

NATIONAL WILDLIFE REFUGES

HEARINGS

BEFORE THE

SUBCOMMITTEE ON FISHERIES, WILDLIFE AND OCEANS

OF THE

COMMITTEE ON RESOURCES HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTH CONGRESS

FIRST SESSION

ON

THE EXPANSION OF AND PUBLIC ACCESS TO THE EDWIN
B. FORSYTHE NATIONAL WILDLIFE REFUGE

H.R. 1112—A BILL TO TRANSFER MANAGEMENT OF THE
TISHOMINGO NATIONAL WILDLIFE REFUGE IN OKLA-
HOMA TO THE STATE OF OKLAHOMA

H.R. 1675—A BILL TO AMEND THE NATIONAL WILDLIFE
REFUGE SYSTEM ADMINISTRATION ACT OF 1966 TO IM-
PROVE THE MANAGEMENT OF THE NATIONAL WILD-
LIFE REFUGE SYSTEM, AND FOR OTHER PURPOSES

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THE EDWIN B. FORSYTHE NATIONAL WILDLIFE REFUGE

SATURDAY, APRIL 22, 1995

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON FISHERIES, WILDLIFE, AND OCEANS,
COMMITTEE ON RESOURCES,
Barnegat, NJ.

The subcommittee met, pursuant to call, at 10:00 a.m., at the Barnegat Municipal Court Building, 900 West Bay Avenue, Municipal Courtroom, Barnegat, New Jersey, Hon. Jim Saxton (chairman of the subcommittee) presiding.

Mr. SAXTON. Good morning. I would like to welcome everyone here, except that I am not really the person who should be doing the welcoming. The mayor is here with us, Vic DiGangi, and I would like to ask the mayor if he would like to start the meeting this morning for us with a few words of welcome or whatever he would like to say.

Mr. DiGANGI. I would just like to welcome everyone to our lovely city of Barnegat. It gives me a great deal of pleasure and honor to introduce to you a congressman, the Honorable Jim Saxton, and his Subcommittee on Fisheries, Wildlife and Oceans.

So, without further ado, I will turn it over to you, Congressman.

Mr. SAXTON. Well, mayor, thank you very much. It is a pleasure to be in your beautiful town once again. I guess it has been a number of years since I have been in this building and in this room.

I probably should not admit that, but it is always a pleasure to come here and to have taken part in a variety of programs over the years.

Before we start, I just saw Mr. deCamp come into the room—

Ms. MILLER. And then he walked back out.

Mr. SAXTON.—and then he went back out. OK. He will be back in a minute. And when he does, if somebody would just direct him to his seat, that would be wonderful.

Let me first thank everyone for being here this morning. I would like to introduce the people on my left and on my right.

Sharon McKenna is a staffer with me in Washington on the Fisheries, Wildlife and Ocean Subcommittee. She works directly with me. Sharon worked with me on my personal staff in Washington for four years. And, incidentally, her home town is Barnegat, New Jersey. So, she is right here where she should be.

And John Rayfield is also chief counsel to the subcommittee. Is that your title?

Mr. RAYFIELD. Counsel.

Mr. SAXTON. Whatever. Counsel to the subcommittee, a real expert on issues that have to do with fish and wildlife and oceans. And we are very fortunate to have him on the subcommittee staff. And I am very pleased that he is here with me this morning to help me.

STATEMENT OF HON. JIM SAXTON, A U.S. REPRESENTATIVE FROM NEW JERSEY, AND CHAIRMAN, SUBCOMMITTEE ON FISHERIES, WILDLIFE, AND OCEANS

Mr. SAXTON. I have a short statement that I would like to make to try to frame the issue that we are here to discuss this morning. The Subcommittee on Fisheries, Wildlife and Oceans is a new committee. We are an offshoot of the Merchant Marine Committee and the Fish and Wildlife Subcommittee that was there.

The subcommittee is meeting today to hear testimony regarding the expansion of and public access to the Edwin B. Forsythe National Wildlife Refuge. The subcommittee chose to meet in Barnegat because in 1984 the Barnegat and Brigantine National Wildlife Refuges were formally designated as the Edwin B. Forsythe National Wildlife Refuge in memory of the late congressman and my predecessor.

The Forsythe Refuge has expanded greatly since this consolidation, acquiring refuge lands encompassing more than 40,000 acres of predominantly estuarine marsh habitat that grades into brackish and freshwater wetlands.

The barrier islands ecosystem and upland forest and fields have increased the biodiversity of the refuge to a great extent.

Our witnesses today will speak of the importance of open space in this densely populated area and of the recreational opportunities and ecological benefits of open space.

Indeed, our witnesses are largely supportive of the U.S. Fish and Wildlife Service's aggressive land acquisition strategy in Ocean County. In fact, many of them have worked together to make this refuge expansion a reality.

But there are concerns about the issue of public access to recently acquired parcels of the refuge. And I believe it is safe to say that those concerns come from many individuals and from many directions. I would just like to take a couple of minutes to frame those issues for us this morning.

The National Wildlife Refuge Administration Act authorizes the Secretary to allow activities on refuges as long as those activities are compatible with the major purposes for which the refuge was established. Obviously, everyone knows what the major purposes are and that is to preserve open space and to provide a home and a place for critters of various species to propagate.

We set forth the laws and executive orders establishing individual refuges. Those purposes range from very narrow (for example, preserving and managing the habitat for a single species) to relatively broad issues (such as, conserving waterfowl).

Currently, the law does not include a list of purposes for the Refuge System as a whole. At this time, hunting takes place on 272 refuges and fishing on 254, including the opening of four refuges to hunting and one to fishing in 1994 alone.

There are also secondary uses. Refuge managers are responsible for determining, on a case-by-case basis, whether activities on refuges are compatible with the primary uses or the primary objectives.

Accordingly, according to the U.S. Fish and Wildlife Service Refuge Manual, an activity on a refuge "... may be determined to be compatible if it will not materially interfere with or detract from the purposes[s] for which the refuge was established."

Management of a refuge has been the focus of several studies in the last two decades, including two General Accounting Office reports, two reports of the advisory boards of the Interior Department and a report prepared by the U.S. Fish and Wildlife Service. These reports highlighted the fact that refuges are not managed as a national system because of the lack of centralized guidance to the U.S. Fish and Wildlife Service and because of individual characteristics of individual refuges and need for them.

In 1992, several environmental groups (including the Defenders of Wildlife, the National Audubon Society and the Wilderness Society) sued former Interior Secretary Manuel Lujan for authorizing and otherwise allowing secondary uses on refuges without ensuring that these uses were compatible with those refuges.

In October, 1993, a settlement was reached with the *National Audubon Society v. Babbitt*, in which the U.S. Fish and Wildlife Service agreed to expeditiously terminate many secondary uses within one year, unless the agency determined in writing that the use is compatible or was compatible with the primary purposes of the refuge on which it occurs.

In addition, the settlement agreement requires the U.S. Fish and Wildlife Service to determine within one year whether funds are available for development and maintenance of recreational activities that are underway under their authority and that are not directly related to the primary purpose of the refuge.

Upon completion of the one-year study, the U.S. Fish and Wildlife Service announced that it had found that there were about nine cases altogether of activities being incompatible with the fundamental purpose of the National Wildlife Refuge System.

In no instance was it determined that hunting or fishing was not compatible. In fact, the biggest problem facing the Refuge System was not wildlife-dependent activities, but other human activities such as motorized devices and even foot traffic and jogging.

And, so, we note these concerns. We also note that the wildlife expansion process is well underway and healthy in New Jersey because it enjoys broad citizen support. One of the things that is absolutely necessary for us to do is to continue to have that broad support.

Just last week, we added some 350 acres near here to the Wildlife Refuge; cut the ribbon on it, with broad public support. We want to continue that support.

And, so, one of the issues that we will look at closely today is the process under which and through which we determine what uses are compatible and, perhaps, which are not.

So, without further comment, I will introduce our first panel today—people who have been involved in this issue for years and people with whom I have worked on many projects of like nature.

And, so, let me begin by introducing Mr. George Howard who goes back a long way with this issue and others like it. He is currently the executive director of the New Jersey State Federation of Sportsmen.

And then we will hear from Mr. Willie deCamp who was and has been and will be most instrumental in the acquisition process with regard to the Forsythe. He is president of the Ocean County Izaak Walton League.

And we will turn, then, to Ms. Joan Koons, the president of the Alliance for a Living Ocean, an extremely active group of environmentalist that have worked since 1987, I believe, with regard to issues that have to do with the coastal area.

And then to Mr. Tom Gormley, one of my long-time friends and a very active guy in the southern part of Ocean County. He is president and co-founder of a new—well, I guess it is not new anymore, but it is still emerging—Barnegat Bay Decoy and Baymen's Museum organization.

And, then, a good friend, Alan Front who is vice president of The Trust for Public Land, also who has been extremely instrumental in the expansion of the preserve of the refuge.

Let me just remind you that there is a little series of lights there in front of you. The red light will come on at the end of five minutes. That is just as a reminder, kind of a timer, to let you know where you are.

We are not going to stop you at five minutes because we know that you have important testimony to be presented and we want to get the full benefit of it, but that will let you know that five minutes has gone by and that if you could conclude at some reasonable period after that, it would be great.

So, Mr. Howard, welcome this morning and welcome to all of you. You may proceed.

STATEMENT OF GEORGE HOWARD, EXECUTIVE DIRECTOR, NEW JERSEY STATE FEDERATION OF SPORTSMEN'S CLUBS

Mr. HOWARD. Thank you, Congressman.

First of all, on behalf of the State Federation of Sportsmen, I would like to thank the Congressman and also the committee for bringing this hearing to Barnegat, especially since it is related to an issue that is of tremendous importance to all of us.

The 150,000 member New Jersey State Federation of Sportsmen's Clubs appreciates the opportunity to address the subcommittee today relative to the Edwin B. Forsythe National Wildlife Refuge and the future acquisition strategy for the southern expansion area.

We are particularly interested in addressing public access to Forsythe and other New Jersey refuges for compatible wildlife-related activities such as fishing, hunting, birding, trapping, crabbing, clamming, et cetera.

Over the years, sportsmen in New Jersey have experienced a deep frustration relative to the Service's recreational use policies on national wildlife refuges in our state.

Instead of encouraging compatible wildlife-oriented recreation, many refuge managers in New Jersey and the northeast region

seem to have an "inviolable sanctuary" mentality when it comes to the public's use of "their" refuge.

For example, in New Jersey no refuge permits small game hunting. Except for Lily Lake in Forsythe, no refuge in New Jersey permits freshwater fishing. Fall bow hunting is prohibited on all national wildlife refuge lands in New Jersey. Birding is prohibited on most refuge lands here.

It is of interest to compare public access policies on State Fish and Game Division operated wildlife management areas which sit side-by-side with many national wildlife refuges in New Jersey.

On the state wildlife areas, compatible wildlife-related recreation uses are encouraged and permitted from the day the areas are acquired, unless a problem is identified.

On the adjoining national wildlife refuge lands, no wildlife-related uses are permitted until the use in question can be documented to be compatible in a process that takes years, if not decades, to accomplish. This negative approach to compatible public use certainly does not represent encouragement.

In 1971, the Service began acquiring Supawna National Wildlife Refuge in Salem County, New Jersey. At about the same time, the nearby Mad Horse Creek State Wildlife Management Area was being acquired.

Some 20-plus years later, Supawna is just opening its first waterfowl season on a mere 4.5 percent of the refuge. Birders and small game hunters are still considered non-entities.

In the same time period on the nearby Mad Horse Wildlife Management Area, literally tens of thousands of people days of waterfowl hunting, birding and small game hunting have been enjoyed by the New Jersey public over most of the tract.

In light of this, sportsmen have concerns as to why these two agencies are managing similar lands so differently.

To have the national wildlife refuge lands closed to public use for years and even decades because no one has bothered or has the wherewithal to complete the necessary management plans opens the Service to charges of being unsympathetic to the needs of today's recreational users and erodes support for the entire National Wildlife Refuge System.

Because of its negative approach to wildlife-related recreational users, the Service is losing the support of its formerly most ardent advocates.

In conclusion, I would like to state that New Jersey sportsmen see the National Wildlife Refuge System as a potentially tremendous asset to the wildlife resources of our state, as well as to the future recreational users of these resources, if they are properly managed.

We have been encouraged by the recent changes that we see in recreational use policies being developed for some national wildlife refuge areas.

In particular, we applaud the efforts of Service personnel at the Cape May National Wildlife Refuge which has resulted in a public access policy for deer hunting which accommodates compatible recreational activities at Cape May.

We trust that the Cape May deer-hunting policy will prove to be a model for public access plans for other New Jersey wildlife ref-

uges, rather than the "exception to the rule" which it now represents.

The National Wildlife Refuge System is far too important to the future of our wildlife, as well as to the quality of life of our citizens, to be the recipient of anything less than our best effort relative to the planning for its future.

A big part of its future in New Jersey should be to encourage and to maximize where possible compatible—and I emphasize "compatible"—wildlife-related recreational activities for New Jersey citizens on National Wildlife Refuge System lands.

With proper planning and management, the New Jersey National Wildlife Refuge System of the future should prove to be at least as important to our citizens as it is to our wildlife. Thank you.

[The statement of Mr. Howard may be found at end of hearing.]

Mr. SAXTON. We want to thank you very much, Mr. Howard.

Mr. deCamp?

STATEMENT OF WILLIAM DECAMP, JR., PRESIDENT, OCEAN COUNTY IZAAK WALTON LEAGUE

Mr. DECAMP. Good morning and thank you, Congressman Saxton for calling this hearing. You have been a great friend to the Forsythe Refuge.

And I understand that one of the purposes of this hearing is to explore problems or reservations that people may have about the acquisition process. I think it is really healthy and a very good thing to air those problems, to try to talk them through.

The expansion of the refuge has tremendous popular support, as you mentioned, but the most useful thing we can do today, I think, is to talk about those legitimate concerns that some people have that the whole growth of the refuge has raised.

I have submitted written testimony—which, I assume, you have—but I would rather speak extemporaneously.

Mr. SAXTON. We will include your entire statement in the record as submitted.

Mr. DECAMP. Right. It may be slightly more fluent than what I have to say, but I hope to get my point across.

When I look at the refuge process and the acquisition process overall, I keep three key concepts in mind.

One is that I think it is appropriate to have a heavy emphasis on acquisition. And I will elaborate on that point in just a minute.

The second sort of touchstone for me is that I believe that formulas do have to be worked out so that there is greater flexibility of the question of access.

Mr. Howard has just made a plea, I think, for that type of thing. And I am sure that others will. I know that Mr. Gormley will.

And we favor that. The Izaak Walton League favors exploring ways that there can be greater access.

Mr. SAXTON. Mr. deCamp, can I ask you to pull that set of microphones toward you? I think that the bottom one is so that the public that is here can hear what you are saying.

Mr. DECAMP. OK.

Mr. SAXTON. And the top microphone is for the stenographer.

Mr. DECAMP. If you cannot hear me in the back, give a shout, please. OK?

Mr. SAXTON. Sometimes you have to get real close to those micro-phones.

Mr. DECAMP. OK. So, a second point is that we favor greater access.

