

In Reply Refer To:
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January 19, 2007

Memorandum

To: Regional Directors, Regions 1-7
Manager, California/Nevada Operations Office

From: Director /s/ Acting Director Ken Stansell

Subject: NEPA Compliance for Hunting Programs

The Fund for Animals sued the Fish and Wildlife Service (Service) on March 14, 2003, alleging noncompliance with the National Environmental Policy Act (NEPA) in opening 37 refuges to hunting during the 1997-98 through 2002-03 seasons. On August 31, 2006, U.S. District Court Judge Ricardo M. Urbina, granted plaintiff's motion for summary judgment agreeing that the Service did not adequately consider the cumulative impacts of opening these refuges to hunting. The court stopped short of enjoining hunting on those 37 refuges pending receipt of supplemental briefs suggesting remedy both from the Service and the plaintiffs. Those briefs were filed with the court on October 5, 2006 and opposition to the supplemental briefs was filed October 31, 2006. A judgment will be entered by the court at any time in the coming months.

The Service's October 5, 2006 brief asked the court not to enjoin the hunt programs while the Service proceeded to address the NEPA deficiencies in the original 37 hunting packages. In addition, the Service informed the court that by May 30, 2007, it would also correct NEPA deficiencies for the 30 refuges opened to hunting since the lawsuit was filed and for seven 2006-2007 proposed refuge openings. In total, we need to correct NEPA deficiencies for 74 refuge hunting packages by May 1, 2007.

We are providing the attached guidance to assist the Regions and refuge field stations in addressing the issues identified by the court and in improving the overall quality of NEPA compliance for refuge hunting programs.

Please note that the revised NEPA documents for these hunting packages must be submitted to Refuge Headquarters, attention Ms. Leslie Marler by May 1, 2007. Any questions concerning this guidance should be addressed to Ms. Marler at (703) 358-2397 or Mr. Rick Schultz at (703) 358-2332.

**NEPA Compliance for Hunting Programs
National Wildlife Refuge System
December 22, 2006**

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Section 1. General Guidance – Refuge Hunting Chapters (Plans)

New Submissions. Consistent with 605 FW1 – Wildlife-Dependent Recreation policy, each national wildlife refuge must submit an opening package for hunting programs comprised of the following items:

- (1) Hunting chapter of the Visitor Services Plan (VSP);
- (2) Compatibility determination, which must include analysis of the availability of resources with which to administer the use;
- (3) NEPA documentation (categorical exclusion, environmental assessment, or environmental impact statement);
- (4) Appropriate decision document (e.g., finding of no significant impact or record of decision);
- (5) Endangered Species Act section 7 evaluation;
- (6) Copies of letters requesting State and, where appropriate, tribal involvement and the results of the request;

- (7) Draft news release;
- (8) Outreach plan; and
- (9) Draft refuge-specific regulations.

As discussed in 605 FW1.13D., the Visitor Services Plan (VSP) is usually a step-down management plan of the refuge's Comprehensive Conservation Plan and is the overarching document for providing visitor services in the Refuge System. This plan is an integrated analysis of all applicable aspects of visitor service programs on a refuge. Generally, a refuge is opened to wildlife-dependent recreation by submitting a VSP covering all proposed uses and any other appropriate documents to the Regional/CNO office. The Regional Director/CNO Manager reviews and approves the plan, and the Regional/CNO coordinator forwards a copy of these documents to the Refuge System Headquarters Office (Headquarters). In order to comply with 50 CFR 32.1 and 32.4, the opening of hunting or fishing on a refuge requires the extra step of highlighting the hunting and fishing chapters and sending the VSP to the Refuges *Federal Register* liaison in Headquarters.

It is acceptable to only have the chapters pertaining to hunting and fishing completed when submitting the VSP to the Refuges *Federal Register* liaison (605 FW 2.9 and 605 FW 3.8). In such instances, the refuge manager will continue developing the other portions of the VSP as the hunting and fishing regulations are being prepared for publication in the *Federal Register*.

The hunting chapter of the Visitor Services Plan is an important document in that it provides overall documentation of permitted hunting on a refuge, including the relationship of hunting to other refuge objectives. Until further notice, Appendix 1 should be followed for both the format and content of this chapter. In essence, this chapter must describe in considerable detail the refuge's proposed hunting activity.

Previous Submissions. For those hunting packages that were previously submitted, no modifications are needed for the hunting plans. If, however, any major change is being proposed concerning these hunts, one or more of the components of the hunting package should be modified consistent with 605 FW1. A major change is defined for this purpose as a new hunting activity, adding a new species to the program, or opening a new area to hunting.

