

## **COMPATIBILITY DETERMINATION**

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

**Refuge Name:** Middle Mississippi River National Wildlife Refuge

**Establishing and Acquisition Authority (ies):** 16 U.S.C. 460k-1 16U.S.C. 715d; 16 U.S.C. 644

**Refuge Established:** May 31, 2000

**Refuge Authorities:** 16 U.S.C. § 715d (Migratory Bird Conservation Act); 16 U.S.C. § 664 (Fish and Wildlife Coordination Act); 16 U.S.C. § 460K-1 (Refuge Recreation Act); 16 U.S.C. § 460K-2 (Refuge Recreation Act (16 U.S.C. § 460K-4), as amended); 16 U.S.C. § 3901b, 100 Stat. 3583 (Emergency Wetlands Resources Act, 1986); 16 U.S.C. § 668dd(a)(2) (National Wildlife Refuge System Administration Act)

### **Refuge Purpose(s):**

"...for uses as an inviolate sanctuary, or for any other management purpose, for migratory birds." 16U.S.C. 715d (Migratory Bird Conservation Act).

"...shall be administered by him (Secretary of the Interior) directly or in accordance with cooperative agreements...and in accordance with such rules and regulations for the conservation, maintenance, and management of wildlife, resources thereof, and its habitat thereon,..." 16 U.S.C. 664 (Fish and Wildlife Coordination Act).

'..suitable for - (1) incidental fish and wildlife-oriented recreational development, (2) the protection of natural resources, (3) the conservation of endangered species or threatened species...' 16 U.S.C. 460k-1 "...the Secretary...may accept and use... property. Such acceptance may be accomplished under the terms and conditions of restrictive covenants imposed by donors..." 16 U.S.C. 460k-2 (Refuge Recreation Act (16U.S.C. 460k-460k-4), as amended).

### **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:** This compatibility determination (CD) evaluates the photography, videography, filming, and audio recording (collectively referred to as “recording”) conducted of natural, historic, or cultural subjects for commercial use. 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.

Commercial recording will be restricted to areas determined by the Refuge Manager and managed via a Special Use Permit (SUP). Special needs will be considered on a case-by-case basis and are subject to Manager’s approval.

**Is the use a wildlife-dependent public use?**

Yes, the recording of flora and fauna is a wildlife dependent public use.

**Where would the use be conducted?**

Commercial recording of natural, historic, or cultural subjects could occur on any lands or waters of the more than 8,000 acre Refuge. 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.

**How and when would the use be conducted?**

The use will typically be conducted by a recording crew (generally less than five people) who may or may not be accompanied by a Refuge or other governmental employee (Fish and Wildlife Service, U.S. Geological Survey, or state Department of Natural Resources). Commercial recording may take place day-or-night from a vehicle, on foot, from a boat (motorized or non-motorized) or from the air. All times of recording and forms of transportation will require pre-approval from the Refuge Manager and stipulations regarding Refuge entry, access locations, and other required coordination will be articulated in the SUP under “Special Conditions.”

**Why is this use being proposed?**

The location of the wildlife refuge in relation to the St. Louis metro area and the Mississippi River attracts news media and a large number of professional photographers and videographers to the natural landscapes of the Refuge. Wildlife observation and wildlife photography are priority public uses on National Wildlife Refuges. Allowing appropriate commercial recording on the Refuge will allow a greater segment of the public to enjoy Middle Mississippi River National Wildlife Refuge while promoting the National Wildlife Refuge System. Quality recordings can be excellent educational and inspirational media and commercial recording within this context is consistent with the goals of the Refuge.

**Availability of Resources:**

There is sufficient staffing and funding available at this time for the Refuge to provide personnel to review proposals related to this use and to prepare a SUP. The Refuge Manager reserves the right to assign a staff member to accompany permittee(s) during times of recording and assist with transportation if deemed advantageous to the refuge.

