

ANILCA, would be awarded more permits than companies without the preference. This preference will have a positive impact on the local areas by increasing the economic base of these communities. This impact, while important in relation to the total economic level of the local area, is very small in actual dollar value. It is anticipated that each of the projected new permits issued annually will generate between \$50,000 and \$200,000 in revenue, depending on the service provided. Therefore, this rule would have no "significant" economic impact on the local communities or local governmental entities.

Drafting Information

The primary author of this proposed regulation is David G. Patterson, Regional Public Use Specialist, Fish and Wildlife Service, Alaska Region.

List of Subjects 50 CFR Part 36

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

Accordingly, part 36 of chapter I of Title 50 of the Code of Federal Regulations is proposed to be amended as set forth below.

PART 36—[AMENDED]

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

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

2. A new § 36.37 is added to subpart D of part 36 to read as follows:

§ 36.37 Revenue producing visitor services.

(a) Applicability.

The regulations contained in this section apply to visitor services, except guided sport fishing and hunting, provided within all Alaska National Wildlife Refuge areas.

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

(1) *Adequate services* means, services which are safe, sanitary, and attractive, at levels visitors would expect from the private sector operating outside U.S. Fish and Wildlife Service (Service) areas, have been evaluated as satisfactory, and meet the needs and requirements of the Service and the refuge in which the service is authorized.

(2) *Controlling interest* means, in the case of a corporation, 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. "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. In other circumstances, "controlling interest" means any arrangement under which a third party has the ability to exercise general management authority over the actions or operations of the business.

(3) *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 provide that visitor service without a break in the service for more than eleven continuous months; 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.

(4) *Local area* means that area in Alaska within the refuge boundary as well as the area within 35 straight-line miles of the refuge boundary, but excluding communities with a population in excess of five thousand persons.

(5) *Local resident* means:

(i) *For individuals that operate a business as a sole proprietorship or partnership.* Those individuals that maintain a primary, permanent residence and business within the local area 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, Department of Fish and Game, tax returns, and voter registrations.

(ii) *For corporations.* A corporation which maintains its headquarters within the local area, and all of the stockholders, who own a controlling interest in the corporation, qualify as individual local residents under this section.

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

(7) *Preferred operator* means a local resident or Native Corporation which is entitled to a preference under this

section in the award of visitor service authorizations, and as otherwise provided under section 1307(b) of ANILCA.

(8) *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 an historical operator.

(9) *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.

(10) *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.

(1) *Right of preference* means that persons with a preference conveyed by section 1307(b) of ANILCA will be given an opportunity to meet the terms and conditions of the best proposal submitted in response to a visitor service prospectus.

(c) *Visitor services existing on or before January 1, 1979, "historical operators"*. (1) An historical operator shall have a right to continue to provide visitor services or similar services in a refuge 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. An historical operator must obtain a permit from the refuge manager to conduct the visitor services. The permit shall be for a fixed term 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