

[Draft] Compatibility Determination

Stillwater Natural Resource Collecting

Refuge Use Category

Natural Resource Collection

Refuge Use Type(s)

Plant Gathering (non-commercial), Animal Product Gathering (non-commercial)

Refuge

Stillwater National Wildlife Refuge, Churchill County, Nevada

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

Stillwater National Wildlife Refuge (NWR) was established under the authority of the Truckee-Carson-Pyramid Lake Water Rights Settlement Act (TCP 1990), the Fish and Wildlife Act (FWA 1956, as amended), the U.S. Endangered Species Act (ESA 1973, as amended) and the Emergency Wetlands Resources Act (EWR 1986).

According to these authorities, the purposes of Stillwater NWR are: “(A) maintaining and restoring natural biological diversity within the refuge; (B) providing for the conservation and management of fish and wildlife and their habitats within the refuge; (C) fulfilling the international treaty obligations of the United States with respect to fish and wildlife; and (D) providing opportunities for scientific research, environmental education, and fish and wildlife oriented recreation” (extracted from the Truckee-Carson-Pyramid Lake Water Rights Settlement Act of 1990); “...for the development, advancement, management, conservation and protection of fish and wildlife resources...” and “...for the benefit of the U.S. 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...” (extracted from the Fish and Wildlife Act of 1956); “...to conserve (A) fish or wildlife which are listed as endangered species or threatened species... or (B) plants...” (extracted from the Endangered Species Act of 1973); and “...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...” (extracted from the Emergency Wetlands Resources Act of 1986).

National Wildlife Refuge System Mission

The mission of the National Wildlife Refuge System, otherwise known as the 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?

No. However, allowing this use was contemplated in the 2002 Stillwater NWR Comprehensive Conservation Plan (CCP) Environmental Impact Statement (EIS). The use is being re-evaluated through the compatibility determination (CD) process in conjunction with a Memorandum of Understanding (MOU) for the Fallon Paiute Shoshone Tribe.

What is the use?

We propose to allow natural resource collecting (plant gathering (non-commercial) and animal product gathering (non-commercial)) by the Fallon Paiute-Shoshone Tribe to promote connections to cultural resources on the Stillwater NWR. Plant gathering (non-commercial) is defined as the collection of berries, fruits, grasses, marsh plants (e.g., cattails or sweet grass), mushrooms, nuts, roots, wild rice or other plants, plant parts or plant products for non-subsistence, non-research purposes. Animal product gathering (non-commercial) is defined as the collection of shed antlers, owl pellets, shells, bones or other animal parts or products for personal use or recreational purposes (does not include hunting, fishing, aquaculture or other collection of living organisms).

Is the use a priority public use?

This use is not a priority public use of the Refuge System under the National Wildlife Refuge System Administration Act (NWR 1966) as amended by the National Wildlife Refuge System Improvement Act of 1997 (NWR 1997). Priority public uses are wildlife-dependent recreational uses of a refuge involving hunting, fishing, wildlife observation and photography, or environmental education and interpretation. However, this use does pertain to the Service's Appropriate Refuge Uses Policy to provide reasonable access to Native Americans to refuge lands and waters for gathering plants for ceremonial, religious, medicinal and traditional purposes when the activity is appropriate and compatible (603 FW 1).

Where would the use be conducted?

Plant and animal product gathering would be allowed on the entire Stillwater NWR, subject to current regulations regarding vehicle and boat use. Gathering would be allowed in areas closed to hunting.

The refuge lies in the high-desert (at approximately 4,000 feet elevation) and is part of an interior basin terminal sink for the Carson River. The major habitats include wetlands, desert upland shrubs and, in the future, restored riparian areas. The refuge also contains dunes and alkaline playas. Under natural (historic) conditions, the areal extent of and species mix in these habitats

would have varied broadly over the years depending on drought and flooding, and the volume of freshwater inflows and salinity, among other factors. These factors continue to influence the location and extent of these habitats, but upstream water storage and withdrawals for agricultural and urban uses have greatly limited the degree to which these factors currently affect refuge habitats.

