

least one newspaper of general circulation within the State, posted at community post offices within the affected vicinity, made available for broadcast on local radio stations in a manner reasonably calculated to inform residents in the affected community, and designated in a map which shall be available for public inspection at the office of the Refuge Manager, or (2) designated by the posting of appropriate signs or (3) both.

(d) In the event unattended property interferes with the safe and orderly management of a refuge area or causes damage to refuge resources, it may be impounded by the Refuge Manager at any time.

§ 36.36 Sled dogs and household pets.

The general trespass provisions of 50 CFR 26.21 shall not apply to household pets and sled, work, or pack dogs under the direct control of their owners or handlers, but such activities may be prohibited or otherwise restricted pursuant to the provisions of § 36.42.

[46 FR 40192, Aug. 7, 1981]

§ 36.37 Revenue producing visitor services.

(a) *Applicability.* (1) Except as otherwise provided for in this paragraph, the regulations contained in this section apply to new visitor services provided within all National Wildlife Refuge areas in Alaska.

(2) The rights granted by this section to historical operators, preferred operators, and Cook Inlet Region, Incorporated, are not exclusive. The Refuge Manager may authorize other persons to provide visitor services on refuge lands. Nothing in this section shall require the Refuge Manager to issue a visitor services permit if not otherwise mandated by statute to do so. Nothing in this section shall authorize the Refuge Manager to issue a visitor services permit to a person who is not capable of carrying out its terms and conditions in a satisfactory manner.

(3) This section does not apply to the guiding of sport hunting or sport fishing.

(b) *Definitions.* The following definitions shall apply to this section:

(1) *Best offer* means a responsive offer that best meets, as determined by the

Refuge Manager, the selection criteria contained in a competitive solicitation for a visitor services permit.

(2) *Controlling interest, in the case of a corporation* means an interest, beneficial or otherwise, of sufficient outstanding voting securities or capital of the business, so as to permit exercise of final managerial authority over the actions and operations of the corporation, or election of a majority of the Board of Directors of the corporation.

(3) *Controlling interest in the case of a partnership, limited partnership, joint venture or individual entrepreneurship* means a beneficial ownership of or interest in the entity so as to permit the exercise of final managerial authority over the actions and operations of the entity.

(4) *Controlling interest in other circumstances* means any arrangement under which a third party has the ability to exercise general management authority over the actions or operations of the business.

(5) *Historical operator* means any person who:

(i) On or before January 1, 1979, was lawfully engaged in adequately providing any type of visitor service in a refuge within the scope of paragraph (c) of this section;

(ii) Has continued to lawfully provide that visitor service; and

(iii) Is otherwise determined by the Refuge Manager to have a right to continue to provide such services or similar services pursuant to paragraph (c) of this section.

(6) *Local area* means that area in Alaska within 100 miles of the location within a refuge where any of the visitor service is authorized.

(7) *Local resident* means:

(i) For *individuals*. Those individuals that have maintained their primary, permanent residence and business within the local area for the past twelve (12) consecutive months and whenever absent from this primary, permanent residence, have the intention of returning to it. Factors demonstrating the location of an individual's primary, permanent residence and business may include, but are not limited to, the permanent address indicated on licenses issued by the State of

Alaska, tax returns, and voter registrations.

(ii) For *corporations*. A corporation in which the controlling interest is held by an individual or individuals who qualify as “local resident(s)” within the meaning of this section. For non-profit corporations a majority of the board members and a majority of the officers must qualify as “local residents.”

(8) *Native Corporation* means the same as defined in section 102(6) of ANILCA.

(9) *Preferred operator* means a local resident or Native Corporation which is entitled to a preference under this section in the award of a permit, and as otherwise provided under section 1307(b) of ANILCA.

(10) A *responsive offer* means one which is timely made and meets the terms and conditions of the solicitation document.

(11) *Similar visitor service* means that visitor service authorized by the Refuge Manager to be provided on a refuge and determined by the Refuge Manager, on a case by case basis, to be similar to an established service being provided by a historical operator.

