

COMPATIBILITY DETERMINATION

Use: Commercial Recording (photography, videography, filming, and audio recording)

Refuge Name: Southeast Louisiana Refuges Complex (Atchafalaya, Bayou Sauvage, Bayou Teche, Big Branch, Bogue Chitto, Breton, Delta, and Mandalay National Wildlife Refuges)

Establishing and Acquisition Authority and Refuge Purpose(s): Each National Wildlife Refuge (NWR) is established under specific legislation or administrative authority. Similarly, each refuge has one or more specific legal purposes for which it was established. The establishing legislation or authority and the purposes for each refuge in the Southeast Louisiana Refuges Complex (Complex) are given below.

Atchafalaya NWR - On October 26, 1984, Congress authorized the establishment of Atchafalaya NWR (Public Law 98-548) and Fish and Wildlife Act of 1956.

Purpose: (1) To provide for the conservation and management of fish and wildlife within the refuge; (2) to fulfill the international treaty obligations of the United States with respect to fish and wildlife; and (3) to provide opportunities for scientific research, environmental education, and fish and wildlife-oriented recreation, including hunting, fishing, and trapping, bird watching, nature photography, and others.

Bayou Sauvage NWR - Emergency Wetland Resources Act of 1986 (Public Law 99-645); North American Wetlands Conservation Act, 16 U.S.C. 4401 2(b)

Purpose: (1) To enhance the populations of migratory, shore, and wading birds within the refuge; (2) to encourage natural diversity of fish and wildlife species within the refuge; (3) to protect threatened and endangered species and otherwise to provide for the conservation and management of fish and wildlife within the refuge; (4) to fulfill the international treaty obligations of the United States respecting fish and wildlife; (5) to protect the archaeological resources of the refuge; and (6) to provide opportunities for fish and wildlife-dependent public uses and recreation in an urban setting.

Bayou Teche NWR - Endangered Species Act of 1973

Purpose: (1) "To conserve fish and wildlife which are listed as endangered species or threatened species or plants..." 16 U.S.C. 1534 (Endangered Species Act of 1973).

Big Branch Marsh NWR - Emergency Wetlands Resources Act of 1986, 16 U.S.C. §3901 (b); North American Wetlands Conservation Act, 16 U.S.C. §4401 2(b)

Purpose: As defined by the Emergency Wetlands Resources Act of 1986, 16 U.S.C. §3901 (b): (1) "For 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."

As defined by the North American Conservation Act, 16 U.S.C. §4401 2(b): (1) “To protect, enhance, restore, and manage an appropriate distribution and diversity of wetland ecosystems and other habitats for migratory bird and other fish and wildlife in North America; (2) to maintain current or improved distributions of migratory bird populations; and (3) to sustain an abundance of waterfowl and other migratory birds consistent with the goals of the North American Waterfowl Management Plan and the international obligations contained in the migratory bird treaties and conventions and other agreements with Canada, Mexico, and other countries.”

Further defined in the 1994 Final Land Protection Plan and two subsequent Supplemental Environmental Assessments (1996, 1998) for expansion of Big Branch Marsh NWR as the following: (1) To provide habitat for natural diversity of wildlife; (2) to provide wintering habitat for migratory birds; (3) to provide nesting habitat for wood ducks; (4) to provide habitat for non-game migratory birds; and (5) to provide opportunities for public outdoor recreation, such as hunting, fishing, hiking, bird watching, and environmental education and interpretation, whenever they are compatible with the purposes of the refuge.

Bogue Chitto NWR - 94 Stat. 604, dated June 28, 1980, the Emergency Wetland Resources Act of 1986; the Fish and Wildlife Act of 1956; and the National Wildlife Refuge System Administration Act

Purpose: These lands approved under 94 Stat. 604, dated June 28, 1980 state the purpose for which Bogue Chitto NWR was established to: (1) “Administer all lands, waters, and interests therein, acquired under this act in accordance with the provisions of the National Wildlife Refuge Administration Act, and to utilize such additional statutory authority as may be available for the conservation and development of wildlife and natural resources, the development of outdoor recreation opportunities, and interpretive education as deemed appropriate to carry out the purposes of this Act.”

