



**4333-15**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**[FWS-HQ-RF-2017-N076; FXRS1263090000-167-FF09R81000]**

**Agency Information Collection Activities: OMB Control Number 1018-0102;**

**National Wildlife Refuge Special Use Permit Applications and Reports**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice; request for comments.

**SUMMARY:** We (U.S. Fish and Wildlife Service) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. As required by the Paperwork Reduction Act of 1995 and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC. This IC is scheduled to expire on June 30, 2017. We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

**DATES:** To ensure that we are able to consider your comments on this IC, we must receive them by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Send your comments and suggestions on this information collection to the Desk Officer for the Department of the Interior at OMB-OIRA at (202) 395-5806 (fax) or [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov) (email). Please provide a copy of your comments to the Service Information Collection Clearance

Officer, U.S. Fish and Wildlife Service, MS: BPHC, 5275 Leesburg Pike, Falls Church, VA 22041-3803 (mail); or info\_coll@fws.gov (email). Please include “1018–0102” in the subject line of your comments. You may review the ICR online at <http://www.reginfo.gov>. Follow the instructions to review Department of the Interior collections under review by OMB.

**FOR FURTHER INFORMATION CONTACT:** Service Information Collection Clearance Officer, at info\_coll @fws.gov (email) or (703) 358–2503 (telephone).

**SUPPLEMENTARY INFORMATION:**

**I. Abstract**

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee) (Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997, consolidated all refuge units into a single National Wildlife Refuge System (System). It also authorized us to offer visitor and public programs, including those facilitated by commercial visitor and management support services, on lands of the System when we find that the activities are appropriate and compatible with the purpose(s) for which the refuge was established and the System’s mission. The Refuge Recreation Act of 1962 (16 U.S.C. 460k–460k–4) (Recreation Act) allows the use of refuges for public recreation when it is not inconsistent or does not interfere with the primary purpose(s) of the refuge. The Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 et seq.) (ANILCA) provides specific authorization and guidance for the administration and management of national wildlife refuges within the

State of Alaska. Its provisions provide for the issuance of permits under certain circumstances.

We issue special use permits for a specific period as determined by the type and location of the management activity or visitor service provided. These permits authorize activities such as:

- Agricultural activities (hay and grazing, 50 CFR 29.1 and 29.2).
- Beneficial management tools that we use to provide the best habitat possible on some refuges (50 CFR 30.11, 31.14, 31.16, and 36.41).
- Special events, group visits and other one-time events (50 CFR 25.41, 25.61, 26.36, and 36.41).
- Recreational visitor service operations (50 CFR 25.41, 25.61, and 36.41).
- Guiding for fishing, hunting, wildlife education, and interpretation (50 CFR 25.41 and 36.41).
- Commercial filming (43 CFR 5, 50 CFR 27.71) and other commercial activities (50 CFR 29.1 and 36.41).
- Building and using cabins to support subsistence or commercial activities (in Alaska) (50 CFR 26.35 and 36.41).
- Research, inventory and monitoring, and other noncommercial activities (50 CFR 26.36 and 36.41).

We use three forms to collect applicant information:

- FWS Form 3-1383-G (General Activities Special Use Application).
- FWS Form 3-1383-C (Commercial Activities Special Use Application).

- FWS Form 3-1383-R (Research and Monitoring Special Use Application).

The information we collect helps ensure that: (1) Applicants are aware of the types of information that may be needed for permit issuance; (2) requested activities are appropriate and compatible with the purpose(s) for which the refuge was established and the System's mission; and (3) the applicant is eligible or is the most qualified applicant to receive the special use permit.

We may collect the necessary information in a non-form format (through discussions in person or over the phone, over the Internet, by email, or by letter). In some instances, respondents will be able to provide information verbally. Often, a simple email or letter describing the activity will suffice. For activities (e.g., commercial visitor services, research, etc.) that might have a large impact on refuge resources, we may require applicants to provide more detail on operations, techniques, and locations. Because of the span of activities covered by special use permits and the different management needs and resources at each refuge, respondents may not be required to answer all questions. Depending on the requested activity, refuge managers have the discretion to ask for less information than appears on the forms. However, refuge managers must not ask for more or different information.

