

[Draft] Compatibility Determination

Stillwater Natural Resource Collecting

Refuge Use Category

Natural Resource Collection

Refuge Use Type(s)

Plant Gathering (non-commercial), Animal Product Gathering (non-commercial)

Refuge

Stillwater National Wildlife Refuge, Churchill County, Nevada

Refuge Purpose(s) and Establishing and Acquisition Authority(ies):

Stillwater National Wildlife Refuge (NWR) was established under the authority of the Truckee-Carson-Pyramid Lake Water Rights Settlement Act of 1990 (16 U.S.C. 668dd; §206(b), Title II, P.L. 101-618), the Fish and Wildlife Act of 1956, as amended (16 U.S.C. §742), the Endangered Species Act of 1973, as amended (16 U.S.C. §1531-1544) and the Emergency Wetlands Resources Act of 1986 (16 U.S.C. §3901(b)).

According to these authorities, Stillwater National Wildlife Refuge purposes are: “(A) maintaining and restoring natural biological diversity within the refuge; (B) providing for the conservation and management of fish and wildlife and their habitats within the refuge; (C) fulfilling the international treaty obligations of the United States with respect to fish and wildlife; and (D) providing opportunities for scientific research, environmental education, and fish and wildlife oriented recreation” (Truckee-Carson-Pyramid Lake Water Rights Settlement Act of 1990)... “...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)... “...to conserve (A) fish or wildlife which are listed as endangered species or threatened species... or (B) plants...” (Endangered Species Act of 1973)... “...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).

National Wildlife Refuge System Mission

The mission of the National Wildlife Refuge System, otherwise known as 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. However, allowing this use was contemplated in the 2002 CCP EIS. The use is being re-evaluated through the compatibility determination process in conjunction with a MOU for the Fallon Paiute-Shoshone tribe.

What is the use?

We propose to allow plant gathering (non-commercial) and animal product collecting (non-commercial) by the Fallon Paiute Shoshone Tribe for cultural resource gathering purposes on Stillwater National Wildlife Refuge. Plant gathering (non-commercial) is defined as the collection of berries, fruits, grasses, marsh plants (e.g., cattails or sweet grass), mushrooms, nuts, roots, wild rice or other plants, plant parts, or plant products for non-subsistence, non-research purposes. Animal product gathering (non-commercial) is defined as the collection of shed antlers, owl pellets, shells, bones or other animal parts or products for personal use or recreational purposes (does not include hunting, fishing, aquaculture, or other collection of living organisms).

Is the use a priority public use?

This use is not a priority public use of the National Wildlife Refuge System under 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. Priority public uses are wildlife-dependent recreational uses of a refuge involving hunting, fishing, wildlife observation and photography, or environmental education and interpretation. However, this use does pertain to the Service's Appropriate Refuge Uses policy to provide reasonable access to Native Americans to refuge lands and waters for gathering plants for ceremonial, religious, medicinal, and traditional purposes when the activity is appropriate and compatible (603 FW 1).

Where would the use be conducted?

Plant and animal product gathering would be allowed on the entire Stillwater NWR, subject to current regulations regarding vehicle and boat use. Gathering would be allowed in areas closed to hunting.

The Refuge lies in the high-desert (at approximately 4,000 feet elevation) and is part of an interior basin terminal sink for the Carson River. Major habitat types include wetlands, desert upland shrub, and, in the future, restored riparian. The Refuge also contains dunes and alkaline playas. Under natural (historic) conditions, the areal extent of and species mix in these habitats

would have varied broadly among years depending on drought and flooding, the volume of inflows, and salinity, among other factors. These factors continue to influence the location and extent of these habitats, but upstream water storage and withdrawals for agricultural and urban uses have greatly limited the degree to which these factors currently affect Refuge habitats.

Riparian habitats are characterized by Fremont cottonwood (*Populus fremontii*), red willow (*Salix laevigata*), sandbar willow (*Salix exigua*), and understory shrubs and grasses. Riparian areas provide valuable breeding and staging habitats for neotropical migratory birds, nesting and roosting areas for cavity-nesting birds and raptors, and cover and forage for mammals.

