

## DRAFT COMPATIBILITY DETERMINATION

**Use:** Temporary Work Outside Existing Rights-Of-Way

**Refuge Name:** Upper Mississippi River National Wildlife and Fish Refuge (Refuge).

**Establishing and Acquisition Authorities:** The Upper Mississippi River National Wildlife and Fish Refuge was established by Public Law No. 268, 68<sup>th</sup> Congress on June 7, 1924. This act authorized acquisition of lands for Refuge purposes. Additional lands acquired in fee title by the U.S. Army Corps of Engineers are managed as part of the Refuge under a 1963 Cooperative Agreement between the Department of the Army and the Department of the Interior.

**Refuge Purpose(s):** “The Refuge shall be established and maintained (a) as a refuge and breeding place for migratory birds included in the terms of the convention between the United States and Great Britain for the protection of migratory birds, concluded August 16, 1916, and (b) to such extent as the Secretary of the Interior by regulations, prescribe, as a refuge and breeding place for other wild birds, game animals, fur-bearing animals, and for the conservation of wild flowers and aquatic plants, and (c) to such extent as the Secretary of the Interior may, by regulations, prescribe a refuge and breeding place for fish and other aquatic animal life.”

**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.”

### Description of Use:

*What is the use?* Allow short-term disturbance to Refuge lands for highway or other public interest projects with no right-of-way expansion and full restoration.

*Where is the use conducted?* Requests are made by state and local governmental agencies, railroads, and utility companies to do repairs and improvements to existing road ways and utility facilities associated with existing rights-of-way on, and adjacent to, the Refuge. Many of these requests require temporary work outside existing right-of-way boundaries, generally resulting in temporary disturbance to the associated vegetation.

*When is the use conducted?* Most often, the temporary work outside of the right-of-way is conducted during the summer and fall, when construction conditions are optimal.

*How is the use conducted?* Frequently, the temporary work requested is required to reshape a slope immediately adjacent to a road right-of-way to improve transportation safety. In the case of utility lines, the request may involve access across Refuge lands to a portion of the right-of-way for repairs or structure replacement. The work typically involves temporary disturbance to uplands that can be replanted with native vegetation to restore it to its original planted character.

*Why is the use being proposed?* This compatibility determination would allow approved work and temporary habitat disturbance outside the right-of-way boundary when long-term impacts are either beneficial or not significantly harmful.

**Availability of Resources:** In most cases, minimal expense is required of the Service for these projects. However, on occasion, the scope of a project may be such that a major commitment in staff and/or resources is required. In these cases the Service may opt to require the permittee to reimburse the agency for administrative costs. Authorization of the projects will require the requesting organization to cover habitat restoration costs. There may be a modest administrative cost for issuing and monitoring the work.

**Anticipated Impacts of the Use:** The impacts to the associated uplands with this use will be minimal and temporary. When the request includes unavoidable destruction of vegetation, approval will be limited to sites previously tilled or otherwise disrupted. No native prairie remnants or wetlands may be destroyed. Any areas with disturbed vegetation will be seeded by the requesting organization to a diverse mix of native species that will lead to better long-term habitat than the vegetation originally disturbed.

Most of this work occurs in summer and fall, after the waterfowl nesting season. The duration of any single project is usually 1 to 8 weeks. Occasionally, work may occur during the nesting season but the size of the disturbance zone will be minimal. The quality of the habitat in the disturbed zone may be diminished for up to 3 years following the project but the disturbed zone will provide some migratory bird value by the year following the project. The long-term productivity of the disturbed zone will frequently increase due to the replacement of exotic, less desirable cover with native vegetation.

Most impacts will be along existing roads in areas already subject to significant habitat and aesthetic deterioration due to existing transportation right-of-way. In some cases, a utility right-of-way can split an otherwise contiguous block of quality habitat. In these settings, the disturbance from machinery and construction activity will still be temporary but the impact to waterfowl and other migratory birds is likely greater. The existing right-of-way already results in some disturbance but the decision to authorize temporary work outside the right-of-way will slightly increase the magnitude of the disturbance.

**Public Review and Comment:** This Compatibility Determination is a re-evaluation of an existing determination which was included in the Draft Comprehensive Conservation Plan and Environmental Impact Statement (EIS) released May 1, 2005 for a 120-day comment period. It was also available during a subsequent 90-day review period on a supplement to the EIS released December 3, 2005. Public notification included notices in the Federal Register, media announcements, and 31 public meetings and workshops attended by more than 3,700 persons. No comments specific to this use or determination were received.

A draft of this re-evaluation was released on August 5, 2016 for a 30-day comment period. Public notification of the availability of this CD included media announcements and posting on the Refuge's website.

**Determination:**

Use is Not Compatible

Use is Compatible with the Following Stipulations

### Stipulations Necessary to Ensure Compatibility:

1. All work done outside of existing rights-of-way must be approved by the appropriate District Manager in the form of a letter of authorization or a Special Use Permit depending upon the scope of the project.
2. Conditions stipulated in a letter of authorization such as seeding mixes, weed control, etc. must be followed to remain a compatible use.
3. No work that leads to permanent loss of wetlands or native prairie remnants will be allowed without a site-specific compatibility determination. All state and federal laws must be complied with where impacts to wetlands are involved.
4. Wherever possible, work should be performed during the winter months when the ground is frozen to minimize damage to the soil surface. Where ground disturbance will occur on Service lands outside a right-of-way, appropriate steps must be taken to ensure that there are no negative impacts to cultural resources.
5. With ever advancing technologies, the permittee will consider all available options for access using the existing right-of-way. Only when it is deemed unavoidable, will temporary work outside the right-of-way be authorized.

**Justification:** This use will not materially interfere with or detract from the purposes for which the Refuge was established with the above stipulations in place. Temporary disturbances to the lands adjacent to rights-of-way will usually have only short-term effects on wildlife and their habitat. Work within the rights-of-way is beyond the authority of the Fish and Wildlife Service to regulate other than influencing the timing and scope of work to minimize wildlife harm. Restricting off-right-of-way work to winter months will help prevent soil damage and minimize potential erosion and impacts to cultural resources. Ensuring that all state and federal laws pertaining to wetland impacts are complied with will ensure that any damage to wetlands is temporary and fully restored or mitigated. Allowing temporary work outside existing right-of-ways ensures that the holder can continue to provide essential human services to communities in the vicinity of the Refuge. In some cases, the repairs and maintenance performed may also ensure safety of visitors and the public. Finally, restoration of disturbed sites may, in some cases, increase productivity by providing more robust vegetation than what was originally present.

**Refuge Manager:** \_\_\_\_\_  
Signature Date

**Regional Chief Concurrence:** \_\_\_\_\_  
Regional Chief Date

**Mandatory 10 or 15 year Re-evaluation Date:** 2026