(12) *Visitor service* means 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 excepting the guiding of sport hunting and fishing. This also includes 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.

(13) *Right of first refusal* means, as it relates to section 1307(a) of ANILCA, a reasonable opportunity for a historical operator to review a description of the new similar service and the terms and conditions upon which it is to be provided to determine if the historical visitor service operator wishes to provide the service. As it relates to section 1307(c) of ANILCA, it refers to the opportunity for Cook Inlet Region, Incorporated to have the first opportunity to provide new visitor services on the Kenai National Wildlife Refuge in the Cook Inlet Region.

(c) *Visitor services existing on or before January 1, 1979, “historical operators”*. (1) A historical operator shall have a right to continue to provide visitor services or similar services within such area, under appropriate terms and conditions, so long as such services are determined by the Refuge Manager to be consistent with the purposes for which the refuge was established. A historical operator must obtain a permit from the refuge manager to conduct the visitor services. The permit shall be for a fixed term and specified area, and shall contain such terms and conditions as are in the public interest. Failure to comply with the terms and conditions of the permit may result in cancellation of the authorization and consequent loss of historical operator rights under this section. Nothing in this section shall prohibit the Refuge Manager from permitting persons, in addition to historical operators, to provide visitor services in the refuge at the Refuge Manager’s discretion so long as historical operators are permitted to conduct a scope or level of visitor services equal to or greater than those provided prior to January 1, 1979, under terms and conditions consistent with this section. A historical operator may be permitted by the Refuge Manager, under separate authority, to increase the scope or level of visitor services provided prior to January 1, 1979, but no historical operating rights shall be obtained in such increase.

(2) A historical operator may also apply to the Refuge Manager for a permit or amended permit to provide similar types of visitor services. Granting the request will not result in an increase in the scope or level of service in excess of those provided as of January 1, 1979, by the requesting historical operator. The Refuge Manager shall grant the request if such visitor services are determined by the Refuge Manager to be:

(i) Consistent with the management of refuge resources and the purposes for which the refuge area was established;

(ii) Similar to the visitor services provided by the historical operator prior to January 1, 1979; and

(iii) Consistent with the legal rights of any other person.

(3) When a historical operator permit has expired, and if the visitor services permitted by it were adequately provided and consistent with the purposes of the refuge as determined by the Refuge Manager, the Refuge Manager shall renew the permit for a fixed term consistent with such new terms and conditions as are in the public interest. Should a historical operator decline to accept an offer of renewal, its rights as a historical operator shall be considered as terminated.

(4) If the Refuge Manager determines that permitted visitor services must be curtailed or reduced in scope or season to protect refuge resources, or for other purposes, the Refuge Manager shall require the historical operator to make such changes in visitor services. If more than one historical operator providing the same type of visitor services is required to have those services curtailed, the Refuge Manager shall establish a proportionate reduction of visitor services among all such historical operators, taking into account historical operating levels and other appropriate factors, so as to achieve a fair curtailment of visitor services among the historical operators. If the level of visitor services must be so curtailed that only one historical operator feasibly may continue to provide the visitor services, the Refuge Manager shall select one historical operator to continue to provide the curtailed visitor services through a competitive selection process.

(5) The rights of a historical operator shall terminate if the historical operator fails to provide the visitor services under the terms and conditions of a permit issued by the Refuge Manager or fails to provide the visitor services for a period of more than twenty four (24) consecutive months.

(6) The rights of a historical operator under this section shall terminate upon a change, after January 1, 1979, in the controlling interest of the historical operator through sale, assignment, devise, transfer or otherwise.

(7) The Refuge Manager may authorize other persons to provide visitor services in a refuge in addition to historical operators, as long as such other persons conduct the services in a man-

ner compatible with the purposes of the refuge.

(d) *Visitor services initially authorized after January 1, 1979, "preferred operators"*. (1) In selecting persons to provide, and in permitting any type of visitor service, excepting guided hunting or fishing, the Refuge Manager will give a preference to preferred operators determined qualified to provide such visitor services. Preferences for most directly affected Native Corporation(s) and local residents are equal and are not additive.