Riparian habitats are characterized by such trees and shrubs as the Fremont cottonwood (*Populus fremontii*), red willow (*Salix laevigata*), sandbar willow (*S. exigua*) as well as understory plants and grasses. Riparian areas provide valuable breeding and staging habitats for neotropical migratory birds, nesting and roosting areas for cavity-nesting birds and raptors and cover and forage for mammals.

Various passerine birds (e.g., blackbirds, grosbeaks, larks, nighthawks, orioles, peewees, sparrows, swallows, warblers and wrens), raptors (e.g., eagles, hawks and owls) and others, like mourning dove (*Zenaida macroura*) and California quail (*Callipepla californica*), regularly use more than one habitat type on the refuge. The refuge has no critical habitat and no species listed under the Endangered Species Act are regularly seen on site.

Because of the high wildlife values of the area, the Lahontan Valley Wetlands have been included in the Western Hemisphere Shorebird Reserve Network, it is a focus area for the Intermountain West Joint Venture (to implement the North American Waterfowl Management Plan) and has been designated an Important Bird Area by the American Bird Conservancy and National Audubon Society.

Non-Native (invasive) species and inadequate and unreliable supplies of clean, fresh water are threats to the continued health and viability of these habitats. Records reveal that approximately 1,000 refuge acres are infested by invasive plants (Multi-year RAPP Report). The refuge's CCP EIS includes much more detailed information about its habitats and wildlife and the threats to these resources (USFWS 2002).

When would the use be conducted?

As currently envisioned, natural resource collecting would be an infrequent activity engaged in by Tribal individuals, families or other small groups. Collecting times would be at the discretion of the collectors and would not be limited to specific hours or seasons since the refuge is open year-round and at all times of day. However, special consideration would be given to ensuring that plant and animal product gathering did not occur in places and at times where and when it would expose gatherers to the safety risks associated with refuge hunting programs or conflict with other visitors enjoying the refuge.

How would the use be conducted?

Natural resource collecting would be done individually or in small groups by Fallon Paiute-Shoshone Tribal members using traditional harvest tools (knives, bags, digging sticks, etc.). Participation in natural resource collecting on the refuge would be limited to members of the

Fallon Paiute-Shoshone Tribe for cultural purposes, and the gathering would be authorized through issuance of a MOU to the Tribe.

Traditionally, the natural resources collected during gatherings included roots/tubers, berries, seeds/nuts, small animals and insects (e.g., tules, cattails, willows, grasses, ground squirrels, jack rabbits, minnows [tui chub, *Gila bicolor*] and other fishes and various birds, including waterfowl and coots [American coot, *Fulica americana*]). These items were repurposed in a variety of ways. The roots, seeds and berries were eaten raw or processed then eaten (e.g., ground up or dried). Other plants served medicinal purposes or were added to food as spices. Tules (hardstem bulrush, *Schoenoplectus acutus*) were dug up using digging sticks or cut with knives and used for a broad range of purposes, including to weave mats; make hats; make bags and baskets to store food and carry other items; cover lodges framed of willow poles (*Salix* spp.); build waterfowl decoys, fish traps and balsa boats (like canoes); and for food (tule seeds and roots were eaten). Cattails (*Typha* spp.) also served numerous purposes. Young cattail shoots and the immature pollen spikes, pollen, seeds and roots of cattails were all harvested and eaten. Cattails were used in the manufacture of waterfowl decoys, and cattail leaves were twisted into rope. Nuts of pinyon pines (*Pinus monophylla*) were ground into flour. Sagebrush bark (*Artemisia* spp.) and tules were used to manufacture footwear (Raymond 1997). Using traditional methods to gather, process and use natural materials of this nature is an important cultural practice.

Historically, and prehistorically, Tribal members also hunted, fished and trapped larger animals. Many of these species are now managed as game species, furbearers or unprotected species; and their harvest is regulated by the state and Federal governments. Hunting, fishing and trapping are considered separate activities from cultural or natural resource collecting and their appropriateness and compatibility on the refuge are evaluated in separate documents. Their hunting of game and unprotected species would be regulated the same as any other member of the general public (see hunting CDs). Fishing on the refuge has been determined not compatible and is not allowed (see Fishing CDs). Trapping has been determined not appropriate and is not allowed on the refuge (see Trapping Finding of Appropriateness (FOA)). Gatherers would not be allowed to hunt on the refuge in a manner or at a time or location inconsistent with current state and Service rules and regulations. Their hunting of game and unprotected species would be regulated the same as that of any other member of the general public (see hunting CDs).

