

✓✓✓
~~DIRECT~~ COMPATIBILITY DETERMINATION

USE:

Commercial Wildlife and Nature Photography

REFUGE NAME:

Edwin B. Forsythe National Wildlife Refuge

ESTABLISHING AND ACQUISITION AUTHORITY(IES):

The Edwin B. Forsythe National Wildlife Refuge (NWR, refuge) was created on May 22, 1984, by combining the former Brigantine and Barnegat NWRs (98 Stat. 207). Brigantine NWR was established on January 24, 1939, by the Migratory Bird Conservation Commission, under the authority of the Migratory Bird Conservation Act (16 U.S.C. section 715d) to preserve estuarine habitats important to the Atlantic Brant (*Branta bernicla*) and to provide nesting habitats for American black ducks (*Anas rubripes*) and rails. Barnegat NWR was established on June 21, 1967, under the authority of the Migratory Bird Conservation Act (16 U.S.C. section 715d) to preserve estuarine feeding and resting habitat for ducks and brant.

Other authorities include the Migratory Bird Conservation Act (16 U.S.C section 715-715r), the Fish and Wildlife Act of 1956 (16 U.S.C. sections 742(a)-754) as amended, the Emergency Wetlands Resources Act of 1986 (16 U.S.C. section 3901(b)), and the National Wilderness Preservation System under P.L. 93-632.

REFUGE PURPOSE(S):

Edwin B. Forsythe NWR (Forsythe Refuge, the refuge) was established:

For lands acquired under the Migratory Bird Conservation Act (16 U.S.C. section 715-715r) as amended, "...for use as an inviolate sanctuary, or for any other management purpose, for migratory birds." (16 U.S.C. section 715d)

For lands acquired under the Fish and Wildlife Act of 1956 (16 U.S.C. sections 742(a)-754) as amended, "...for the development, advancement, management, conservation, and protection of fish and wildlife resources..." (16 U.S.C. section 742 (a)(4)) "...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.C. section 742f(b)(1))

For lands acquired under the Emergency Wetlands Resources Act of 1986 (16 U.S.C. section 3901(b)) "...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..." (16 U.S.C. section 3901(b), 100 Stat. 3583)

For lands designated as parts of the National Wilderness Preservation System under P. L. 93-632, "...to secure for the American people of the present and future generations the benefits of an enduring resource of wilderness." (78 Stat. 890, 16 U.S.C. 1121 (note), 1131-1136)

NWR SYSTEM MISSION:

"The mission of the 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."—NWR System Improvement Act of 1997 (Public Law 105-57; 111 Stat. 1282)

DESCRIPTION OF USE:

What is the use? Is the use a priority public use?

The use is commercial photography, either still or motion pictures, of wildlife or nature scenes for conservation uses. This is not a priority public use, but would be contributing to priority public uses.

Where would the use be conducted?

This use would occur in areas of the refuge specified in a Special Use Permit (SUP). The use would generally take place in areas that are open to the visiting public including the wildlife drive, parking lots, and trails. Some use may occur in areas typically closed to the public, such as the Cross Dike, seasonally closed trails, impoundments, or in forested areas of the refuge. These requests would be evaluated on a case-by-case basis with restrictions detailed on a SUP.

When would the use be conducted?

The use would be permitted during hours, times, and seasons specified in a SUP.

How would the use be conducted?

Requests must be submitted in writing to the Refuge Manager no less than twenty one (21) days prior to the requested date(s). Each request would be reviewed on a case-by-case basis and will require a SUP. Other permits may be required depending on the commercial activity.

Why is this use being proposed?

The refuge receives requests from professional photographers, videographers, and film makers each year to film or photograph habitats and/or wildlife. Granting these requests will contribute to enhancing public awareness of conservation and recreational opportunities at the refuge.

AVAILABILITY OF RESOURCES:

Staff time from Forsythe Refuge will be required to review and oversee permits. The Visitor Services Manager will process most SUP requests, which could take approximately up to 1 day per year. Costs associated include:

Visitor Services Manager (GS-12) - 1 day/year = \$281

No other staff resources should be required for most requests. Occasionally, more complex requests such as documentaries or other larger scale projects will require more staff time and

administrative oversight to ensure the use is compatible. In such cases, the Refuge Manager will review all requests and ensure the project is compatible and refuge resources are adequate for the request.

