DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Draft Compatibility 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, the process for determining whether or not a use of a national wildlife refuge is a compatible use. This draft compatibility policy incorporates the compatibility provisions of the National Wildlife Refuge System Improvement Act of 1997 (NWRSIA–1997), that amends the National Wildlife Refuge System Administration Act of 1966 (NWRSAA–1966), into our policy as Part 603 Chapter 3 of the Fish and Wildlife Service Manual. Published concurrently in this **Federal Register** are our proposed compatibility regulations describing the process for determining whether or not a use of a national wildlife refuge is a compatible use.

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

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

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

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

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

Compatibility and the NWRSIA–1997

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

We will not initiate or permit a new use of a national wildlife refuge or expand, renew, or extend an existing use of a national wildlife refuge, unless we have determined that the use is a compatible use and that the use is not inconsistent with public safety. We may make compatibility determinations for a national wildlife refuge concurrently with the development of a Comprehensive Conservation Plan.

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

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

Compatibility determinations in existence on the date of enactment of the NWRSIA–1997, October 9, 1997, will remain in effect until and unless modified. In addition, we will make compatibility determinations prepared during the period between enactment of the NWRSIA–1997 and the effective date of the compatibility regulations published concurrently with this notice under the existing compatibility process. After the effective date of the compatibility regulations, we will make compatibility determinations and re-evaluations of compatibility determinations under the compatibility process in the regulations.

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

1. Identify the refuge official responsible for making compatibility determinations;
2. Require an estimate of the time-frame, location, manner, and purpose of each use;
3. Require the identification of the effects of each use on national wildlife refuge resources and purposes of each national wildlife refuge;
4. Require that compatibility determinations be made in writing;
5. Provide for the expedited consideration of uses that will likely have no detrimental effect on the fulfillment of the affected national wildlife refuge's purposes or the National Wildlife Refuge System Mission;
6. Provide for the elimination or modification of any use as expeditiously as practicable after we make a determination that the use is not a compatible use;
7. Require, after an opportunity for public comment, reevaluation of each existing use, other than wildlife-dependent recreational uses, if conditions under which the permitted use change significantly or if there is significant new information regarding the effects of the use, but not less frequently than once every 10 years, to ensure that the use remains a compatible use. In the case of any use authorized for a period longer than 10 years (such as an electric utility right-of-way), the reevaluation will examine compliance with the terms and conditions of the authorization, not examine the authorization itself;
8. Require, after an opportunity for public comment, reevaluation of each existing wildlife-dependent recreational use when conditions under which the permitted use change significantly or if there is significant new information regarding the effects of the use, but not less frequently than in conjunction with each preparation or revision of a comprehensive conservation plan or at least every 15 years, whichever is earlier; and

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

Purpose of This Draft Policy

The purpose of this draft policy is to establish in policy, the process for determining compatibility of proposed national wildlife refuge uses and procedures for documentation and periodic review of existing uses, and to ensure that we administer proposed and existing uses according to the compatibility provisions of the NWRSIA–1997. Published concurrently in this **Federal Register** are our proposed compatibility regulations. This draft compatibility policy reflects the proposed compatibility regulations and provides additional detail for each step in the compatibility determination process.

Fish and Wildlife Service Directives System

Because many of our field stations are located 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, 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 Fish and Wildlife Service Manual contains our standing and continuing directives with which our employees must comply and has regulatory force and effect within the Service. 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 Fish and Wildlife Service Manual or removed. Material appropriate for immediate inclusion in the Fish and Wildlife 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 Fish and Wildlife 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 compatibility policy into the Fish and Wildlife Service Manual as Part 603 Chapter 3.

Comment Solicitation

If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to: Chief, Division of Refuges, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 670, Arlington, Virginia 22203. You may comment via the Internet to: Compatibility__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–AE98'' and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at (703)358–1744. You may also fax comments to: Chief, Division of Refuges, (703)358–2248. Finally, you may hand-deliver comments to the address mentioned above.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There also may be circumstances in which 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 seek public comments on this draft compatibility policy and will take into consideration comments and any additional information received during the 60-day comment period.

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

Required Determinations

We have analyzed the impacts of this policy in concert with the proposed rule published concurrently in today's issue of the **Federal Register**. For compliance with applicable laws and Executive orders affecting the issuance of rules and policies, see the ''Supplementary Information'' section of the proposed rule.

Primary Author

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

Draft Compatibility Policy

FISH AND WILDLIFE SERVICE

NATIONAL WILDLIFE REFUGE SYSTEM USES

Refuge Management
Part 603 National Wildlife Refuge System Uses
Chapter 3 Compatibility
603 FW 3.1

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

3.2 What does this policy apply to? This policy applies to all proposed and

existing uses of national wildlife refuges where we have jurisdiction over such uses.

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

3.4 What are the objectives of this chapter?

A. To provide guidelines for determining compatibility of proposed national wildlife refuge uses and procedures for documentation and periodic review of existing national wildlife refuge uses; and

B. To ensure that we administer proposed and existing national wildlife refuge uses according to laws, regulations, and policies concerning compatibility.