Why is this use being proposed or reevaluated?

Plant gathering and animal product collecting includes the collection of various plants and animal products on Stillwater NWR by members of the Fallon Paiute-Shoshone Tribe. This Tribe of Native Americans have lived year-round in the Lahontan Valley for thousands of years (Raymond 1997). By continuing to collect their traditional plant and animal products, important cultural knowledge and ties are learned and passed on to future generations.

Natural resource collection, using traditional methods, is an activity not usually available to the general public. Participation in natural resource gathering on the refuge is a privilege, not a right. Before being allowed on the refuge, this use would first need to be found appropriate (USFWS

2006) and then be determined compatible (USFWS 2000). Official authorization to access the refuge for this use would occur through issuance of a MOU.

Availability of Resources

Natural resource collecting would utilize existing refuge facilities. Therefore, there are no one-time costs associated with the construction of new facilities. Annual/recurring costs would include biological monitoring, as needed, to ensure that natural resources are being sustainably collected. The other foreseeable costs are negligible but would include funding staff for developing a Plant/Animal Product Collecting FOA and CD; issuing a MOU to cover activity and duration; attending meetings to discuss the collecting; and completing site visits with Tribal members. The recurring costs associated with staff time (law enforcement, administration and management) would be minimal considering that the Fallon Paiute-Shoshone Tribe is knowledgeable in plant and animal product gathering and will be using their own traditional harvesting tools and vehicles.

The Service currently has adequate budget and staff to support the annual costs associated with operation and maintenance of the programs and facilities associated with a modest amount of natural resource collecting.

Anticipated Impacts of the Use

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

Short-term impacts

The immediate impact of plant gathering and animal product collecting would be removal of selected plants and animal products from the refuge. The amount of loss would depend on the gathering pressure (e.g., the number of gatherers, days of effort, and harvest success). Taken to an extreme, this could potentially reduce the size or health of populations on the refuge. However, this is not expected because of the small numbers of gatherers expected on the refuge, the infrequency of their visits and the fact that the Service would regulate and monitor this activity to ensure it was managed on a sustained yield basis. The greatest residual effects would then likely be wildlife disturbance.

Activities expected to cause wildlife disturbance during gathering include vehicle operation (e.g., access and parking), walking in/near wetlands and other valuable wildlife habitats and boating (e.g., launching). The amount of disturbance generated depends on several factors, including whether visitors are within or outside of vehicles. Wildlife disturbance is greater when visitors depart their vehicles and walk trails or venture into wetlands. This is a likely scenario during plant and animal product gathering.

Many birds and other animals are wary and flush or flee when approached too closely. The effects of gathering on wildlife depend upon the species involved and its age; the time of year; the breeding cycle stage (if applicable); the activity in which birds are engaged (e.g., foraging

versus nesting); prey density and nutritional requirements for feeding birds; flock size (large flocks may be more easily disturbed); whether the species is hunted; the surrounding environment; the involvement of vehicles; the type, size, intensity, speed, noise, nature and frequency of the disturbing activity; and the approach angle or directness of approach to an animal (Blanc et al. 2006; Goss-Custard and Verboven 1993; Hammitt and Cole 1998; Kirby et al. 1993; Knight and Cole 1995a; Knight and Cole 1995b; Lafferty 2001a; Lafferty 2001b; Rodgers 1991; Rodgers and Schwikert 2002; Rodgers and Smith 1997; Smit and Visser 1993). The disturbance and flushing of birds, or even raising their alert levels which usually occurs at a greater distance than that for flushing, creates stress and requires animals to alter their normal behavior and expend energy that otherwise would be invested in essential life history activities such as foraging, migration, predator avoidance, mating, nesting and brood-rearing. It can cause them to stop feeding, cause abandon nests and young, allow predators access to nests and young, reduce parental attention to young and otherwise impact survival of individual animals, including birds, eggs, nestlings, broods, young and juveniles (Burger and Gochfeld 1991; Haysmith and Hunt 1995; Lafferty 2001b). Breeding birds are especially sensitive to human disturbance (Hammitt and Cole 1998; Trulio 2005). A study of visitors to a colony of kittiwakes (*Rissa tridactyla*) and guillemots (*Uria aalge*) revealed that nesting success was influenced by the distance observers were from the birds (positively correlated) and the number of observers involved (negatively correlated) (Beale and Monaghan 2004). The effects of disturbance on individual animals are likely additive.