ANTICIPATED IMPACTS OF THE USE:

Public uses, such as commercial photography, can produce short-term, negative direct or indirect impacts on wildlife or habitats. However, we believe the long-term benefits from the conservation nature of the products could be greater. Projects would be conducted at the appropriate time of year and conditions to minimize disturbances to wildlife and the public. Other best management practices would be incorporated as necessary depending on the specific request.

Direct Effects

Direct impacts are those where the activity has an immediate effect on wildlife and/or habitats.

The presence of people walking along trails can directly disturb migratory birds and other wildlife species. Wildlife often respond to human presence by departing from the disturbed site (Owen 1973, Burger 1981, Kaiser and Fritzell 1984, Korschen et al. 1985, Henson and Grant 1991, Kahl 1991), using sub-optimal habitat or non-preferred habitat (Erwin 1980, Williams and Forbes 1980), altering their behavior (Burger 1981, Korschen et al. 1985, Morton et al. 1989, Ward and Stehn 1989, Havera et al. 1992, Klein 1993), and/or increasing their energy expenditure (Morton et al. 1989, Belanger and Bedard 1990). Human disturbances can also decrease reproductive success by causing nest abandonment, decline in parental care, altering feeding schedules, and other stresses (Colorado State Parks 1998).

Overall, the direct effects of commercial wildlife and nature photography should be minor because visitors engaged in these activities typically do not want to disturb wildlife so they may photograph or film animals in natural, undisturbed settings. In addition, permittees may be required to use blinds and/or other techniques identified in a SUP to minimize disturbance.

Indirect Effects

We do not anticipate any indirect, negative impacts from this use.

Cumulative Effects

Cumulative effects are effects that are minor when considered separately but may be important when considered collectively. The principal concerns are repeated disturbances of birds that are nesting, foraging, or resting. Refuge staff will ensure that repeated disturbances do not occur through special conditions of the SUP.

We anticipate that this use will support refuge purposes, the National Wildlife Refuge System (NWRS) mission, and priority public uses, including environmental education and interpretation. It has the potential to have a very positive cumulative impact on the refuge's natural resources through outreach and education.

PUBLIC REVIEW AND COMMENT:

This compatibility determination was submitted for public review and comment via advertisement in the Press of Atlantic City on May 6, 2013, and posting at the refuge Visitor Information Center for 21 days (May 7 - 28, 2013). No comments were received.

DETERMINATION (CHECK ONE BELOW):

Use is not compatible.

Use is compatible with the following stipulations.

STIPULATIONS NECESSARY TO ENSURE COMPATIBILITY:

- A SUP will be required. Other permits may be required depending on the commercial activity.
- There may be a cost associated with this use that will be determined based on the use.
- Sites identified for photography will be submitted 21 days in advance and approved by the Refuge Manager.
- Only commercial photography in support of conservation, refuge purposes, the NWRS mission, and/or for educational and interpretive purposes will be permitted.

Special Conditions to the SUP will include, but not be limited to, the following:

- The use of bait or any devices designed to lure wildlife closer for photography purposes is prohibited. Sound making devices will not be permitted without consent from the Refuge Manager and will be specified, if approved, in the SUP.
- Visitors engaged in commercial photography in areas typically closed to the public, such as the Cross Dike, seasonally closed trails, impoundments, or in closed forested areas of the refuge will be evaluated on a case-by-case basis and a list of special conditions will be detailed on the SUP to reduce potential impacts of the use.
- Sites used for photography must be left in the same condition they were found.
- Permittee may be accompanied by refuge personnel during filming.
- No blinds, scaffolding, or other structures may be built on the refuge without Refuge Manager approval.
- No clearing or removal of trees or vegetation is authorized. Disturbance to existing vegetation is to be minimized to the greatest extent possible.
- Permittee may not impede traffic or block public roadways while conducting activities related to this permit.
- For video productions, permittee will provide three (3) copies in video format (i.e., digital) of the production for use in interpretive and educational programs on the Refuge. They will be required to provide written authorization for use of the images of the video/images. Copies should be sent to the Edwin B Forsythe NWR Headquarters address when complete.
- For photography productions, permittee will provide one disk or other storage medium in .mpg or other standard format of photographs for use in interpretive and educational programs on the Refuge.