3.5 What are our statutory authorities for requiring uses of national wildlife refuges to be compatible?

A. 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 states that ''The Secretary is authorized, under such regulations as he may prescribe, to—(A) permit the use of any area within the System for any purpose, including but not limited to hunting, fishing, public recreation and accommodations, and access whenever he determines that such uses are compatible'' and that ''* * * the Secretary shall not initiate or permit a new use of a refuge or expand, renew, or extend an existing use of a refuge, unless the Secretary has determined that the use is a compatible use and that the use is not inconsistent with public safety.'' The law also provides that, in administering the Refuge System, ''* * * the Secretary is authorized to * * * Issue regulations to carry out this Act.''

A significant goal of the Refuge Administration Act is to ensure that we maintain the biological integrity, diversity, and environmental health of the Refuge System for present and future generations of Americans. Fragmentation of the Refuge System's wildlife habitats is a direct threat to the integrity of the Refuge System, both today and in the decades ahead. Uses that we reasonably may anticipate to reduce the quality or quantity or fragment habitats on a refuge will not be compatible.

B. Refuge Recreation Act of 1962, 16 U.S.C. 460k (Refuge Recreation Act). This law requires that any recreational use of a refuge must be compatible with the primary purposes for which the refuge was established.

C. Alaska National Interest Lands Conservation Act of 1980, 16 U.S.C. 140hh–3233, 43 U.S.C. 1602–1784 (ANILCA). Section 304 of the ANILCA adopted the compatibility standard of the Refuge Administration Act for Alaska refuges.

3.6 What do these terms mean?

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

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

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

D. Conservation, and Management mean to sustain and, where appropriate, restore and enhance, healthy populations of fish, wildlife, and plants utilizing, in accordance with applicable Federal and State laws, methods, and procedures associated with modern scientific resource programs. Such methods and procedures include, consistent with the provisions of the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee), protection, research, census, law enforcement, habitat management, propagation, live trapping and transplantation, and regulated taking.

E. Coordination area means a wildlife management area made available to a State: (1) By cooperative agreement between the U.S. Fish and Wildlife Service and a State agency having control over wildlife resources pursuant to section 4 of the Fish and Wildlife Coordination Act (16 U.S.C. 664); or (2) by long-term leases or agreements pursuant to title III of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1010 et seq.). The States manage coordination areas as a part of the National Wildlife Refuge System. The compatibility standard does not apply to coordination areas.

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

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

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

I. National Wildlife Refuge System, and Refuge System mean all lands, waters, and interests therein administered by, or subject to the jurisdiction of, the U.S. Fish and Wildlife Service as wildlife refuges, wildlife ranges, wildlife management areas, waterfowl production areas, and other areas administered by the U.S. Fish and Wildlife Service for the protection and conservation of fish and wildlife, including those that are threatened with extinction. A complete listing of all areas of the Refuge System is in the current annual ''Report of Lands Under Control of the U.S. Fish and Wildlife Service.''

J. National Wildlife Refuge System Mission, and Refuge System Mission mean to administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans.

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

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

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

N. Refuge use, and Use of a refuge mean a recreational use (including refuge actions associated with a recreational use or other general public

use), refuge management economic activity, or other use of a national wildlife refuge by the public or other non-Service entity.

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

P. Refuge management activity means an activity conducted by the Service or a Service-authorized agent to fulfill all purposes or at least one or more purposes of the national wildlife refuge, or the National Wildlife Refuge System Mission. Service-authorized agents include contractors, cooperating agencies, cooperating associations, friends organizations, and volunteers.

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

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

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

T. Sound professional judgment means a finding, determination, or decision that is consistent with principles of sound fish and wildlife management and administration, available science and resources, and adherence to the requirements of the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee), and other applicable laws. Included in this finding, determination, or decision is a Refuge Manager's field experience and a Refuge Manager's knowledge of the particular affected refuge's resources.

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

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

3.7 What are our responsibilities?

A. Director.

(1) Provides national policy for making compatibility determinations to ensure that such determinations comply with all applicable authorities.

B. Regional Director.

(1) Ensures that Refuge Managers follow laws, regulations, and policies when making compatibility determinations.

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

C. Refuge Manager.

(1) Determines if a proposed or existing use is subject to the compatibility standard.

(2) Determines whether a use is compatible or not compatible. The Director delegates the authority to make this determination, through the Regional Director, to the Refuge Manager.

(3) Consults with the Regional Office supervisor or designee prior to approving each compatibility determination.

(4) Documents all compatibility determinations in writing.

(5) Ensures that we provide for public review and comment opportunities for all compatibility determinations, unless previously provided.

3.8 What is the compatibility standard for Alaska refuges?

A. The Refuge Administration Act, as amended, establishes the same standard for compatibility for Alaska refuges as for other national wildlife refuges, but it specifically acknowledges that the ANILCA provisions take precedence if any conflict arises between the two laws. Additionally, the provisions of the ANILCA are the primary guidance Refuge Managers should apply when examining issues regarding subsistence use. We may alter the compatibility process, in some cases, for Alaska refuges to include additional procedural steps, such as when reviewing applications for oil and gas leasing on non-North Slope lands (ANILCA Sec. 1008) and for applications for transportation and utility systems (ANILCA Sec. 1104).

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

C. Section 22(g) of the Alaska Native Claims Settlement Act provides that patents issued to Village Corporations for selected land within the boundaries of a refuge existing on December 18, 1971, the signing date of the Act, will contain provisions that these lands remain subject to laws and regulations governing the use and development of such refuges. This includes application of the compatibility standard in accordance with the Service's compatibility rules and procedures with regard to such use and development.

