involving applicants who were not selected during a competitive selection process, the selected applicant concurrently will be afforded the opportunity to provide information to the regional director before a final decision is made. For purposes of reconsideration, appellants shall present the following information:

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

under which the permit application/award was made;

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

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

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

decision. A copy of the decision must promptly be forwarded to the applicant and will constitute final agency action.

(5) Compliance with any decision or order of a Refuge Manager must not be suspended if an appeal has been taken unless such suspension is authorized in writing by the Regional Director, and then only upon a determination that such suspension is not detrimental to the interests of the United States or upon submission and acceptance of a bond deemed adequate to indemnify the United States from loss or damage.

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

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

Dated: September 24, 1996.

George T. Frampton, Jr.,
Assistant Secretary for Fish and Wildlife and Parks.

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