Studies have had mixed results regarding potential habituation of birds and some other taxa to human disturbance. Wildlife are often less disturbed by routine human activities that repeatedly occur along defined routes (e.g., trails, roads or water channels), especially frequent disturbance that does not involve direct contact or other threat, compared with those activities that occur irregularly and outside predictable paths/channels (Blanc et al. 2006; Burger 1998; Knight and Cole 1995b; Smit and Visser 1993). Some species can habituate to the presence of humans who stay in the same general location and remain relatively still (Goss-Custard and Verboven 1993; Smit and Visser 1993). Habituation to some types and levels (intensity and frequency) of human disturbance appears to vary among species, within species, between resident and migratory populations and potentially between inexperienced and experienced breeders. This makes it difficult to forecast habituation in actual field situations.

Wading in the water and chopping or digging up emergent vegetation would stir up sediments, increase turbidity and reduce the depth to which sunlight penetrated the water column. This can reduce growth of submerged vegetation and populations of phytoplankton. Because of the small numbers of gatherers expected on the refuge, the infrequency of their visits and the very large acreage of wetlands, it is expected that the effects of visitation on wetland biota would be minimal.

Various areas of the refuge are open to numerous public uses, including hunting, wildlife observation and photography and environmental education and interpretation. There is potential for conflicts to arise between visitors participating in natural resource collecting and those enjoying other priority public uses. The presence of plant and animal product gatherers could

cause wildlife to flush or flee and potentially degrade the quality of the experience for other visitors; or, that disturbance could cause wildlife to move such that it was more readily seen, photographed or hunted by others. MOUs would include provisions to avoid or minimize potential conflicts with other refuge visitors.

Because this activity would be engaged in by members of the Fallon Paiute-Shoshone Tribe, it is expected that participants would be especially knowledgeable about, and sensitive to, the valuable cultural resources, including the abundance of human burials on the refuge. As a result, it is not expected that participants would impact those resources. Regardless, all refuge visitors are advised not to collect or otherwise disturb cultural resources, including human remains.

Long-term impacts

Gatherers, vehicles, and harvest tools could potentially introduce or spread invasive species, including plants and invertebrates. Once established, invasive species can outcompete native plants, thereby altering habitats and indirectly affecting wildlife. The threat of invasive plant establishment will always be an issue requiring annual monitoring and, when necessary, treatment. To date, invasive and other Non-Native plants are being adequately controlled along roadsides within Stillwater NWR. Due to the anticipated small size of gathering groups and the infrequency of their visits, significant long-term impacts are not anticipated.

Public Review and Comment

The draft CD will be available for public comment and review for 15 days from **Month/day**, 2022 to **Month/day**, 2022. It will be made electronically available on the refuge's website (<https://www.fws.gov/refuge/stillwater>). Hard copies will be posted at the refuge's headquarters and visitor contact station in Fallon (1020 New River Parkway, #305, Fallon, NV 89406) and on the refuge (13303 Stillwater Road, Fallon, NV 89406). The Fallon Paiute-Shoshone Tribe has been asked to review and comment on the draft CD. Concerns expressed during the public comment period will be addressed in the final version of the compatibility determination.

Determination

Is the use compatible?

Yes, with the three stipulations outlined below.

Stipulations Necessary to Ensure Compatibility

To ensure compatibility with refuge purposes and the mission of the Refuge System, any natural resource collecting on the refuge must meet the following stipulations:

1. The Service would monitor activities associated with this CD and the actual effects of plant and animal product gathering on native fish, wildlife, plants and their habitats; and other refuge users, especially those engaged in compatible, wildlife-dependent public uses. Appropriate action would be taken if unanticipated effects occurred.