3.9 When is a compatibility determination required?

A. We require a compatibility determination for all refuge uses as defined by the term ''refuge use'' and must include in the analysis consideration of all associated facilities, structures, and improvements, including those constructed or installed by us or at our direction. This requirement will apply to all such facilities, structures, improvements, and refuge actions associated with uses that we approve on or after the effective date of this policy and to the replacement or major repair or alteration of facilities, structures, and improvements associated with already approved uses.

B. Facilities, structures, and improvements commonly associated with recreational public uses include: campgrounds/campsites; environmental education centers; boat/fishing docks; parking lots; boat ramps; roads; trails; viewing platforms/towers; and visitor centers.

C. Facilities, structures, and improvements commonly associated with refuge management economic activities include: loading/unloading areas; construction, operation, and maintenance buildings; parking lots; roads and trails; fences; stock ponds and other livestock watering facilities; and crop irrigation facilities.

D. We will make compatibility determinations for such facilities, structures, and improvements at the same time we make the compatibility determination for the use or activity in question.

3.10 When is a compatibility determination not required?

A. Refuge management activity. We do not require a compatibility determination for refuge management activities as defined by the term ''refuge management activity'' except for ''refuge management economic activities.'' Examples include: prescribed burning;

water level management; invasive species control; routine scientific monitoring, studies, surveys, and censuses; historic preservation activities; law enforcement activities; and maintenance of existing refuge facilities, structures, and improvements.

B. Other exceptions.

1. There are other circumstances under which the requirements of compatibility may not be applicable. The most common of these exceptions involves property rights that are not vested in the Federal Government, such as reserved rights to explore and develop minerals or oil and gas beneath a refuge. In some cases, these exceptions may include water rights, easements, or navigability issues. Exceptions may apply when there are rights or interests imparted by a treaty or other legally binding agreement, where primary jurisdiction of refuge lands falls to an agency other than us, or where legal mandates supersede those requiring compatibility. Where reserved rights or legal mandates provide that we must allow certain activities, we should not prepare a compatibility determination. 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 agreement to alleviate or minimize adverse impacts to the refuge.

2. Communication and cooperation between the Refuge Manager and the owner of reserved rights will help protect refuge resources without infringing upon privately-held rights. Refuge Managers may find it helpful in these instances to secure legal advice from the Department of the Interior Solicitor's Office.

3. Compatibility provisions of the Refuge Administration Act do not apply to Department of Defense or other overflights above a refuge. However, other Federal laws (e.g., Airborne Hunting Act, Endangered Species Act, Bald Eagle Protection Act), may govern overflights above a refuge. For military overflights, active communication and cooperation between the Refuge Manager and the local base commander will be the most effective way to protect refuge resources.

4. Compatibility requirements apply to activities on bodies of water ''in'' or ''within'' any area of the Refuge System. Under 50 CFR 25.11, this is effectively to the extent of the ownership interest of the United States in lands or waters. Where activities on water bodies not within an area of the Refuge System are affecting refuge resources, the Refuge Manager should seek State cooperation in controlling the activities. If necessary, the refuge manger should consider refuge-specific regulations that would address the problem.

5. Compatibility provisions of the Refuge Administration Act do not apply to activities authorized, funded, or conducted by another Federal agency which has primary jurisdiction over the area where a refuge or a portion of a refuge has been established, if those activities are conducted in accordance with a memorandum of understanding between the Secretary or the Director and the head of the Federal agency with primary jurisdiction over the area.

C. Emergencies. The Refuge Administration Act states that the Secretary may temporarily suspend, allow, or initiate any use in a refuge in the Refuge System if the Secretary determines it is necessary to act immediately in order to protect the health and safety of the public or any fish or wildlife population. Authority to make decisions under this emergency power is delegated to the Refuge Manager. Temporary actions should not exceed 12-months and will usually be of shorter duration. Such emergency actions are not subject to the compatibility determination process as outlined in this chapter. When using this authority, the Refuge Manager will notify the Regional Office supervisor or designee in advance of the action, or in cases where the nature of the emergency requires immediate response, as soon as possible afterwards, and typically no later than the start of business on the first normal workday following the emergency action. The Refuge Manager will create a written record (memorandum to the file) of the decision, the reasons supporting it, and why it was necessary to protect the health and safety of the public or any fish or wildlife population.

D. Denying a proposed use without determining compatibility.

1. The Refuge Manager should deny a proposed use without determining compatibility if any of the following situations exist:

(a) the proposed use is inconsistent with any applicable law or regulation (e.g., Wilderness Act, Endangered Species Act, Marine Mammal Protection Act, Migratory Bird Treaty Act);

(b) the proposed use is inconsistent with the goals or objectives in an approved refuge management plan (e.g., Comprehensive Conservation Plan, Comprehensive Management Plan, Master Plan or step-down management plan);

(c) the proposed use has already been considered in an approved refuge management plan and was not accepted;

(d) the proposed use is inconsistent with any applicable Executive Order, or written Department of the Interior or Service policy;

(e) the proposed use is inconsistent with public safety;

(f) the proposed use is a use other than a wildlife-dependent recreational use that is not manageable within the available budget and staff; or

(g) the proposed use conflicts with other resource or management objectives provided that the Refuge Manager specifies those objectives in denying the use.

2. A compatibility determination should only be prepared for a proposed use after the Refuge Manager has determined that we have jurisdiction over the use and has considered items (a) through (g) above (see Exhibit 1).

