

# **Draft Compatibility Determination**

## **Title**

Draft Compatibility Determination for Non-Commercial Plant Materials Collection at Nestucca Bay National Wildlife Refuge

## **Refuge Use Category**

Natural Resource Collection

## **Refuge Use Type(s)**

Plant Gathering (non-commercial)

## **Refuge**

Nestucca Bay National Wildlife Refuge (NWR)

## **Refuge Purpose(s) and Establishing and Acquisition Authority(ies)**

Nestucca Bay NWR was established in 1991 under the authority of:

"... to conserve (A) fish or wildlife which are listed as endangered species or threatened species .... or (B) plants" Endangered Species Act of 1973, as amended (16 U.S.C. 1532-1544, 87 Stat. 884);

"... for the development, advancement, management, conservation, and protection of fish and wildlife resources ..." 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 ..." Fish and Wildlife Act of 1956, as amended (16 U.S.C. 742(a)-754);

"... for use as an inviolate sanctuary, or for any other management purpose, for migratory birds." Migratory Bird Conservation Act of 1929 (16 U.S.C. 715- 715d);

"... for conservation purposes ..." Consolidated Farm and Rural Development Act (7 U.S.C. 2002);

"... the conservation of the wetlands of the Nation in order to maintain the public benefits they provide and to help fulfill international obligations contained in various migratory bird treaties and conventions ..." Emergency Wetlands Resources Act of 1986 [16 U.S.C. 3901(b), 100 Stat. 3583].

## **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 United States for the benefit of present and future generations of Americans (Pub. L. 105-57; 111 Stat. 1252).

## Description of Use

Is this an existing use?

No.

What is the use?

**Plant Gathering (non-commercial).** The collection of seed and other plant propagules from selected plants for non-commercial or research purposes both on and off refuge. The Refuge proposes to review such proposals from a limited audience and issue Special Use Permits (SUP) when their goals align with those established here and in our Comprehensive Conservation Plan (USFWS 2013).

The Refuge proposes the collection of limited plant material and seeds from native plants for restoration projects, plant propagation, cultural practices, and other non-commercial uses with the approval of a Special Use Permit (SUP). This activity must occur under the stipulations of a valid SUP and approval under the direct supervision of the Refuge Manager or equivalent Refuge personnel.

Is the use a priority public use?

No

Where would the use be conducted?

Seed collection and plant collection would be allowed on the Nestucca Bay NWR, which contains a number of important habitats of interest to seed collectors. For example, the restored prairie of the Cannery Hill Unit (prairie) contains approximately 35 acres of coastal prairie under management for the benefit of the federally listed Oregon silverspot butterfly (OSB). The restored portions of the prairie contain dozens of native plants species of interest to the refuge and others restoring or managing coastal prairies. Other Refuge habitats that may be used for seed collection include marsh, both historic and restored, as well as forested lands. Lowland pastures that are currently managed using cooperative agriculture are unlikely to be of interest to plant or seed collectors but would be open to collection as well. Specific locations for seed and plant collection will be determined and pre-approved in the corresponding SUP.

When would the use be conducted?

Seed and plant collection generally occurs between March and October. The frequency and duration depend upon the number of species being collected, their life histories (reproductive strategies), and the quantity of seed or material being collected. In general, the work requires limited surveys taking tens of minutes to a

few hours, and collection periods taking several hours at most for each plant stand collected. This use would only occur during times and seasons that are pre-approved in the corresponding SUP.

How would the use be conducted?

Seed collection would be performed by one or a few people at a time. Surveys for plant species and their readiness for collections would occur periodically over the months leading up to their usual seed set time of year. Seed would be collected by hand, either by pinching or clipping/cutting. Other collection methods may be considered, but they require written permission from the Refuge Manager. Plant collection would be conducted in similar ways with appropriate methods for collecting the specific part of the plant. Requests that include larger plant samples, or removal of whole plants would be closely scrutinized and may be approved on a case-by-case basis depending on the species and proposed impacts.