**Anticipated Impacts of the Use:**

Commercial filming activities could cause temporary disturbance to bald eagles, water birds, waterfowl, fish, and other wildlife. Disturbance is expected to be localized and of short duration. Wildlife disturbed generally has abundant cover and food on adjacent areas of the Refuge and disturbance is likely to have impacts (fright and flight) of short duration.

Any commercial filming 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 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:** Determination prepared and reviewed in conjunction with Refuge Complex Comprehensive Conservation Plan (CCP) and Environmental Assessment. (Minimum 2-week notice in newspaper(s) unless use is very minor with no impacts on Refuge purpose)

**Determination:**

Use is Not Compatible

Use is Compatible with Following Stipulations

**Stipulations Necessary to Ensure Compatibility:** To ensure compatibility with National Wildlife Refuge System and Middle Mississippi River National Wildlife Refuge goals and objectives and to minimize or exclude adverse impacts as described above, the activity can only occur under a number of stipulations:

1. All applicable state and federal regulations apply. Permittee is responsible for acquiring and/or renewing any necessary State and Federal permits prior to beginning or continuing their project.
2. A Special Use Permit (SUP) will be issued to the commercial recording crew. Conditions within the SUP will minimize disturbance to Refuge resources.

3. The Refuge Manager will provide guidance to reduce impacts to either fish and wildlife or other Refuge visitors and address these in the Special Conditions of the SUP.
4. The permittee will provide five (5) copies in an approved format of the final production for use in interpretive and educational programs on the Refuge. Copies should be sent to the Headquarters address at the end of the production.
5. No blinds, scaffolding, or other structures may be built on the Refuge without the Refuge Manager's approval.
6. No clearing or removal of trees or vegetation is authorized. Disturbance to existing vegetation is to be minimized to the greatest extent possible.
7. Permittee and crews must heed public use regulations for the refuge and restricted areas as defined by signs and on maps.
8. Videographer/photographer(s), designated representatives, and associates will comply with all refuge regulations and conditions of the SUP as provided by the Refuge Manager. Person(s) operating under this permit must carry a copy when conducting recording or related activities on the Refuge, and display it upon request of Refuge officials.
9. Permittee(s) will contact the Refuge Manager prior to commencement of work, preferably two weeks in advance to identify sensitive areas/wildlife species.
10. The Refuge Manager or designee can suspend, modify or terminate any recording that is already permitted and in progress, should unacceptable, unforeseen, or unexpected impacts or issues arise.
11. All commercial recordings on the Refuge must reference the fact that they were collected on Middle Mississippi River National Wildlife Refuge.

**Justification:** In accordance with the missions of the National Wildlife Refuge System, Middle Mississippi River National Wildlife Refuge and the 1997 Refuge Improvement Act, this use has been determined compatible provided the above stipulations are implemented. This use will promote public awareness and stewardship of the Refuges' natural and cultural resources. It does not materially interfere with or detract from the Service's ability to meet the mission of the National Wildlife Refuge System and administration of this use will require minor amounts of administrative time and funding.

**NEPA Compliance for Refuge Use Decision (check one below)**

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

Categorical exclusions are classes of actions which do not individually or cumulatively have a significant effect on the human environment. Commercial filming/recording can be categorically excluded from the EA process under Departmental Manual 516 DM6 Appendix 1.4 Categorical Exclusions General section C (3), as outlined below, when the filming/recording is educational in nature.

**Permit and Regulatory Functions**

On August 22, 2013 the Department of the Interior published final regulations in the Federal Register on commercial filming, still photography and audio recording applying to the National Park Service (NPS), U.S. Fish and Wildlife Service (FWS) and Bureau of Land Management (BLM). The regulations became effective September 23, 2013.

- The regulation governing commercial filming and still photography is found at 43 CFR part 5 subpart A.
- 50 CFR part 21.71 governs how the FWS will manage audio recording.

**Signature:**

**Refuge Manager:** \_\_\_\_\_  
Jason Wilson, Refuge Manager Date

**Concurrence:** \_\_\_\_\_  
Charles W. Blair, Regional Chief Date

**Mandatory 10-year Re-evaluation Date:** \_\_\_\_\_