E. Existing compatibility determinations. Compatibility determinations in existence prior to the effective date of this policy will remain in effect until and unless modified and will be subject to periodic re-evaluation as described in section 3.11 G. Any use specifically authorized for a period longer than 10 years (such as rights-of-way) is subject to a compatibility determination at the time of the initial application and when the term expires and we receive a request for renewal. We will use periodic re-evaluations for such long-term uses to review compliance with permit terms and conditions.

3.11 What are considerations when applying compatibility?

A. Sound professional judgment.

1. In determining what is a compatible use, the Refuge Administration Act relies on the ''sound professional judgment'' of the Director. The Director delegates authority to make compatibility determinations through the Regional Director to the Refuge Manager. Therefore, it is the Refuge Manager who is required and authorized to exercise sound professional judgment. Compatibility determinations are inherently complex and require the Refuge Manager to consider their field experiences and knowledge of a refuge's resources, particularly its biological resources and make conclusions that are consistent with principles of sound fish and wildlife management and administration, available scientific information, and applicable laws.

2. The Refuge Manager must also consider the extent to which available resources (funding, personnel, and facilities) are adequate to develop, manage, and maintain the proposed use so as to ensure compatibility. The Refuge Manager must make reasonable efforts to ensure that the lack of resources is not an obstacle to permitting otherwise compatible

wildlife-dependent recreational uses (hunting, fishing, wildlife observation and photography, and environmental education and interpretation). If reasonable efforts do not yield adequate resources to develop, manage, and maintain the wildlife-dependent recreational use, the use will not be compatible because the Service will lack the administrative means to ensure proper management of the public activity on the refuge.

3. Refuge Managers are reminded, that unless otherwise provided for in law or other legally binding directive, permitting uses of national wildlife refuges is a determination vested by law in the Service. Under no circumstances (except emergency provisions necessary to protect the health and safety of the public or any fish or wildlife population) may we authorize any use not determined to be compatible.

B. Materially interfere with or detract from.

1. When completing compatibility determinations, Refuge Managers use sound professional judgment to determine if a use will materially interfere with or detract from the fulfillment of the Refuge System Mission or the major purpose(s) of the refuge. Compatibility, therefore, is a threshold issue, and the proponent(s) of any use or combination of uses must demonstrate to the satisfaction of the Refuge Manager that the proposed use(s) pass this threshold test. The burden of proof is on the proponent to show that they pass; not on the Refuge Manager to show that they surpass. Some uses, like a proposed construction project on or across a refuge that affects the flow of water through a refuge, may exceed the threshold immediately, while other uses, such as boat fishing in a small lake with a colonial nesting bird rookery may be of little concern if it involves few boats, but of increasing concern with growing numbers of boats. Likewise, when considered separately, a use may not exceed the compatibility threshold, but when considered cumulatively in conjunction with other existing or planned uses, a use may exceed the compatibility threshold.

2. A use that has a tangible adverse effect will ''materially interfere with or detract.'' That effect should be one where we can reasonably foresee a lingering or continued adverse effect or influence on refuge resources. For example, the removal of a number of individual animals from a refuge through regulated hunting, trapping or fishing would in many instances help the Refuge Manager manage for improving the health of wildlife populations. However, the take of even one individual of a threatened or endangered species could significantly impact the refuge's ability to manage for and perpetuate that species. Likewise, wildlife disturbance which is very limited in scope or duration may not result in a tangible, lingering or continued adverse effect on refuge resources. However, even unintentional harassment or disturbance during critical biological times, in critical locations, or repeated over time may exceed the compatibility threshold.

3. The Refuge Manager must consider not only the direct impacts of a use but also the indirect impacts associated with the use and the cumulative impacts of the use when conducted in conjunction with other existing or planned uses of the refuge, and uses of adjacent lands or waters that may exacerbate the effects of a refuge use.

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

D. Refuge-specific analysis. We must base compatibility determinations on a refuge-specific analysis of reasonably anticipated impacts of a particular use on refuge resources. We should base this refuge-specific analysis on information readily available to the Refuge Manager, including field experience and familiarity with refuge resources, or made available to the Refuge Manager by the State, Tribes, proponent of the use, or through the public review and comment period. Refuge-specific analysis need not rely on refuge-specific biological impact data, but may be based on information derived from other areas or species which are similarly situated and therefore relevant to the refuge-specific analysis. We do not require Refuge Managers to independently generate data to make determinations. If available information to the Refuge Manager is insufficient to document that a proposed use is compatible, then the Refuge Manager would be unable to make an affirmative finding of compatibility and we must not authorize or permit the use.

E. Relationship to management plans. The Refuge Manager will usually complete compatibility determinations as part of the Comprehensive Conservation Plan or step-down management plan process for individual uses, specific use programs, or groups of related uses described in the plan. The Refuge Manager will incorporate compatibility determinations prepared concurrently with a plan as an appendix to the plan. These compatibility determinations may summarize and incorporate by reference what the Refuge Manager addressed in detail in the Comprehensive Conservation Plan, step-down management plan, or associated National Environmental Policy Act (NEPA) document.