And a third point is that we would like to see greater funding for the management of the refuge. I know that these are tight fiscal times and that that is a difficulty, but it really, I think, is necessary and would tend to reduce conflicts. There could be more people working for the Service to do the job.

In relation to acquisition, a central point that I think everyone should keep in mind in thinking about the refuge is how much land there is along the shoreline of Barnegat Bay that is under threat of development.

As I look at the acquisition boundary of lands that have not been acquired and go down Barnegat Bay on the west side—say, from north to south—I look at Reedy Creek and there are properties there which are definitely under threat of development.

At Tilton Point, which is the area that is south of Cattus Island County Park, there is Seward Road that goes through the woods which certainly represents a development threat.

In Bayville, in Berkeley Township inside of Good Luck Point, there is a huge 800-or-so housing development proposed in lands that are in the acquisition boundary for the Forsythe Refuge.

And one can go down the Bay and continue with that story. Along Maple Creek in Bayville also, the Finninger Farm, across from the nuclear power plant, certainly has a look of an area that is high and dry and could one day be developed.

The airport tract in Lacy is an area that could be developed if it does not come into the ownership of the Fish and Wildlife Service.

And along Oyster Creek there are other lands. And a further example is the Lighthouse Camp in Waretown.

So, what I think we need to be doing is to be aggressively pursuing acquisition opportunities as they come along and willing sellers are what we are looking for. So, we, overall—the government and the environmental community—tend to lack control over the timing with which various opportunities will arise.

I think that we need to look at what future generations might ask of us. And what they really want is—or will want, I think, in looking back—that we should have saved as much habitat as we can.

Now, I am just asking that those who have the difficulties with the access problems continue—as, I believe, they have—not to denigrate the idea of increasing the refuge, but, rather, to try to promote fairer access policies.

One subject that has come up often is what happens to land when it comes into the ownership of the refuge, but a management plan has not yet been drawn up.

And it would be useful, I think, to look at that and see if the use could be allowed to continue as it was until a management plan is drawn up, rather than cutting the land off from public use and waiting for a management plan; leaving everyone out of the property until a management plan comes along.

I also think that the boundary of the refuge should be a sort of a flexible thing and it should have a different meaning in different places: where there is endangered species, where there is sensitive habitat—it is very appropriate to keep people entirely out, but that is far from everywhere.

And I think that popular support is an integral part of the health of a refuge. So, I believe that there should be places where people can take a walk and not have to get a permit and can hunt and can fish and do all those things that are tradition in our area.

And as I am sitting here, I am looking at the town seal of the Township of Barnegat which has symbols of all of the things that we are speaking of.

My red light has been on for a while, so I will not continue much longer, but I feel it so important that we meet the test of saving the habitat, which is the one thing that can be done in our era and that ought to be done.

To do that, we should galvanize public support. To do that, we should accept that the land may be undermanaged for a while because we will be acquiring so much of it. And we should work for formulas to increase public access.

Thank you.

[The statement of Mr. deCamp may be found at end of hearing.]
Mr. SAXTON. All right, thank you, Mr. deCamp, for a very thoughtful and, I believe, balanced statement.

Ms. Joan Koons, president of the Alliance for a Living Ocean.

STATEMENT OF JOAN KOONS, VICE PRESIDENT, ALLIANCE FOR A LIVING OCEAN

Ms. KOONS. Congressman Saxton, I thank you for the invitation and the many years of support of environmental issues.

I do stand to correct you. I am vice president now of the Alliance, but, at the present time, working as an administrator.

I think—

Mr. SAXTON. Excuse me.

Ms. KOONS.—Mr. DeCamp has taken part of my thunder—

Mr. SAXTON. Joan, excuse me. We are going to have to get so that the public can hear you, too. You need to pull that real close—closer than it probably feels comfortable.

Ms. KOONS. I am going to read my testimony and embroider on it as I go along.

"We stood in the hushed stillness of the woods. Water trickled softly over a beaver dam and sunlight flickered gently through the intricate pattern of branches overhead. We stood at a site once destined to become another housing development."

This direct quotation was written by an ALO member who attended the dedication of the Waterford Property on April 13, 1995. It is an indication of where the Alliance stands in relationship to the Forsythe Refuges.

Many of our over 1,000 members have homes in a shore community. We recognize the desire to live here. However, common sense tells us that we must leave room for natural habitats and coastal wetlands.

For the last few years, the Alliance for a Living Ocean has had the honor of being a facilitator for the Edwin B. Forsythe National Wildlife Refuge, Bonnet Island Unit.

We have taken schools and organizations such as Ocean Nature into the site using designated pathways. We point out indigenous flora, fauna and birds that either nest or stop over as they use the major flyway on the east coast.

We proceed to the small bay beach where waters lap from Barnegat Bay. Here we explain the importance of water quality, showing the contents of our Barnegat Bay Watch monitors' water testing buckets.

We speak repeatedly of nonpoint source pollution and the important role that citizens play in its alleviation. Most of these pollutants have come from developed areas.

As we stand in the quiet refuge, looking across the bay to Long Beach Island—now almost totally developed—we have a visceral feeling that these refuge areas must be preserved.

Their significance to maintaining clean aquifers and protecting nurseries for the inhabitants of aquatic ecosystems cannot be overstated. In order to endure the stress of modern lifestyles, however, one periodically needs to commune with nature.

Before leaving the area, we clean everywhere we have been using Adopt-A-Beach methods. ALO runs a spring clean up of the total Bonnet Island refuge as a way of thanking the U.S. Fish and Wildlife Service for respectfully giving us access.

All of this is done by volunteers. The relationship between the Alliance for a Living Ocean and the Edwin B. Forsythe National Wildlife Refuge has been broadcasted to the public during our ecotour of a Barrier Island, bringing questions and interest about the Refuge System.

At this point, I would like to stop and tell you what the Alliance believes in. The Alliance believes that each refuge system should be looked over for its size and its relationship to the endangered species.

We feel that if you find an area that is a home to these species, definitely they would need to be closed for a period of time.

However, if they is a very small area such as Bonnet Island, their value as an educational site cannot be overstated. If people use the areas respectfully—and this includes hunters and fishermen—the magic word to us is "respectfully", then, yes, they should be given access to certain areas in the system.

When citizens have a limited controlled access to wildlife lands, they begin to feel an almost spiritual tie to these very special properties.

I thank you very much.

Mr. SAXTON. Thank you very much, Joan.

I am going to have some questions for each of you in just a few minutes, but we will continue with our testimony with Mr. Gormley from the Barnegat Bay Decoy and Baymen's Museum.

STATEMENT OF TOM GORMLEY, PRESIDENT, BARNEGAT BAY DECOY AND BAYMEN'S MUSEUM

Mr. GORMLEY. Thank you, Congressman.

I think that everybody so far has spoken pretty much about the things that we believe in. And I will just make mine real short.

Mr. SAXTON. May I ask you to pull that microphone a little closer to you?

Mr. GORMLEY. I am a life-long resident of southern Ocean County and president of the Barnegat Bay Decoy and Baymen's Museum whose goal is to preserve the rich heritage and traditions of the Baymen of the Jersey shore.

Our concern is access to the properties that are being bought by the refuge. The best way to teach people today and in the future is through hands-on education. But by denying access, we are not allowed to teach future generations about these traditions and environmental education.

We are not opposed to the acquisitions, but there should be considerations given to the people who have made a living from these areas and to the many organizations that are trying to teach the future generations about the environment and how to respect and utilize these natural resources.

I know there should be some control during certain seasons and in critical areas, but there should be representatives from the communities and organizations of the areas on an advisory board to help make these decisions. Thank you.

Mr. SAXTON. Thank you very much.

And we will move now quickly to Alan Front, vice president of The Trust for Public Land, and, obviously, an active partner in this acquisition process.

STATEMENT OF ALAN FRONT, VICE PRESIDENT, THE TRUST FOR PUBLIC LAND

Mr. FRONT. Well, thank you, Mr. Chairman. And thanks more to you and other members of the subcommittee for your demonstrated personal commitment to the appropriate preservation of critical fish and wildlife habitat here in New Jersey and elsewhere across the nation.

Like my friends here at the table, I have also submitted a written statement and ask that it be included in the record today.

And beyond that, I just wanted to share a couple of brief observations that might provide some additional context as the subcommittee looks at the acquisition program at the Forsythe.

First, by way of introduction, I am here this morning representing The Trust for Public Land which, as you know, is a national non-profit land conservation organization that works with government agencies and their constituencies to assist in acquiring and protecting threatened open space lands of particular significance to natural communities and human ones.

And in this capacity—and I will be very brief and try to beat the red light—we have invested substantial energy and, at least for our non-profit organization, substantial resources over the last six or seven years in the effort to protect the Barnegat Bay ecosystem which, as you mentioned, is a fairly remarkable partnership.

Others have talked about—and, I believe, the Fish and Wildlife Service which is well qualified to do so, probably will be talking about—the specific benefits to wildlife of these refuge lands; 35 percent of the black ducks of the Atlantic Flyway depend on this area

for their survival in winter habitat; 70 percent of the brants on the Atlantic Flyway do the same. I will not go on about that, but it is an astoundingly important habitat.

As an organization that focuses on the acquisition side of the equation, I would like to speak for a few moments about the specific threats that these lands face and the response to those threats and the partnership that has helped in that response.

Driving to this hearing, I was struck—as Willie deCamp mentioned as well—by the number of new home and under construction signs that lie on the highway on the way in here. And New Jersey is America's most urbanized and increasingly urbanizing state. Development is dense. Development threats are nothing, if not increasing.

And that picture has been made somewhat of more concern by what we have recognized, which is that funding—whether it is local, state or Federal funding—has become less and less available nationally for the protection of resources that are more and more threatened.

In a buy now and save climate, it is getting harder to buy now. And that sounds fairly dire and I know that today, one of the focuses at this hearing are management questions that at least pose some challenges to the partnership that has kept this effort alive for so long, but I feel like Mark Twain who, when asked about the music of Wagner, said, "It is not as bad as it sounds".

I do not think it is as bad as it sounds. And, in fact, I would like to bring to your attention—which, Mr. Chairman, you already know—two vibrant elements that have kept this project going and that I hope will keep it going.

One of them is that there has been an astounding partnership that, together—with the support of Congress; with the support of the State of New Jersey, local jurisdictions—has protected, over the last five years, during the course of two expansions of the Forsythe Refuge, something on the order of \$25 million worth of critical habitat in this area.

It is an astounding statistic. And my organization is pleased to have had a part in some of those acquisitions which have taken place in those two expansions, as well as in the core area of the original Barnegat and Brigantine Refuges, which were combined to form the Forsythe some years ago.

The other critical element is that partnership itself. And I am at least hopeful, listening to some of the testimony of my fellow tablemates this morning, that there is a spirit of commitment to this refuge and to the protection of this open space and habitat lands which form an important thread in the fabric of the communities that host the Forsythe.

That spirit certainly suggests that the management issues of today can be appropriately resolved and we are certainly hopeful that they will be resolved in a way that allows us to deal with the opportunities to come. Those opportunities are out there.

Mr. Chairman, you testified before the Interior Appropriations Subcommittee about some opportunities, some of which are currently available to the Fish and Wildlife Service.

There are a number of others that I believe the Fish and Wildlife Service will be discussing this morning within the refuge. And

these are properties that, if not acquired in short order, will certainly be lost irretrievably.

And, so, I would like to commend you for your commitment to this program. I would commend everybody else who is sitting here for their individual local commitment to this program.

And we are very hopeful that this partnership can stay together and can keep on doing the good work that it has done. Thank you. [The statement of Mr. Front may be found at end of hearing.]

Mr. SAXTON. Thank you very much, Mr. Front.

Let me, before I ask specific questions, just note that from wall to wall on this panel, there has been expressed here this morning great support for the Forsythe Refuge, of the general concept of preserving land for wildlife habitat. And, in general, support for the program.

And I think that is very, very healthy and I thank all of you for those expressions of support.

As I indicated earlier and it has been indicated by several of you, however, there are some management questions which we, perhaps, need to address.

One is whether or not we need more dollars to go into management so that we can do a more effective job.

Another has to do with a short-term issue which specifically is what should the process be in developing the management plan and what should the situation relative to access be during that period of time.

And then the third is the issue of access or the lack of it to all of or a part of the refuge—or the various refuges around the country—on a longer-term basis.

So, let me ask this question first to whoever would like to respond to it. Under current law, properties such as the Waterford—which was just dedicated—are immediately closed to all historic uses as soon as the deed goes across the table to the U.S. Fish and Wildlife Service.

That, of course, is the technical explanation. That does not always ring exactly true because there are shortages of manpower to make that happen, but, legally and technically, that is the situation as I understand it.

On the other hand, I intended to include in the re-authorization bill a proposal and language that would say that the properties acquired would continue to be available to historic uses until a management plan is developed and adopted which determines that perhaps certain historic uses are incompatible with the primary purposes of the refuge.

I am interested to know how you each respond to how we should proceed on this issue. Let me just bring it—

I thought Joan Koons was going to do this. She almost did. She was talking about the day late last week when we cut the ribbon on the Waterford property. We stood in front of the most beautiful sights that anyone can imagine: a little beaver pond with rippling water and cedar trees and birds singing in the trees and a motorcycle roaring in back of me when I was trying to talk about this issue.

Now, I suppose, in a sense, a motorcycle has been there historically. I do not think that that is quite what we are talking about in terms of historic use.

So, I guess my question is twofold. One, what should the process be in terms of determining human use of property in the short-term during this period of time. And, two, how do we define what a historic use is.

Mr. HOWARD. I think what I referred to in my statement was compatible wildlife-related uses. I think somewhat following the pattern of how the state Fish and Game and Wildlife division, their management policy on those state areas is related to what we are talking about.

I think there has to be some way, rather than the way the procedure is now—as soon as these areas are, as you say, acquired, they are closed. And this is getting to be more and more a negative as far as support goes.

As far as the Federation of Sportsmen, we would actively support anything that was said here today relative to the need for public ownership and the support for the refuge 100 percent.

I think your legislation would go a long way. I think it should be wildlife related, rather than just historical. Now, that was my bias, I guess, but there has to be a line drawn somewhere.

Certainly, the way it is now, is causing us a great problem because, as you stated, Supawna has been 20 years and we have gotten nowhere. So, there has to be some changes in the overall system approach. And maybe throughout the system, to come up with some kind of a secondary purpose which could be compatible wildlife-related uses. That might be it.

So, that wildlife-related recreation is recognized as a use of the refuge, rather than the old intent for which it was purchased because some of these refuges have been around 100 years and the intent, which was very good at the time of purchase, is not maybe relevant right now.

Mr. SAXTON. Willie?

Mr. DECAMP. I have one or two thoughts on this question and one is I am not an expert. I do not really know the structure of the Fish and Wildlife Service and the hierarchy and how rules come down, but the subject that we are raising in relation to lands that are newly acquired would seem to me to be one where it could be different for each property what was appropriate.

And it could be a situation in which you want there to be the ability for discretion on the part of the local Fish and Wildlife Service managers.

And I am under the impression—and maybe it is a false impression because my knowledge is not in-depth—that there are situations where local managers do not have that much discretion.

They are looking at rules that come down from Washington and, for all I know, they may be the same for every refuge whether it is in Alaska (where it is a place where there are hardly any human beings) to New Jersey (where you have a highly suburban environment).