(2) In selecting persons to provide any type of visitor service for refuges subject to a preferred operator preference under this section, the Refuge Manager will publicly solicit competitive offers for persons to apply for a permit, or the renewal of a permit, to provide such visitor service pursuant to Service procedures. Preferred operators must submit a responsive offer to such solicitation in order to effect their preference. If, as a result of the solicitation, an offer from a person other than a preferred operator is determined to be the best offer and that offeror is determined to be capable of carrying out the terms of the permit, the preferred operator which submitted the most responsive offer shall be given an opportunity to substantially equal the best offer received by amending its offer. If the amended offer of the preferred operator is considered by the Refuge Manager as being substantially equal to the terms of the best offer, the preferred operator, if determined to be capable of carrying out the terms of the permit, shall be awarded the visitor service permit. If the preferred operator fails to meet these requirements, the Refuge Manager shall award the permit to the person who submitted the best offer in response to the solicitation. The Native Corporation(s) determined to be "most directly affected" under this section and local residents have equal preference.

(3) Nothing in this section shall prohibit the Refuge Manager from authorizing persons other than preferred operators to provide visitor services in refuge areas so long as the procedures described in this section have been followed with respect to preferred operators. Preferred operators are not entitled by this section to provide all visitor services in a qualified refuge.

(4) An offer from a Native Corporation or a local corporation under this section must document its controlling interest in the entity or in the case of a joint venture, all partners, making the offer.

(5) The preferences described in this section may not be sold, assigned, transferred, or devised, directly or indirectly.

(e) *Preference to Cook Inlet Region, Incorporated (CIRI)*. (1) Cook Inlet Region, Incorporated, in cooperation with village corporations within Cook Inlet Region when appropriate, shall have a right of first refusal to provide new visitor services within that portion of the Kenai National Moose Range (Kenai National Wildlife Refuge) within the boundaries of Cook Inlet Region. The CIRI shall have ninety (90) days from receipt of a prospectus in which to exercise its right.

(2) In order to exercise this right of first refusal, CIRI must submit an offer responsive to the terms of a visitor services solicitation. If CIRI makes such an offer and is determined by the Refuge Manager to be capable of carrying out the terms of the special use permit, it shall be awarded the permit. If it does not, the permit may be awarded to another person pursuant to a showing that such other person can carry out the conditions of the special use permit in a manner compatible with the purposes of the refuge. An offer being made by CIRI under this section must document controlling interest by CIRI when made in cooperation with village corporations within the Cook Inlet Region. The CIRI right of first refusal shall have precedence over the rights of preferred operators.

(3) The right of first refusal described in this section may not be sold, transferred, devised, or assigned, directly or indirectly.

(f) *Most directly affected Native Corporation determination*. (1) Prior to the issuance of a solicitation document for any new visitor service in a refuge, the Refuge Manager shall provide an opportunity for any Native Corporation interested in providing visitor services within that refuge to submit an application to the Refuge Manager to be determined “most directly affected” Native Corporation. The application shall include but not be limited to, the following information:

(i) The name, address, and telephone number of the Native Corporation, the date of incorporation, its articles of incorporation and structure, and the name of the applicable refuge area;

(ii) The location of the corporation’s population center or centers;

(iii) An assessment of the socio-economic impacts, including historical and traditional use, and their effects on the Native Corporation as a result of the expansion or establishment of the refuge; and

(iv) Any other information the Native Corporation believes is relevant.

(2) Upon receipt of all applications from interested Native Corporations, the Refuge Manager will determine the “most directly affected” Native Corporation based on, but not limited to, the following criteria:

(i) The number of acres of surface land within and adjoining the refuge that the Native Corporation owns, or which has been selected under the Alaska Native Claims Settlement Act, unless such selection is determined to be invalid or is relinquished;

(ii) The distance and accessibility from the Native Corporation’s population center and/or business address to the applicable refuge; and

(iii) The socio-economic impacts, including historic and traditional use, and their effects as a result of the expansion or establishment of the refuge.