Further defined to include: (1) For 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. 3901(b), 100 Stat. 3583 (Emergency Wetlands Resources Act of 1986); (2) For the development, advancement, management, conservation, and protection of fish and wildlife resources ..." 16 U.S.C. 742f(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. 742f(b)(1) (Fish and Wildlife Act of 1956); and (3) For conservation, management, and ... restoration of the fish, wildlife, and plant resources and their habitats ... for the benefit of present and future generations of Americans..." 16 U.S.C.668dd(a)(2) (National Wildlife Refuge System Administration Act).

Breton NWR - Originally designated by an unnumbered Executive Order on October 4, 1904. Established as the Breton Island Reservation by Executive Order 369-A on November 11, 1905. Established as the Breton Bird Refuge by Executive Order 7983 on October 4, 1938. All of the federally owned lands of the refuge were entered into the National Wilderness Preservation System on January 3, 1975 (Public Law 93-632).

Purpose: (1) Provide sanctuary for nesting wading birds and waterfowl; and (2) protect and preserve the wilderness character of the islands, and to provide sandy beach habitat for a variety of wildlife species.

Delta NWR - Executive Order 7229 on November 19, 1935; Executive Order 7383 on June 5, 1936; Executive Order 7538 on January 10, 1937

Purpose: (1) Provide breeding ground for migratory birds and other wildlife. (2) as a migratory waterfowl refuge, is subject to use for quarantine purposes. (3) for waterfowl refuge purposes is subject to use...with the improvement of navigation in the Mississippi River and the uses thereof, and the administration of the area for wildlife conservation purposes shall be without interference with any existing or future uses or regulations of the War Department (Army Corps of Engineers); and (4) for use in an inviolate sanctuary, or for any other management purpose, for migratory birds.

Mandalay NWR - Migratory Bird Conservation Act of 1929; Endangered Species Act of 1973

Purpose: (1) "...for use as an inviolate sanctuary, or for any other management purpose, for migratory birds." 16 U.S.C. 715d (Migratory Bird Conservation Act); and (2) "...to conserve fish or wildlife which are listed as endangered species or threatened species...or plants..." 16 U.S.C. 1534 (Endangered Species Act of 1973)

National Wildlife Refuge System Mission: "The mission of the National Wildlife 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" (National Wildlife Refuge System Administration Act of 1966, as amended) [16 U.S.C. §668dd-668ee].

Other Applicable Laws, Regulations, and Policies:

Antiquities Act of 1906 (34 Stat. 225)

Migratory Bird Treaty Act of 1918 (15 U.S.C. 703-711; 40 Stat. 755)

Migratory Bird Conservation Act of 1929 (16 U.S.C. 715r; 45 Stat. 1222)

Migratory Bird Hunting Stamp Act of 1934 (16 U.S.C. 718-178h; 48 Stat. 451)

Criminal Code Provisions of 1940 (18 U.S.C. 41)

Bald and Golden Eagle Protection Act (16 U.S.C. 668-668d; 54 Stat. 250)

Refuge Trespass Act of June 25, 1948 (18 U.S.C. 41; 62 Stat. 686)

Fish and Wildlife Act of 1956 (16 U.S.C. 742a-742j; 70 Stat.1119)

Refuge Recreation Act of 1962 (16 U.S.C. 460k-460k-4; 76 Stat. 653)

Wilderness Act (16 U.S.C. 1131; 78 Stat. 890)

Land and Water Conservation Fund Act of 1965

National Historic Preservation Act of 1966, as amended (16 U.S.C. 470, et seq.; 80 Stat. 915)

National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd, 668ee; 80 Stat. 927)

National Environmental Policy Act of 1969, NEPA (42 U.S.C. 4321, et seq; 83 Stat. 852)

Use of Off-Road Vehicles on Public Lands (Executive Order 11644, as amended by Executive Order 1 0989)
Endangered Species Act of 1973 (16 U.S.C. 1531 et seq; 87 Stat. 884)
Refuge Revenue Sharing Act of 1935, as amended in 1978 (16 U.S.C. 715s; 92 Stat. 1319)
National Wildlife Refuge Regulations for the Most Recent Fiscal Year [50 Code of Federal Regulations (CFR) Subchapter C; 43 CFR 31 01.3-3]
Emergency Wetlands Resources Act of 1986 (S.B. 740)
North American Wetlands Conservation Act of 1990
Food Security Act (Farm Bill) of 1990 as amended (HR 2100)
The Property Clause of the U.S. Constitution Article IV 3, Clause 2
The Commerce Clause of the U.S. Constitution Article 1, Section 8
The National Wildlife Refuge System Improvement Act of 1997 (Public Law 105-57, USC668dd)
Executive Order 12996, Management and General Public Use of the National Wildlife Refuge System, March 25, 1996
Title 50, Code of Federal Regulations, Parts 25-33
Archaeological Resources Protection Act of 1979
Native American Graves Protection and Repatriation Act of 1990

