

## **Final Compatibility Determination for Hunting on John W. and Louise Seier National Wildlife Refuge**

**Use:** Hunting of resident game and migratory birds

**Refuge Name:** John W. and Louise Seier National Wildlife Refuge (Seier National Wildlife Refuge)

### **Establishing and Acquisition Authority and Refuge Purpose:**

The refuge was established pursuant to The John W. and Louise Seier Living Trust. The primary purpose of the refuge is “. . . for the development, advancement, management, conservation, and protection of fish and wildlife resources . . .” (16 United States [U.S.] Code a 742f1:[a][4]) and “. . . for the benefit of the United States Fish and Wildlife Service, in performing its activities and services. Such acceptance may be subject to the terms of any restrictive or affirmative covenant, or condition of servitude” (16 U.S. Code a 742 f[b][1]).

### **National Wildlife Refuge System Mission:**

The mission of the National Wildlife Refuge System (Refuge System) is 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 U.S. for the benefit of present and future generations of Americans (National Wildlife Refuge System Improvement Act of 1997, Public Law 105-57).

### **Description of Use:**

*What is the use? Is the use a wildlife-dependent public use?*

The U.S. Fish and Wildlife Service (Service) will open the Seier National Wildlife Refuge (NWR) to hunting of resident game and migratory birds according to state and federal regulations. Resident game includes all non-migratory wildlife hunted in Nebraska under the Nebraska Game and Parks Commission (NGPC) hunting regulations. Resident game species are white-tailed deer, mule deer, pronghorn antelope, elk, badger, bobcat, coyote, fox, long-tailed weasel, mink, muskrat, opossum, prairie dog, porcupine, rabbit and hare, raccoon, skunk, squirrel, woodchuck, greater prairie chicken, grouse, partridge, pheasant, quail, and turkey. Migratory birds are waterfowl, dove, crow, rail, snipe, and woodcock.

*Where will the use be conducted?*

Hunting will be allowed on all of the refuge except for safety zones established by the refuge manager. State law also states that it is unlawful to hunt any form of wild mammal or wild bird with a rifle within a 200-yard radius of an inhabited dwelling or livestock feedlot, unless permission to do so has been granted by the owner or tenant of the dwelling or feedlot. It is unlawful to hunt any form of wild mammal or wild bird with archery equipment, handgun, or shotgun within a 100-yard radius of an inhabited dwelling or livestock feedlot, unless permission to do so has been granted by the owner or tenant of the dwelling or feedlot.

*When will the use be conducted?*

Hunting seasons will be established by the NGPC. Hunter access will be allowed from two hours before legal sunrise until two hours after legal sunset. Hunting hours for badger, bobcat, fox, furbearers, long-tailed weasel, mink, opossum, raccoon, skunk, coyote, porcupine, prairie dog, and woodchuck will be limited to the two hours before sunrise and two hours after sunset limit instead of the 24-hour state allowance. All other shooting hours for proposed species will fall within the refuge access hours by state regulation.

*How will the use be conducted?*

License requirements and bag limits will be according to state regulations. Special deer bag limits such as antlerless-only, bonus tags, and mule deer doe will be negotiated with the NGPC and published in their regulations.

Nontoxic shot will be required for all shotgun hunting.

*Why is this use being proposed?*

The purpose of this proposed action is to provide compatible wildlife-dependent recreational opportunities on the refuge. The need of the proposed action is to meet the Service's priorities and mandates as outlined by the National Wildlife Refuge System Administration Act of 1966 to "recognize compatible wildlife-dependent recreational uses as the priority general uses of the NWRS" and "ensure that opportunities are provided within the NWRS for compatible wildlife-dependent recreational uses" (16 U.S. Code 668dd[a][4]). This action satisfies Executive Order 13443 signed August 16, 2007, "Facilitation of Hunting Heritage and Wildlife Conservation"; Secretarial Order 3347 signed March 2, 2017, "Conservation Stewardship and Outdoor Recreation"; and Secretarial Order 3356 signed September 15, 2017, "Hunting, Fishing, Recreational Shooting, and Wildlife Conservation Opportunities and Coordination with States, Tribes, and Territories." The proposed action also helps to accomplish a goal in the conceptual management plan to facilitate compatible, wildlife-dependent recreational opportunities on refuge lands.