Seed collection would be limited to collecting less than 20% of each species seed set for the year when the species is either common or uncommon on the site. Limits to plant collections would be determined on a case-by-case basis. This proportion of an abundant species' seed set is conservative and accounts for our limited ability to reliably estimate seed set with precision (BLM 2016). Collection of rare on-site species would be limited to less than 10% of the species seed set for the year. This proportion is very conservative and in line with standard guidance (Center for Plant Collection 2025). Similar limits will be enforced for the collection of other plant parts including flowers and other foliage. Table 1 below summarizes the considerations for determining abundance efficiently.

**Table 1.** Discontinuous cover ranks for species abundance

Rank	Percent Cover (%)	Comment
Common	>33	Abundant/Frequent
Uncommon	10-25	A smattering/here & there
Rare	<5	<50 individual/hard to find

**Note:** space between ranks forces the observer to make a stronger decision, while accounting for our coarse perception (ex. “is it less than one-quarter or more than one-third of the total cover?”).

If requests for the same species occur within a given year from different partners the collection limit will be shared among organizations. If requests for the same species occur in back-to-back years, then the Refuge Manager will consider the species biology and its ability to support collections year-after-year. These considerations will be reviewed and stipulated in the SUP if appropriate. Furthermore, collections of a given species will need to be spread out across the entire site's population, so the indicated collection limit for the entire population is not concentrated upon any one

portion. This can be achieved by collecting less than 20% from any one stand of an abundant species or by spreading out the partner's or partners' collection goals across the entire site.

SUPs would require that collectors return a portion of their seed harvest to the Refuge so it can be used to improve the local populations. This amount will be determined on a case-by-case basis, depending on the species in question and how much is collected under the SUP, but will be limited to 10% or less of the total collection or harvest. All seed collection requests will be tracked in an electronic file at the Refuge to ensure seed collection activities remain compatible and that no single species is overharvested. Plant collection by tribal partners for cultural uses would not be required to provide a portion of their harvest of plant material, including seeds, to the Refuge because of the nature of the collection. Requirements around cultural plant collection uses would be collaboratively determined by the Refuge and the permittee.

Collectors would not be allowed to operate vehicles off-road and would only access plants on foot. Collections of federal or state-listed species is prohibited without an Endangered Species Act 10(a)(1)(a) permit or equivalent State permit.

Seed and plant collection proposals would not be accepted from any for-profit entity and the collected seed would be further limited to use within the PNW coastal zone for the restoration and management of natural resources or for cultural uses. Federal and state agencies, as well as the conservation Non-Governmental Organizations (NGOs) that work in the coastal habitats would be able to collect seed on refuge.

A SUP is required for all seed and plant collection activities. Applications will be considered on a case-by-case basis using the criteria identified in this compatibility determination and as applicable to federal law and USFWS policy and regulation. The SUPs would specify which species could be collected and in what quantities. It would also specify design criteria to minimize these activities' effects on threatened and endangered species and their habitats. Attachment 1 is the template for special conditions that would be included in any seed or plant materials collection SUP.

Why is this use being proposed or reevaluated?

The collection of native seeds and plant propagules from the refuge to assist in habitat restoration activities on non-refuge lands is an appropriate and beneficial purpose. As proposed, this activity will remove limited material from native plants (e.g. seeds, flowers, cuttings), leaving the plant alive and undamaged. One of the primary constraints on habitat conservation and restoration on the Oregon coast and more broadly is the unavailability of suitable plant materials. Native plants flourish on Nestucca Bay NWR due to management actions that control or eradicate non-native species or invasive plants and promote native species. The result is a source for native plant materials that can be used to benefit habitat conservation and restoration projects more broadly.

Cannery Hill at Nestucca Bay NWR for example hosts a wide variety of native plants in abundance due to active restoration and management activities conducted by Service personnel for the benefit of OSB (USFWS 2020). This makes it an ideal location for sourcing native plant materials. The Refuge receives multiple requests annually from partner conservation organizations to conduct non-commercial seed collection on the refuge. This use, while typically compatible with refuge purposes, can be challenging to address fairly across the board.