Various passerine birds (e.g., blackbirds, grosbeaks, larks, nighthawks, orioles, peewees, sparrows, swallows, warblers, and wrens), raptors (e.g., eagles, hawks, and owls), and others, like mourning dove (*Zenaida macroura*) and California quail (*Callipepla californica*), regularly use more than one habitat type on the Refuge. The Refuge has no critical habitat and no species listed under the Endangered Species Act are regularly seen on site.

Because of the high wildlife values of the area, the Lahontan Valley Wetlands have been included in the Western Hemisphere Shorebird Reserve Network, it is a focus area for the Intermountain West Joint Venture (to implement the North American Waterfowl Management Plan) and has been designated an Important Bird Area by the American Bird Conservancy and National Audubon Society.

Non-native (invasive) species and inadequate and unreliable supplies of clean, fresh water are threats to the continued health and viability of these habitats. Records reveal that approximately 1,000 Refuge acres are infested by invasive plants (Multi-year RAPP Report). The Refuge's comprehensive conservation plan and environmental impact statement (CCP/EIS) includes much more detailed information about the Refuge's habitats and wildlife, and the threats to these resources (USFWS, 2002).

When would the use be conducted?

As currently envisioned, natural resource gathering would be an infrequent activity engaged in by tribal individuals, families, or other small groups. Collecting times would be at the discretion of the collectors. The collectors would not be limited to specific hours or seasons since the refuge is open year-round and at all times of day. However, special consideration would be given to ensuring that natural resource gathering did not occur in places and at times where and when it would expose gatherers to safety risks associated with Refuge hunting programs or conflict with other visitors enjoying the Refuge.

How would the use be conducted?

Plant and animal product gathering would be done individually or in small groups by Fallon Paiute-Shoshone tribal members using traditional harvest tools (knives, bags, digging sticks, etc.). Participation in natural resource gathering on the Refuge would be limited to members of the Fallon Paiute-Shoshone Tribe for cultural purposes. Natural resource gathering on the Refuge would be authorized through issuance of a MOU to the Tribe.

Traditionally, items of interest for gathering included roots/tubers, berries, seeds/nuts, small animals, and insects (e.g., tules, cattails, willows, grasses, ground squirrels, jack rabbits, minnows [tui chub, *Gila bicolor*] and other fishes, and various birds, including waterfowl and coots [American coot, *Fulica americana*]). Roots, seeds, and berries were eaten raw or processed then eaten (e.g., ground up or dried). Other plants served medicinal purposes or were used to spice food. Tules (hardstem bulrush, *Schoenoplectus acutus*) were dug up using digging sticks or cut with knives and used for a broad range of purposes, including to weave mats; make hats; make bags and baskets to store food and carry other items; cover lodges framed of willow poles (*Salix* spp.); build waterfowl decoys, fish traps, and balsa boats (like canoes); and for food (tule seeds and roots were eaten). Cattails (*Typha* spp.) also served numerous purposes. Young shoots, immature pollen spikes, pollen, seeds, and roots were all harvested and eaten; cattails were used in the manufacture of waterfowl decoys; and cattail leaves were twisted into rope. Nuts of pinyon pines (*Pinus monophylla*) were ground into flour. Sagebrush bark (*Artemisia* spp.) and tules were used to manufacture footwear (Raymond, 1997). Using traditional methods to gather, process, and use natural materials of this nature is an important cultural practice.

Historically and prehistorically, tribal members also hunted, fished, and trapped other, including larger animals. Many of these species are now managed as game species, furbearers, or unprotected species; and their harvest is regulated by the State and Federal governments. Hunting, fishing, and trapping are considered separate activities from cultural gathering and their appropriateness and compatibility on the Refuge are evaluated in separate documents. Their hunting of game and unprotected species would be regulated the same as that of any other member of the general public (see hunting CDs). Fishing on the Refuge has been determined not compatible and is not allowed (see Fishing CD). Trapping has been determined not appropriate and is not allowed on the Refuge (see Trapping AF). Resource gatherers would not be allowed to hunt on the Refuge in a manner or at a time or location inconsistent with current State and Service rules and regulations. Their hunting of game and unprotected species would be regulated the same as that of any other member of the general public (see hunting CDs).

Why is this use being proposed or reevaluated?