So, I will make a plea for allowing local managers to determine what is appropriate and what is not, rather than having the higher authority take a one-size-fits-all attitude.

I think it is safe to say that the Waterford site, part of the rationale for conserving it is that there is an endangered species there: swamp pink. It might be appropriate for refuge managers to want to make sure right away that nothing is happening to that. So, they might want to do something there.

On the other hand, I support the idea of people being able to walk there, a bird watcher or whatever.

So, my thought is that every site is different. How do you account for the fact that every site is different. Perhaps it is to give local managers more discretion immediately.

Mr. SAXTON. Well, to emphasize your point even further, even within a refuge, different parts of the refuge are obviously different.

We have a certain set of issues to deal with on Holgate Beach in, what I refer to, as the heart of the wildlife refuge which is down at the old place called Brigantine. I have driven on those dikes and looked at the white swans and the snow geese and the Canada geese and the other waterfowl that are there. That is a situation that is still different from the Waterford property.

And, so, there are issues to be dealt with on a broader basis.

How do you feel about what George Howard mentioned: small game hunting, deer hunting, bow hunting and those issues. How would you deal with them in terms of what is an historic use?

Mr. DECAMP. Well, I think in relation to newly-acquired property, historic is what has been happening there.

At Reedy Creek—just to take an area that I sort of know like the back of my hand—there are no deer at all. So, I assume, you know, that that place has been hunted out and is regularly hunted out.

And I do not really see a problem with that, unless—I mean, I do not think that situations exist in which hunters are blasting species into extinction that would require immediate changes.

So, I would tend to think that you would just allow the pre-existing use to continue.

Mr. SAXTON. Thank you.

Joan?

Ms. KOONS. Building on Willie's last comments and Mr. Howard's, I think that "historic" is a very poor word to use.

A historic use of Bonnet Island was as a party island. For many, many, many years it was a place for young people to party and in their wake, left massive pollution.

Mr. SAXTON. Is that wild life?

Ms. KOONS. No.

[Laughter.]

Ms. KOONS. It is wild life, but there are other places for us to have parties beside a wildlife refuge.

I feel respectful—again, I keep coming back to that word—respectful use. If a hunter goes on to the land and packs in and packs out in back of himself, to me that is a very respectful use of the land. The same with the fisherman.

I come from an area originally in Pennsylvania that had a gorgeous lake, a large lake. And only sailing and boating were allowed on the lake without motorized craft, but you were allowed to fish around the edge of the lake.

And I could not share with you the trash and pollution that was left around the edge of the lake. Now, I know it was not all from fishermen, but a great deal of it was.

And I think, again, that the managers of the area should have some kind of an out if they are finding that a special use of that land was leaving large problems in its wake.

Mr. SAXTON. So, once again, an issue of flexibility for the managers—

Ms. KOONS. Definitely.

Mr. SAXTON.—is important. Tom?

Mr. GORMLEY. Congressman, I am not so sure of the local refuge manager having the whole say in everything. I mean, I think you know with a previous refuge manager of this area, a lot of the concerns there.

I think that there should be input from the local people of those areas that are using it from the traditional uses that are going on.

And it is nothing against that refuge manager, but a lot of them do not know this area. They come in here for a job and then they are trying to read on to regulations that are in place. And I do not think that that is fair to somebody who has lived here, has made a living from that part of the area and then is denied access to that.

Just one example is, growing up, I was going perch fishing with my dad as being six- or seven-years-old to a fish—

Mr. SAXTON. Perch?

Mr. GORMLEY. Perch fishing on a refuge at a place where the refuge has now bought that now we are not allowed to walk on.

We cannot go there, so I cannot take my son to that area. No one knew we were there. We did not bother anybody. We brought in what we took out.

Yes, there are bad apples in every bunch, but I think that as the local groups were all involved here today, working together with that refuge area, coming up with a compromise.

Yes, there has got to be places that access is denied. We all understand that, but I think that we have to work together at that.

And the sportsmen are a big part of the conservation effort throughout the whole country. And they are upset because of all of the development that is going on. Those properties are being taken away. And then the properties that are going into public use are being taken away from them.

When properties are being acquired and are being looked at to be added to the refuge, there is an environmental impact statement done or being done on that piece of property, but then when they purchase it, they decide to do another one.

Why cannot that same one be used when the properties are being purchased the day that the deed is signed over? We already would know—with the help of this advisory panel—what should not be there and what should be.

Using that Waterford site, Mr. Spotafore was talking a lot about the knowledge that he knows of that area, but, by rights, he is not allowed back in there anymore to take his daughter or his family to walk and see the beautiful wildlife.

It is a touchy situation, but I think something we should really look at as a group—as a country, that we have got to look at.

How can you teach the future if we cannot show them? And that is what we are all about, is trying to do that. And I think everybody else that is here is looking to do the same thing.

I know that Joan has had some problems in the beginning of trying to get Cedar Bonnet Island to be used for that environmental educational center. And it is the ideal location for it.

I know that a lot of the property that is bought, there is a percentage that is supposed to be kept open for traditional uses, but where a lot of those problems are is that those areas are far away where people cannot always get to and they have to go by boat.

And that is a concern when a lot of people are trying to use that area and are not familiar with the bays to go out into a small craft.

I think in the past few years that we have noticed a lot of crafts overturning. And when someone does not have knowledge of the area, we are looking at some problems there.

So, that is our concern. And I think if we just work together and have input from the local people who use it in different areas, I think that is the best.

Mr. SAXTON. Thank you, Tom.

Alan, did you want to make a comment?

Mr. FRONT. I would actually just like to borrow one of Joan's words and respectfully sidestep the question to some extent.

Just because, as you know, The Trust for Public Lands focus has tended to be very much on reaching accommodations between different interests at the time before the land is transferred to the Fish and Wildlife Service and our focus then ends there and we leave it to public processes such as this one to determine what happens next.

I will say, though, that recognizing the proximity and the importance for environmental education, and another reason is the importance of local communities of historic uses, I am certainly personally sympathetic to the concerns that have been expressed here.

I am equally sensitive to the Fish and Wildlife Service's historic and current concerns, I believe, based on their own authorizing enabling legislation, based on their mandate to preserve habitat.

And, again, I would just say that issues arise such as this one, but it certainly sounds, in this atmosphere and at this refuge, that there is room to accommodate all interests and to keep a good program going.

Mr. SAXTON. OK, thank you.

Tom Gormley started to bridge into the second part of my question and that is this is a long-term management question rather than a short-term management question. Obviously, there are going to be decisions made that are not going to be of the nature that they make everyone happy from time to time in terms of the long-range management of a particular refuge.

And that is the case with this refuge, for sure. There are areas which were acquired and a management plan was developed. And the local refuge manager was given discretion to put certain pieces of the refuge off limits for certain uses: crabbing, duck hunting, fishing, perch fishing.

Do you have any comments as to how we can work through this process together and how these decisions can be made?

While everybody is not going to end up happy, maybe people will have input and we can talk about how these things happen before they are just imposed on someone. George?

Mr. HOWARD. I think that you have to get around the regulations that are in place right now which I think your suggestion is attempting to do.

Some of the regulations are so inflexible that the refuge manager has little opportunity to do what he would like to do anyway.

I think there is a real need for public input from local citizens, local users and that type of thing.

Mr. SAXTON. I do not know the answer to this and I should. Is there a formal process for community input?

Here we are adding 8,000 acres to a 40,000-acre parcel that we already own in the refuge and we end up with almost 50,000 acres.

Is there a formal public comment participation program?

Mr. HOWARD. I cannot answer that. I think you would have to ask—

Mr. GORMLEY. Yes, there is.

Mr. SAXTON. There is supposed to be.

Mr. GORMLEY. There is a comment period, but the problem is is that the comments do not go anywhere. Do not get me wrong. Some of them do, but a lot of them do not. And that is the problem.

We brought up an access issue a couple of years ago. A whole bunch of different organizations got together to come up with a plan to use. And the previous refuge manager, we had given him all the ideas. The ideas were great. Nothing was ever implemented.

And I think the people that we have there now are fantastic people. They are very understanding and are willing to listen, but their hands are tied.

Mr. SAXTON. By what?

Mr. GORMLEY. By the regulations that are in place. They cannot allow different uses to certain areas. And it takes forever to move an area from one place to another. They are willing to work with the people, but it is just getting that process done.

And I think it needs more of an input. And I think you said the perfect word that not everybody is going to be happy and we understand that, but I think if you get everybody's input from both sides of the view before something is put in place, then it is more understandable and it is more well received. And that is the problem, is communication.

Mr. HOWARD. I think there is also a need for some direction from the top to say that this is important. And I think that that has been lacking over the years and the refuge manager that wanted to accommodate some of these uses sort of found himself out by himself.

And the direction from the top was not to say to accommodate compatible—I keep using “compatible”—wildlife-related public use and that type of thing. So, that would certainly help.

One thing that I would like to throw out while I have the opportunity—I think Alan brought it up—was the word “partnership”. I think he put this out there.

We are involved throughout the state in various coalitions relative to National Wildlife Refuge, relative to the Highlands, relative to the Maurice River and everywhere else.

And the most successful are partnerships between public, Federal, private and whatever. And I think that this is really the only way that we are going to reach the goal of preserving the habitat and the environment that we want.

Some of that could be accommodated in some of these acquisition plans for something like Forsythe, when you get a refuge as large as this. Or Maurice River is a good example, where there is a proposal down there relative to 93,000 acres. And there is a lot of nature conservancy, fish and wildlife, farmland preservation and whatever involvement. And I think that that is something that we could look at.

Mr. SAXTON. Are there any other comments on this long-term question?

Let me go to a couple of specific things, then. Willie, you mentioned—as the mayor did earlier, by the way—that there is significant growth in New Jersey and that there is even significant growth in this area in spite of state and Federal statutes that were intended to inhibit that growth.

And in this town, west of the Parkway, in the last decade the population has increased by about 10,000.

Mr. DiGANGI. No, in this decade's growth.

Mr. SAXTON. In 1994? In the 1990's?

Mr. DiGANGI. In the 1990's, we should, yes. We have already approved approximately 3,000 senior homes, but there is 5,000 altogether that can be built west of the Parkway.

Mr. SAXTON. OK. So, we are in the Pinelands, which is a state and Federal partnership. And during the decade of the 1990's, the mayor projects that the population west of the Parkway—which is the Pinelands—will grow by 10,000.

We also have the CAFRA regulations that are very controversial. And they pertain to the land east of the Parkway. And, essentially, east of the Parkway is where we have been doing the acquisitions.

What is it about the state and Federal laws that are intended to inhibit growth that are making it necessary for us to do these acquisitions and actually spend these much needed dollars on acquisitions where these other laws which are intended to apparently accomplish much of the same thing?

Mr. DECAMP. Well, that is sort of a question that is a big one. And I think that maybe the nub of an answer would be that the laws such as CAFRA and the Waterfront Development Act and the Pinelands Commission tend not to be prohibitions.

I do not think the word "prohibition" comes up that often. And for a variety of reasons. One of them is that people just do not like to have things prohibited.

So, that is a reason why, even though you have the entire coast covered by CAFRA, you have the entire coast under development pressure.

And the sort of definitive solution to protect against development pressure is Federal acquisition or any form of acquisition.

So, that is the short answer. And a further sort of motivation, I think, that we all have to see acquisition and go forward, is the changes contemplated in Congress with relation to wetlands laws and takings issues because there will be, I think, substantial difficulty in protecting against development if the definitions of wet-

lands is drastically cut back as may be contemplated under the Clean Water Act.

Or if takings legislation requires compensation of property owners, we will be in a situation in which just in the real world, whatever we think of the merits of that law, in the real world there will not be enough money to acquire all this land.

So, you will end up with wetlands laws that are not enforced with some dire consequences, perhaps, that sportsmen are well aware of with water quality and habitat concerns.

So, the world of regulatory environmental protection is on shaky ground right now, politically. I am sorry that it is, but it is a fact that it is.

And that makes acquisition look like all the more rational and workable a strategy.

Mr. SAXTON. Thank you.

Alan, I am going to let you comment briefly, but before I do, Joan, I know that you have a schedule problem and if you need to excuse yourself at any point, just do so.

I have one more question for you, if you could stay for just a minute.

Ms. KOONS. All right.

Mr. SAXTON. Alan?

Mr. FRONT. Thank you, Mr. Chairman. Just to follow up on what Willie was saying.

There are obviously two major approaches to environmental protection; one of them being regulatory and one of them, at times, called incentive based, at other times, in this case clearly acquisition and compensation based.

And there are a few reasons why those two approaches need to be woven together in places like Forsythe—even if no regulatory changes were to occur; even if everything were to continue just as it is today.

One of those reasons is that unless regulations completely eliminate the prospect of development, even small scale development can take its toll on the sensitive upland buffers and wetland habitat that sits next to it.

Additionally, there is no shortage of discussion and it makes a good deal of sense that if enough of a property's value is regulated away, that the best thing to do with that property—if it is that important for public reasons—is to purchase it.

And that before the current discussion of regulatory reform, that, in fact, has been a cornerstone of government land acquisition for some time. If a property is important enough for public purposes, it ought to be purchased.

There are fairness issues to landowners and that is a realm in which we dwell, trying to appropriately accommodate the financial needs of landowners whose properties are that important.

And, so, regulatory approach aside, there are some properties that are developable and that are important enough to go ahead and acquire.

Additionally, Willie talked about Reedy Creek. And there are management questions that arise as well, even on undevelopable properties.

At Reedy Creek, the focus of the acquisition program—which has been very successful and is well on the way to a completion—the acquisition program has focused in the past few years initially on the properties that were the most developable, the most threatened by imminent development.

And once those properties had been taken care of, the focus was allowed to shift to the inner-connecting wetlands area that could not be developed, but along with those developable uplands would form the fabric of a manageable habitat area and a habitat area that would provide both wetland feeding areas and upland nesting cover and travel corridors and the other things for which the upland plus wetland buffers are needed.

So, one reason to acquire properties certainly is that it is developable and either it will be developed or potentially it may be regulated to the point that it ought to be acquired just to meet some basic fairness issues, but then, additionally, there are other properties that, for management reasons, need to be acquired.

And, so, from our perspective as a national organization, there are a few places—apart from Forsythe—where it is more critical to follow that acquisition side.

Mr. SAXTON. Thank you.

Joan, would you take just a minute to describe for us your vision for Bonnet Island?

And for those of you who are not familiar with Bonnet Island—I guess maybe everybody is—Bonnet Island is a relatively small island consisting of—how many acres?

Ms. KOONS. A hundred and twenty-four, I believe.

Mr. SAXTON. A hundred and twenty-four acres.

Ms. KOONS. Now, I just closed the book on that.

Mr. SAXTON. And, incidentally, an artificial island, if I am not mistaken, was created—

Ms. KOONS. A hundred and thirty-four.

Mr. SAXTON. A hundred and thirty-four acres of artificial island. Right?

Ms. KOONS. Some of it has been made. Some is natural and some was filled.

Mr. SAXTON. It was determined to be a critical habitat and was acquired by the U.S. Fish and Wildlife Service and was closed to, I think, all historic uses.

And Joan's vision has to do with an environmental education opportunity that exists.

Ms. KOONS. I would like to give you my vision with Bonnet Island included.