The refuge has and will continue to contract with farmers and non-profit organizations to acquire and produce plant materials, however the ability to trade seed or allow collections in exchange for materials, in-kind services, or to promote healthy native habitats on nearby lands are all reasons why the refuge should choose to collaborate with other agencies/groups and allow them to collect seed at Nestucca Bay NWR.

Without cooperation between organizations, habitat restoration and management is difficult and more expensive; economies of scale apply. Most species, including OSB, require more habitat than a refuge complex can provide. It is in our organizational and conservation interests to support the work of others when it benefits our trust species. Collaboration serves bilateral purposes.

In addition to the valuable prairie restoration area at Cannery Hill, the refuge manages both naturally occurring and restored or enhanced wetlands to benefit salmonids including the Federally listed Coho Salmon. These habitats may provide a seed source for other wetland restoration activities. Allowing for plant materials collection in these habitats would support the Refuge's mission regionally by making them more readily available.

### **Availability of Resources**

To comply with the Refuge Recreation Act (Public Law 87-714), the Project Leader must determine whether sufficient resources—financial, staffing, facilities, or other infrastructure—are available to support the proposed use without materially interfering with the refuge purpose(s) or the mission of the National Wildlife Refuge System. This determination should be informed by a review of current capacity and, where applicable, the refuge's Comprehensive Conservation Plan (CCP).

#### **Assessment of current resources and capacity**

Plant collection occurs with existing staff and funding. Refuge staff are needed to administer activities such SUP administration and monitoring to ensure stipulations are met, and to monitor and evaluate impacts of the refuge use. It is anticipated that the Refuge Manager or designee will administer a small number (approximately 1-2) of SUPs annually. Refuge staff work collaboratively with a restoration specialist in Ecological Services that provides assistance in meadow restoration and is responsible for managing the refuge's seed inventory. This staff person will be integral to the process of permitting, monitoring, and administering seed and plant collection

activities on the refuge. The use is within the scope of the Refuge's core functions and not a new task for refuge staff. Refuge management time reviewing and suggesting edits to this CD and approvals of SUPs is a new need but is expected to be limited and is within the current Refuge resource availability. We estimate that these functions require less than 25 hours of time for two Refuge employees annually.

### **Impacts of changes to resources and capacity**

The availability of resources is subject to change and the level of use provided may vary based on current staffing, partner support, funding, or infrastructure conditions. Costs may increase over time, in relation to changes in the costs for equipment, maintaining facilities, etc. A substantial increase to the number of requests may also create the need for additional resources to administer the use. The Project Leader will use sound professional judgment in evaluating whether the refuge or its partners can develop, operate, and maintain the use in a compatible manner.

For other refuge uses, if resource conditions shift such that the refuge can no longer sustain the use in a compatible manner, the Project Leader may modify or suspend the use pursuant to 50 CFR 25.21 (or 50 CFR 36.42 for Alaska). The public will be notified of any changes to refuge uses, including temporary modification or suspension, re-evaluation of compatibility and/or discontinuing of refuge uses.

### **Anticipated Impacts of the Use**

The effects and impacts of the proposed use to refuge resources, whether adverse or beneficial, are those that are reasonably foreseeable and have a reasonably close causal relationship to the proposed use. This CD includes the written analyses of the environmental consequences on a resource only when the impacts on that resource could be more than negligible and therefore considered an "affected resource." Only the impact to soils, vegetation and wildlife are discussed below; all other resources will not be more than negligibly impacted by the action and have been dismissed from further analyses.

#### **Potential impacts of a proposed use on the refuge's purpose(s) and the Refuge System mission**

Limitations on the number of seed and plant collection personnel, areas they may access, and total collection allowance will all mitigate potential impacts to refuge resources. There is no anticipated negative impact on the Refuge purpose or Refuge system mission with granting this activity. As noted above, we anticipate positive impacts such as more readily available and lower cost plant materials, more restoration of coastal meadows and tidal marshes regionally and therefore more habitat for OSB and juvenile Coho Salmon.