**Availability of Resources:**

Some additional time and money will be required of refuge management and maintenance staff to administer the hunt, assess hunting effects, coordinate with the NGPC, and support parking lots, fences, and gates. These costs will be approximately \$5,000 per year. Refuge law enforcement will be stretched much thinner with implementation of the use. This will add approximately five percent to the overall time required of the Sandhills NWR Complex's single officer. With only one officer, this time will reduce the time spent at the other six refuges within the Sandhills NWR Complex. Overtime funding or extra detail officers will be needed to provide even minimal law enforcement.

**Anticipated Impacts of the Use:**

We, the Service, anticipate that this use will have minimal impacts on the refuge. The potential take of most resident and migratory wildlife species open to hunting on the refuge will likely be negligible in proportion to regional or state harvest numbers and will not add significantly to the cumulative impacts on the various species. Direct impacts on refuge populations of some species (for example, turkey and deer) will not be known until the hunting program is implemented.

Expanded hunting opportunities will most likely result in increased temporary disturbance or displacement of hunted and non-hunted wildlife species from foot traffic moving through the area or from gunfire. There will be no impact on threatened and endangered species. There will be no conflict with other public uses because there are currently no other public uses of the refuge. There will be minimal impact on refuge management. The one negative aspect of this opening is that law enforcement will not be adequate, or it will reduce enforcement activities at other refuges in the Sandhills NWR Complex.

### **Public Review and Comment:**

This compatibility determination was prepared concurrently with the environmental assessment (EA) and companion hunting plan for the refuge. Public review and comment were achieved concurrently with the public review and comment period for the draft hunting plan and EA. Public review and comment were solicited through public posting of notices at the refuge and on the refuge's website. During the 30-day public comment period, the Service received comments from various individuals and from large non-governmental organizations, which are addressed briefly below and in full detail in the final EA.

*Comment (1):* We received comments opposed to hunting coyote and bobcat on the refuge because it is deemed biologically unsound, contrary to the Service's mandate, and not supported by legally sufficient environmental analysis.

*Response:* We considered the impacts of hunting on furbearer populations through the individual EA for the proposed hunting opening. We also considered the cumulative impacts of all proposed hunts in the 2020-2021 cumulative impacts report accompanying the proposed rule. Through our analysis in the EA and in analyzing these comments (a detailed response can be found in the final EA), we have determined that hunting of coyote and bobcat are compatible uses at the refuge. We believe that current and proposed management actions at Seier NWR are ensuring the overall biological integrity and diversity of the wildlife and habitats entrusted to the Service.

The Service did not modify the proposal as a result of these comments.

*Comment (2):* We also received comments from birders and other nonconsumptive users of the Refuge System that other forms of recreation are important to them and to the economy in addition to hunting, and that some areas of the refuge should only be open to nonconsumptive users.

*Response:* Congress, through the NWRSA, as amended, envisioned that hunting, fishing, wildlife observation and photography, and environmental education and interpretation would all be treated as priority public uses of the Refuge System. Therefore, the Service facilitates all of these uses on refuges, as long as they are found compatible with the purposes of the specific refuge and the mission of the Refuge System.

We did not make any changes to the rule as a result of this comment.

*Comment (3):* We received a comment that any regulation changes should be postponed until public meetings are held.

*Response:* NEPA regulations require opportunities for the public to review proposals such as the ones presented by this refuge, and a time for the public to provide comments. When developing an EA, there is no NEPA requirement to hold public meetings as part of the public review and comment period on the proposed action. Since the Service values and seeks public participation for proposed actions, we like to hold public meetings whenever appropriate and necessary. Unfortunately, due to ongoing nationwide gathering restrictions, and in following with departmental guidance, the Service did not organize public meetings to help prevent further spread of dangerous viruses and preserve public health. Since it is unclear when these national health guidelines will change, and we have the possibility of receiving public comments without the need for public meetings, we decided to not postpone a decision until public meetings may take place.

The Service did not modify the proposal as a result of this comment.

*Comment (4):* We received comments that wildlife refuges should not allow hunting.

*Response:* The word “refuge” includes the idea of providing a haven of safety for wildlife, and as such, hunting might seem an inconsistent use of the Refuge System. However, the NWRSA stipulates that hunting, if found compatible, is a legitimate and priority general public use of a refuge. In this case, the hunting opportunities in our proposal have been found to be compatible on this refuge (please see the final compatibility determination).