2. The Service would reserve the right to add to or otherwise modify the stipulations listed herein to ensure the continued compatibility of natural resource collecting. New or modified stipulations could be instituted as a result of new information generated by ongoing or new studies or monitoring results; new legal, regulatory or policy requirements; significant changes to the refuge environment or status of native fish, wildlife, plants or their habitats; or for other legitimate reasons. Refuge personnel would appropriately advise the Tribe of any such changes.
3. The Service would also reserve the right to terminate or modify privileges to collect natural resources on the refuge if participants were violating the stipulations listed herein; if unacceptable impacts were occurring to native fish, wildlife, plants or their habitats, cultural resources or refuge facilities, or other refuge visitors; or for other legitimate reasons.

Justification

Plant and animal product gathering have direct effects on individual plants and other materials gathered. However, significant effects to abundance, diversity or health of refuge populations are not anticipated because the number of gatherers is expected to be small and their visits to the refuge infrequent. Consistent with the stipulations above, the Service would regulate and monitor this activity to ensure it was managed on a sustained yield basis.

There would be some wildlife disturbance effects associated with this use. As mentioned above, these effects are not anticipated to be significant due to the small number of participants, their infrequent visits and Service regulation and monitoring.

The activities discussed herein are of special cultural significance to members of the Fallon Paiute-Shoshone Tribe. Providing opportunities for such individuals to gather and use these materials for construction, medicinal, educational, ceremonial, artistic and perhaps other traditional purposes would support the continuation of Native American cultural values. Allowing this use at the refuge would also be consistent with the spirit of the Service's appropriateness policy as it regards providing Native Americans with reasonable access to refuge lands for gathering of plants and animal products for ceremonial, religious, medicinal and traditional purposes; and with the Native American Policy of the Service as it relates collaborating with Tribal governments to protect traditional, customary, ceremonial, medicinal, spiritual and religious uses of plants and animals for Tribal members where it is not contrary to our legal mandates and conservation goals (USFWS 2016).

Allowing this use would also further implementation of the refuge's CCP. As part of the cultural resources management program described in that document, the Service committed to working with the Fallon Paiute-Shoshone Tribe to, "...facilitate the harvest and use of traditional plant and animal resources...for educational, ceremonial, artistic and allied purposes necessary to learn about, or enhance, traditional culture. Harvest and use for subsistence and commercial purposes would not be allowed. For example, the Fallon Paiute-Shoshone Tribe, in consultation with the Service, would identify traditional plants and their gathering locations and establish a protocol for their protection, harvest and use."

Tribal members engaged in plant and animal product gathering on the refuge would be exposed to native fish, wildlife, plants and their habitats; they would likely gain a better understanding of Service's management of these valuable natural resources; and they would likely participate in wildlife observation and possibly photography. Though, not technically cultural resources, the natural resources gathered by Tribal members have special cultural significance. These activities would not conflict with any refuge goals.

Engaging in natural resource collecting would increase the participants' understanding and appreciation of the refuge's natural or cultural resources. If the gathered materials were used and source explained in larger tribal or public activities or events, then the understanding and appreciation of the refuge's natural or cultural resources would reach a larger audience.

If natural resource gathering was allowed on the refuge under the stipulations outlined above, it is anticipated that wildlife, which could be disturbed, would find sufficient food resources and resting places so their abundance and use would not be measurably lessened. Additionally, it is anticipated that monitoring, as needed, would prevent unacceptable or irreversible impacts to fish, wildlife, plants and their habitats; other public uses; and cultural resources. For the reasons stated above and consistent with the stipulations described herein, this use would not materially interfere with or detract from the maintenance of the refuge's biological integrity, diversity and environmental health; fulfillment of Stillwater NWR's purposes; or the Refuge System's mission.

Signature of Determination

Refuge Manager Signature _____ (Date) _____

Signature of Concurrence

Assistant Regional Director Signature _____ (Date) _____

Mandatory Reevaluation Date

2032

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