Wild collection of native seed and plants is a well-studied activity that has clear guidelines to avoid adverse effects on the populations being utilized, as cited above (BLM 2016). Another example is USFS (2025) collecting seed guidance, which requires that "... at least 50 percent of the seed crop at a given site is left intact to allow for natural recruitment and regeneration of the native population." Therefore the guidelines adopted here, and the research they are based upon, ensure this activity will not negatively impact Refuge plant populations or other resources.

### Short-term impacts

Walking off trail to survey and collect seed would cause the trampling of some plants. But the activity would be limited in time and scope and should not cause the creation of "social trails" that lead visitors to venture off established trails due to the small number of collectors and the dispersed nature of collection activities. Seed collectors would be required to wear high-visibility vests or other clothing to identify themselves with a group so that visitors are not misled into thinking that off-trail hiking is permitted. They would also be required to answer the public's questions about their activities and note their SUP.

### Long-term impacts

The long-term impacts to native plants or wildlife from this activity should be minimal (Blanc et al. 2006; Knight et al. 1995a; Knight et al. 1995b) as long as the collection parameters and other guidance specified in this CD and the SUP Special Conditions (Attachment 1) are followed. No long-term impacts are foreseeable. Only sensitive plant species, or those that are locally rare, will not produce the seed required to sustain or improve their populations on a site with higher percentages of seed harvested (i.e. >10%). Seed from these sensitive and locally rare species will only be collected at the Refuge in lower percentages.

Permittees will only be allowed to harvest in areas that are approved by the Refuge Manager and will be limited when collecting from plants that are rare on the site. Collection of federal or state threatened and endangered plant species will only be allowed with an appropriate ESA permit or state equivalent permit. To minimize disturbance to ground cover plants or compaction of soils, the designated collection will be conducted from a wide variety of areas spread out across the entire site's population, so the indicated collection limit for the entire population is not concentrated in one location.

Collectors can be vectors for invasive plants when seeds or other parts of the plant are moved from one area to another. The SUP special conditions will direct collectors to clean their clothing and shoes before entering the native plant areas. Collection activities directly remove plant material from the Refuge, but the special conditions ensure that the removal will not affect population levels. Only cuttings, seeds, and flowers will be taken from plants, leaving the host plant healthy and capable of producing further growth. Although numerous native insect species utilize the native

plants, the proposed activity is unlikely to be impactful because only a small percentage of the plant material will be removed.

Since the SUPs would require collectors to return a portion of their harvest to the Refuge these collection activities would ultimately benefit local plant populations. The specific amount would be determined by the Refuge Manager or designee on a case-by-case basis depending on the species that is being collected during the development of the SUP. All harvested plant materials would be utilized by federal and state agencies or NGOs to improve the harvested species' regional distribution and abundance, which is necessary to recover the ecosystem and its species. No collection of state or federally listed species would be allowed without the appropriate permit.

### **Public Review and Comment**

The draft compatibility determination will be available for public review and comment for 14 days. The public will be made aware of this comment opportunity through our social media and the refuge website. Organizations that have expressed interest in seed collection for restoration purposes at Nestucca Bay NWR will be notified of the public comment period directly. A hard copy of this document will be available at the Oregon Coast National Wildlife Refuge Complex Headquarters (2127 SE Marine Science Drive, Newport, OR 97365-5258). It will be made available electronically on the refuge website <https://www.fws.gov/refuge/oregon-islands>. Please let us know if you need the documents in an alternative format by emailing [OregonCoast@fws.gov](mailto:OregonCoast@fws.gov). Comments expressed during the public comment period will be addressed in the final.

### **Determination**

Is the use compatible?