F. Managing conflicting uses. The Refuge Manager may need to allocate uses in time and/or space to reduce or eliminate conflicts among users of the refuge. If this cannot be done, the Refuge Manager may need to terminate or disallow one or more of the uses. The Refuge Administration Act does not prioritize among the six wildlife-dependent recreational uses. Therefore, in the case of direct conflict between these priority uses, the Refuge Manager should evaluate, among other things, which use most directly supports long-term attainment of refuge purposes and the Refuge System Mission. This same analysis would support a decision involving conflict between two non-priority public uses. Where there are conflicts between priority and non-priority uses, priority uses take precedence.

G. Re-evaluation of uses.

1. We will re-evaluate compatibility determinations for existing wildlife-dependent recreational uses when conditions under which the permitted use changes significantly, or if there is significant new information regarding the effects of the use, or concurrently with the preparation or revision of a Comprehensive Conservation Plan, or at least every 15 years, whichever is earlier. In addition, a Refuge Manager always may re-evaluate the compatibility of a use at any time.

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

3. For uses specifically authorized for a period longer than 10 years (such as long-term rights-of-way), our re-evaluation will examine compliance with the terms and conditions of the authorization, not the authorization itself. However, we will frequently monitor and review the activity to ensure that all permit terms and

conditions are being carried out. We will make a new compatibility determination prior to extending or renewing such long-term uses at the expiration of the authorization.

H. Public review and comment. An opportunity for public review and comment is required for all compatibility determinations. For compatibility determinations prepared concurrently with Comprehensive Conservation Plans or step-down management plans, we can achieve public review and comment concurrently with the public review and comment of the draft plan and associated NEPA document. For compatibility determinations prepared separate from a plan, we will determine the appropriate level of opportunity for public review and comment through a tiered approach based on complexity, controversy, and level of impact to the refuge. See 3.12 A10 for details on public review and comment.

3.12 What are the steps for preparing compatibility determinations?

A. The following steps outline the procedure for reviewing uses for compatibility. To maintain consistency, we will use the format provided in Exhibit 2 for documenting all compatibility determinations.

1. Use. Identify the use. A use may be proposed or existing, and may be an individual use, a specific use program, or a group of related uses. The Refuge Manager will determine whether to consider a use individually, a specific use program, or in conjunction with a group of related uses. However, whenever practicable, the Refuge Manager should concurrently consider related uses or uses that are likely to have similar effects, in order to facilitate analysis of cumulative effects and to provide opportunity for effective public review and comment.

2. Refuge name. Identify the name of the refuge.

3. Establishing and acquisition authority(ies). Identify the specific authority(ies) used to establish the refuge (e.g., Executive Order, public land order, Secretarial Order, refuge-specific legislation, or general legislation).

4. Refuge purpose(s). Identify the purpose(s) of the refuge from the documents identified in 3.12 A3. For a use proposed for designated wilderness areas within the Refuge System, the Refuge Manager must first analyze whether the activity can be allowed under the terms of the Wilderness Act (16 U.S.C. sections 1131–36). If so, the Refuge Manager must then determine whether the activity is compatible. As a matter of policy, the Refuge Manager will also analyze whether the activity is compatible with the purposes of the Wilderness Act, which makes such purposes supplemental to those of the national wildlife refuge.

5. National Wildlife Refuge System Mission. The Mission of the National Wildlife Refuge System is ''to administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans.''

6. Description of use. Describe the nature and extent of the use. The Refuge Manager may work with the proponent(s) of a use to gather information required in items (a) through (e) below to describe the proposed use. If the use is described in sufficient detail in a Comprehensive Conservation Plan, step-down management plan, other plan, or associated NEPA document, the Refuge Manager may provide a summary of the use and reference the plan or NEPA document.

At a minimum, the Refuge Manager must address and include the following in the compatibility determination:

(a) What is the use?

(b) Where would the use be conducted? Describe the specific areas of the refuge that will be used: habitat types and acres involved; key fish, wildlife, and plants that occur in or use that habitat; and the proportion of total refuge acreage and the specific habitat type involved. Include a description of other areas that may be affected incidental to the specific use, such as access to the destination area and storage of equipment. This information may be described in writing and on a map.

(c) When would the use be conducted? Describe the time of year and day, and duration of the use.

(d) How would the use be conducted? Describe the techniques to be used, types of equipment required, and number of people per given period. Include supporting uses and facilities as appropriate, e.g., boating and boat ramps to support fishing, camping and campsites to support hunting, etc.

(e) Why is this use being proposed? Describe the reason for the use and the need to conduct the use on the refuge. Consider the extent to which other areas in the vicinity provide similar opportunities.

7. Availability of resources.

a. Complete an analysis of costs for administering and managing each use. Implicit within the definition of sound professional judgment is that adequate resources (including financial, personnel, facilities, and other infrastructure) exist or can be provided by the Service or a partner to properly develop, operate, and maintain the use in a way that will not materially interfere with or detract from fulfillment of the refuge purpose(s) and the Refuge System Mission. If resources are lacking for establishment or continuation of wildlife-dependent recreational uses, the Refuge Manager will make reasonable efforts to obtain additional resources or outside assistance from States, other public agencies, local communities, and/or private and non-profit groups before determining that the use is not compatible. If adequate resources cannot be secured, the use will be found not compatible and cannot be allowed. Efforts to find additional funding must be documented on the compatibility determination form.

b. For many refuges, analysis of available resources will have been made for general categories of uses when preparing Comprehensive Conservation Plans, step-down management plans, other plans, or NEPA documents. If the required and available resources are described in sufficient detail in a Comprehensive Conservation Plan, step-down management plan, other plan, or associated NEPA document, provide a summary of the required and available resources for the use and reference the plan or NEPA document. If not sufficiently covered in the planning document, the following should be documented in the compatibility determination:

(i) Resources involved in the administration and management of the use.