We did not make any changes to the rule as a result of this comment.

*Comment (5):* We received a comment that the Service has a legal duty to take a hard look to ensure that the biological integrity, diversity, and environmental health (BIDEH) of the system are maintained for the benefit of present and future generations of Americans. The commenter stated that the Service cannot act consistent with that duty when authorizing the hunting of ecologically important animal species.

*Response:* We do not allow hunting on a refuge if it is found incompatible with that individual refuge's purposes or with the mission of the Refuge System. Based on the analysis in the EA, we did not find that the proposed action would have any significant impact on predator species such as mountain lion and bobcat, ecologically important furbearers such as beavers, or rare animals and, consequently, would have no significant impact on the BIDEH of refuges. The detailed response to this comment can be found in the final EA.

The Service did not modify the proposal as a result of this comment.

*Comment (6):* We received comments opposing the proposal to allow use of lead ammunition for hunting resident game because of concerns that it may lead to poisoning of eagles and other wildlife on the refuge. Some comments also asked the Service to consider an alternative that would require the use of nontoxic ammunition for all hunting on the refuge.

*Response:* The Service shares commenters' concerns regarding the bioavailability of lead in the environment and the fragments that can be deposited in killed game (see Nancy Golden et al., “A Review and Assessment of Spent Lead Ammunition and Its Exposure and Effects to Scavenging Birds in the United States,” which is available online at

[www.fws.gov/midwest/refuges/Review%20and%20Assessment%20paper.pdf](http://www.fws.gov/midwest/refuges/Review%20and%20Assessment%20paper.pdf)). The impacts of spent lead on predators and scavengers on the refuge are analyzed in the EA in the cumulative impacts section. We also expect that expanding hunting opportunities would not substantially increase harvest or hunter numbers but would more likely provide additional opportunities for current hunters. Thus as a result of the proposed action, the potential overall increase in and cumulative impact of lead in the environment, both in number of animals harvested and area impacted, is expected to be minor and would not make a significant contribution to the cumulative effects of lead at the local or state level. The Service encourages refuge-state partnerships to reach decisions on usage and will continue to encourage hunters and anglers to voluntarily use nontoxic ammunition and tackle for all harvest activities. The Service's intent is to reduce the potential of lead poisoning to migratory birds and birds of prey, as well as lower the risk of lead exposure for humans ingesting wild game hunted on refuges. A more detailed response to this comment category can be found in the final EA.

The Service did not modify the proposal as a result of these comments.

*Comment (7):* We received a comment stating that the EA on this proposal is insufficient, and the Service must not publish a final EA or finding of no significant impact on activities at the refuge before it has accepted and analyzed all comments on the proposed rule, including on the cumulative impacts report.

*Response:* The Service disagrees with the assertion that the EA was insufficient for this proposal. We completed the EA, in compliance with NEPA, to evaluate the impacts of opening or expanding hunting opportunities on the refuge. The EA underwent regional review to address and consider all proposed actions from a local and regional perspective, and to consider the cumulative impacts. After analyzing the impacts, we concluded that the proposed actions would not have significant impacts at the local or regional level. The commenters who have raised these environmental analysis concerns have provided no additional information that would change this analysis or our conclusion. We annually conduct management activities on the refuge that minimize or offset impacts of hunting on physical and cultural resources, including establishing designated areas for hunting, restricting levels of use, confining access and travel to designated locations, providing education programs and materials for hunters, and conducting law enforcement activities.

The Service is expanding opportunities for recreational hunting. Expanding opportunities does not necessarily result in increased impacts to the refuge resources. Overall, considering the decreasing trends in hunting generally and decreasing trends of hunting on refuges in general, we do not expect this proposal to have a significant impact on the environment. As noted by the Service in the final rule, hunter participation trends have been generally declining and some refuges attract a very small number of participants, and often participation rates decline over the course of a season.

After analyzing all comments received the Service did not find it necessary to modify the proposal.

*Comment (8):* One commenter noted that refuges in Nebraska have had drastic reductions in staffing over the last 15 years. Expansion of hunting and fishing will place an additional workload on already strained budgets and staff, especially law enforcement officers.