My vision would start where we were last week. If public access—particularly for educational purposes—is given, we could take a group onto the Waterford property and show them the head waters of the watershed.

And we could take them to Manahawkin Lake. And we could stop at Bonnet Island. And possibly on Bonnet Island, in the future, I would like to see the pathways respected and used; maybe ending at or on the Little Beach or somewhere in the refuge area, a platform with binoculars that the public could view the Barnegat Bay itself.

Spend a little time at Bonnet Island and then take them onto Long Beach Island, ending at Holgate, the spot that you are able to have access to.

In all of these areas, we would discuss water from the very moment it came from the clouds as a raindrop. And when you do that with the public, we have seen it in the Alliance's volunteers, over and over and over, you will get someone in a crowd or in a group with you; they will be very defensive. This land should be open; we should be able to do everything to it.

By the time you are finished educating a little bit and they are standing there and seeing for themselves the importance of the whole cycle to the watershed, you have an interested citizen that wants to be a partner.

And I think Mr. Howard is on the right track. Partnership is the word, along with respectful. We want to be partners as a group and I certainly want to be partners in this process as a citizen of southern Ocean County.

Mr. SAXTON. When you say "environmental education", you are thinking about leaving the island in as pristine a condition as possible using the paths that already exist and maybe one small deck facility—

Ms. KOONS. Yes.

Mr. SAXTON.—porch type—

Ms. KOONS. Very unsophisticated, but, still, giving people a chance to feel it. When you feel it and see it and see the perspective of the development from that area, sometimes you can be there in the heat of the summer when it is wall-to-wall cars coming onto the island.

And while the wild grasses and bushes in that area shield you from the sound, you do not even know that 72 is to your back.

People that live here do not know that there are areas like that still left. And that is what we would like it used for, as a group.

Mr. SAXTON. Environmental education is something that, obviously, I am not sure whether it was a stated goal of the Refuge System, but it certainly is an opportunity to use the Refuge System.

And I guess it was the day before yesterday, we were talking about another partnership between the Barnegat Bay Decoy and Baymen's Museum developing with the refuge and with—

Mr. GORMLEY. Rutgers.

Mr. SAXTON.—and with Rutgers University.

Tom, would you just describe for a moment your organization's goals in terms of environmental education and how you would use the facilities that you proposed in Tuckerton to carry out that partnership?

Mr. GORMLEY. I will try to sum it up pretty quick for you.

It is a 16-acre site right at the head of Tuckerton Creek which was the third port of entry into the United States.

There is going to be one main building that is going to be specifically for the valuable artifacts. And the other buildings will be for demonstrations of traditional activities and environmental education.

Mr. SAXTON. How many buildings all together?

Mr. GORMLEY. A total of 23. It is about a \$6.5 million project. We have raised \$1.3 million since we started.

There are over 1,000 members now. It was all volunteers. We now have three full time and one part-time person.

What our goal is is now that we have the Refuge System—we have a statewide management area right there; there is an estuary program that is coming in place; we are setting a coastal heritage trail through the Federal Government—is having a visitor's center as one of the buildings where someone can walk in and can see all these different aspects of the area; all the wetlands.

They can come in and learn about, just briefly, the environmental education part of it, the traditional uses that have gone on.

Rutgers University wants to be a part of this project. What is going to happen is that they are talking about an underwater laboratory six miles off the shore—I think it is six miles off—and tying in with fiber optics. We would like to be a host to that.

We have talked with Joan about Alliance for a Living Ocean being a part of that.

And the best thing is to educate people. And like what Joan said, people live right here and they do not even realize some of the natural beauties that we have here.

But also we have got to have respect for the tradition uses that have occurred. And I know that we could work together and that is the partnership that we are trying to do. The Refuge System now has a lot of different little small visitor centers.

If we could have one at this major attraction that we are proposing, to cover all those different aspects of the refuge—the fish and wildlife area and the things that I have mentioned—we think that it will highly educate the people that are coming to the area and to respect what is there.

Mr. SAXTON. Well, thank you very much. And I think that we have almost run out of time. Willie has got one more comment.

And we are going to hear from Willie and as soon as we do, I am going to dismiss this panel and we are going to take a five-minute break and then the next and final panel will come in.

Willie, go ahead.

Mr. DECAMP. As I was listening to Joan describe her vision of Bonnet Island and other places, I was trying to sort of get eyes in the back of my head and was wondering, you know, what the refuge managers might be thinking of Joan's vision.

And in my way of thinking of it—and I would be interested to know how people who would manage the refuge think—that the picture that Joan has drawn really would not burden refuge managers.

If Alliance for a Living Ocean brought people in, you could be sure that there would be less trash there when they left than they found when they got there. And they would have their own people who can educate everyone.

And I see it as a way to increase popular support without creating management difficulties. If I am wrong, I would be interested to learn why.

Mr. SAXTON. Well, thank you all very much. This has been very helpful, very productive and very informative and educational.

Thank you for being with us this morning. We could probably sit and talk about these issues for much longer than the hour-and-15-minutes that we have been here. And, obviously, we will be doing that with you on a one-on-one basis.

We appreciate your being here this morning. Thank you very much. And we are going to take a five-minute break.

[Recess.]

Mr. SAXTON. We are going to begin. So, if everyone would take their places.

We are going to begin our second panel of witnesses which is made up of professionals who have careers that are related to the Refuge System.

Mr. Don Conner is the chief of the Division of Realty for the U.S. Fish and Wildlife Service in the Region 5 office. And, obviously, when it comes to acquisition, Mr. Conner has a great deal to do with it.

We are also going to hear from an old friend, Robert McDowell, who is the director of the Fish and Game for the New Jersey Department of Environmental Protection.

And we will also be joined by Tracy Casselman who is the manager of the Forsythe National Wildlife Refuge.

So, once again, just let me remind you that that little red light when it comes on in front of you is just a reminder. If you talk on past it for a while, that is fine because we are very much interested in your points of view on these issues.

So, Mr. Conner, if you would begin, please.

STATEMENT OF DONALD CONNER, CHIEF, DIVISION OF REALTY, REGION 5, U.S. FISH AND WILDLIFE SERVICE

Mr. CONNER. All right. Good morning, Congressman Saxton and thank you for allowing us to be here.

Mr. SAXTON. You are going to have to pull those microphones closer. I know it is sometimes uncomfortable to have them too close, but that is the way that they work best.

Mr. CONNER. Mr. Chairman, it is a pleasure to appear before you today and the future land acquisition strategy for the southern Ocean County expansion area of the Edwin B. Forsythe National Wildlife Refuge.

I am accompanied by Mr. Tracy Casselman, the acting refuge manager.

I will be addressing the areas of land acquisition, management and access and the public use of newly-acquired lands.

The refuge consists of approximately 40,000 acres of coastal saltmeadow, upland fields, woodland, open bays and channels, and barrier beach. The complex is made up of two divisions—Brigantine and Barnegat.

The management focus is to preserve and manage the wetland habitats for waterfowl, shorebirds and other wildlife as productive migration and wintering habitat.

Regarding land acquisition. In 1994, the service released the Final Environmental Assessment and Finding of No Significant Impact on approximately 7,730 acres expansion of the refuge. This action was taken to provide long-term protection to important coastal wetlands, forested freshwater wetland and upland habitat. The

purpose of the refuge and this addition is to protect and enhance waterfowl and other migratory bird habitat; to protect and restore wetlands; to protect habitat for endangered and threatened wildlife; to promote and to preserve biodiversity; and to provide wildlife-oriented recreation and education.

This is the third such expansion of the refuge boundary in seven years—9,827 acres in 1987 and approximately 2,400 acres of Reedy Creek and Herring Point in 1990—which indicate the service's commitment to habitat preservation and protection of the Ocean County/Barnegat Bay area.

The service has been working actively with The Trust for Public Land and other partners to develop plans for acquisition of the habitat identified in the most recent EA. These lands are potentially useful additions to this refuge, but in the ranking of the overall needs of the Refuge System, do not always rank among the service's highest priority acquisitions for which we are requesting funds in fiscal year 1996.

Budget priorities may change in future years. The Migratory Bird Conservation Commission might also provide funding.

Chairman Saxton identified four areas for future acquisition totaling approximately 369 acres in his March 2, 1995, testimony to the Subcommittee on Interior and Related Agencies, regarding the Interior Appropriation Requests.

In addition, the service places a very high priority on future acquisition of the following eight areas in Burlington and Ocean Counties. These areas include Humus Land Corporation in Stafford Township, 539 acres; Stouts Creek/Murray Grove in Lacey Township, 450 acres; Forked River Natural Area in Lacey Township, 426 acres; Lake Manahawkin in Stafford Township, 43 acres; Cedar Run Creek in Stafford Township, 756 acres; Barnegat Beach in Ocean County for 140 acres.

In Burlington County, we have two areas identified: Bass River Associates in Ocean Township of 140 acres and the Warbler Tract in Little Egg Harbor for 235 acres.

The service has every intention of continuing its cooperative land protection efforts with The Trust for Public Land, the Izaak Walton League, local, county and state governments and their agencies and other groups working for the same goal in the Barnegat Bay area.

The second part of my testimony deals with management and access. First I would like to state the brief purpose of the refuge. The refuge has multiple purposes as a result of employing different acquisition authorities to purchase lands. The refuge was established under the Migratory Bird Conservation Act: "For use as an inviolate sanctuary, or for any other management purpose for migratory birds."

Lands acquired under the Fish and Wildlife Act are: "For the development, advancement, management, conservation and protection of fish and wildlife resources . . . for the benefit of the service in performing its activities and services . . ."

Lands purchased using the Emergency Wetlands Resources Act are for: "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 conservation."

Dealing with the management of refuge, the refuge provides access to nearly 250,000 visitors who observe and photograph wildlife, hunt, fish, crab and harvest clams from the bay. The refuge also hosts 5,000 students who participate in research and educational programs.

The major attraction of the refuge is the eight mile auto-tour loop and two walking trails located at the Brigantine Division. This area accounts for 80 percent of the refuge's visitation because it provide a unique opportunity to view a wide variety of waterbirds up close, and often in spectacular numbers.

Portions of the refuge are open to public hunting. In 1994, an environmental assessment was written to include newly-acquired lands into the waterfowl hunt units. This action expanded the area available for waterfowl hunting to 16,000 acres or 40 percent of the total refuge area.

The refuge provides deer hunting opportunities in cooperation with the New Jersey Division of Fish and Game. Currently, 3,000 acres or 75 percent of the upland in the refuge are open to deer hunting. The division administers three special hunt zones which may be accessed during the shotgun, muzzle loader and archery seasons.

The recreational fishing and crabbing opportunities are available throughout the waters of the refuge. The refuge provides bank access to three tidal creeks and special use permits are available to individuals who wish to fish for white perch in other tidal streams. Surf fishing is available at Holgate from September to April. However, vehicles must travel below mean high tide. Lily Lake offers freshwater fishing opportunities.

There are also six trapping units totally 11,000 acres available for bid by trappers. Trappers regularly take muskrats, raccoons and fox on the refuge.

Now, get to an issue that seems to be the focus for today: compatibility. As a result of a compatibility lawsuit settlement in October of 1993, the refuge conducted a review of secondary activities occurring on the refuge and prepared compatibility determinations for those uses. Twenty-three activities were reviewed and all were deemed compatible.

Public use of newly-acquired lands. Your letter of invitation also ask that we address the issue of public use of newly-acquired lands. As was stated earlier, under the National Wildlife Refuge System Administration Act, all Refuge System lands are closed to public use unless and until the service determines that a proposed use is compatible with refuge purposes and meets various other requirements.

In the past, we have not evaluated the appropriateness of public use for individual tracts of land until after they were acquired. As a result, traditional uses of newly-acquired lands have been halted for a year or more while the service engaged in the required planning, review and public involvement processes needed to determine whether the uses are appropriate and compatible.

We recognize that this has created problems here at Forsythe and elsewhere, and the issue is actively under review in the Washington office. However, at this time, the service does not have any

new policy to announce. We will, however, keep the subcommittee fully advised of our intentions on this matter.

This concludes my prepared statement. Mr. Casselman and I would be pleased to respond to any questions that you may have later.

Mr. SAXTON. Thank you very much for your statement, Mr. Conner.

Bob McDowell.

STATEMENT OF ROBERT McDOWELL, DIRECTOR OF FISH AND GAME, NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION

Mr. McDOWELL. Yes, I want to thank the Congressman and the committee for giving us the opportunity to comment on this. I am the director of the New Jersey Division of Fish, Game and Wildlife. And I am also representing the executive committee of the International Association of Fish and Wildlife Agencies. We also represent Mexico and Canada and all 50 states are members of this association.

I think one thing that we have learned in our 100 years of managing fish and wildlife in the State of New Jersey is that protecting the habitat is not a nice thing to do; it is a necessary thing to do. And whether you are interested in harvesting clams commercially or fishing off our coastal waters, what we do to the upland and what we do to the coastal marshes has a demonstratable effect.

These are the breeding grounds, the nursery grounds, for all of the fish that live off the continental coast—either themselves or something they eat.

So, the interest is broad. New Jersey happens to be in a very interesting place. We are in the migratory route—both off the coast for pelagic species and inshore fish—and we are also the migratory stop-off place for many species of waterfowl and other types of birds.

We have always been and will continue to be a partner of the U.S. Fish and Wildlife Service. In fact, our relationship goes beyond partnership. We are more closely related than just a loosely-knit partnership.

We do many things with the U.S. Fish and Wildlife Service. We protect large tracts of land in partnerships, which is going on in the Maurice River and in the Salem River. The state non-governmental organizations and the U.S. Fish and Wildlife Service are working very hard to protect these pristine habitats.

Barneget Bay is a good example of how because you moved here, if you liked those living resources that attracted you here, you had better be concerned about the uplands and the wetlands associated to the bay.

We are very happy in the state of New Jersey that we have five refuges in this state. We have refuges all the way from Sussex County to Cape May County, on the Delaware Bay shore and on the Atlantic coast. Having said that, though, I think we have some concerns and some of these concerns have been expressed by others here.

We are concerned about how the Refuge System is managed. We are concerned that the refuges are purchased because of those val-

ues you see out there. If people were not clamming, hunting, fishing, birding—all the things they are doing on the land now, then we would not think it so valuable. And, yet, when we purchase a refuge, the first thing we do is shut it down to those uses.

This is not only a recreational problem, it is an economic problem. In New Jersey, the Fish and Wildlife Service shows that just the recreational value of this resource statewide is \$2.65 billion for the recreational, nature, tourism and the small businesses that represent the bait shop, the party boat, the waterfowl hunting guide. And their employees are benefited, too.

The government is benefited by the sales tax and income taxes we collect off of these incomes.

So, it seems rather strange that the first thing we do is when we purchase this land that has all these recreational values, all these economic values already, we shut it down.

I might point out that this is not the case throughout the country. And interpretation by local refuge managers does play a role in whether the refuge can be shut down or not, as to whether what is a manageable unit; how much land is necessary to acquire.

Before you make that determination that it is a manageable unit, you shut it down and then you go through the process to open it up again. I think we need to reverse this process. You leave it open, make the studies, defend why it should be shut down and leave it open in the meanwhile.