Description of Use: This Compatibility Determination (CD) evaluates the photography, videography, filming, and audio recording (collectively referred to as “recording”) on the eight refuges that are part of Southeast Louisiana National Wildlife Refuges Complex (Complex). Commercial recording typically involves creating a documentary film, taking still photographs, or recording wildlife sounds that are intended to be sold for income or revenue or traded for goods or services. This CD does not apply to bona fide news media activities or developing news stories.

Commercial recording will be considered once requested. Each request is unique and will have to be evaluated based on impacts to wildlife, habitat and priority public uses. A Special Use Permit (SUP) will be required to conduct commercial recording. Commercial recording could occur on any lands or waters of the more than 160,000- acre Complex. Locations of recording would be restricted seasonally to avoid impacts to sensitive wildlife, closed areas, no hunting zones, sanctuaries and other specially designated areas where human disturbance through recording could be detrimental.

The location of the Complex in relation to New Orleans/Baton Rouge metro area attracts news media and a large number of professional photographers and videographers to the natural landscapes. Wildlife observation and wildlife photography are priority public uses on national wildlife refuges. Allowing commercial recording on the Complex when and where deemed appropriate by the Refuge Manager, will allow a greater segment of the public to enjoy the refuges while promoting the National Wildlife Refuge System. Quality commercial recordings can be excellent educational and inspirational media.

Availability of Resources: Adequate Complex personnel and base operational funds are available to manage this activity at the present level. Each refuge manager oversees the

commercial recording use. Staff time is required to review, process, and monitor SUP issued for these activities, including monitoring specific activities to ensure that impacts are minimized and to ensure adherence to conditions of the permits.

Anticipated Impacts of Use: Any public use activity has the potential for impacts; however, the focus is to minimize any potential impacts to within acceptable limits. Commercial recording will be allowed via SUP which will include specific special conditions. These special conditions will be adapted to individual requests to minimize impacts to vegetation and wildlife and ensure that the use is consistent with goals of the specific refuge and the National Wildlife Refuge System. These special conditions may include, but not be limited to, minimum distances to species, timing within the lifecycle of the flora/fauna, limits on size of recording crews, number of visits to specific sites, equipment, fees etc.

Public Review and Comment: Public notification and review will include a 30-day comment period from October 21, 2015 through November 20, 2015. Copies of the document will be displayed at the Complex Headquarters. The document will also be made available on the Complex website and was distributed by news releases to the following media outlets (The Advocate Newspaper, The Daily Advertiser Newspaper, and The Times Picayune Newspaper). Comments received and agency responses will be included in the final version of this Compatibility Determination.

Determination (check one below):

Use is Not Compatible
 Use is Compatible with the Following Stipulations

Stipulations Necessary to Ensure Compatibility: To ensure compatibility with National Wildlife Refuge System and refuge goals and objectives and to minimize or exclude adverse impacts as described above, the activity can only occur under a number of stipulations. Access for commercially produced recording will be allowed in designated areas only. Activities will be monitored to document any negative impacts to wildlife. If negative impacts are found, corrective action will be taken to reduce or eliminate these impacts. Access to certain areas may be closed during adverse weather conditions for protection of infrastructure (e.g., roads and levees) and visitor safety. Those proposing to conduct commercial recording activities on any of the eight refuges in the Complex must obtain a valid SUP.

Requests will only be considered if they demonstrate a means to enhance education, appreciation, and/or understanding of the refuge the permit is requested for and/or the National Wildlife Refuge System.

Special Use Permits for commercial recording will be issued on a per event basis and will contain conditions under which the activities are allowed to operate. Typical conditions for commercial recording Special Use Permits are listed.

1. Permittees are required to keep a copy of the SUP with them while on-site.
2. Permittees and their designees are subject to all applicable Federal, State, and local regulations and will ensure compliance with these regulations.