- Credit for Edwin B. Forsythe NWR location must be included on all media.

JUSTIFICATION:

Any potential negative impacts of commercial wildlife and nature photography activities on refuge resources and management, or the NWRS and Service's missions will be minimized by the restrictions included in the conditions of the SUP. In addition, the activities associated with commercial photography will be regulated and monitored by refuge staff.

The U.S. Fish and Wildlife Service permits commercial photography where it would further outreach, education, or public understanding of the natural environment, refuge resources and management, or the Refuge System and Service's missions. No approvals for a permit would occur until the Refuge Manager can ensure those benefits would result.

As such, all approved commercial wildlife and nature photography will contribute to the goals of the refuge and NWRS, and will not materially interfere with or detract from the mission of the NWRS or the purposes for which the refuge was established.

SIGNATURE:

Refuge Manager: Virginia Petty (Signature) August 5, 2013 (Date)

CONCURRENCE:

Regional Chief: Scott B. Kuhn (Signature) 8/27/2013 (Date)

MANDATORY 10 YEAR RE-EVALUATION DATE:

8/2023

LITERATURE CITED:

Belanger, L. and J. Bedard. 1990. Energetic cost of man-induced disturbance to staging snow geese. *Journal of Wildlife Management*. 54:36-41.

Burger, J. 1981. Effect of human activity on birds at a coastal bay. *Biological Conservation* 21:231-241.

Colorado State Parks. 1998. Planning trails with wildlife in mind: a handbook for trail planners prepared by Trails and Wildlife Task Force and Hellmund Associates. 51 pp. Accessed online at: <http://www.fs.fed.us/outdoors/naturewatch/start/planning/Trails-for-Wildlife-Handbk.pdf>.

- Erwin, R.M. 1980. Breeding habitat by colonially nesting water birds in two mid-Atlantic U.S. regions under different regimes of human disturbance. *Biological Conservation*. 18:39-51.
- Henson, P.T. and A. Grant. 1991. The effects of human disturbance on trumpeter swan breeding behavior. *Wildlife Society Bulletin* 19:248-257.
- Havera, S.P., L.R. Boens, M.M. Georgi, and R.T. Shealy. 1992. Human disturbance of waterfowl on Keokuk Pool, Mississippi River. *Wildlife Society Bulletin* 20:290-298.
- Kaiser, M.S. and E.K. Fritzell. 1984. Effects of river recreationists on green-backed heron behavior. *Journal of Wildlife Management* 48:561-567.
- Kahl, R. 1991. Boating disturbance of canvasbacks during migration at Lake Poygan, Wisconsin. *Wildlife Society Bulletin* 19:242-248.
- Korschen, C.E., L.S. George, and W.L. Green. 1985. Disturbance of diving ducks by boaters on a migrational staging area. *Wildlife Society Bulletin* 13:290-296.
- Morton, J.M., A.C. Fowler, and R.L. Kirkpatrick. 1989. Time and energy budgets of American black ducks in winter. *Journal of Wildlife Management* 53:401-410 (also see corrigendum in *J. Wildl. Manage.* 54:683).
- Owen, M. 1973. The management of grassland areas for wintering geese. *Wildfowl*. 24:123-130.
- Ward, D.H. and R.A. Stehn. 1989. Response of brant and other geese to aircraft disturbance at Izembek Lagoon, Alaska. U.S. Fish and Wildlife Service, Alaska Fish and Wildlife Research Center. Final report to the Minerals Management Service. Anchorage, Alaska. 193 pp.
- Williams, G.J. and E. Forbes. 1980. The habitat and dietary preferences of dark-bellied brant geese and widgeon in relation to agricultural management. *Wildfowl*. 31:151-157.