We issue permits for a specific period as determined by the type and location of the use or service provided. We use these permits to ensure that the applicant is aware of the requirements of the permit and his/her legal rights. Refuge-specific special conditions may be required for the permit. We identify

conditions as an addendum to the permit. Most of the special conditions pertain to how a permitted activity may be conducted and do not require the collection of information. However, some special conditions, such as activity reports, before and after site photographs, or data sharing, would qualify as an information collection, and we have included the associated burden below.

## **II. Data**

**OMB Control Number:** 1018–0102.

**Title:** National Wildlife Refuge Special Use Permit Applications and Reports, 50 CFR 25, 26, 27, 29, 30, 31, 32, & 36.

**Service Form Number(s):** 3–1383–G, 3–1383–C, and 3–1383–R.

**Type of Request:** Revision of a currently approved collection.

**Description of Respondents:** Individuals and households; businesses and other for–profit organizations; nonprofit organizations; farms; and State, local, or tribal governments.

**Respondent's Obligation:** Required to obtain or retain a benefit.

**Frequency of Collection:** On occasion for applications; annually or on occasion for reports.

**Estimated Number of Annual Responses:** 7,865.

**Estimated Completion Time per Response:** Varies from 30 minutes to 4 hours, depending on activity.

**Estimated Annual Burden Hours:** 16,756.

**Estimated Annual Non-hour Burden Cost:** \$270,300 for fees associated with applications for commercial use activities (\$100.00 x an estimated 2,703 applications).

### **III. Comments**

On February 24, 2017, we published in the Federal Register (82 FR 11601) a notice of our intent to request that OMB approve this information collection. In that notice, we solicited comments for 60 days, ending on April 25, 2017. We received two comments in response to that Notice:

**Comment 1:** A respondent commented on the authorities and regulations that allow for certain commercial activities on wildlife refuges (specifically haying/grazing/farming and cabin rentals) and the fees that are charged, but not on the application forms themselves.

**FWS Response to Comment 1:** The National Wildlife Refuge System Administration Act at 16 U.S.C. 668dd(a)(1) authorizes us to permit public accommodations, including commercial visitor services, on lands of the System when we find that these activities are compatible and appropriate with the purpose for which the refuge was established. The respondent did not address the information collection, and we did not make any changes to our requirements.

**Comment 2:** A second respondent provided the following comment:

1) The information collected is not necessary because it appears not to be a lawfully authorized request. Although it is difficult to know which law cited by the FWS is applicable to which CFR given because the Federal Registry entry does not appear to comply with FR requirements for specificity, see 1 CFR 21 and 22. Regardless none of the laws cited; 16 U.S.C. 668dd-668ee, 16 U.S.C. 460k-460k-4, 6 U.S.C. 3101 et seq. (it is unclear what “et seq.” is referring to) appear relevant at a minimum to Form 3-1383-C.

The 16 U.S.C. 460k-460K-4 codes (subchapter LXVIII) is entitled “NATIONAL CONSERVATION RECREATIONAL AREAS”, these parts only concern recreation and do not even use the word commercial, economic, business, etc.

16 U.S.C. 668dd-668ee likewise address recreation and management, conservation, etc. but has no mention of the word “commercial” or any other type of “economic” activity.

16 U.S.C. 3101 speaks to the needs of recreation and scientific purposes, et al. but no mention of commercial, economic or other business interests.

Therefore, the information requested from form 3-1383-C regarding “Commercial Activities” would appear not only unnecessary but also unauthorized based on the authorities cited.

Even the statement in Section I (Abstract) appears to acknowledge this fact: “We issue special use permits for a specific period as

determined by the type and location of the management activity or visitor service provided.” No mention of commercial activities.

2) 29 CFR 29.1 is mentioned as both an agricultural activity and a commercial activity, however none of the statutory authority cited mentions anything to do with agricultural activity or commercial activity. Nor do they mention these activities as “permissible” activities. Therefore, the informational requests regarding 29 CFR 29.1 in regards to forms 3-1383-C would also appear unnecessary and also not authorized by the authorities cited.

3) 29 CFR 29.2 is mentioned as a farming activity however the regulation itself is clearly a “management activity” using various methods to achieve the management:

“§ 29.2 Cooperative land management.

Cooperative agreements with persons for crop cultivation, haying, grazing, or the harvest of vegetative products, including plant life, growing with or without cultivation on wildlife refuge areas may be executed on a share-in-kind basis when such agreements are in aid of or benefit to the wildlife management of the area.”