(ii) Special equipment, facilities or improvements necessary to support the use. Itemize expenses such as costs associated with special equipment, physical changes or improvements necessary on the refuge that would be required to comply with disabled access requirements.

(iii) Maintenance costs associated with the use (e.g., trail maintenance and mowing, signing, garbage pickup or sanitation costs, parking areas, road repair or grading, building or structure repair, including blinds, boat ramps, kiosks, etc.).

(iv) Monitoring costs (e.g., biological surveys, maintenance of control sites, etc) to assess the impact of uses over time.

c. This analysis of cost for administering and managing each use will only include the incremental increase above general operational costs

that we can show as being directly caused by the proposed use.

d. Offsetting revenues, such as entrance fees and user fees that are returned to the refuge, should be documented in determining the costs to administer individual or aggregated uses.

8. Anticipated impacts of the use.

a. Identify and describe the reasonably anticipated impacts of the use. In assessing the potential impacts of a proposed use on the refuge purpose(s) and the Refuge System Mission, Refuge Managers will use and cite available sources of information, as well as their best professional judgment, to substantiate their analysis. Sources may include planning documents, environmental assessments, environmental impact statements, annual narratives, information from previously-conducted or ongoing research, data from refuge inventories or studies, published literature on related biological studies, State conservation management plans, field management experience, etc. Refuge Managers are not required to independently generate data on which to base compatibility determinations. The Refuge Manager may work with the proponent of the use to gather additional information before making the determination. If available information to the Refuge Manager is insufficient to document that a proposed use is compatible, then the Refuge Manager would be unable to make an affirmative finding of compatibility and we must not authorize or permit the use.

b. Refuge Managers should distinguish between long-term and short-term impacts. For example, a use may initially only be expected to cause minor impacts to the resource, however, the cumulative impacts over time may become quite substantial. Other uses may have impacts which are very short in duration but very significant while they are occurring, or are the converse: very long in duration but very insignificant in effect.

c. Direct impacts on refuge resources, such as wildlife disturbance or destruction of habitats, may be easily predicted. However, the analysis of impacts must also address indirect and cumulative effects that may be reasonably associated with a specific use. A use with little potential for impact on its own may contribute to more substantive cumulative impacts on refuge resources when conducted in conjunction with or preceding or following other uses, and when considered in conjunction with proposed or existing uses of lands and waters adjacent to the refuge.

d. If the anticipated impacts of the use are described in sufficient detail in a Comprehensive Conservation Plan, step-down management plan, other plan, or associated NEPA document, Refuge Managers may provide a summary of the anticipated impacts of the use and reference the plan or NEPA document.

9. Justification. After completing the steps described above, the Refuge Manager will provide a logical explanation for the determination. The justification must describe how the proposed use is reasonably expected to affect fulfilling the refuge's major purpose(s) and the Refuge System Mission.

10. Public review and comment.

a. The Refuge Manager must provide for public review and comment on the proposed refuge uses(s) before issuing a final compatibility determination. Public review and comment, includes actively seeking to identify individuals and organizations that reasonably might be affected by, or interested in, a refuge use. Additionally, public review and comment will offer the public the opportunity to provide relevant information and express their views on whether or not a use is compatible. The extent and complexity of public review and comment that is necessary or appropriate will be determined by the Refuge Manager. For example, significantly modifying a popular hunting, fishing, or wildlife observation program would likely be controversial and would require considerable opportunity for public review and comment; whereas, temporarily closing a small portion of a wildlife observation trail would likely require much less opportunity for public review and comment. For compatibility determinations prepared concurrently with Comprehensive Conservation Plans or step-down management plans, public involvement can be achieved concurrently with the public review and comment of the draft plan and associated NEPA document. For compatibility determinations prepared separate from a plan, the level of public review and comment will be handled through the following tiered approach.

b. For minor, incidental, or one-time uses which have been shown by past experience at this or other refuges in the Refuge System to result in no significant, cumulative, lingering or continuing adverse impacts to the refuge and would likely generate minimal public interest, the public review and comment requirement can be accomplished by posting a notice of the proposed determination at the refuge headquarters so as to maximize the opportunity for comment as is practicable. For all other uses, at a minimum, the Refuge Manager will solicit public comment by placing a public notice in a newspaper with wide local distribution. The notice must contain, at a minimum: a brief description of the compatibility determination process, a description of the use that is being evaluated, the types of information that may be used in completing the evaluation, how to provide comments, when comments are due, and how people may be informed of the decision the Refuge Manager will make regarding the use. The public will be given at least 14 calendar days to provide comments following the day the notice is published. This period may be reduced by the Refuge Manager when there is not sufficient time to provide the full 14-days.

c. For evaluations of controversial or complex uses, the Refuge Manager should expand the public review and comment process to allow for additional opportunities for comment. This may include newspaper or radio announcements, notices or postings in public places, notices in the **Federal Register**, letters to potentially interested people such as adjacent landowners, holding public meetings, or extending the comment period.

d. Public review and comment efforts must be documented on the compatibility determination form and relevant information retained with compatibility determinations as part of the administrative record. The documentation must include a description of the process used, a summary of comments received, and a description of any actions taken because of the comments received. All written public comments will be retained in the administrative record. If a Comprehensive Conservation Plan or NEPA document is being prepared, this information would be included in these documents as part of the administrative record.