Plant and animal product collecting includes collection of various plants and animal products on Stillwater NWR by members of the Fallon Paiute-Shoshone Tribe. These Native Americans have lived year-round in the Lahontan Valley for thousands of years (Raymond, 1997). By continuing to collect their traditional plant and animal products, important cultural knowledge and ties are learned and passed on through generations.

Natural resource collection, using traditional methods, is an activity not usually available to the general public. Such uses are defined as specialized uses under U.S. Fish and Wildlife Service (Service or USFWS) policy (Administration of Specialized Uses, 5 RM 17). Participation in natural resource gathering on the Refuge is a privilege, not a right. Before being allowed on the Refuge, this use would first need to be found appropriate (see Appropriate Refuge Uses, 603 FW 1, Ch. 1.10D(6)) and then be determined compatible (see Compatibility, 603 FW 2). Official authorization to access the Refuge for this use would occur through issuance of a Memorandum of Understanding (MOU).

Availability of Resources

Natural resource collecting would utilize existing refuge facilities. Therefore, there are no one-time costs associated with construction of new facilities. Annual/recurring costs would include biological monitoring, as needed, to ensure that natural resources are being taken on a sustainable yield basis. The other foreseeable costs are negligible but would include mainly staff time for the following: develop a Plant/Animal Product Collecting FOA and CD, issue a Memorandum of Understanding to cover activity and duration, attend meetings to discuss the collecting, and complete site visits with tribal members. Staff time recurring costs (LE, administration and management) would be minimal considering that the Fallon Paiute-Shoshone tribe is knowledgeable in natural resource collection and will be using their own traditional harvesting tools and vehicles.

The Service currently has adequate budget and staff to support the annual costs associated with operation and maintenance of the programs and facilities associated with a modest amount of natural resource collecting.

Anticipated Impacts of the Use

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

Short-term impacts

The immediate impact of plant and animal product collecting would be removal of selected plants and animal products from the Refuge. The amount of loss would depend on the gathering pressure (i.e., the number of gatherers, days of effort, harvest success, etc.). Taken to an extreme, this could potentially reduce the sizes or health of such populations on the Refuge. However, this is not expected because of the small numbers of cultural gatherers expected on the Refuge, the infrequency of their visits, and the fact that the Service would regulate and monitor this activity to ensure it was managed on a sustained yield basis. The greatest residual effects would then likely be wildlife disturbance.

Activities expected to cause wildlife disturbance during collecting include vehicle operation, including access and parking, walking in/near wetlands and other valuable wildlife habitats, and boating, including launching. The amount of disturbance generated depends on several factors, including whether visitors are within or outside of vehicles. Wildlife disturbance is greater when visitors depart their vehicles and walk trails or venture into wetlands. This is a likely scenario during natural resource collecting.

Many birds and other animals are wary and flush or flee when approached too closely. Among other variables, effects on wildlife depend upon the species involved and its age; the time of year; the breeding cycle stage (if applicable); the activity in which the birds are engaged (e.g., foraging versus nesting); prey density and nutritional requirements for feeding birds; flock size

(large flocks may be more easily disturbed); whether the species is hunted; the surrounding environment; whether the disturbing activity involves vehicles; the type, size, intensity, speed, noise, nature, and frequency of the disturbing activity; and the approach angle or directness of approach to an animal (Blanc et al., 2006; Goss-Custard and Verboven, 1993; Hammitt and Cole, 1998; Kirby et al., 1993; Knight and Cole, 1995a; Knight and Cole, 1995b; Lafferty, 2001a; Lafferty, 2001b; Rodgers, 1991; Rodgers and Schwikert, 2002; Rodgers and Smith, 1997; Smit and Visser, 1993). Disturbance and flushing of birds, or even raising their alert levels (which usually occurs at a greater distance than that for flushing), creates stress and requires animals to alter their normal behavior and expend energy that otherwise would be invested in essential life history activities such as foraging, migration, predator avoidance, mating, nesting, and brood-rearing. It can cause them to stop feeding, cause abandonment of nests and young, allow predators access to nests/young, reduce parental attention to young, and otherwise impact survival of individual animals, including birds, eggs, nestlings, broods, young, and juveniles (Burger and Gochfeld, 1991; Haysmith and Hunt, 1995; Lafferty, 2001b). Breeding birds are especially sensitive to human disturbance (Hammitt and Cole, 1998; Trulio, 2005). A study of visitors to a colony of kittiwakes (*Rissa tridactyla*) and guillemots (*Uria aalge*) revealed that nesting success was influenced by the distance observers were from the birds (positively correlated) and the number of observers involved (negatively correlated) (Beale and Monaghan, 2004). The effects of disturbance on individual animals are likely additive.