Just performing “agricultural activities” does not necessarily bring the activity within the realm of “wildlife management” of the area.

Regardless the authorities cited do not cross to 50 CFR 29.2 and if they did it could only authorize “cooperative agreements” not Special Use

Permits, therefore this informational request must also be considered not only unnecessary but also not allowed by the authorities cited.

4) The informational requests within the forms given make no mention of how any potential commercial activity would comply with federal contracting law. As written these type of commercial activities would appear to unlawfully escape the Competition in Contract Act, Federal Acquisition Regulations and a host of other legal requirements like small business, minority and disadvantaged groups, wage requirements, etc. These types of informational requests and notifications would be required to be included within any permitting form if not addressed within other forms. Therefore, the information requests appear to be inadequate in this regard.

5) Lastly, the informational requests in the forms do not appear to comport with 1 CFR part 21 and 22 regarding authority citations. Specifically, the forms do not indicate the specific authority delegated by statute nor do they indicate any delegation from the Secretary of the Interior to the FWS, e.g. “The provisions of this subchapter and any such regulation shall be enforced by any officer or employee of the United States Fish and Wildlife Service designated by the Secretary of the Interior.” 16 USC 460k-3

**FWS Response to Comment 2:**

We forwarded Comment 2 to the DOI Solicitor’s Office for review based on Jay H. questioning the authority under the cited statutes for the

Service to collect information under FWS Form 3-1383-C (Commercial Activities Special Use Application). The requester did not believe that the FWS possessed the authority to act for the Secretary under the cited statutes, and did not believe that the cited statutes authorized the issuance of permits for commercial activities on national wildlife refuges. The following response to Comment 2 was provided by the DOI Solicitor's Office:

“The National Wildlife Refuge System Administration Act (NWRSA), at 16 U.S.C. 668dd(a)(1), states that the National Wildlife Refuge System (NWRS), “...shall be administered by the Secretary through the United States Fish and Wildlife Service.” The Secretary (through the FWS) is authorized, under such regulations as he may prescribe, to, “...permit the use of any area within the System for any purpose...whenever he determines that such uses are compatible with the major purposes for which the areas were established. (16 U.S.C. 668dd(d)(1)(A). The term, “compatible use,” is defined, at 16 U.S.C. 668ee(1), to mean, “...a wildlife-dependent recreational use or any other use of a refuge that, in the sound professional judgement of the Director, will not materially interfere with or detract from the fulfillment of the mission of the System or the purposes of the refuge.”

The two other statutes cited in the Federal Register notice are, 16 U.S.C. 460k-3, which refers to the authority to manage national wildlife refuges, among other conservation areas, and 16 U.S.C. 3101 et seq.,

which refers to management provisions for national wildlife refuges in Alaska. In both instances, the FWS has been charged with managing such wildlife refuges through the provision in the NWRSA which states that the system shall be managed by the Secretary through the FWS.

Among the regulations prescribed for management of the NWRS is 50 C.F.R. 29.1, which specifically states that the FWS, "...may authorize economic use by appropriate permit only when we (FWS officials) have determined the use on a national wildlife refuge to be compatible." That regulatory provision also cites to 16 U.S.C. 715s, which confirms Congress's intent that economic uses on national wildlife refuges may be permitted, directing for the deposit of, "...all revenues received...from the sale or other disposition of animals, salmonoid carcasses, timber, hay, grass, or other products of the soil, minerals, shells, sand, or gravel, from other privileges, or from leases of public accommodations or facilities incidental to but not in conflict with the basic purposes for which those areas of the National Wildlife Refuge System were established."

Clearly the Secretary's authority to manage the NWRS is delegated to the FWS, by the language of the NWRSA cited above, and the FWS has the broad authority under the NWRSA to permit commercial uses within national wildlife refuges which are compatible with the purpose for which an individual refuge was established and the purposes of the NWRS."

#### **IV. Request for and Availability of Public Comments**

We again invite comments concerning this information collection on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- Ways to enhance the quality, utility, and clarity of the information to be collected; and
- Ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

#### **V. Authorities**

The authorities for this action are the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee), as amended by the National Wildlife Refuge System Improvement Act of 1997; Refuge Recreation Act of 1962 (16 U.S.C. 460k–460k–4); Alaska National Interest Lands

Conservation Act (16 U.S.C. 3101 et seq.); and the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

Dated: June 14, 2017

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Madonna L. Baucum,  
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