Refuge managers shy away from making these decisions on opening it up because they perceive that opening it up requires a tremendous amount of management; an awful lot of study. And I think, in some cases, over-management. We manage 220,000 acres in the State of New Jersey. Some of it is adjacent to some refuges that have been shut down.

The bald eagles, the black rails, the terns, the striped bass are doing well on our wildlife management areas on the coast and they have not been shut down. My feeling is that there is legislation needed to allow the service to take the position which will support traditional wildlife-related uses. If a compatibility problem arises, then the uses can be determined to be inappropriate and curtailed.

This not only sends a positive message to the users, but cuts down tremendously in the administrative workload on the hard-pressed refuge managers. The service's "Refuges are for people" slogan would not ring so hollowly in New Jersey if that were the case. The positive approach works. And we have many examples of this.

Earlier, George Howard referenced Mad Horse Creek. We have sensitive critters there and yet they are doing well. And as soon as we bought it, about the same time, the Supawna Refuge was bought. We left it open. Supawna has been closed.

At Supawna, all recreational use has been excluded for the last 24 years, with the exception of hunts that control deer which are not recreational in nature; waterfowl hunting on 4.5 percent of the refuge and guided tours of a lighthouse on the third Sunday of every month. This is the kind of use there.

We certainly do not want this dichotomy to exist in the lands that we manage here on the East coast and U.S. Fish and Wildlife Service lands. And, quite frankly, Brigantine—as it was called before—has done a reasonable job in most areas. Areas have been

bought, held, compatibility studies have been made in the past. And the amount of time it was shut down was very, very short, but we are concerned about the extension in terms of its impacts in that manner.

We have seen improvements in these situations in recent years like the opening of the Cape May Refuge and recreational deer hunting, but this took almost six years to do. Now, you are going to be able this year, to bird watch and deer hunt according to the state laws as far as deer hunting is concerned.

Legislation is sorely needed to rectify this needless and irretrievable loss of recreation and economic values. Additionally, any new legislation should re-affirm the state's position in this.

The state has regulatory authority over many of these uses. These are not uses that are going on before they purchase them for a refuge. Without regulation, it is not a free-for-all as far as the wildlife-related recreational uses are concerned. So, greater coordination and cooperation with state agencies should be a part of any change in the law.

The National Wildlife Refuge System represents a key link in our efforts to preserve a place for wildlife in our nation's most densely populated state. We have a tremendous contrast in the State of New Jersey. We truly are the Garden State when it comes to wildlife. We have a very dense and very diverse population of wildlife.

I will just point out one fact. This year we shot 51,462 deer in the State of New Jersey. That is more than the entire New England states, with the exception of New York. That reflects the productivity of this environment. And that is true of many other species in this state, whether migratory or resident.

I think that moving ahead with this opening of the refuge prior or leaving it open prior to closing it down or having the necessary public hearings and whatever, doing the studies, whatever needs to be done—can also bring to a feel good approach to the users who want these areas to be open, who want the benefit of the recreational and economic values that they have.

So, I think that legislation needs to be formed to make this a rule by which everybody follows when managing the U.S. Fish and Wildlife Service's Refuge System. Thank you very much.

[The statement of Mr. McDowell may be found at end of hearing.]

Mr. SAXTON. Thank you very much.

Tracy, do you have anything to offer at this point or would you just prefer to answer questions as they come along?

Mr. CASSELMAN. I have a list of notes.

Mr. SAXTON. It is up to you.

Mr. CASSELMAN. I think I will refer to individual questions and then if there is anything burning deep down inside, I will use that as a wrap up.

Mr. SAXTON. OK, great. Thank you.

Let me start with the same kinds of two questions that we started with regard to the attitudes and the beliefs and the desires of the first panel.

The first addresses the issue that we have called "closed until open" or shall we reverse it and have "open until closed".

And I would be interested in—I do not know whether there is an official position of the service or whether you have a personal opinion that you would like to offer.

And if you would proceed to address that issue as specifically as you can in terms of what your position is on that.

Mr. CONNER. As specifically as I am able to, the position of the Fish and Wildlife Service, as I believe at this time, is that the "closed until open" policy that they have is legislated to us. We do not have a choice in that manner.

Individual refuge managers do have input into some areas, but—

Mr. SAXTON. But if you all had a choice, what would you tell us to do?

Mr. CONNER. My personal opinion—and I do not speak for the service—is that I think the issue should be taken under advisement as it is and that if an improvement would require legislation, then I believe that is what should be done, but that determination is going to have to be made on the part of the Fish and Wildlife Service as to how they wish to proceed.

Mr. SAXTON. Right. I appreciate that. Let me ask this question. In the acquisition process, there is an environmental assessment that is carried out prior to acquisition. Is that correct?

Mr. CONNER. Yes, sir.

Mr. SAXTON. And in that environmental assessment, are such things as endangered species on the site noted? Are threatened species on the site noted? And various environmental characteristics that need to be preserved, are they noted?

Mr. CONNER. Yes, they are, Mr. Chairman. I have the final environmental assessment for this last expansion. And I would be glad to let anyone look through it, but all of those issues are addressed in it, along with public uses. They have bird species, highlights of botanical survey, reptiles and mammals, endangered and threatened species; all of those issues are addressed in the EA.

And those do go out to the public for comments. And those comments do come into the office and these documents are prepared by people on my staff and they are considered and they are included in revisions that are made between the preliminary and the final EA.

All of those are addressed, as well as for the broad goals of the National Wildlife System and the mission and goals—the purposes for which the acquisition is being proposed.

And one of the ones that the National Wildlife Refuge System is: "To provide an understanding and appreciation of fish and wildlife ecology and man's role in the environment and to provide refuge visitors with high quality, safe, wholesome and enjoyable recreational experiences oriented toward wildlife qualified to the extent that these activities are compatible with the purposes for which the refuge was established."

So, we do address public use and endangered and threatened species, habitat, potential threats to the property in these documents.

Mr. SAXTON. Let me suggest a "what if". On the Holgate Beach there is an endangered species which is recovering and it is recovering because the Fish and Wildlife Service, as well as members of

the environmental community and other users of beaches up and down the East Coast have cooperated together to help bring the piping plover back from very few nesting pairs—I understand now—to somewhere in the neighborhood of 1,200 or it may be a little better. And that we think we need to get to 2,000.

When the Environmental Assessment was done—and I assume it was done when that acquisition was made years ago.

Mr. CONNER. Yes, there was.

Mr. SAXTON. Maybe there is a different—

Mr. CONNER. Tracy?

Mr. CASSELMAN. Holgate Beach was donated to us prior to the piping plover being listed.

Mr. SAXTON. I see.

Mr. CASSELMAN. So, there was no mechanism for addressing many of these issues.

Mr. SAXTON. OK, then, my "what if" has to be a hypothetical "what if".

Mr. CASSELMAN. OK.

Mr. SAXTON. In that case, if the piping plover were designated on the endangered species list, and we were to acquire the Holgate Beach today, and we knew that the piping plover was endangered and we also knew that the U.S. Fish and Wildlife Service had responsibility to help propagate more piping plovers, what if there were the situation? Now, you have done the Environmental Assessment, and you know that there are plovers there initially. While the management plan is being implemented, a reasonable person would not say, "Let the beach buggies go run over the piping plovers when they are nesting." That is not what a reasonable person—fisherman or anybody else—would want to do, I do not think.

So, what if there were a provision that said that pursuant to your Environmental Assessment which you do prior to an acquisition, that we were to include an interim list of opened and closed areas and permitted and non-permitted uses as has eventually evolved anyway for the Holgate Beach.

What has evolved is a common sense evolution for Holgate and with a long, painful process which maybe is not over yet.

But could that not be done based on an Environmental Assessment? We make the acquisition and we say, Look, we have got this problem from April 15th to August 15th rather than—

Mr. CASSELMAN. I think what—

Mr. SAXTON.—just do the closure? Period. Slam door. Put up fence. Finished.

Mr. CASSELMAN. You are using a hypothetical situation to reference back the question you had asked the earlier panel.

And I think that is could we possibly use the acquisition EA process to look into public uses on individual parcels of property.

That is a potential possibility. I see some flaws in that. And when I look at the acquisition EAs that Don has and that we have used before, we have three of them current now. We have not acquired all of the property from the EA that was done; two before the one that we are working on now.

And in order to do enough in-depth work on each individual parcels, to consider what we do when that particular parcel is bought,

would take a lot of work because if you look at one parcel versus if you get the three adjacent to it, there is a lot of change.

And one of the things that I have seen since I have been here is that we will acquire a staff in Stafford Township and it will be two years later until we acquire the piece next to it because the willing seller has not come around.

So, to be able to address that in the acquisition EA, I think would be very difficult because you would have to do almost in-depth on a piece-by-piece or, perhaps, say that until we acquired this whole block, that it would all be closed.

Because, as an example, if you acquire a piece of property that has a species of very high concern on it but only a small number, and then the piece next to it will round out a big enough number where you could allow a management use but you do not acquire that piece when you acquired the first one. There is a lot of things that I could be potentially concerned with.

Along the basic overall question of whether or not legislation is needed to address some of these issues. Tom made the comment that everyone's hands seem to be tied with previous acts that we are dealing with. I would not look forward to another act of legislative further tying our hands.

I think a lot of these issues can be addressed through public meetings and express concerns of the individuals. As a lot of the folks know here, we have made some progress in the past.

There have been some slow things to open. Joan's vision of Cedar Bonnet Island is almost there, with the exception of the platform. I mean, we certainly issued Joan permits to go out to Cedar Bonnet Island. And some of the issues are being addressed—slow but sure. It is not a fast process.

Forsythe, I think, is very unique in that it has had a tremendous acquisition budget in the last five years. It has also lost 30 percent of its staff. And I do not know that legislating a way for the discretion of the wildlife refuge manager is going to be the answer to those two concerns. I do not think that that is going to solve the problems.

I think open dialog between the people who have traditional uses and inherent uses with the refuge management group is the answer.

Mr. SAXTON. Let me just stop you there, just so I can inform myself.

Is it not the legal case that you do not have discretion—or maybe you do have discretion—that when an acquisition is made and the closed status comes about, do you have the legal discretion to permit certain uses?

Mr. CASSELMAN. No, not until the ink is dry on the paperwork, but—

Mr. SAXTON. The ink is dry on what?

Mr. CASSELMAN. The paperwork. Not until the plan and the determinations are done. In some cases we can have a public use, a management plan, for the refuge. And as pieces of property come into our fold, if that property does not have something extremely sensitive on it, can fall right into place with that. They did that at Cape May with hunting.

And as land is acquired down there, they are not going to stop and say, you know, any land from here on out, we will have to wait two more years to do the paperwork.

If there is an accrued public use management plan which includes hunting or trapping or fishing available that looks at these new expansions, they can be brought into that fold as they are purchased.

Mr. SAXTON. In other words, if it is an addition to a current piece of the refuge?

Mr. CASSELMAN. Correct.

Mr. SAXTON. And that piece has a management plan for it, that those uses can be extended to the new piece?

Mr. CASSELMAN. When we wrote the expansion EA for the latest waterfowl expansion, I specifically put wording in there that referred back to the EA for that expansion area that would allow for those additional areas to come under that EA as they were acquired so we do not have a stop gap; OK, we have got an 8,000-acre acquisition, we are halfway through it and we are going to wait until the other 4,000 are incorporated to do that. That is not going to be the case.

Now, there are logistics to reposting, managing and shifting around some of these areas, but we certainly, in this particular case, do not have to wait until we have got the other half to redo another EA. I specifically put wording in that to allow that to come about.

So, there are instances where we can do that. There are instances where we cannot. And on a case-by-case basis, I think is the way to look at it.

Mr. SAXTON. Do you want to comment?

Mr. McDOWELL. Yes. I think, first of all, he mentioned Cape May. And it is going to be open for deer hunting. It will not be open for woodcock hunting. It will not be open for duck hunting. It will not be open to crab in its coastal waters.

So, the activities that are allowed now are species specific and activity specific in this evaluation process. And it took six years to get to the first level at Cape May. So, I think that has got to be fixed.

The use was going on—deer hunting was going on—on the lands that Cape May was buying for the values that allowed the deer hunting to go on. I mean, the deer were there.

I will say this. In the case of deer when they close it up, it can cause us a lot of other problems with adjacent landowners. And that is probably why they moved ahead with that.

But I think this concept that it should be open until closed for legal responsible fish and wildlife related recreation that has been going on there before, in my way of thinking, there is a better way to do things.

Mr. SAXTON. Tell me what would happen, Tracy, if it were open until closed and we made the acquisition and you all would proceed then to develop a management plan.

Would you be able to do that in an expedited way so that if there were swamp or piping plovers to be protected that—

Mr. CASSELMAN. In some cases that may work, but I can think of many individual cases where that would be a problem.

One of the things that struck me when I first moved here, I grew up in central New York right next to Montezuma National Wildlife Refuge.

Mr. SAXTON. We are glad you are here, by the way. We want you to know that.

Mr. CASSELMAN. And then I spent five years in Louisiana and the refuges there are wide open to everything. I mean, they are just completely wide open. You can go anywhere.

At one time, I went canoeing and realized that I was canoeing right through a rookery.

Mr. SAXTON. A what?

Mr. CASSELMAN. A wading bird rookery which, to me, is a violation unheard of. No one should be able to canoe through a wading bird rookery during nesting season.

And I do not think that anybody would disagree that that should be allowed. It has a tremendous impact on the nesting birds.

When I came up here, I could not believe that all of Forsythe was closed to just walking through the fire breaks and the trails.

And one of the things that the refuge manager pointed out to me was that, look over there. He pointed to Atlantic City and then he says, "We get a quarter-of-a-million visitors here a year."

And, incidentally, I did not work for the Fish and Wildlife Service when I came up here. I worked for the Department of Agriculture, so I was not in the Fish and Wildlife Service fold.

And I thought about that as I left. And as I came to work for the Fish and Wildlife Service and see the tremendous number of people who come around the wildlife drive, watch the tremendous number of people that go to Long Beach Island and realize that if they had an unrestricted access—whether it would be for traditional uses or not—right off the bat that would cause a tremendous impact.

And the thing that happens that I see potentially happening is that once it is known that that is Fish and Wildlife Service property, it is no longer Mr. Smith's who is going to give me a hard time if he catches me out there, and it is open to the public, we are going to get a lot of influx from outside visitors above and beyond the local folks in the Barnegat Bay area.

I spoke to one of the reporters this morning. There is a beautiful little spot that I love to duck hunt. It could tolerate about two pairs of duck hunters before there would be just too many people for safe shooting and also I would think that if it received too much attention, it would not be near as valuable a duck hunting spot.

Boy, if the service gets that, I am going to hate to put that on a map because if it is open, I know that it will attract a lot of use. And, therefore, will diminish the quality and even the safety of the hunt.

And that is one thing that I see. Because we are a national organization. It is estimated that 50 percent of our waterfowl hunters do not come from this region. They come from outside.

They come here because they know that it is Forsythe National Wildlife Refuge and I have access to 40 percent of it.

So, if all lands are open until closed and that becomes a legislative policy, I see the potential for some problems on some of these pieces of property.

Mr. SAXTON. Your most recent statement was what prompted me to ask the question earlier where we would have kind of an interim list of pieces that would be open and closed based on those obvious kinds of situations that exist.