(3) In the event that more than one Native Corporation is determined to be equally affected, each such Native Corporation shall be considered as a preferred operator under this section.

(4) The Refuge Manager’s “most directly affected” Native Corporation determination or when requested, the Regional Director’s appeal decision for a

refuge is applicable for all new visitor services in that refuge.

(5) Any Native Corporation that has not applied for a most directly affected Native Corporation determination may apply for a determination upon issuance of a future solicitation for a new visitor service. A corporation determined to be most directly affected for a refuge will maintain that status for all future visitor service solicitations.

(g) *Appeal procedures.* Any person(s) who believe that they have been improperly denied rights with respect to providing visitor services under this section may appeal the denial to the Regional Director. Such an appeal must be submitted in writing within forty-five (45) days of receipt of the denial from which an appeal is sought. The appeals process as defined in 50 CFR subpart F, 36.41(b) will apply with exception of the period of time allowed to file an appeal.

[62 FR 1842, Jan. 14, 1997]

Subpart E—Refuge Specific Regulations

§ 36.39 Public use.

(a) *General.* Public use of Alaska National Wildlife Refuges (NWR) is permitted subject to all other parts of 50 CFR part 36, those sections of 50 CFR subchapter C not supplemented by part 36, and the following refuge-specific requirements:

(b) *Alaska Maritime National Wildlife Refuge.* (1) Amchitka Island—closed to all public access, occupancy and use, unless specifically authorized by a special use permit issued jointly by the Refuge Manager and the U.S. Navy (Commanding Officer, Fleet Surveillance Support Command, Chesapeake, Virginia).

(c) *Alaska Peninsula/Becharof National Wildlife Refuge Complex.* (1) The Alaska Peninsula/Becharof National Wildlife Refuge (Complex) includes the Becharof National Wildlife Refuge, the Chignik and Ugashik Units of the Alaska Peninsula National Wildlife Refuge and the Seal Cape Area of the Alaska Maritime National Wildlife Refuge.

(2) Off-road vehicles are permitted on the refuge complex under

§ 36.12(a), § 36.39(c)(2)(ii) or § 36.39(c)(2)(iii) and must meet the following conditions:

(i) Vehicles are limited to three or four-wheeled vehicles with a maximum gross weight of 650 pounds as listed by the manufacturer.

(ii) ORV's are permitted on the following trails only: Yantarni Bay Airstrip; Yantarni Bay Airstrip to beach trail; and Yantarni Bay Airstrip to oil well site trail. Maps of the above areas are available from the Refuge Manager.

(iii) Subject to the weight and size restrictions listed in (i) above, subsistence use of off-road vehicles, as authorized by 50 CFR 36.12(a) is allowed throughout the Alaska Peninsula/Becharof National Wildlife Refuge Complex.

(3) Camping is permitted on the Refuge Complex subject to the following restrictions:

(i) These camping limits do not apply to subsistence users except at Big Creek where they apply to all refuge complex users.

(ii) No permanent improvements may be made to campsites without a special use permit. All materials brought on to the refuge complex must be removed upon cessation of camping unless authorized by a special use permit.

(iii) Other than reserved sites authorized by special use permits, camping at one location is limited to seven consecutive nights from August 1 through November 15 within ¼ mile of the following waters: Becharof Lake in the Severson Peninsula area (Island Arm); Becharof Lake Outlet; Ugashik Narrows; Big Creek; Gertrude Lake; and Gertrude Creek between Gertrude Lake and the King Salmon River. Maps of the above areas are available from the Refuge Manager.

(iv) Tent camps must be moved a minimum of one mile following each seven-night camping stay during the periods specified above.

(4) Temporary facilities may be authorized on the Alaska Peninsula/Becharof National Wildlife Refuge Complex by special use permit only, subject to the following conditions:

(i) Except for administrative or subsistence purposes, new temporary facilities are prohibited within ¼ mile of the Becharof Lake shoreline.