Yes

### **Stipulations Necessary to Ensure Compatibility**

The following stipulations are required to ensure compatibility of this activity:

1. Organizations requesting to collect seeds or plant propagules at Nestucca Bay NWR should submit a General Activities Special Use Permit Application ([FWS Form 3-2469](#)) to the general mailbox at [OregonCoast@fws.gov](mailto:OregonCoast@fws.gov). Subject line for this email should indicate that it is a request for a Seed or Plant Collection SUP. The Application must include details on the requested activities including the desired species, amount of collected material requested, timing, personnel, locations, and other specific information that describes the desired activities (ie. access to closed areas or off trail portions of the refuge). All SUP requests must contain the intended use of seed or plant that is collected on the refuge. The application will be reviewed by Nestucca Bay NWR staff for the



potential value and impact to the Refuge's natural resources. Special conditions will be developed for each request using the template (Attachment 1).

2. Failure to comply with the provisions of the SUP results in the revocation of permit privileges. Collections must adhere to the requirements indicated in the SUP.
3. All Refuge rules and regulations must be followed unless otherwise exempted in writing by the Refuge Manager or designee.
4. Permitted activities will only be approved for the dates specified in the permit.
5. Access to areas normally closed to the public will be granted on a case-by-case basis, and will not be allowed for all collection activities.
6. The Refuge Manager may suspend an existing SUP or reject new SUPs without notice.
7. All activities must be coordinated with the Refuge Manager, or designated staff member. Two days' notice prior to collection activities will be required.
8. No collection of State or Federally listed species would be allowed without the appropriate 10(a)(1)(A) Threatened and Endangered Species Permit for recovery actions such as propagation or equivalent State permit.
9. All collection activities will be outlined in an annual report. This report must include dates, times, and a detailed description of all activities and results from the collection. This must include the final collected species, amounts, and locations that were accessed for collection.
10. Collections may not exceed the set allowance (typically 20% of seed set for common species and 10% for rare species). Seed collectors must aim to collect across the whole population/site, not just from one area. Species that have been requested or collected in previous years may be denied or have a smaller take allowance.
11. The Permittee must share a portion of their collections with the Refuge. This amount will be determined by the Refuge Manager or designee but will be limited to 10% or less of the collection or harvest from amplification. Collected seed should be prepared for storage, so Refuge resources are not needed to accept the donation.
12. Seeds or other plants materials collected, may not be sold for profit or for commercial uses.
13. All seed collection personnel are required to wear high visibility vests or clothing while working in refuge closed areas. High visibility vests enable the public to distinguish workers from other members of the public.
14. Use existing trails where possible and limit trammeling of vegetation.
15. To avoid the spread and infestation of invasives species, all boots and

equipment must be brushed clean prior to accessing Refuge lands.

16. Ground disturbing activities are not authorized. Any ground disturbing activities must be approved by U.S Fish and Wildlife Service in advance.

### **Justification**

Based on considerable research, as cited by the organizations referenced herein, and our best professional judgement, allowing limited seed and plant collection by selected partners will not materially interfere with or detract from the fulfillment of the National Wildlife Refuge System mission or the purposes of the refuge. The stipulations above will ensure compliance with the national policy to maintain the biological diversity, integrity, and environmental health of the refuge.

Non-commercial plant gathering will allow the Refuge to contribute to the regional availability of native plant materials for use in habitat management projects. The Refuge has a vested interest in this outcome because it needs them for the ongoing restoration of the Cannery Hill Unit prairie, and for its perpetual management to retain the habitat qualities needed by OSB.

The stipulations outlined above would help ensure that the use is compatible at Nestucca National Wildlife Refuge. Seed and plant collection, as outlined in this compatibility determination, would not conflict with the national policy to maintain the biological diversity, integrity, and environmental health of the refuge. Based on available science and best professional judgement, the Service has determined that the seed and plant collection at Nestucca National Wildlife Refuge, in accordance with the stipulations provided here, would not materially interfere with or detract from the fulfillment of the National Wildlife Refuge System mission or the purpose of the Nestucca National Wildlife Refuge. Rather, appropriate and compatible seed and plant collection contributes to the Refuges goal for restoration of rare habitats.

## **Signature of Determination**

Refuge Manager Signature and Date

## **Signature of Concurrence**

Assistant Regional Director Signature and Date

## **Mandatory Reevaluation Date**

2036

## **Literature Cited/References**

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