

Compatibility Determination

Title

Compatibility Determination for Commercial Guiding for Wildlife Dependent Recreation for Valentine National Wildlife Refuge

Refuge Use Category

Environmental Education and Interpretation

Refuge Use Type(s)

Commercial Guiding for Wildlife Dependent Recreation

Refuge

Valentine National Wildlife Refuge

Refuge Purpose(s) and Establishing and Acquisition Authority(ies)

System lands are managed consistent with a number of federal statutes, regulations, policies, and other guidance. The National Wildlife Refuge System Administration Act of 1966, as amended (16 United States Code [U.S.C.] 668dd-668ee) (Administration Act) is the core statute guiding management of the System.

The National Wildlife Refuge System Improvement Act of 1997 (Public Law [P.L.] 105-57) made important amendments to the Administration Act, one of which was the mandate that a comprehensive conservation plan be completed for every unit of the System. Among other things, comprehensive conservation planning has required field stations to assess their current farming program and establish objectives for the future.

The Migratory Bird Hunting Stamp Act of March 16, 1934, as amended by section 3 of the Act of August 1, 1958 (72 Stat. 486, 16 U.S.C. sec. 716 d[c]), authorized the Secretary of Interior to acquire small wetland or pothole areas suitable as Waterfowl Production Areas.

Additional Authorities include the following: Consolidated Farm and Rural Development Act, Migratory Bird Conservation Act, North American Wetlands Conservation Act, and the Emergency Wetlands Resources Act.

National Wildlife Refuge System Mission

The mission of the National Wildlife Refuge System, otherwise known as 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 (Pub. L. 105-57; 111 Stat. 1252).

Description of Use

Is this an existing use?

Yes

What is the use?

The use is commercially guided priority public use activities (hunting, fishing, wildlife observation, photography, environmental education, and interpretation). Commercial guiding is the act of accompanying or assisting any person engaged in a wildlife-dependent public use, in exchange for compensation for those services.

To date, only a few individuals interested in offering this service have inquired about obtaining special use permits (SUPs), and citizens have occasionally inquired about the availability of such services. Only priority public use activities (hunting, fishing, wildlife observation, photography, environmental education, and interpretation) are covered by this determination. Requests for any additional activities would be considered in the future on a case-by-case basis.

Commercial guiding is not a priority public use of the National Wildlife Refuge System (Refuge System) under the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd-668ee), as amended by the National Wildlife Refuge System Improvement Act of 1997. Commercial guiding for hunting, fishing, wildlife observation, photography, environmental education, and interpretation can contribute to the fulfillment of refuge purposes and to the Refuge System Mission by facilitating priority and/or compatible public uses.

Is the use a priority public use?

No

Where would the use be conducted?

These activities take place on all refuge units open to the identified public uses. The same areas currently used by non-guided visitors for wildlife observation, wildlife photography, hunting, fishing, environmental education, and interpretation would therefore also be available for commercially guided visitors. Although current use

levels are modest, if user conflicts arise in the future, commercial activities could be restricted to certain areas or times to minimize such conflicts.

When would the use be conducted?

These activities would take place year-round, subject to the refuge-specific regulations or laws governing the individual public use. The refuge must approve any requests for guiding outside of the refuge access hours for the recreational use. If approved, the hours permitted will be included in the SUP.

How would the use be conducted?

With the exception of the ability to charge guests for services rendered, this use will not impart any additional privileges beyond those available to all refuge users. Commercial guides would be allowed to operate on refuge lands through a formal process, including the issuance of a SUP. The refuge manages commercial guiding activities at a level that is compatible with refuge purposes and that ensures high-quality guiding services are available for the public. Application packages containing false statements or fraudulent or misleading information will be denied.

All SUP activities are regulated by provisions listed in 50 CFR, subpart D-Permits, 25.41 - 45. The permittee would be required to comply with all Department of the Interior, U.S. Fish and Wildlife Service (Service), and Federal, State, and local laws in the conduct of their business. Because this is an economic use of the refuge, it is also subject to other applicable laws and regulations (see 50 CFR 29.1).

The number of permittees is limited to 5 guiding permits for the protection of the resource and the quality of experience for the general public.

Commercial guiding may be conducted along designated refuge roads and trails open to these uses. It may also be conducted by boat in waters open to fishing. Commercial guiding can also occur by foot or bicycle in areas of the refuge open to these uses. Visitors participating in approved public uses are allowed off trail; however, off-trail use is limited to pedestrian access only (e.g., walking, hiking). In addition, commercial guiding for hunting that uses horses to recover downed deer as part of the service, may be allowed by SUP.

Why is this use being proposed or reevaluated?

We would allow commercial guiding to facilitate and enhance the experience of visitors while participating in wildlife-dependent priority public uses because many visitors may not have the knowledge, skills, confidence, or equipment to explore the refuge and engage in these activities on their own. Commercial guides would help facilitate a safe and high-quality priority public use experience, and facilitate observation and appreciation by participants and observers of the refuge's wildlife and habitats. Because it

will generate a minimal amount of economic activity, this use is also likely to be supported by the local communities,. Because commercial guiding is considered an economic use, per Federal law (see 16 USC 715s) and Service regulations (50 CFR 29.1), we may only allow economic uses of a refuge natural resource where the use contributes to achieving refuge purposes or the Refuge System mission.