Studies have had mixed results regarding potential habituation of birds and some other taxa to human disturbance. Wildlife are often less disturbed by routine human activities that repeatedly occur along defined routes (e.g., trails, roads, or water channels), especially frequent disturbance that does not involve direct contact or other threat, compared with those activities that occur irregularly and outside predictable paths/channels (Blanc et al., 2006; Burger, 1998; Knight and Cole, 1995b; Smit and Visser, 1993). Some species can habituate to the presence of humans who stay in the same general location and remain relatively still (Goss-Custard and Verboven, 1993; Smit and Visser, 1993). Habituation to some types and levels (intensity and frequency) of human disturbance appears to vary among species, within species, between resident and migratory populations, and potentially between inexperienced and experienced breeders. This makes it difficult to forecast habituation in actual field situations.

Wading in the water and chopping or digging up emergent vegetation would stir up sediments, increase turbidity, and reduce the depth to which sunlight penetrated the water column. This can reduce growth of submerged vegetation and populations of phytoplankton. Because of the small numbers of cultural gatherers expected on the Refuge, the infrequency of their visits, and the very large acreage of wetlands, it is expected that the effects on wetland biota would be minimal.

Various areas of the Refuge are open to numerous public uses, including hunting, wildlife observation and photography, and environmental education and interpretation. There is potential for conflicts to arise between visitors participating in natural resource gathering and those enjoying these other priority public uses. The presence of natural resource gatherers could cause wildlife to flush or flee and potentially degrade the quality of the experience for other visitors; or, that disturbance could cause wildlife to move such that it was more readily seen,

photographed, or hunted by others. MOU's would include provisions to avoid or minimize potential conflicts with other Refuge visitors.

Because this activity would be engaged in by members of the Fallon Paiute-Shoshone Tribe, it is expected that participants would be especially knowledgeable about and sensitive to the valuable cultural resources, including the abundance of human burials on the Refuge. As a result, it is not expected that participants would impact those resources. Regardless, all Refuge visitors are advised not to collect or otherwise disturb cultural resources, including human remains.

Long-term impacts

Resource collectors, vehicles and harvest tools could potentially introduce or spread invasive species, including plants and invertebrates. Once established, invasive species can outcompete native plants, thereby altering habitats and indirectly affecting wildlife. The threat of invasive plant establishment will always be an issue requiring annual monitoring and, when necessary, treatment. To date, invasive and other non-native plants are being adequately controlled along roadsides within Stillwater NWR. Due to the anticipated small size of collecting groups and the infrequency of their visits, significant long-term impacts are not anticipated.

Public Review and Comment

The draft compatibility determination will be available for public comment and review for 15 days from December 16, 2022 to January 1, 2023. It was made available through hard copy postings at the Refuge's headquarters and visitor contact station in Fallon (1020 New River Parkway, #305, Fallon, NV 89406). It was also electronically available by being posted on the refuge's website (<https://www.fws.gov/refuge/stillwater>). The Fallon Paiute Shoshone Tribe was asked to review and comment on the draft compatibility determination, which was made available for review for 30 days on their website and by a hard copy posting at their business council headquarters in Fallon from October 27, 2022, to November 27, 2022. No comments were received from the Fallon Paiute Shoshone Tribe. Concerns expressed during the public comment period will be addressed in the final version of the compatibility determination.

Determination

Is the use compatible?

Yes, with the following stipulations.