11. Use is compatible or not compatible. Identify whether the use is compatible or not compatible. This is where the Refuge Manager states whether the use materially interferes with or detracts from fulfilling the National Wildlife Refuge System Mission or the major purposes of the refuge.

12. Stipulations necessary to ensure compatibility.

a. Describe any stipulations necessary to ensure compatibility. If a use is not compatible as initially proposed, it may be modified with stipulations that avoid or minimize potential adverse impacts, making the use compatible. It is not the responsibility of the Refuge Manager to

develop a sufficient set of stipulations so as to make an otherwise not compatible proposed use, compatible. If the use cannot be modified with stipulations to ensure compatibility, the use cannot be allowed.

b. Protective stipulations in the compatibility determination for a particular use should specify the manner in which that use must be carried out to ensure compatibility. Stipulations must be detailed and specific. They may identify such things as limitations on time (daily, seasonal, or annual) or space where a use could be safely conducted, the routes or forms of access to be used, and any restrictions on the types of equipment to be used or number of people to be involved. Monitoring of the use must be sufficient to evaluate compliance with stated conditions and swift action must be taken to correct or respond to any serious deviations.

13. Consultation with Regional Office. Prior to approving each compatibility determination, the Refuge Manager will consult with their Regional Office supervisor or designee. The consultation will be documented by recording on the compatibility determination form the date and name of person consulted with.

14. Signature. The Refuge Manager will sign and date the compatibility determination.

15. Mandatory 10 or 15-year re-evaluation date. At the time the compatibility determination is made, the Refuge Manager will insert the required maximum 10-year re-evaluation date for uses other than wildlife-dependent recreational uses or a 15-year maximum re-evaluation date for wildlife-dependent recreational uses.

3.13 How do we expedite the compatibility determination process? The Refuge Administration Act provides for expedited consideration of uses that will likely have no detrimental effect on the fulfillment of the purpose(s) of the refuge or the Refuge System Mission. The intent of this provision is to reduce the administrative burden on the Refuge Manager and speed the compatibility determination process for uses that are frequently found to be compatible. For minor, incidental, or one-time uses which have been shown to have no significant, cumulative, lingering, or continuing adverse impacts to the refuge and would likely generate minimal public interest, the time period for an opportunity for public review and comment may be reduced to the time available.

3.14 What do we do with existing uses that are not compatible? Existing uses determined to be not compatible will be terminated or modified to make the use compatible as expeditiously as practicable.

3.15 May we deny uses that are compatible? A determination that a use is compatible does not require the use to be allowed. Determinations on whether to allow otherwise compatible uses are based on compliance with other laws, the Refuge System Mission, policy, refuge purposes, availability of resources to manage the use, possible conflicts with other uses, public safety, and other administrative factors. The Refuge Manager must clearly document and describe in writing the administrative reasons for not permitting a compatible use. Usually, a Refuge Manager will make this decision prior to making a compatibility determination and completing one will be unnecessary.

3.16 What are the procedures for appealing a permit denial? Procedures for appealing a permit denial are provided in 50 CFR 25.45 (special use permits), 50 CFR 29.23 (rights-of-way), 50 CFR 36.41(b) (special use permits for refuges in Alaska), or 43 CFR 36.8 (rights-of-way for Alaska).

3.17 Compatibility on Lands Added to the National Wildlife Refuge System.

A. When we add lands to the National Wildlife Refuge System, the Refuge Manager assigned management responsibility for the land to be acquired, will identify prior to acquisition, withdrawal, transfer, reclassification, or donation of those lands, existing wildlife-dependent recreational public uses (if any) determined to be compatible that we will permit to continue on an interim basis, pending completion of the Comprehensive Conservation Plan. For this purpose, the Refuge Manager will make a pre-acquisition compatibility determination that will apply to existing wildlife-dependent recreational public uses that may be allowed, if determined to be compatible during the interim between acquisition and completion of the Comprehensive Conservation Plan. The purpose of this policy is to inform the public, prior to acquisition, which wildlife-dependent recreational public uses will be allowed to continue on newly acquired lands. Such decisions must be based on the compatibility standards and procedures outlined in this chapter. These pre-acquisition compatibility determinations for continuing existing wildlife-dependent recreational public uses will be made in writing, using the format in Exhibit 2.

B. Pre-acquisition compatibility determinations only apply to existing wildlife-dependent recreational public uses and are intended to be short term in nature, bridging the gap between acquisition of refuge lands and completion of refuge Comprehensive Conservation Plans. They should be made in conjunction with the preparation and release of appropriate pre-acquisition Realty documentation, prepared pursuant to NEPA. Pre-acquisition compatibility determinations should document the type, level and location of wildlife-dependent recreational public uses that are presently occurring on lands proposed for acquisition.

3.18 What is the relationship of compatibility to NEPA?

A. Analysis done to comply with NEPA with regard to proposed actions are closely related to the compatibility determination process because the NEPA process requires analysis of the impacts of a proposed action on the natural, cultural, and physical environment, and requires public participation in the decision-making process. The information developed in complying with NEPA will be useful in completing compatibility determinations.