With regard to the duck hunting spot that you just mentioned, which I will bet my avid duck hunter friend, Tom Gormley, would agree with. Maybe.

[Laughter.]

Mr. SAXTON. Based on what we learn about properties in the acquisition process, is there not a level of knowledge that is obtained that would permit the identification of those kinds of situations?

Mr. CASSELMAN. I think it would have—

Mr. SAXTON. At least on a temporary basis.

Mr. CASSELMAN. I think it would have to be a little more in-depth process than we do currently.

Mr. SAXTON. Don?

Mr. CONNER. Just to make one comment, Mr. Chairman. On an existing refuge such as Forsythe—40,000 acres expanded between 2,400 and 9,000 acres at a time—that is a very complicated process.

But the service has on its new refuges just last year we created Canaan Valley, the 500th national wildlife refuge in the system. And we were able to prepare a station management plan prior to the acquisition that did address several of these issues including determinations made on hunting.

However, there will always be a need. The purpose that the refuge is established is for wildlife. And the primary consideration has to be for that purpose.

If the refuge manager determines that the use—whether it be traditional or not—is going to adversely affect it, that will not be allowed, but the service does attempt to eliminate the two year or what can be a longer delay.

And we have on our new refuges and we are attempting to do as much as we can on Barnegat and Brigantine. However, piecemeal additions, even though they are 9,000 acres, are difficult to deal with.

And just as a landowner issue, one of the things that the service and the government does have is a liability issue when we acquire property.

And to allow the general public onto a piece of property that we are maybe aware of a hazard or a potential danger to people—whether it be a cellar hole, a fence, an unsafe bridge—there are some reasons why we may have to close it until that can be fixed.

Mr. SAXTON. Yes, sir. OK, let me move—

Mr. McDOWELL. Congressman, may I say one thing?

Mr. SAXTON. Yes, sure.

Mr. McDOWELL. All those things are specific areas. A lot of these endangered species are specific areas, you know. So, closing down 9,000 acres because there might be a bad bridge is, you know. The liability issue always comes up, but the state is liable also.

We have lots of endangered species. We have got lots of these kinds of considerations also. And when we buy our land, we immediately open it up and we are not adverse that if it has wildlife im-

pacts, to shut it down for particular uses. Higbee Beach being a prime example.

Mr. SAXTON. What is Higbee Beach?

Mr. McDOWELL. Higbee Beach wildlife management area is on the tip of Cape May County. It was established as a layover spot for migratory birds, especially song birds and raptors.

And we have allowed wildlife observation in there, but we have disallowed some other uses that interfere with certain kinds of wildlife populations at certain times. It is almost site specific and this is where the management skill comes in.

But I think this whole thing about being concerned about a site-specific area and that therefore you keep X number of acres of a refuge shut down until you can write all of these reports, I do not see that as a necessity at all.

Mr. SAXTON. Let me ask you to respond to this, then. First, Tracy just mentioned that his staff has been reduced something like 30 or 35 percent in a relatively short period of time. Since you have been here or whatever.

In terms of your perspective from a state official standpoint, does the Fish and Wildlife Service have the capacity in a rapidly growing to be a 50,000-acre reserve to have the manpower to do the kinds of discriminating judgments and make those decisions that you have just suggested?

Mr. McDOWELL. Well, for one thing, the fish and wildlife law, for the State of New Jersey, also aids them. And we have about 55 conservation officers in this state that enforce the law.

These conservation officers, I would say there is about a total of 100 people that manage 220,000 acres of fish and wildlife management area in the state.

Forest and parks manages over 300,000 acres and they have proportionately less people. I do not know the exact numbers.

It can be done. And you do have trash to pick and management decisions to make, but the critters are doing fine on these areas.

Mr. SAXTON. Would you like to respond, Don or Tracy, to whether you have the manpower to be that flexible with newly-acquired pieces of reserve?

Mr. CASSELMAN. Well, again, I think that the Fish and Wildlife Service regulations are, perhaps, a little more lengthy than the state's. So, we are required to do many more things because we are addressing the nation. We were bought with national taxpayers' money, not just state taxpayers' money.

So, we do have a different type of expectation. I mean, if you ask people about the average wildlife management area that is in the State of New Jersey to a Californian, with the exception of Higbee's Beach, which is nationally known for birds, they are not going to know too much about it, but if you ask an avid outdoorsman in California about Brigantine Refuge, I will bet he has heard of it.

So, we have a national scope to address as well, beyond the state. So, we are required to do a few more things than the state is.

As far as the manpower issue, the manpower issue is always going to be a problem. I think the thing that has happened in Forsythe is that the manpower has gone down and we have one of the largest acquisition budgets in the region.

Mr. SAXTON. I would like to switch gears and ask about the ongoing management process. The one concept that has been explored by the previous panel was opportunities for public input, public comment and perhaps some kind of a public role in the decision-making process.

Is there an adequate one currently and do we need something different than we have in order to guarantee the public access to the process?

Mr. CASSELMAN. From what I have seen in Fish and Wildlife Service, the places where I have seen it work the best have been very informal. Situations where there are annual or bi-annual—twice annually—meetings between the refuge staff.

Just an open public meeting where the refuge staff says, "Look, this is what we have got funded; this is what we are planning on doing; what do you think we should strive for next year; what are your thoughts and what are your inputs."

This is done at Parker River. It is also done at several refuges throughout the region.

I think that is the best mechanism. And I see the people here to provide that kind of input. That was not necessarily input in the past. And, again, that is due to the different management styles of the different refuge managers.

I am currently serving in an interim role as the acting refuge manager. I am very hopeful that they will have a permanent refuge manager within the next 120 days before my tenure as an acting refuge manager expires.

Mr. SAXTON. We would just as soon have you stay.

Mr. CASSELMAN. Well, I am going to encourage—you know, one of the things that I am certainly going to do and one of the things that I have been very adamant about is a lot of discussion with my staff.

And my staff has brought up the subject of friends groups which are a very effective mechanism in aiding refuge managers because they allow the refuge manager to get a feel for the whole scope of public use interest.

Friends groups quite often consist of everyone from people who want to foster butterflies in refuges to people who want to hunt waterfowl.

Mr. SAXTON. Is there anything like a citizen's advisory group committee at a refuge anywhere that you know of that would meet on a periodic basis—monthly, quarterly, bi-annually?

Mr. CONNER. The groups that Tracy mentioned in several areas we have what may be The Friends of Rachel Carson, Canaan Valley Task Force.

There are groups of concerned citizens and individuals involved with the area and the uses of the refuge that do meet with the refuge manager. The refuge manager serves as a member of that team or committee.

But it is not necessarily called an "advisory group", although in this era of partnerships that the Fish and Wildlife Service is starting off on, that would be an excellent idea.

Mr. SAXTON. One of the previous witnesses, Mr. deCamp, who comes from this as an environmentalist and not so much as a sportsman, says in his testimony that:

"We support the idea of forming a Friends of the Forsythe Refuge organization which we think should start out as an alliance of existing groups who wish to be helpful to the management of the refuge. Many groups, including the Ocean County Izaak Walton League and the Alliance for a Living Ocean, are already hosting clean-ups of refuge lands and are thereby acting in a friends capacity."

And, certainly, in order to foster community support and community involvement, community participation among all the user groups and all the interested groups something like that might be interesting.

I can see Bob McDowell and Tracy Casselman having this opportunity today as an exchange and, perhaps, a Friends of the Forsythe participation by the state, by the Barnegat Bay Baymen's group, by ALO and other groups—would that be something that you think might work out in our specific case and have a general application across the country?

Mr. CONNER. Just before Tracy speaks, I have seen this work in several states within the region in many refuges and it is an effective way of getting input from the community, getting involvement from the people.

And it is a great help to myself and my land acquisition program to have these groups in there. We can resolve potentially controversial issues before they become controversial.

And the refuge managers that I have spoken to are strongly in favor of this type of participation and encourage it.

Mr. CASSELMAN. We are actively looking into starting a friends group in the Barnegat Bay area. I think that is part of where Willie got the idea for the testimony that he prepared.

Mr. SXTON. He is shaking his head that that is right.

Mr. CASSELMAN. And that has come about because the division manager here, Allison Banks, has approached him about that and she has also contacted Park and River, Rachel Carson, and several other refuges to see how they went about establishing a friends group and to look into the possibility for doing that for perhaps each of the divisions.

This refuge is so big and spread out that what we have considered now has been a divisional approach.

Mr. SXTON. Bob, do you have a comment?

Mr. McDOWELL. Well, first of all, I think this is an excellent approach and I will help them with some names of folks—in addition to those groups—who might be interested.

I am sure that the New Jersey State Federation of Sportsmen's Clubs, Ducks Unlimited and some of these other groups may be helpful.

In addition to that, our division has 1,650 volunteers that work for us daily. And, so, getting volunteers to help with wildlife-related kinds of things takes some organizational skills, but I can tell you that we would not get the work that we get done if it were not for those 1,650 volunteers.

To help teach kids how to fish and they pick up trash in the creek. They do everything. Pound in data.

And, in fact, some of them even patrol the forests of the state. I have about 100 volunteer conservation officers, in addition to vol-

unteers who keep people from going onto beach in an inappropriate place because of piping plovers.

So, volunteers involving the community is what it is all about.

Mr. SAXTON. Thank you very much. I do not know whether there is anything else. I have nothing further this morning, unless there are comments that any of you have in concluding here.

So, let me just thank you for being here. This has been very helpful. We are in the process of doing a re-authorization and that is the prime time to make any changes that the committee and the Congress deems are in the best interest of the ongoing reserve program.

And, so, we thank you for being here this morning with your input. And we appreciate it very much. And we look forward to communicating with you in the future, perhaps on an individual basis. Thank you.

Mr. MCCLAIN. Are you taking any questions from the audience?

Mr. SAXTON. I am afraid that I cannot at this point. However, I do not want to preclude the opportunity to do that.

Mr. MCCLAIN. Just one, if I may.

Mr. SAXTON. OK, go ahead.

Mr. MCCLAIN. I am Pete McClain. With the success of the opening of the section of the Cape May Refuge, I think that it has worked out very well.

I am just wondering. It takes a very long and expensive effort to develop a comprehensive management plan because of the separate areas if it should come under a challenge from a particular group who might not agree or does agree.

Give the refuge manager some flexibility and provide them with the support that they would need from the regional officer and the office in Washington directing refuge activities, would it be appropriate to consider an interim management plan for areas that are very obviously not going to be affected in the endangered species way or the vegetation way or anything else.

An example would be along Route 47 in Cape May County where there are several hundred acres of old fields that, since they have acquired them, they have grown up in vegetation.

Now, I have got a rabbit hunter. There would seem to me that one who would go in with rabbit dogs in there and shoot rabbits on three or four hundred acres of an old field directly adjacent to the road. I could not see why that field and areas like that—staying away from where we throw out the baby with the bath water—could not be covered an interim management plan that would be approved by the officers, or the Washington level, to allow the refuge manager the discretion of saying, "Let's open this 300-acre field just like you have done with the area for deer hunting."

Again, you are showing the public that you are interested in acquiring these areas and providing the public use of these areas while you are hopefully going to get legislation through that you proposed—which, I think, is excellent.

I think a lot could be accomplished with an interim management plan which would be an agreement, more or less, that this area is not obviously infested with endangered species, if you will, and that it could be used for public recreation. Is that possible?

Mr. SAXTON. Yes, sir.

Mr. MCCLAIN. I think that should be very heavily explored.

Mr. SAXTON. The situation under current law is that everything is officially—not always practically, but officially—closed until it is opened through a management plan process.

Mr. MCCLAIN. Then, how do they allow the deer hunting?

Mr. SAXTON. Our process would totally open it—until a part of it is officially closed—through the management plan.

And what you are suggesting is a kind of a middle-of-the-road kind of thing where Tracy and his colleagues could say, "Look, there is a serious problem in this area and we are going to close this area, but we do not have to close the other 9,000 acres in order to solve this problem." Yes, sir.

Mr. MCCLAIN. The authority would partially come from their supervisors in Trenton, in Boston, or in Washington to do this activity—

Mr. SAXTON. Yes, sir.

Mr. MCCLAIN.—which would get them off the hook as far as total responsibility goes.

Mr. SAXTON. Yes, sir.

Mr. MCCLAIN. Thank you very much.

Mr. SAXTON. Thank you all very much. And thank you panelists, once again. And the first panel, I see, is still here. Thank you as well.

This has been a very productive session and we will look forward to hearing from you on an individual basis in the future. Thank you very much.

[Whereupon, at 12:20 p.m., the subcommittee was adjourned; and the following was submitted for the record:]



NEW JERSEY STATE FEDERATION OF SPORTSMEN'S CLUBS, INC.

Organized May 24, 1935 / Serving over 150,000 members
Executive Director - George Howard 219 Ridway Rd., Princeton, NJ 08547
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Testimony of George P. Howard, Executive Director of the New Jersey State Federation Of Sportsmen's Clubs, before the Subcommittee on Fisheries, Wildlife and Oceans of the Committee on Resources of the U.S. House of Representatives, at Barnegat Recreation Center, Barnegat, New Jersey on Saturday, April 22, 1995.

The 150,000 member New Jersey State Federation of Sportsmen's Clubs appreciates the opportunity to address the Subcommittee today relative to the Edwin R. Forsythe National Wildlife Refuge (NWR) and the future acquisition strategy for the southern expansion area. We are particularly interested in addressing public access to Forsythe and other New Jersey refuges for compatible wildlife related activities such as fishing, hunting, birding, trapping, crabbing, clamming, etc., and would like to suggest a modification to the NWR system approach to public access, which should prove beneficial to the U.S. Fish and Wildlife Service as well as to New Jersey citizens.

Over the years, sportsmen in New Jersey have experienced a deep frustration relative to the Service's recreational use policies on NWR's in our state. Despite the obvious intent of relevant legislation to encourage compatible wildlife oriented recreation within the NWR system, and despite the oft repeated official Service policies in this regard, somewhere down through the years something has gone awry. Instead of encouraging compatible wildlife-oriented recreation, many Refuge managers in New Jersey and the Northeast Region seem to have an "inviolable sanctuary" mentality when it comes to the public's use of their refuges. (Unfortunately, in many cases, Service policy is still dictated by the whims and biases of many individual refuge managers.) For example in New Jersey no refuge permits small game hunting. Except for Lily Lake in Forsythe, no refuge in New Jersey permits fresh water fishing. Fall bow hunting is prohibited on all NWR lands in New Jersey. Birding is prohibited on most refuge lands here.

It is of interest to compare public access policies on State Fish and Game Division operated Wildlife Management Areas, which sit side by side with many NWR's in New Jersey. On the state wildlife areas, whose broad objectives are practically identical to those of the Refuge system, compatible wildlife related recreational uses are encouraged and permitted from the day the areas are acquired, unless a problem is identified.

Protecting the Environment Through Resource Conservation

On the adjoining NWR lands no wildlife related uses are permitted until the use in question can be documented to be compatible, in a process that takes years, if not decades, to accomplish. This negative approach to compatible public use does certainly not represent "encouragement." In practice, Service public use in New Jersey translates into, at best, a mere tolerance of public wildlife related recreation. This in a state where public lands for wildlife related recreation are at a premium, and are becoming more important daily, and where the U.S. Fish and Wildlife Service NWR system controls tens of thousands of acres of potential good quality wildlife related recreational lands.