3. Permittee will contact the Refuge Manager two weeks in advance to identify sensitive areas/wildlife species.
4. Permittee will notify the Refuge Manager within 24 hours prior to commencement of work.
5. Permittee will provide the Refuge Manager with a copy of the final results/product of this project for review within 180 days of development of the product(s).
6. At no time will the permittee enter any designated closed area without prior agreements and approval of the Refuge Manager.
7. Permittee must obtain approval of the Refuge Manager prior to any aerial recording.
8. Permittee will not impede or prohibit visitor use within the refuge during commercial recording activities.
9. The permittee acknowledges and agrees that the SUP does not give the permittee exclusive use or access to any site, facility, or wildlife.
10. The permittee acknowledges that the U.S. Fish and Wildlife Service or appropriate law enforcement officer may limit or eliminate artificial lighting and artificial sound producing devices during commercial recording activities to minimize impacts to wildlife.
11. The U.S. Fish and Wildlife Service is not responsible for any mishaps or injuries that may occur during filming and associated activities. The permittee acknowledges and agrees to provide appropriate safety equipment and caution all people participating in the commercial recording activities about the hazards likely to be encountered on refuge managed lands and waters.
12. Permittee will remove all equipment and completely clear and clean each location of any materials brought to the site upon leaving a site each day. There is no overnight usage.
13. Permittee will not erect any facilities or structures, whether temporary or permanent, without written approval of the Refuge Manager.
14. Permittee will not clear, trim, cut, or disturb vegetation, light any fires, or dig any holes.
15. Permittee acknowledges that supervision by U.S. Fish and Wildlife Service staff may be required during any commercial recording activities.
16. Pictures will be taken of wildlife only when such wildlife will be shown in its natural state or under approved management conditions if such wildlife is confined.
17. Permittee will ensure no natural features are injured, and after completion of the work the area will, as required by the Refuge Manager, either be cleaned up and restored to its prior condition or left, after clean-up, in a condition satisfactory to the Refuge Manager.
18. Permittee must furnish a bond or deposit made in cash or by certified check, in an amount to be set by the Refuge Manager to insure full compliance with all of the conditions prescribed in the SUP.
19. Permittee shall save, hold harmless, defend and indemnify the United States of America, its agents, and employees for losses, damages, or judgments and expenses on account of fire or other peril, bodily injury: death, or property damage, or claims for bodily injury, death, or property damage of any nature whatsoever, and by whomsoever made, arising out of the activities of the permittee, its employees, subcontractors, or agents under the SUP.
20. Any footage used from the Complex must include a credit, acknowledgement, or caption acknowledging the U.S. Fish and Wildlife Service: "Filmed on location at (name of refuge, city, state) courtesy of the U.S. Fish and Wildlife Service".

Failure to comply with all the SUP conditions may result in the suspension or cancellation of the SUP, including the possible loss of future SUP privileges at the discretion of the Refuge Manager. Permits may be modified at any time by the Refuge Manager. Other stipulations may be warranted depending upon the proposed location and season of the year the activity is conducted.

Justification: Under the stipulations described above, commercial recording is an economic use which contributes to the achievement of refuge purposes and the National Wildlife Refuge System mission. Commercial recording can reach new audiences with messages beneficial to the Service and to wildlife conservation. Underserved populations such as the elderly, disabled, and urban dwellers can come to appreciate and understand the conservation of wildlife and natural systems and the role of the National Wildlife Refuge System by viewing commercially produced video products.

Conditions imposed in the required SUP will help ensure that these activities minimize impacts. Approved commercial recording would not conflict with the national policy to maintain the biological diversity, integrity, and environmental health of refuges with the Southeast Louisiana Refuges Complex nor would they materially interfere with or detract from the purposes of the refuges.

NEPA Compliance for Refuge Use Description:

- Categorical Exclusion without Environmental Action Statement
- Categorical Exclusion and Environmental Action Statement
- Environmental Assessment and Finding of No Significant Impact
- Environmental Impact Statement and Record of Decision

Categorical exclusions are classes of actions which do not individually or cumulatively have a significant effect on the human environment. Commercial Recording (photography, videography, filming, and audio recording) can be categorically excluded from the EA process under Departmental Manual 516 DM6 Appendix 1 Categorical Exclusions general sections B(7) and C(3).

Mandatory 15-Year Re-evaluation Date: December 1, 2030

Approval of Compatibility Determination:

**Project Leader,
Southeast Louisiana
Refuges Complex:**

Stacy Armitage **Date**

**Regional Compatibly
Coordinator,
Southeast Region:**

Pam Horton **Date**

**Refuge Supervisor,
Area 2,
Southeast Region:**

Kathleen Burchett **Date**

**Regional Chief, National
Wildlife Refuge System,
Southeast Region:**

David Viker **Date**

