

[From Spring 1994]

"Compatibility" Determinations on National Wildlife Refuges

Due to a recent out-of-court settlement of a lawsuit against the U. S. Fish and Wildlife Service, all national wildlife refuges (NWRs), including the Chincoteague and Eastern Shore of Virginia refuges, are in the process of conducting a compatibility exercise. This is leading to some confusion, since "compatibility" is not a term which most people associate with refuges. However, this term has been around for a long time. As used in relation to a refuge's natural resources, the term first appeared around 1918 in the Migratory Bird Treaty Act. It has had legal meaning for all NWRs since the passage of the Refuge Recreation Act of 1962. This act allows recreational uses of national wildlife refuges as long as such uses are compatible with, and do not in any way prevent the accomplishment of, the primary purposes for which the refuge was acquired or established. The National Wildlife Refuge Administration Act also states that allowed activities must not be inconsistent with the primary purpose for which the refuge was established.

Refuge managers have been making compatibility determinations since 1962. A compatible use is an allowed use that will not materially interfere with or detract from the purposes for which the individual refuge was established.

The process of compatibility determinations benefits both wildlife and the public. By assuring uses on refuges are compatible with the purposes of the refuge, wildlife and habitats on refuges will be assured of protection. The public will be benefitted since these areas will be functioning as productive wildlife areas for many generations to come.

So you might ask, why is compatibility such an issue at this time? Although the two Acts were heralded as being the saviors of the refuges, little specific direction existed as to how the determinations should be made, when they should be made, and what the critical elements are to such determinations. This lack of direction led to a lack of uniformity in making compatibility determinations, which led to certain incompatible uses being allowed on some refuges. A 1990 report, *Secondary Uses Occurring on National Wildlife Refuges*, which was generated in response to a 1989 Government Accounting Office report, identified certain activities occurring on NWRs to be incompatible. No uses were identified on Chincoteague or Eastern Shore of Virginia Refuges as being incompatible.

The current focus on compatibility is the result of a 1992 lawsuit which a group of national conservation organizations brought against the U. S. Fish and Wildlife Service. This lawsuit was settled out of court in October 1993. Nine refuges were identified in the suit; Chincoteague and Eastern Shore Refuges were not listed. However, the lawsuit and the settlement definitely pertain to all refuges. Within one year of the settlement, all refuges must make written compatibility determinations, in compliance with appropriate National Environmental Policy Act (NEPA) requirements, for all secondary uses. NWRs must also make written determinations on whether funds are available for the development, operation and maintenance of all recreational activities occurring on the refuge. All proposed future

uses and re-authorizations of existing uses would also need to undergo written compatibility determinations.

You might also ask, how will this affect the Chincoteague and Eastern Shore of Virginia NWRs? Like all national wildlife refuges, the staffs of these two refuges, over the next six to eight months, will be reviewing all secondary uses and preparing written compatibility determinations on those uses. Unlike most refuges, Chincoteague Refuge has a recently completed Master Plan, which will make doing compatibility determinations in compliance with the appropriate NEPA requirements easier than for those refuges without such a plan. The Chincoteague Refuge Master Plan addresses most secondary uses. This plan was also preceded by a Final Environmental Impact Statement for the Master Plan (FEIS) and complied with the NEPA requirements, including the area of public involvement. Although the compatibility exercise is just beginning, neither I nor Eastern Shore Manager, Sherm Stairs, foresee any major changes in the activities currently occurring on the refuges.

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