Section 2. General Guidance - Environmental Assessments

The Environmental Assessment (EA) serves as the basis for determining whether implementation of the proposed action would constitute a major Federal action significantly affecting the quality of the human environment. The components of a typical EA consist of the following:

- I. Purpose and Need for Action

- II. Proposed Action and the Alternatives
- III. Affected Environment
- IV. Environmental Consequences (including cumulative impacts analysis)
- V. Consultation and Coordination with Others
- VI. Regulatory Compliance

To the degree necessary, this EA must address the proposed refuge hunting activities and their effects upon the species being hunting and the surrounding environment. More specifically, EAs should be used to describe proposed hunting in sufficient detail to provide the decision-maker with a good understanding of the past, present, and future impacts to the environment and other recreational activities in order to make an informed decision. If this proposed action is found to significantly affect the quality of the human environment, an EIS is required. If a negative finding is made, a Finding of No Significant Impact (FONSI) is prepared and signed. Either finding will be based on the information presented in the text of the EA.

Use of EAs Prepared for Comprehensive Conservation Plans (CCP). In most cases, an EA previously prepared for a CCP or an earlier completed refuge master plan is not sufficiently detailed to address NEPA requirements for proposed refuge hunting activities. In light of this, new EAs need to be prepared for the hunting packages where EAs of this type were submitted.

Public Input and Comments. Upon the revision of an existing EA or the preparation of a new EA, the public must be notified and provided adequate opportunity for comment. This may consist of public meetings, notice in newspapers, or other venues. The administrative record for the EA should document the public notice, opportunity for public comment, and coordination with States and others.

Section 3. General Guidance - Cumulative Impacts Analysis

The cumulative impacts analysis is a necessary component of an EA. In particular, Council on Environmental Quality (CEQ) regulations require federal agencies to consider the direct, indirect, and cumulative impacts associated with implementing a proposed action. Additional background information for addressing cumulative impacts of a proposed Federal action can be obtained from: www.nepa.gov.

Courts have identified five elements that constitute a meaningful cumulative impacts analysis and must be included in EAs for each refuge hunting plan. In completing an EA for a refuge hunting plan, its cumulative impacts analysis must generally address:

1. the area in which the effects of the proposed project will be felt;
2. the impacts that are expected in that area from the proposed project;
3. other actions – past, present, and proposed, and reasonably foreseeable – that have had or are expected to have impacts in the same area;
4. the impacts or expected impacts from these other actions; and
5. the overall impact that can be expected if the individual impacts are allowed

to accumulate.

Section 4. Recommended Approach – Cumulative Impacts Analysis

To address both the CEQ guidelines and the elements of a cumulative impacts analysis as identified by the Court, *Section IV. Environmental Consequences* of the EA should be organized into five subsections. These subsections and the contents thereof are as follows:

A. Anticipated Direct and Indirect Impacts of Proposed Hunt on Wildlife Species.

Under this subsection, both the anticipated direct and indirect impacts that the proposed hunt will have upon wildlife populations and other natural resources needs to be reviewed and considered. This analysis must consider the impacts of that action upon the species being hunted within a local, regional, or if appropriate, flyway context. For the purpose of this document, “regional” is defined as a multi-county area surrounding the refuge. Additional guidance is as follows:

Resident Wildlife – Does the proposed hunt include the harvesting of resident wildlife? If so, this analysis should explain how the proposed hunt impacts local and regional populations of these species. Quantify the anticipated take for each species and cite any State or regional population surveys and analysis that serve as a justification for hunting of these species. Will the proposed hunt have any positive impacts upon the species or its habitat? For example, will the harvest of deer in a particular area improve the quality of its habitat or reduce car-deer collisions?

Will the proposed hunt indirectly impact non-hunted resident wildlife? If so, analyze the significance of these impacts.

Migratory Species – Does the proposed hunt include the harvesting of migratory species? If so, the analysis should explain how the proposed hunt directly impacts local and regional populations. Quantify the anticipated take for each species and compare the expected harvests for each species with the flyway population level. Use and cite the Migratory Bird Frameworks (Appendix 2) and State regulations to use as points of reference for analysis of impacts and severity of impacts.

Will the proposed hunt indirectly impact non-hunted migratory species? If so, identify which species will be affected, how they will be affected, and the significance of these impacts.