*Response:* Each refuge manager makes a decision regarding hunting and sport fishing on that particular refuge only after rigorous examination of the available information (referencing a comprehensive conservation plan; referencing step-down plans, of which a hunting plan would be one; complying with NEPA [42 U.S. Code 4321 et seq.]; evaluation of Section 7 of the Endangered Species Act of 1973, as amended [16 U.S. Code 1531 et seq.]; copies of letters requesting State and/or tribal involvement; draft refuge-specific regulatory language; and requesting and analyzing public comments).

In addition, to open or expand hunting or sport fishing on a refuge, we must find the activity compatible. In order to find an activity compatible, the activity must not “materially interfere or detract from” public safety, wildlife resources, or the purpose of the refuge. For the proposed openings and expansions, we determined that the proposed actions would not have these detrimental impacts and found the actions to be compatible.

Service policy (603 FW 2.12[7]) requires station managers to determine that adequate resources (including personnel, such as law enforcement) 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 Service 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 private and nonprofit groups before determining that the use is not compatible. When Service law enforcement resources are lacking, we are often able to rely upon state fish and game law-enforcement capacity to assist in enforcement of hunting and fishing regulations.

A more detailed response to this comment can be found in the final EA.

The Service did not modify the proposal as a result of this comment.

**Determination (check one below):**

- Use is not compatible.
- Use is compatible with the below stipulations.

**Stipulations Necessary to Ensure Compatibility:**

Listed below are refuge-specific regulations that pertain to hunting on the refuge as of the date of this determination. These regulations may be modified as conditions change or if refuge expansion continues/occurs. Because this refuge is newly opened to hunting, the 50 Code of Federal Regulations will need to be modified to provide a place for the following regulations.

50 Code of Federal Regulations 32.46 Nebraska

(d) John W. and Louise Seier National Wildlife Refuge—

(1) *Migratory game bird hunting. We allow migratory game bird hunting to include coot, crow, dark goose, dove, duck, light goose, merganser, rail, snipe, teal, and woodcock on designated areas of the refuge subject to the following conditions:*

(i) *Hunters may access the refuge from 2 hours before legal sunrise until 2 hours after legal sunset.*

(ii) *You must remove all blinds and decoys at the conclusion of each day's hunt (see Section 27.93 of this chapter).*

(iii) *We allow the use of dogs from August 1 through April 31.*

(2) *Upland game hunting. We allow upland game hunting to include badger, bobcat, coyote, fox, long-tailed weasel, mink, opossum, prairie dog, porcupine, rabbit & hare, raccoon, skunk, squirrel, woodchuck, greater prairie chicken, grouse, partridge, pheasant, quail, and turkey on designated areas of the refuge subject to the following conditions:*

(i) *The conditions set forth at paragraphs (d)(1)(i) and (iii) of this section apply.*

(ii) *You may only possess nontoxic shot when hunting turkey (see Section 32.2(k)).*

(iii) *Shooting hours for coyote, porcupine, prairie dog, woodchuck, and state-defined huntable furbearers are ½ before legal sunrise to ½ hour after legal sunset.*

(3) *Big game hunting. We allow hunting of deer, elk, and pronghorn antelope on designated areas of the refuge subject to the following conditions:*

(i) *The condition set forth at paragraph (d)(1)(i) of this section applies.*

(ii) *We allow portable tree stands and ground blinds to be used from August 16 through January 31.*

(4) *[Reserved]*

**Justification:**

Based on the anticipated biological impacts listed above and in the final EA, the Service has determined that hunting of resident game and migratory birds on the refuge will not interfere with the wildlife or habitat goals and objectives or purposes for which the refuge was established. Hunting is a priority public use that is listed in the National Wildlife Refuge System Improvement Act of 1997. By facilitating this use, visitors will gain knowledge and an appreciation of fish and wildlife, which will lead to increased public stewardship of wildlife and their habitats. Increased public stewardship will support and complement the Service's actions in achieving the purposes of the refuge and the mission of the Refuge System.

**Signatures:**

\_\_\_\_\_  
Steven A. Hicks, Project Leader

\_\_\_\_\_  
Date

**Review:**

\_\_\_\_\_  
Refuge Supervisor

\_\_\_\_\_  
Date

**Approval:**

\_\_\_\_\_  
Maureen Gallagher, Refuge Chief  
Region 6

\_\_\_\_\_  
Date

**Mandatory 10- or 15-Year Re-Evaluation Date: 2035**