Availability of Resources

Additional staff costs are incurred to review each request, analyze affected habitats and wildlife, coordinate with the outside entity, and process a permit if necessary. Compliance with the terms of the permit is within the regular duties of the Refuge's law enforcement officers. Additionally, costs may be assumed by the requestor as appropriate given the level of oversight needed. The Service requires the permittee to offset any cost incurred by the Refuge through implementation of a fee. Refuge resources are limited, and the issuance commercial guiding permits will be limited to ensure refuge resources are not diverted from priority public uses and other mission critical work. To ensure that commercial guiding does not impact other mission critical uses, commercial guiding permits will be limited to 1-3/year.

Anticipated Impacts of the Use

Potential impacts of a proposed use on the refuge's purpose(s) and the Refuge System mission

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 guiding 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 dependent recreation 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. Some requests may require further analysis of the impacts of the proposed activity which may also require additional compliance with the National Environmental Policy Act (NEPA) and consultation under any other relevant laws.

Opening the refuge to commercial guiding could result in a minimal increase in the number of visitors to the refuge and likewise increase the number of larger groups (4 or more people) visiting the refuge.

Resource impacts, however, are not expected to be any greater than those resulting from the existing, approved wildlife-dependent public uses. Commercial guides and their clients would be required to comply with all of the existing stipulations for authorized public uses. In addition, commercial guides would be required to comply with the stipulations noted below and would be routinely checked by the refuge's federal wildlife officer for compliance with regulations and permit conditions. Permit conditions and stipulations are designed to minimize potential impacts. Although a substantial increase in the cumulative impacts from public use is not expected in the near term, refuge staff would monitor impacts of this use and respond, if necessary, to conserve the existing high quality of refuge resources.

Public Review and Comment

Determination

Is the use compatible?

Yes

Stipulations Necessary to Ensure Compatibility

The following stipulations apply to SUPs issued for commercially guided recreational activities. Continuing law enforcement and administrative monitoring of permittees would be carried out to ensure compliance with the following conditions that are incorporated into permits in order to minimize impacts on refuge lands and resources.

- Permittee agrees to hold the U.S. Government harmless from liability for any accident/injury to their clients or employees resulting from their activities being authorized by this permit.
- The permittee must provide adequate and appropriate liability insurance (a Certificate of Insurance with adequate Comprehensive General Liability coverage, the minimum limit of liability being \$300,000 per occurrence).
- The insurance certificate must name the U.S. Fish and Wildlife Service as additional insured, as well as specify that the service/activity authorized by the permit is covered by the policy and must also provide a telephone number for verification purposes.
- The permittee must provide a copy of the appropriate documentation of current First Aid and CPR (cardiopulmonary resuscitation) certification for all guides.
- The refuge will reserve the right to limit the number of commercial guides and clients as needed.
- A copy of a valid SUP must be available for inspection by any law enforcement officer or refuge staff member, on request, whenever an activity authorized by the permit is occurring. Storing in the glove box of the vehicle may be acceptable; however, all guides must be knowledgeable about the permit and its conditions.
- Violation of (1) any special conditions of the SUP or (2) any Federal, State, local, or refuge regulations may result in a Notice of Violation being issued or revocation/cancellation of the permit without written or verbal warning. In that case, the permittee would receive immediate notification via phone with followup notification via mail. Permittees are responsible for the actions of their employees, agents, others working under their SUP, and their clients.
- No refund would be made to the permittee, regardless of the reason for revocation/cancellation of a permit.
- For those businesses having held a previous year SUP, a current year SUP would not be issued until an accounting of tours/activities conducted under the old SUP has been received by the refuge office.

- SUPs are issued on a year-to-year basis and are not automatically re-issued on consecutive years.
- Permittee would provide all participants with information explaining the refuge, Refuge System and their missions, as well as, relevant permit regulations and conditions. The refuge would supply the necessary information to the permittee.
- Vehicle(s) would be used only on designated roadways and in parking areas.
- Guides would police their clients for litter, vandalism, etc. and report any problems to the refuge office.
- The use of electronic calls or baiting for the purposes of attracting wildlife is not allowed.
- Pursuing wildlife for purposes other than regulated hunting activities involving the intended take of game species (e.g., pursuit for purposes of wildlife observation or photography) is not allowed.
- Commercial guiding can occur during the refuge's open hours from one-half hour before sunrise until one-half hour after sunset. The refuge must approve any requests for guiding outside of these hours.

Justification

While few requests to offer commercial guiding have been received, it is possible that this niche, once available, will be filled by individuals and organizations with the skills necessary to provide quality fishing, hunting, and wildlife observation for guests. It is anticipated that even the minimal amount of economic activity represented by this use will be welcomed by the local communities.

We have determined that allowing commercial guiding would not materially interfere with, or detract from, the mission of the Refuge System or the purposes for which the refuge was established. In fact, based on the analysis presented above, we have determined that allowing this use will contribute to the refuge's purpose, "[to] provide opportunities for...fish and wildlife oriented recreation and access to the extent compatible with the other purposes..." First, refuge visitors enjoy participating in wildlife-dependent priority public uses, but many may not have the knowledge, skills, or equipment to engage in these activities, particularly at the more remote refuge units. Commercial guides may help facilitate a safe and high-quality priority public use experience, and facilitate observation and appreciation by participants of

the refuge's wildlife, habitats, and conservation programs. Second, by allowing this activity, refuge staff hopes more visitors will be exposed to the refuge and the Refuge System, and this exposure may lead to a better understanding of the importance of the Refuge System to wildlife conservation and to the American people. These users may take the time to learn more about the refuge and become supporters of the Refuge System.