In 1971, the Service began acquiring Supawna NWR in Salem County, New Jersey. At about the same time the nearby Mad Horse Creek State Wildlife Management Area was being acquired. Some twenty plus years later, Supawna is just opening its first waterfowl season (on a mere 4.5% of the refuge.) Birders and small game hunters are still considered non-entities. The mis-management of the deer herd at Supawna through the lack of an adequate harvest has over the years caused vast problems for the agricultural neighbors of the refuge. In the same time period on the nearby Mad Horse WMA, literally tens of thousands of people days of waterfowl hunting, birding, and small game hunting have been enjoyed by the New Jersey public over most of the tract. In light of this, sportsmen have concerns as to why these two agencies are managing similar lands so differently. After twenty years, the resource is no worse or better off on Mad Horse WMA than on Supawna NWR.

We've heard the argument that it costs too much to open NWR lands to the public for wildlife related recreation, yet the state seems to manage recreational users with far less regulation and cost. In any case, excessive regulation does not necessarily translate into quality recreational experiences. Most find the opposite to be true. In retrospect, a more positive approach to compatible recreational use of NWR system areas should be attempted.

To have NWR lands closed to public use for years and even decades because no one has bothered or has the wherewithal to complete the necessary management plans, opens the Service to charges of being unsympathetic to the needs of today's recreational users, and erodes support for the entire NWR system. Because of its negative approach to wildlife related recreational users, the Service is losing the support of its formerly most ardent advocates.

In conclusion, I would like to state that New Jersey sportsmen see the NWR system as a potentially tremendous asset to the wildlife resources of our state as well as to the future recreational users of these resources, if properly managed. In

spite of past and present problems related to the recreational use of these areas by New Jersey citizens, we have been encouraged by recent changes we see in recreational use policies being developed for some NWR areas. In particular we applaud the efforts of Service personnel at the Cape May NWR which has resulted in a public access policy for deer hunting which accomodates compatible recreational activities at Cape May NWR. We trust that the Cape May deer hunting policy will prove to be a model for public access plans for other New Jersey NWR's rather than the "exception to the rule" that it now represents.

The NWR system is far too important to the future of our wildlife, as well as to the quality of life of our citizens, to be the recipient of anything less than our best effort relative to the planning for its future. A big part of its future in New Jersey should be to encourage, and maximize where possible, compatible wildlife related recreational activities for New Jersey citizens on NWR lands. With proper planning and management, the New Jersey NWR system of the future should prove to be at least as important to our citizens as it is to our wildlife.

Respectfully submitted,



George P. Howard, Executive Director
New Jersey State Federation of Sportsmen's Clubs



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April 22, 1995

TESTIMONY OF William deCamp, Jr., President
Ocean County Izaak Walton League

SUBCOMMITTEE ON FISHERIES, WILDLIFE AND OCEANS
Hon. Jim Saxton, Chairman

at Barnegat Recreation Center, Barnegat, New Jersey

Re: Acquisition, access and utilization of newly acquired
lands within the Edwin B. Forsythe NWR

The Ocean County Izaak Walton League (Save Barnegat Bay) thanks Congressman Saxton for allowing us the opportunity to testify on the issues of acquisition, access and utilization of land within the growing Edwin B. Forsythe National Wildlife Refuge.

We are extremely grateful to Congressman Saxton for the energetic role that he has played in conserving environmentally sensitive lands within the Barnegat Bay watershed by getting them included within the Forsythe Refuge through the mechanism of purchase at fair market value from willing sellers. We also applaud the efforts of Congressman Saxton to promote a discussion of how lands ought to be acquired and managed. This provides a welcome opportunity to work out conflicting views that any groups may hold on these issues.

The Ocean County Izaak Walton League has devoted itself primarily to promoting land conservation within the Barnegat Bay watershed. Most of our efforts to date have been directed at the expansion of the Forsythe Refuge.

1 - Because development pressure continues throughout the Barnegat Bay watershed, we believe that there should be a continued heavy emphasis on acquisition, even if it means that the land is undermanaged for many years into the future. In the realm of land conservation, acquisition is the great challenge of our era; if we save habitat from destruction today, we will have

THE OCEAN COUNTY CHAPTER OF THE IZAACK WALTON LEAGUE

unlimited time in the future in which to work out management strategies.

The urgency of the need for land acquisition is well illustrated by considering specific properties around Barnegat Bay. The list of lands that would in all likelihood now be housing developments if they had not been included within the Refuge is a long one. It includes Murray Grove and Oak Park Homes near Stout's Creek in Lacey Township, the Waterford site and Cedar Bonnet Island in Stafford Township, most of the Reedy Creek area in Brick Township, and the Dowd property in the Town of Barnegat.

Moreover, the list of tracts under development threat which are eligible for inclusion but not yet brought within the Forsythe Refuge is also a very long one. Among these threatened properties are the Havenswood and Jo Pal properties at Reedy Creek, the Tilton Point area south of Callus Island in Dover Township, the Veeder Lane/Lifetime Homes property as well as the Maple Creek area in Bayville, the Finninger Farm and the Airport tract in Lacey Township, the Sands Point Harbor area on Oyster Creek in Waretown, and the Lighthouse Camp property on the Bayfront in Waretown.

It is worthy of note that Congress is currently threatening to institute new policies concerning both the issue of regulatory "takings" and the definition of wetlands. These changes could potentially render regulatory protection of wetlands impossible. The day may come when the wetlands that the government actually owns are the only ones that we are able to keep from development.

2 - The U.S. Fish & Wildlife Service should have their budget for management increased, not decreased The Forsythe Refuge is very understaffed at present. We strongly believe that this is unwise both for present and future generations. A particularly adverse consequence of this understaffing is that it can serve as a rationale for opponents of land conservation to argue against increasing the amount of land under protection. To our way of looking at it, the fact that the Fish & Wildlife Service is willing to take on more land at a time when they are understaffed is a sign that they have the big picture in proper focus and that they understand what our obligations to future generations truly are. Those who control the Service's management pursestrings ought to back them up.

3 - We believe that the boundary of the Refuge should have wide flexibility ranging from places which are open for people to come in to walk, fish or hunt without having to get permission to other places where environmental sensitivity requires that the public be prohibited This type of flexible refuge boundary will help to maintain the public support that the Refuge ultimately needs to survive.

Hiking, fishing and hunting are three traditional activities of many citizens in our area. When lands pass from private ownership into the refuge, it is only natural that those who formerly were able to walk, fish and hunt on them - and who are now no longer able to do so - are upset. They feel that something has been lost from their lives, and they are right. We would like to see this problem ameliorated.

In our understanding of the problem, the flexibility that would lessen some of the complaints by users, or would-be users, must come from a management level higher than the local managers. Many policies are set in Washington and do not give the local management the discretion to be flexible. The Fish & Wildlife Service may wish to reflect further on the regional differences among their refuges. Because Barnegat Bay exists in an increasingly suburban environment, the public's legitimate needs for access will likely be of a different sort than may be found in Alaska or Wyoming. The winning possibility here is that by letting people use the Forsythe Refuge to a greater extent for walking, fishing and hunting, the Service may well strengthen the constituency that it needs to support it should it ever come under political or fiscal attack.

In urging a more flexible boundary, however, we do recognize that carrying out the mission of the U.S. Fish & Wildlife Service must necessarily frequently involve saying "no". For example we believe in absolute prohibitions on dirt bikes and jetskis on refuge lands. Where endangered species or possible habitat destruction are involved, the public must usually be prohibited. We are not trying to change the Forsythe concept from a refuge to a park, but we do believe that nature may be more strongly protected by allowing further measured involvement by people.

4 - After lands are acquired by the Fish & Wildlife Service and prior to a management plan being drawn up, lands ought to remain open to their traditional uses. To the best of my understanding the current practice is to completely close off a new piece of refuge property as soon as its boundaries can be posted and to leave it closed until a management plan has been drawn up - which may take a long time. This seems unnecessary and only creates bad will for the refuge. We support the idea of leaving land open until the refuge managers can draw up a plan in which access can be considered along with all other issues.

5 - We support the type of experimental management techniques now being tried by the Fish & Wildlife Service in the Connecticut River valley and elsewhere.

Although fee simple purchases from willing sellers will always have our support, we are aware that the Service is increasingly using such mechanisms as conservation easements and management agreements with property owners or state and local agencies. We support these efforts as worthwhile management tools.

6 - We support the idea of forming a "Friends of the Forsythe Refuge" organization, which we think should start out as an alliance of existing groups who wish to be helpful to the management of the Refuge. Many groups, including the Ocean County Izaak Walton League and the Alliance for a Living Ocean, are already hosting cleanups of refuge lands and are thereby already acting in a "Friends" capacity.

7 - Although the solution of this aspect of the problem is likely to lie beyond the power of one Congressman or of one Committee, we would be remiss if we did not take note of the fact that the problems surrounding the Forsythe Refuge have all the classic signs of being linked to overpopulation. Too many people have legitimate

but somewhat conflicting needs of the resource. Families need houses; plants and animals need protection; the tourist economy and shellfishermen need clean water; hikers, fishermen, hunters and boaters need to pursue their avocations. The population of each of these constituencies grows every day and functions as an invisible engine for most of the problems discussed here. We hope that the Committee on Resources will perceive population growth as a major component of this and of other problems and that the Committee will promote an appropriate population policy for our country.

The expansion of the Forsythe Refuge is doing enormous good for our region in the areas of protecting habitat, endangered species, waterfowl, water quality and our tourism economy. We hope that all involved with this project will keep up the good work and that they will talk through any problems that may arise in association with it.

Thank you for considering our views



Conserving Land
for People

STATEMENT OF ALAN FRONT
VICE PRESIDENT, THE TRUST FOR PUBLIC LAND
BEFORE THE
SUBCOMMITTEE ON FISHERIES, WILDLIFE, & OCEANS
APRIL 22, 1995

Mr. Chairman, I appear before you today representing The Trust for Public Land (TPL), a national, nonprofit land conservation organization that works with public agencies and communities to protect resource lands for the people and wildlife that depend on them. I appreciate this opportunity to come before the Subcommittee, and am gratified by your continued interest in land acquisition as an important tool to preserve dwindling habitat at the nearby Edwin B. Forsythe National Wildlife Refuge and at other refuges around the country. Given TPL's specific role in acquisition assistance as part of the extensive public/private partnership at the Forsythe, I hope my organization's perspective on the past successes and future opportunities in this effort will provide useful context for your consideration of the refuge's acquisition program and related issues.

Importance of, and Threats to, the Forsythe Refuge

The Edwin B. Forsythe National Wildlife Refuge provides vital wetland and upland habitat for both migratory and year-round resident species along the coast of America's most intensely urbanized state. The refuge, whose critical oases of open space punctuate the otherwise developed landscape along roughly 60 miles of the Jersey shore, is the first major estuarine area encountered by Atlantic Flyway waterfowl migrating southward from the small glaciated wetlands of the northeastern United States. Consequently, these key remnant wetlands represent an irreplaceable link in the constellation of waterfowl areas on the eastern seaboard, affording essential wintering nesting and feeding grounds for shorebirds, raptors, and upland-dependent species.

The protected lands of the Forsythe host over 150 species of bird life, including such federal-listed species as bald eagle, peregrine falcon, and least tern. An estimated 35 percent of the Atlantic Flyway's black duck population and fully 70 percent of its Atlantic brant winter here, along with the full complement of other migratory species on the flyway. One of just four wetland systems in the U.S. originally designated as a "Wetland of International Importance" under the global treaty known as the Ramsar Convention, the refuge also is home to a diversity of other sensitive animal and plant life.

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But the same development pressures that have severely limited this kind of quality habitat on the Jersey shore pose a real and present threat to key unprotected tracts remaining within the refuge. Subdivision and construction lay claim to more previously undeveloped coastal acreage each year. The habitat that remains thus is increasingly vital for the breeding sites, feeding grounds, upland cover, and travel corridors on which the area's wildlife depends. Maintaining the quantity, as well as the quality, of this habitat is central to stabilizing and enhancing waterfowl and other populations, and to the recovery of threatened and endangered species.

The Forsythe Acquisition Program -- a Partnership Response

Since 1990, the U.S. Fish & Wildlife Service, with support from Congress and from a broad partnership of interests including my organization, has maintained an aggressive habitat acquisition program focused on those available, willing-seller private lands most critical to maintaining the fragile links in the Jersey shore's chain of wetlands and adjacent uplands. The magnitude of this partnership and its record of success is both gratifying and, based on TPL's experience across the country, extremely unusual.

State and local jurisdictions have not only offered their uniform endorsement to the federal habitat preservation effort, but also have undertaken substantial acquisitions themselves, and in numerous instances have transferred their own own lands to the Fish & Wildlife Service (USFWS) to promote consolidated management of these lands. USFWS's program also has received similarly unified support and assistance from a diverse coalition of interests ranging from the environmental community to sportsmen's groups to local chambers of commerce, all of whom have recognized the national importance of the refuge and the importance of its wildlife and open space to their communities.

In the past five years, Congress has specifically directed over \$20 million to the Forsythe Refuge for its resource land acquisition efforts. With the approval of the Migratory Bird Conservation Commission, the Fish & Wildlife Service has committed additional federal duck stamp funds to augment this very considerable investment of appropriated dollars, and even further has applied some of its scarce Emergency Account funding to acquire additional lands of importance to the Forsythe Refuge and the Barnegat Bay. This steady, substantial funding has produced significant, tangible conservation results and habitat consolidation throughout the refuge. The effects have been particularly evident and beneficial in several areas where both the threat of development and USFWS planning efforts to preclude that development have been most intense.

Since 1990, USFWS has twice undertaken its formal public process to expand the boundaries of the Forsythe Refuge to include additional threatened habitat. The first of these cases led to the establishment of the Reedy Creek Division. Private holdings at Reedy Creek ranged from open-space uplands already permitted for development to undevelopable marsh, all of which together comprised a complete wetland/upland habitat system. More recently, USFWS last year approved the nearly 8,000-acre Ocean County expansion of the refuge to include some of the last, best islands of habitat in a sea of development stretching south from

Reedy Creek to the main body of the Barnegat Unit. Like the overall acquisition program, these expansions have been true partnership efforts with strong community consensus.

TPL's role in the Forsythe partnership has centered on the realities of the real estate marketplace, in which private sale or development prospects may outpace the government's ability to respond. As a private organization with public-interest goals, we have been able to secure threatened lands by competing directly with other private alternatives, negotiating with willing sellers to purchase or otherwise gain control of lands, and then maintaining our hold on properties until public acquisition is possible. In this way, TPL works to meet the immediate private needs of landowners while keeping their resource lands available for eventual public use and resource conservation.

TPL's Perspective -- Acquisition to Date, and Opportunity for the Future

Working with USFWS, the State of New Jersey, and local jurisdictions, TPL in the last five years has assisted in the protection of nearly 4,000 acres of habitat lands at the Forsythe Refuge and elsewhere in the Barnegat Bay ecosystem. Our work with USFWS has been concentrated at Reedy Creek, in the more recent Ocean County expansion, and in other key areas of the original core of the refuge. In each area, the primary initial focus has been on properties that faced the most immediate development pressures in order to preclude loss of the habitat integrity of these areas. Subsequent activity has involved acquisition of resource-rich but less imminently threatened (and frequently less costly) sites in order to block up habitat.

