

COMPATIBILITY DETERMINATION

Introduction:

Use: Commercial Photography, Filming, and Videography

Refuge Name: St. Marks National Wildlife Refuge

County: Wakulla, Taylor, and Jefferson

Date Established: October 31, 1931

Establishing and Acquisition Authority:

Executive Order 5740 - established St. Marks Migratory Bird Refuge on October 31, 1931

Presidential Proclamation No. 1982 - established the Executive Closure Area on December 24, 1931

Executive Order 7222 - added acreage on November 1, 1935

Executive Order 7749 - added acreage on November 22, 1937

Presidential Proclamation No. 2264 - December 13, 1937 - expanded Executive Closure Area

Executive Order 7977 - added acreage on September 19, 1938

Presidential Proclamation No. 2416 July 25, 1940 - changed name to St. Marks National Wildlife Refuge

Executive Order 9119 - added acreage on April 1, 1942

Secretary's Order - modified the Executive Closure Area on October 22, 1953

Secretary's Order - enlarged and established a new closure order boundary on October 15, 1960.

16 U.S.C. 715d (Migratory Bird Conservation Act of 1929)

16 U.S.C. 461k-1 (Refuge Recreation Act of 1962)

Refuge Purposes: These purposes and the mission of the National Wildlife Refuge System are fundamental to determining the compatibility of proposed uses for St. Marks NWR. The purposes of St. Marks NWR are:

- “...as a refuge and breeding ground for wild animals and birds...” (Executive Order 5740);
- “...for use as an inviolate sanctuary, or for any other management purpose, for migratory birds.” (Migratory Bird Conservation Act);
- “...suitable for (1) incidental fish and wildlife-oriented recreation development, (2) the protection of natural resources, (3) the conservation of endangered species or threatened species...” (Refuge Recreation Act);
- “...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” (National Wildlife System Administration Act); and
- as a Wilderness Area for “...certain lands in the St. Marks Wildlife Refuge, Florida which comprise approximately seventeen thousand seven hundred and forty-six acres...as the St. Marks Wilderness. (Public Law 92-363).

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 10989)
- 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 3101.3-3]
- 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: Commercial photography, filming, and videography include still photography and filming and are often difficult to distinguish from similar, non-commercial, recreational activities. While recreational photography (including filming and videography) is a priority public use under the National Wildlife Refuge System Improvement Act, commercial photography, filming, and videography activities are not. Commercial photography, filming, and videography involve an individual or company taking photographs, films, or videos for commercial gain. Photography classes, television and film documentary crews, and photographic production shoots are examples of commercial photography. This category applies to any photography, filming, or videography activity that results in images that are intended for sale or where the person is otherwise paid for the work by salary, contract, or other means. These activities are varied in their scopes and impacts, ranging from a single individual in a single vehicle to numerous people and associated support vehicles (e.g., trucks with aeri-als).

Commercial photography, filming and videography 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 will be required to conduct commercial photography or filming on the refuge.

Availability of Resources: The Supervisory Park Ranger oversees the commercial photography, filming, and videography use. Other staff members support administration of this use, including federal wildlife officers, Refuge Biologist, and Refuge Manager. Operation and maintenance funds to support commercial photography, filming, and videography are taken from the St. Marks NWR annual budget, which is adequate to sustain the program at current and predicted levels. St. Marks NWR staff time is required to review, process, and monitor special use permits issued for these activities, including monitoring specific activities to ensure that impacts are minimized and to ensure adherence to conditions of the permits. Salaries for these positions come from fee money and from the St. Marks NWR operating budget, which is adequate to sustain the program at existing and predicted levels.

Anticipated Impacts of the Use:

Any public use activity has the potential for impacts: however, the focus is to minimize any potential impacts to within acceptable limits. Each request for a filming permit will be evaluated for impacts to wildlife, habitats and priority public uses. Stipulations will be added to the Special Use Permit to minimize the anticipated impacts.

Wildlife photography can negatively impact wildlife by altering wildlife behavior, reproduction, distribution, and habitat (Purdy et al. 1987, Knight and Cole 1995). Of the wildlife observation techniques, photographers tend to have the largest disturbance impacts (Klein 1993, Morton 1995, Dobb 1998). While wildlife observers frequently stop to view species, wildlife photographers are more likely to approach wildlife (Klein 1993). Even a slow approach by photographers tends to have behavioral consequences to wildlife species (Klein 1993). Other impacts include the potential for photographers to remain close to wildlife for extended periods of time, in an attempt to habituate the wildlife subject to their presence (Dobb 1998) and the tendency of casual photographers, with low-power lenses, to get much closer to their subjects than other activities would require (Morton 1995), including wandering off trails. This usually results in increased disturbance to wildlife and habitat, including trampling of plants. Klein (1993) recommended that refuges provide observation and photography blinds to reduce disturbance to wildlife when approached by visitors. Potential impacts from this use include purposeful or inadvertent disturbance to wildlife. Large commercial activities could also interfere with priority public uses.