Stipulations Necessary to Ensure Compatibility

To ensure compatibility with Refuge purposes and the mission of the National Wildlife Refuge System, any natural resource collecting on the Refuge must meet the following stipulations:

1. The Service would monitor activities associated with this CD and the actual effects of plant and animal product collecting on native fish, wildlife, plants, and their habitats; and other Refuge users, especially those engaged in compatible, wildlife-dependent public uses. Appropriate action would be taken if unanticipated effects occurred.
2. The Service would reserve the right to add to or otherwise modify the stipulations listed herein in order to ensure the continued compatibility of cultural gathering. New or modified stipulations could be instituted as a result of new information generated by ongoing or new studies or monitoring results; new legal, regulatory, or policy requirements; significant changes to the Refuge environment or status of native fish, wildlife, plants, or their habitats; or for other legitimate reasons. Refuge personnel would appropriately advise the Tribe of any such changes.
3. The Service would also reserve the right to terminate or modify privileges to collect natural resources on the Refuge if participants were violating the stipulations listed herein; if unacceptable impacts were occurring to native fish, wildlife, plants, or their habitats, cultural resources or Refuge facilities, or other Refuge visitors; or for other legitimate reasons.

Justification

By its nature, plant and animal product collecting would have direct effects on individual plants and other materials gathered. However, significant effects to abundance, diversity, or health of Refuge populations are not anticipated because the number of gatherers is expected to be small and their visits to the Refuge infrequent. Consistent with the stipulations above, the Service would regulate and monitor this activity to ensure it was managed on a sustained yield basis.

There would be some wildlife disturbance effects associated with this use. Again, however, these effects are not anticipated to be significant due to the small number of participants, their infrequent visits, and Service regulation and monitoring.

The activities discussed herein are of special cultural significance to members of the Fallon Paiute-Shoshone Tribe. Providing opportunities for such individuals to gather and use these materials for manufacturing, construction, medicinal, educational, ceremonial, artistic, and perhaps other traditional purposes would support restoration and maintenance of Native American cultural values. Allowing this use at the Refuge would also be consistent with the spirit of the Service's appropriateness policy as it regards providing Native Americans with reasonable access to refuge lands for gathering of plants and animal products for ceremonial, religious, medicinal, and traditional purposes; and with The Native American Policy of the Service as it relates collaborating with tribal governments to protect traditional, customary, ceremonial, medicinal, spiritual, and religious uses of plants and animals for tribal members where it is not contrary to our legal mandates and conservation goals (USFWS 510 FW 1, 2016).

Allowing this use would also further implementation of the Refuge's CCP. As part of the cultural resources management program described in that document, the Service committed to working with the Fallon Tribe to, "...facilitate the harvest and use of traditional plant and animal resources...for educational, ceremonial, artistic, and allied purposes necessary to learn about, or

enhance, traditional culture. Harvest and use for subsistence and commercial purposes would not be allowed. For example, the Fallon Tribe in consultation with the Service would identify traditional plants and their gathering locations and establish a protocol for their protection, harvest, and use.”

Tribal members engaged in cultural gathering on the Refuge would be exposed to native fish, wildlife, plants, and their habitats; they would likely gain a better understanding of Service management of these valuable natural resources; and they would likely enjoy wildlife observation and possibly photography ancillary to their primary activities. Though not technically cultural resources, the natural materials gathered by tribal members have special cultural significance. These activities are directly or indirectly supportive of some and would not conflict with any Refuge goals.

Engaging in this activity would increase the participants’ understanding and appreciation of the Refuge’s natural or cultural resources. If the gathered materials were used and source explained in larger tribal or public activities or events, then the understanding and appreciation of the Refuge’s natural or cultural resources would reach a larger audience.

If natural resource gathering was allowed on the Refuge under the stipulations outlined above, it is anticipated that wildlife which could be disturbed would find sufficient food resources and resting places so their abundance and use would not be measurably lessened on the Refuge. Additionally, it is anticipated that monitoring, as needed, would prevent unacceptable or irreversible impacts to fish, wildlife, plants, and their habitats; other public uses; and cultural resources. For the several reasons stated above and consistent with the stipulations described herein, this use would not materially interfere with or detract from maintenance of the Refuge’s biological integrity, diversity, and environmental health; fulfillment of Stillwater NWR’s purposes; or the Refuge System’s mission.

Signature of Determination

Refuge Manager Signature _____ (Date) _____

Signature of Concurrence

Assistant Regional Director Signature _____ (Date) _____

Mandatory Reevaluation Date

2033

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