Endangered Species - Will the proposed hunt either directly or indirectly impact endangered species? If so, this analysis should explain how this proposed action impacts endangered species either locally, regionally, or nationally. Use and cite the Section 7 consultations, endangered species recovery plans, or any other source of local, regional, or national data to help assess the impacts of the

proposed hunt upon these species.

B. Anticipated Direct and Indirect Impacts of Proposed Action on Refuge Programs, Facilities, and Cultural Resources.

This subsection should summarize the anticipated direct and indirect impact of the proposed hunt on other wildlife-dependent recreational programs, on facilities such as roads and trails, and on cultural resources. Additional guidance is as follows:

Other Refuge Wildlife-Dependent Recreation. Does the proposed hunt conflict with other refuge wildlife-dependent recreational programs such as wildlife observation, wildlife photography, wildlife interpretation, environmental education, or fishing? If so, this analysis should quantify these impacts and describe their extent.

Refuge Facilities – Will the proposed hunt have any impacts upon refuge roads and trails? If so, this analysis should quantify this impact.

Cultural Resources – Does the proposed hunt have the potential to impact any known cultural resources that exist on or adjacent to refuge lands? If so, these impacts need to be analyzed.

C. Anticipated Impacts of Proposed Hunt on Refuge Environment and Community.

This analysis must consider the anticipated impacts to the refuge's natural environment which includes its soils, vegetation, air quality, water quality, and solitude. Likewise, this analysis must consider the potential impacts of the proposed hunt on adjacent lands and its associated natural resources. Will the proposed hunt have any impacts upon general public, nearby residents, and refuge visitors? Will the proposed hunt have any impact upon the area's economy either positively or negatively? If impacts are anticipated, they need to be identified and assessed.

D. Other Past, Present, Proposed, and Reasonably Foreseeable Hunts and Anticipated Impacts

The cumulative impacts analysis must identify past, present, proposed, and reasonably foreseeable actions that may have an impact on the species being hunted, other refuge resources, and other wildlife-dependent refuge activities. The timeframe selected for considering these past, present, and future actions should be logical and justifiable. For example, the analysis may consider starting from the date that the refuge was established or from the date that the hunting was first permitted on that refuge. An appropriate end-point could be based on the number of years covered by the proposed hunting plan.

E. Anticipated Impacts if Individual Hunts are Allowed to Accumulate

For Items A- D above, the cumulative impacts analysis must consider both the spatial and temporal aspects of a proposed hunt. For example, this subsection must address how these individual past actions and reasonably foreseeable future actions may cumulatively impact the species being hunted or non-hunted species. Likewise, this analysis may also need to consider how these individual past and future actions may cumulatively impact refuge programs and the refuge environment.

Appendix 3 entitled ***Cumulative Impacts Geographic Matrix*** is provided to assist in framing the cumulative impacts discussion within Section IV A-E of each EA. This list contains the most common refuge resources and/or public use programs that should be considered in completing a cumulative impacts analysis. Although somewhat lengthy, additional items may need to be included in the cumulative impacts analysis.

The appendix also provides a geographic context in which each of items should be reviewed. For example, a proposal to hunt upland game must take into account the home range, geographic mobility, and current distribution of the species to be hunted. Likewise, such an analysis would also need to consider the impacts of a proposed hunt on refuge resources such as refuge vegetation and habitats for other species. A proposal to hunt waterfowl would need to be reviewed in the context of assessing the impacts of that hunt on local, regional, and flyway populations.

Section 5. Responsibilities - Field Stations

Refuge field stations assume the primary responsibility for enhancing the quality of NEPA compliance and in completing appropriate cumulative impacts analysis. These specific responsibilities are as follows:

- Initially prepares the hunting package and all its components.
- As part of the above, completes a good quality EA which includes a cumulative impacts analysis.
- For the 74 hunts subject to the FFA Lawsuit, the refuge field station either amends or completely rewrites the existing EAs to include a cumulative impacts analysis.
- In completing the cumulative impacts analysis, makes contact with key individuals such as state biologists, Regional biologists, endangered species biologists, and flyway biologists to assess the impact of the proposed hunt on wildlife species from a local, regional, or flyway context.
- Where appropriate, incorporates population data and related biological information into the cumulative impacts analysis.
- Finalizes hunting package and/or amended EAs and submits to Regional Office for review and concurrence.