Special use permit conditions and associated monitoring of permitted activities would be designed to minimize wildlife and habitat impacts of this use.

Public Review and Comment:

A 14-day public review and comment period began February 20, 2014 and ends on March 7, 2014. Copies of the document were displayed in St. Marks NWR Visitor Center. The document was made available on the St. Marks NWR Refuge website, the St. Marks Refuge Association website, and the St. Marks Photo Club Website. The availability of the plan for comment was posted on the St. Marks and St. Vincent National Wildlife Refuge Facebook page, the St. Marks Refuge Association Facebook page, and the St. Marks NWR Photography Club Page.

Determination (check one below):

Use is Not Compatible

Use is Compatible with Following Stipulations

Stipulations Necessary to Ensure Compatibility:

Commercial photography, filming, and videography activities on St. Marks NWR must obtain a valid special use permit. Where the Refuge Manager can identify commercial photography, filming, and videography activities, they can be regulated and monitored through special use permits. These permits will contain conditions under which the activities are allowed to operate. Special use permits for commercial photography, filming, and videography will be issued on a per event basis, often limited to a single day's or a week's activities.

Conditions under which commercial photography, filming, and videography could occur are listed.

- Requests are considered if they demonstrate a means to enhance education, appreciation, and/or understanding of St. Marks NWR and/or the National Wildlife Refuge System.
- Commercial photographers would be managed under special use permits stipulating dates, times and general locations that can be photographed. In most cases, the photographer's access is limited to the same areas in which the general public is allowed to go, but this can be evaluated on a case by case basis.
- Proper credit shall be given to St. Marks NWR and the U.S. Fish and Wildlife Service.

Typical conditions for commercial photography, filming, and videography special use permits are listed.

- Permittees are required to keep a copy of this Special Use Permit on site at all times while working in St. Marks NWR.
- Permittees and their designees are subject to all applicable Federal, State, and local regulations and will ensure compliance with these regulations.
- Prior to photography, filming, or associated activities, permittees and their designees are required to review the ethical guidelines produced by the St. Marks NWR Photo Club.
- Permittee will notify the St. Marks NWR Refuge Manager within 24 hours of filming and associated activities for each day of filming or associated activities. For activities occurring on federal holidays and/or the weekends, the permittee will notify the St. Marks NWR Refuge Manager on the last federal workday before the holiday or weekend.
- Permittee will provide the St. Marks NWR Refuge Manager with a copy of the final results/product of this project for review within 180 days of development of the product(s).
- At no time will the permittee, designees, or film crew enter any designated closed area without prior agreements and approval of the refuge Manager.
- Aerial filming or photography of wildlife may result in disturbance of animals, in violation of applicable regulations. Refuge regulations require a minimum altitude of 2,000 feet above any part of St. Marks NWR. The permittees or

designees must obtain approval of the St. Marks NWR Refuge Manager prior to such a flight.

- The permittee, designee, and/or film crew will not impede or prohibit visitor use within St. Marks NWR during filming or associated activities.
- The permittee acknowledges and agrees that this Special Use Permit does not give the permittee or its designees exclusive use or access to any site, facility, or wildlife.
- The permittee acknowledges that the U.S. Fish and Wildlife Service or appropriate law enforcement officer (e.g., from the Florida Fish and Wildlife Conservation Commission) may limit or eliminate artificial lighting, including the type, size, power, and use (including distance to the subject of the filming activity) of all artificial lighting and artificial sound producing devices during filming or associated activities to minimize impacts to wildlife.
- 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 filming/photographic and associated activities about the hazards likely to be encountered on St. Marks NWR managed lands and waters.
- Indemnification: The 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 this Special Use Permit.
 - (a) The permittee shall purchase at a minimum the types and amounts of insurance coverage as stated herein and agrees to comply with any revised insurance limits that the St. Marks NWR Refuge Manager may require during the term of this Special Use Permit.
 - (b) Upon request of the St. Marks NWR Refuge Manager, the permittee shall provide a Statement of Insurance and Certificate of Insurance.
 - (c) The U.S. Fish and Wildlife Service will not be responsible for any omissions or inadequacies of insurance coverages and amounts if such prove to be inadequate or otherwise insufficient for any reason whatsoever.
- Public Liability. The permittee shall provide comprehensive general liability insurance against claims occasioned by actions or omissions of the permittee or its designees in carrying out the activities and operations authorized hereunder. Such insurance shall be in the amount commensurate with the degree of risk and the scope and size of such activities authorized herein, but in any event, the limits of liability shall not be less than (\$300,000) per occurrence covering both bodily injury and property damage. If claims reduce available insurance below the required per occurrence limits, the permittee shall obtain additional insurance to restore the required limits. An umbrella or excess liability policy, in addition to a comprehensive general liability policy, may be used to achieve the required limits.