B. Comprehensive Conservation Plans and step-down management plans will have associated NEPA compliance documentation, and Refuge Managers should ensure that the analysis in the NEPA document adequately covers the factors that are relevant to compatibility determinations. If this is done, it will only be necessary to summarize and reference the analysis and conclusion in the compatibility determination. Final compatibility determinations should be deferred until the NEPA document is completed and a decision is made on the proposed action. Public involvement efforts should be undertaken concurrently to the extent practicable.

C. A decision to allow a proposed use, or terminate or significantly modify an existing use made independent of a formal planning process should be accompanied by appropriate NEPA documentation. However, if a proposed use is not authorized, as a result of a compatibility determination, no action results that would require NEPA documentation. NEPA compliance for authorizations of uses that are categorically excluded should be documented with an Environmental Action Statement as described in 550 FW 3. The Refuge Manager may work with the proponent(s) of a use to provide the appropriate NEPA documentation.

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Exhibit 1

Compatibility Determination Flowchart

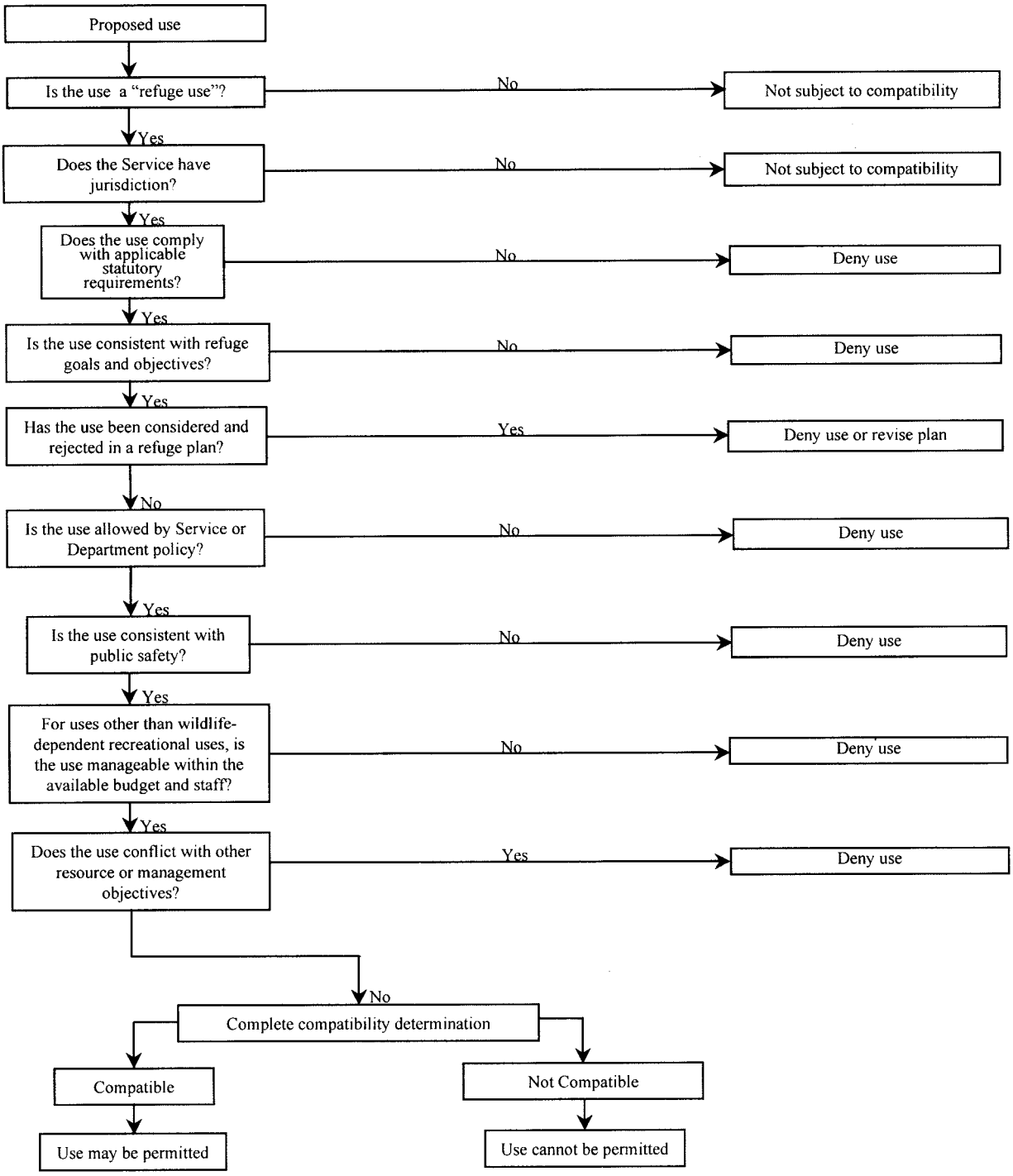

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Exhibit 2—Compatibility Determination

Use:
Refuge Name:
Establishing and Acquisition Authority(ies):
Refuge Purpose(s):
National Wildlife Refuge System Mission:
Description of Use:
Availability of Resources:
Anticipated Impacts of the Use:
Justification:
Public Review and Comment:
Use is Compatible or Not Compatible (circle one):
Stipulations Necessary to Ensure Compatibility:
Consultation with Regional Office:
Signature:
Refuge Manager:

_____

(Signature/Date)

Mandatory 10 or 15-year Reevaluation Date: _____

Dated: May 26, 1999.

Jamie Rappaport Clark,

Director, U.S. Fish and Wildlife Service.

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