Section 6. Responsibilities - Regional Offices

Each Regional Office assumes review, oversight, and quality control responsibilities

associated with hunting packages or amended EAs. These specific responsibilities are as follows:

- Upon receipt of hunting packages and/or amended EAs, reviews packages to ensure their completeness and to ensure the appropriate level of NEPA compliance is achieved.
- Reviews the proposed hunting package from a multi-state or flyway perspective. Identifies apparent gaps in wider-scale analyses and if needed, amends each field station's EA to discuss the cumulative impacts of the proposed hunt from this larger geographical context.
- Once NEPA compliance has been adequately addressed submits the hunting package to Refuge Headquarters.

Section 7. Responsibilities – Refuge Headquarters

The primary responsibility of the Refuge Headquarters is to review hunting packages for completeness, draft regulation language specific to the refuges being proposed for opening, and include this language in the proposed and final rule for publication in the Federal Register.

In addition, Refuge Headquarters will review all the proposed hunting packages from a nationwide perspective. From this broad review, Refuge Headquarters will assess and document the potential impacts of these proposed hunts. Any proposed hunts or combination thereof that may have significant impacts upon the quality of the human environment will be further investigated. This nationwide assessment will be incorporated or appended to the NEPA document (EA or EIS) for each refuge field station's hunting package.

Appendix 1

Hunting Chapter Format Excerpted from 8 RM5

I. Introduction

Include a general description of the refuge and information pertinent to the planned hunting program.

II. Conformance with Statutory Authorities

Explain how the hunting program will be compatible with the purposes for which the refuge was established. Include a funding statement of the estimated initial and annual costs of the planned program in relation to the overall refuge budget. An estimate of annual hunter visits must also be included in the funding statement.

III. Statement of Objectives

Identify and list the major refuge objectives and hunting program objectives. Describe the effect of hunting on the refuge objectives.

IV. Assessment

Assess the hunting resource on the refuge. Factors that should be considered and discussed in this section include the following:

- A. Are wildlife populations present in numbers sufficient to sustain optimum population levels for priority refuge objectives other than hunting?
- B. Is there competition for habitat between target species and other wildlife?
- C. Are there unacceptable levels of predation by target species on other wildlife forms?

V. Description of Hunting Program

Describe the hunting program and include maps of the hunting areas. The description or maps should include the following:

- A. Areas of the refuge that support populations of the target species;
- B. Areas to be opened to the public;
- C. Species to be taken, hunting periods;
- D. Justification for permit, if one is required;
- E. Procedures for consultation and coordination with State (If refuge regulations regarding species to be taken and permitted methods of taking are

to be more restrictive or more liberal than State regulations, a justification must be provided.);

- F. Methods of control and enforcement (identify check stations); and
- G. Funding and staffing requirements for the hunt.

VI. Measures Taken to Avoid Conflicts With Other Management Objectives

- A. Biological Conflicts. Include section 7 consultations, and other measures proposed to mitigate or eliminate conflicts with endangered species or other species.
- B. Public Use Conflicts. Include measures proposed to mitigate or eliminate conflicts between various public uses.
- C. Administrative Conflicts. Cite measures proposed to mitigate or eliminate any administrative conflicts.

VII. Conduct of the Hunt

- A. Refuge-specific hunting regulations.
- B. Anticipated public reaction to the hunt.
- C. Hunter application and registration procedures (if applicable).
- D. Description of hunter selection process.
- E. Media selection for announcing and publicizing the hunt.
- F. Description of hunter orientation, including pre-hunt scouting (if applicable).
- G. Hunter requirements.
 - (1) Age (if restrictions are imposed by State).
 - (2) Allowable equipment - dogs, vehicles, blinds, sporting arms, ammunition.
 - (3) Use of open fires (for cooking, warmth, etc.).
 - (4) License and permits.
 - (5) Reporting harvest.
 - (6) Hunter training and safety (if required by the State).

Migratory Bird Hunting Frameworks

The Migratory Bird Hunting Frameworks are used by Refuges to develop hunting programs based upon annual biological assessments of migratory bird populations. In preparing a cumulative impacts analysis for migratory species, refuge managers must consult with State, regional, and flyway biologists. These consultations must be documented in the EA. As part of these discussions, the opening of refuges to hunting within a flyway must consider the extent and duration of hunting activities on other public and private lands, including refuges. The Migratory Bird Hunting Frameworks should be explicitly mentioned and used as partial justification for bag limits and season length. A comparison of the expected harvest on the refuge should be compared with the overall flyway population as a component of this analysis.