- (a) All liability policies shall specify that the insurance company shall have no right of subrogation against the United States of America or shall provide that the United States of America is named an additional insured.
- (b) The permittee agrees that the U.S. Fish and Wildlife Service does not take any responsibility or liability for the security, loss, damage, or otherwise of any vehicle, machinery, equipment, or other goods or property owned by, or under the control of, the permittee.
- The permittee agrees to:
 - remove all equipment and completely clear and clean each location of any materials brought to the site upon leaving a site each day;
 - not erect any facilities or structures, whether temporary or permanent, without written approval of the St. Marks NWR Refuge Manager;
 - not clear, trim, cut, or disturb vegetation; and
 - light no fires.
- The permittee acknowledges that supervision by U.S. Fish and Wildlife Service staff may be required during any photography, filming, or associated activities.
- Any footage used from St. Marks NWR must include a credit, acknowledgement, or caption acknowledging the U.S. Fish and Wildlife Service: “Filmed on location at St. Marks National Wildlife Refuge, St Marks, Florida courtesy of the U.S. Fish and Wildlife Service”.
- Failure to comply with all Special Use Permit conditions may result in the suspension or cancellation of a Special Use Permit, including the possible loss of future Special Use Permit privileges at the discretion of the Refuge Manager.

The permittee must obtain a Special Use Permit from St. Marks NWR and carry it at all times while on St. Marks NWR. All conditions of special use permits must be met. All other commercial photography, filming, and videography activities are subject to the conditions of their permits. A special use permit may be revoked by the Refuge Manager for failure to comply with the conditions or for repeat violations of applicable regulations. Permits may be modified at any time by the Refuge Manager.

St. Marks NWR will modify or eliminate any use that results in unacceptable impacts.

Justification:

Under certain circumstances, commercial photography, filming, and videography can support priority public uses of St. Marks NWR, including environmental education and interpretation, as well as wildlife observation. Commercial photography, filming, and videography can help St. Marks NWR and the National Wildlife Refuge System increase awareness, understanding, and support for St. Marks NWR and its management, natural resources, the National Wildlife Refuge System, and the U.S. Fish and Wildlife Service. Further, commercial photography, filming, and videography can help promote ethical outdoor behavior, helping to minimize wildlife and habitat impacts on St. Marks NWR and elsewhere. Conditions imposed in required special use permits will help ensure that these activities minimize impacts. Approved commercial photography, filming, and

videography would not conflict with the national policy to maintain the biological diversity, integrity, and environmental health of St. Marks NWR nor would they materially interfere with or detract from the purposes of St. Marks NWR.

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

Mandatory 15-Year Re-evaluation Date: 02/20/2029

Literature Cited:

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Klein, M.L. 1993. Waterbird behavior responses to human disturbances. *Wildlife Society Bulletin* 21: 31-39.

Morton J.M. 1995. Management of human disturbance and its effects on waterfowl. Pages F59-F86 in W. R. Whitman, T. Strange, L. Widjeskog, R. Whittmore, P. Kehoe and L. Roberts, eds., *Waterfowl Habitat Restoration, Enhancement and Management in the Atlantic Flyway*. Third Edition. Environmental Management Committee, Atlantic Flyway Council Technical Section, and Delaware Division of Fish and Wildlife. Dover, Delaware. 1114 pp.

Purdy, K.G., G.R. Goft, D.J. Decker, G.A. Pomerantz, and N.A. Connelly. 1987. A guide to managing human activity on National Wildlife Refuges. Office of Information Transfer, U.S. Fish and Wildlife Service. Ft. Collins, CO. 57 pp.

Dobb, E. 1998. Reality check: the debate behind the lens. *Audubon*, January-February 1998.

Approval of Compatibility Determination

**Refuge Manager,
St. Marks NWR:**

Terry Peacock (Signature/Date)

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James Burnett (Signature/Date)

**Regional Compatibility
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