The text that follows may be used in your environmental assessment to document the refuge's use of the frameworks in setting appropriate bag limits and season lengths:

NEPA considerations by the Service for hunted migratory game bird species are addressed by the programmatic document, "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88-14)," filed with the Environmental Protection Agency on June 9, 1988. We published Notice of Availability in the Federal Register on June 16, 1988 (53 FR 22582), and our Record of Decision on August 18, 1988 (53 FR 31341). Annual NEPA considerations for waterfowl hunting frameworks are covered under a separate Environmental Assessment, "Duck Hunting Regulations for 200X-XX7," and an August XX, 200X, Finding of No Significant Impact. Further, in a notice published in the September 8, 2005, Federal Register (70 FR 53776), the Service announced its intent to develop a new Supplemental Environmental Impact Statement for the migratory bird hunting program. Public scoping meetings were held in the spring of 2006, as announced in a March 9, 2006, Federal Register notice (71 FR 12216).

Because the Migratory Bird Treaty Act stipulates that all hunting seasons for migratory game birds are closed unless specifically opened by the Secretary of the Interior, the Service annually promulgates regulations (50 CFR Part 20) establishing the Migratory Bird Hunting Frameworks from which States may select season dates, bag limits, shooting hours, and other options for the each migratory bird hunting season. The frameworks are essentially permissive in that hunting of migratory birds would not be permitted without them. Thus, in effect, Federal annual regulations both allow and limit the hunting of migratory birds.

The Migratory Bird Hunting Frameworks provide season dates, bag limits, and other options for the States to follow based upon Service-prepared annual biological assessments detailing the status of migratory game bird populations. The annual assessments are based upon the distribution, abundance, and flight lines of migratory birds. Thus, the level of hunting opportunity afforded each State increases or decreases each year in accordance with the annual status of migratory game bird populations.

Each National Wildlife Refuge considers the cumulative impacts to hunted migratory species through the Migratory Bird Frameworks published annually in the Service's regulations on Migratory Bird Hunting. Season dates and bag limits for National Wildlife Refuges open to

hunting are never longer or larger than the State regulations. In fact, based upon the findings of an environmental assessment developed when a refuge opens a new hunting activity, season dates and bag limits may be more restrictive than the State allows.

Appendix 3

Cumulative Impacts Geographic Matrix

	Local ¹ Analysis	Regional ² Analysis	Flyway ³ Analysis	Comments
Resource/Activity				
Hunting of migratory species				
Migratory	X	X	X	
Hunting of Resident wildlife				
Small home range	X			i.e. squirrels, rabbits
Large home range	X	X		i.e. big game
Endangered species				
Small home range	X			
Large home range	X	X		
Migratory	X	X	X	
*Non-hunted wildlife				(except endangered species)
Small home range	X			
Large home range	X	X		
Migratory	X	X	X	
Refuge Environment				
Vegetation and soils	X			
Facilities, roads and trails	X			
Wildlife Recreation				
Wildlife observation	X	X		
Wildlife photography	X	X		
Interpretation	X	X		
Environmental Education	X	X		

*Identify only non-target species likely to be impacted by the proposed action.

Collect only meaningful data, e.g. data that addresses meaningful impacts (not the entire universe of possible impacts) and data that discusses why certain identified impacts are not relevant. Ensure that data collected for each category listed below covers the full range of data required for analyzing cumulative impacts, e.g. data on past and present impacts, impacts associated with the proposed action, and reasonably foreseeable future impacts,

1 – Local Analysis. Sources of data for determining the impacts of hunting activities on local fish and wildlife populations and the refuge environment may include refuge-specific wildlife surveys and studies, personal observation, station reports, plus information collected by State agencies and others within the local geographic area. In addition, data contained in endangered species recovery plans would be useful for this analysis. Data for determining impacts of hunting on public use activities may include local and regional surveys and studies of wildlife dependent recreational programs.

2 – Regional Analysis. Sources of data for determining the impacts of hunting activities on regional populations may include State agency surveys and studies plus information obtained by other organizations including universities and non-profit conservation organizations. Likewise, endangered species recovery plans would also be a good source of information for regional analyses concerning endangered species. In some cases, waterfowl surveys and surveys of other species collected as part of the Fish and Wildlife Service's Migratory Bird Conservation Program may be useful.

3- Flyway Analysis. Sources of data for determining impacts of refuge hunting program on flyway populations of species would include State agency and university wildlife surveys plus data collected as part of the Service's Migratory Bird Conservation Program. Migratory bird data from plans such as

Partners in Flight would also be used as part of this analysis. Any information addressing continental populations of endangered species would be part of this analysis.