This approach has yielded clear results at Reedy Creek, where real progress has been made towards consolidation but which by now would suffer from considerable incompatible development were it not for the acquisition of threatened properties there that began five years ago. In the original Barnegat and Brigantine Units of the refuge, which are fairly well consolidated, development threats and acquisition opportunities continue to arise for key private holdings. And in the most recent expansion areas, our current experience in the real estate marketplace demonstrates just how immediate those threats and opportunities can be. TPL currently is affording interim protection to four properties in the expansion, including an already-approved 252-unit subdivision, that are true now-or-never opportunities.

I appreciate your commitment, Mr. Chairman, and that of other members of the Subcommittee to the protection of resources that once lost can never be retrieved. As the experience to date at Forsythe shows, habitat acquisition in this area (as in many other parts of the country) is a core component in the strategy to maintain and improve the health and number of wildlife populations. Happily, this program also has been consistent with the desires of the communities that coexist with the refuge, communities with their own appreciation for and stake in protecting threatened open space and the habitat it supports. And while the progress to date is truly striking, the choice between development and protection continually arises as properties become available. The public/private partnership, USFWS's program, and Congressional support for the program at the Forsythe all have been remarkably strong. For the work yet to be done, we urgently hope this strength will continue, and we look forward to our continued involvement in this very special refuge.



State of New Jersey

Department of Environmental Protection

Christine Todd Whitman
Governor

Robert C. Shogan, II
Commissioner

NEW JERSEY DIVISION OF FISH, GAME AND WILDLIFE

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TRENTON, NJ 08625

ROBERT MCDOWELL

TESTIMONY OF ROBERT MCDOWELL, DIRECTOR OF THE NEW JERSEY DIVISION OF FISH, GAME AND WILDLIFE, BEFORE THE SUBCOMMITTEE ON FISHERIES, WILDLIFE AND OCEANS OF THE COMMITTEE ON RESOURCES OF THE U.S. HOUSE OF REPRESENTATIVES, AT BARNEGAT RECREATION CENTER, BARNEGAT, NEW JERSEY ON SATURDAY, APRIL 22, 1995

Thank you for the opportunity to appear before you today to discuss the Edwin B. Forsythe National Wildlife Refuge and the purposes of the Refuge System as a whole. As you know, I am the Director of the Division of Fish, Game and Wildlife, the state agency charged with the responsibility of protecting and managing the state's fish and wildlife resources. I am also representing, as an executive committee member, The International Association of Fish and Wildlife Agencies. The Association's governmental members include the fish and wildlife agencies of the states, provinces, and federal governments of the U.S., Canada and Mexico. All 50 states are members.

We have always been, and continue to be strong supporters of the National Wildlife Refuge System. We consider the U.S. Fish and Wildlife Service to be an invaluable partner in the conservation of our state's rich fish and wildlife heritage. We strongly support the expansion of the Refuge System in New Jersey, particularly when it involves wetlands and associated uplands where the threat of development is imminent.

Having said that, I would also like to express some concerns I have with the way the Refuge System is managed. National Wildlife Refuges are purchased because they protect some of the richest fish and wildlife habitats this country has to offer. As a consequence of this richness, these areas have always provided outstanding opportunities for wildlife-associated recreation such as fishing, hunting, birding, crabbing, clamming, etc. In addition, this recreational tourism provides significant economic benefits to the local community. According to the Fish and Wildlife Service's National Survey, wildlife-associated recreation generates \$2.65 billion in economic activity in New Jersey every year, particularly benefiting small businesses and their employees.

Wildlife-associated recreational use has been compatibly enjoyed on many lands that have become National Wildlife Refuges in New Jersey for the better part of three centuries. It is ironic, however, that when these rich habitats are designated a Refuge, all public use must stop until a written determination is made that each particular use, wildlife-associated or not, is compatible with the primary purposes of the Refuge.

Because of the Service's limited operational funding, this policy has resulted in the closure of Refuges to compatible, wildlife-associated uses for many years, sometimes decades. Because of the burdensome paperwork involved, some Refuge Managers shy away from ever opening their Refuges to these uses. This negative approach to wildlife oriented recreation not only impacts local economies and recreational opportunities, it frustrates the users and erodes support for the Refuge System as a whole. Waterfowl hunters, in particular, who have financially supported the Refuge System for half a century, complain about the lack of responsiveness of the Fish and Wildlife Service to their legitimate concerns.

It is my feeling that legislation is needed to allow the Service to take a positive approach toward their most ardent supporters, the wildlife-associated recreational users. Traditional wildlife-associated uses should be presumed to be compatible when a new Refuge is purchased. If a compatibility problem arises, then uses can be curtailed or appropriately regulated. This not only sends a positive message to the users, but cuts down tremendously on the administrative workload of the hard-pressed Refuge Managers. The Service's "Refuges are for People" slogan would not ring so hollowly under this type of system.

The positive approach works! As an example, let me share with you a "tale of two cities." In 1971, acquisition for Supawna Meadows National Wildlife refuge was begun in Salem County, New Jersey. At about the same time, and a short distance down the Bay, the state Wildlife Management Area at Mad Horse Creek began to take shape. Both areas were traditionally utilized for all sorts of wildlife-associated recreation. At Mad Horse this recreation continued, and continues to this day, without any damage to the eagles, harriers, ospreys, black rails or any other sensitive species that inhabits this protected ecosystem. At Supawna on the other hand, all recreational use has been excluded for the last 24 years with the exception of hunts to control the deer herd, waterfowl hunting on 4.5% of the Refuge and guided tours of the lighthouse on the third Sunday of every month. And these exceptions have occurred only very recently. Because of the lack of operational funding, wildlife-associated recreation has essentially been eliminated from an area where it was compatibly enjoyed for generations. The users are left wondering about the dichotomy in policies between two agencies whose primary mission is the same: protect and manage fish and wildlife resources for their ecosystem and people-related values.

We have seen improvements in this situation in recent years such as the opening of Cape May National Wildlife Refuge to birding and its planned opening this fall for recreational deer hunting. Even in this best case scenario, however, where the Refuge Manager is dedicated to getting the job done, it took almost six years for any traditional wildlife-associated uses to be restored. Other traditional uses of this Refuge such as waterfowl hunting, woodcock hunting and crabbing will take several more years to re-establish.

Legislation is sorely needed to rectify this needless and irreplaceable loss of recreational and economic resources. Additionally, any new legislation should affirm the primary role of the state fish and wildlife agencies in protecting and managing fish and wildlife resources unless specifically preempted by federal law. Greater coordination and cooperation with state agencies, who have the broad responsibility for fish and wildlife within their borders, would alleviate many of the problems cited above.

The National Wildlife Refuge System represents a key link in our efforts to preserve a place for wildlife in our nation's most densely populated state, as well as the entire country. It can also serve to meet the considerable recreational and educational needs of our citizenry without damage to the resources it was established to protect, if it is professionally and intelligently managed. To accomplish this, legislation to reform the existing recreational use policies is a necessity. I look forward to working with you to achieve this important goal.

TISHOMINGO NATIONAL WILDLIFE REFUGE

TUESDAY, MAY 16, 1995

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON FISHERIES, WILDLIFE AND OCEANS,
COMMITTEE ON RESOURCES,
Washington, DC.

The subcommittee met, pursuant to call, at 2:15 p.m. in room 1324, Longworth House Office Building, Hon. Jim Saxton (chairman of the subcommittee) presiding.

STATEMENT OF THE HON. JIM SAXTON, A U.S. REPRESENTATIVE FROM NEW JERSEY, AND CHAIRMAN, SUBCOMMITTEE ON FISHERIES, WILDLIFE AND OCEANS

Mr. SAXTON. If the panel would assemble. The committee will come to order.

I would like to extend a welcome to our witnesses who are here today to discuss Mr. Brewster's bill, H.R. 1112, to transfer management of the Tishomingo National Wildlife Refuge from the U.S. Fish and Wildlife Service to the State of Oklahoma.

[The bill H.R. 1112 may be found at end of hearing.]

Mr. SAXTON. This bill was introduced in response to several actions taken by the U.S. Fish and Wildlife Service after its review of the compatibility of certain secondary activities in the Tishomingo Refuge, which I am sure Mr. Brewster intends to outline here today in a few minutes.

Mr. Brewster's measure would transfer management but not ownership of the refuge to the Oklahoma Department of Wildlife Conservation. It would require that this refuge be managed consistent with the Refuge Recreation Act of 1962 and the National Wildlife Refuge System Administration Act of 1966. It would also authorize up to 50 percent of the funds appropriated for the refuge to the State of Oklahoma in fiscal year 1996.

I look forward to hearing from our many distinguished witnesses today about this proposal. Nationwide, questions have arisen about what constitutes compatible use of refuge lands. Just last month, the subcommittee held a field hearing in Barnegat, New Jersey, to discuss appropriate uses of refuge lands in the Edwin B. Forsythe National Wildlife Refuge. In fact, next week the subcommittee will be holding a hearing on the larger refuge reauthorization bill which also examines the compatibility issue. The New Jersey hearing and today's hearing will certainly provide the subcommittee with more background on this very important issue.

I would also like to note that we anticipate a number of votes. They will be spaced a half-hour to 20 minutes apart, so we will do

our best to work within that. And I would like to recognize Mr. Studds at this point for any opening statement he may have.

STATEMENT OF THE HON. GERRY E. STUDDS, A U.S. REPRESENTATIVE FROM MASSACHUSETTS

Mr. STUDDS. Mr. Chairman, I will simply put my opening statement in the record at this point.

[The statement of Mr. Studds follows:]

STATEMENT OF GERRY E. STUDDS, A U.S. REPRESENTATIVE FROM MASSACHUSETTS

Today's hearing is part of an ongoing discussion within this panel about the management of our National Wildlife Refuges. From humble beginnings at the start of this century, the National Wildlife Refuge System has grown into a large, complex system designed to preserve important wildlife habitat throughout the United States. As our nation's population has grown, so too have pressures on the National Wildlife Refuge System, sometimes bringing various uses of the refuges into conflict. The bill on which we will hear testimony today is one approach to resolving user conflicts within a refuge.

I have a number of reservations about H.R. 1112. I am concerned about the precedent set by passing legislation to resolve user conflicts within individual refuges. User conflicts are not new to the refuge system, and we will have a lot of legislation to do if we plan to resolve them that way. Also, if we take actions that restrict the ability of refuge managers to make decisions regarding fish and wildlife conservation, I believe that we will harm the refuge system in the long run. I would venture to say that the many dedicated professionals within the Fish and Wildlife Service know a bit more about wildlife management than does the U.S. Congress. While I wholeheartedly support recreational uses of wildlife refuges by the public, I believe that they are secondary to the fundamental conservation purposes of the refuge system.

In this time of tight budgets, we certainly need to look at creative approaches to management. But before we adopt new management regimes, this Committee needs to take a careful look at the implications of such changes for the resources being managed. On that note, I thank the Chairman for holding this hearing and I look forward to hearing the testimony of our colleagues and the other witnesses.

Mr. SAXTON. Also, I would like to recognize Mr. Young who is waiting breathlessly to say something.

STATEMENT OF THE HON. DON YOUNG, A U.S. REPRESENTATIVE FROM ALASKA; AND CHAIRMAN, COMMITTEE ON RESOURCES

Mr. YOUNG. Mr. Chairman, as a cosponsor of H.R. 1112, I am pleased to listen to the witnesses today, and this is just the first step of many, although this is the first step that has been instigated by a State and by the delegation from that State that I expect to have happen in the full committee over a period of time.

There are many areas where the refuge system has, frankly, not been operated as it should have been, and how this was created and why it was created and by whom it was created has been misinterpreted over the years. I will say in this area that refuges should be managed as refuges, and it is really up to the discretion of the people, I believe, that live in these States to try to make sure that they fulfill the obligations of the Refuge Act itself.

As you know, Mr. Chairman, I have introduced a bill to review the total Refuge Act and we hope to have some of these, I think, unfortunate instances eliminated and how they are interpreted for the refuges take place. That is a step forward, and a very unique step I think. It is the first time.

And I do want to compliment Mr. Brewster for his leadership in this as well as Senator Nickles and Jim Inhofe for their fine vision of how refuges should be operated. So I look forward to the witnesses today, Mr. Chairman.

Mr. SAXTON. Thank you, Mr. Young.
[The statement of Mr. Young follows:]

STATEMENT OF HON. DON YOUNG, A U.S. REPRESENTATIVE FROM ALASKA, AND
CHAIRMAN, COMMITTEE ON RESOURCES

Mr. Chairman, as a cosponsor of H.R. 12112, I am pleased that we are having this important hearing today on the Tishomingo National Wildlife Refuge in Oklahoma.

This bill has been introduced by the distinguished Gentleman from Oklahoma, Congressman Bill Brewster. It will transfer the management of the Refuge from the Federal Government to the Oklahoma Department of Wildlife Conservation.

The Tishomingo National Wildlife Refuge was established on January 24, 1946. For nearly 50 years individuals have been able to enjoy camping, fishing, hunting, and picnicking on some, if not all, of the 13,450 acres that comprise this unit. Regrettably, the Fish and Wildlife Service has now proposed the elimination of camping in the entire Refuge and new onerous restrictions on boating, fishing, and picnicking.

H.R. 1112 was introduced in response to these restrictions and the public outcry that has been sounded throughout the State of Oklahoma.

While the Fish and Wildlife Service will be given an opportunity to explain why these recreational activities are no longer "compatible", many Oklahomans, who help to maintain this Refuge through the purchase of duck stamps and excise taxes on fishing and hunting equipment, are disgusted that the Federal Government would outlaw activities that have occurred for generations.

H.R. 1112 is not a new or radical idea. A number of Federal lands in coordination areas, waterfowl production areas, and wildlife refuges are being effectively managed by the States, and I am confident that the State of Oklahoma could do an outstanding job of managing the Tishomingo Refuge.

Finally, the American people want a smaller Federal Government and more responsibility entrusted to the States. This legislation will accomplish those goals and will ensure that the thousands of people who visit Tishomingo will be able to enjoy various recreational activities without destroying either the Refuge or the species that live there.

Mr. Chairman, I look forward to hearing from our distinguished witnesses and I compliment Don Nickles, Jim Inhofe, and Bill Brewster for their leadership in this matter.

Mr. SAXTON. I ask unanimous consent that all subcommittee members' statements be included in the record at this point.

I would like to introduce our first panel and the sponsor of the bill, our good friend and distinguished colleague from Oklahoma, Congressman Bill Brewster, and former cochair of the Congressional Sportsmen's Caucus.

Gentlemen, welcome. We would like to remind you that under the committee rules we must limit our oral statements to five minutes, so if you would proceed in any order, presumably with Mr. Brewster going first.

STATEMENT OF THE HON. BILL K. BREWSTER, A U.S.
REPRESENTATIVE FROM OKLAHOMA

Mr. BREWSTER. Mr. Chairman, I want to thank you for the opportunity to appear before your subcommittee today, and I appreciate the opportunity to hold this hearing so various interests can have an opportunity to publicly discuss the legislation I have introduced.

On March 2nd, 1995, I introduced H.R. 1112, a bill which transfers management of the Tishomingo National Wildlife Refuge in

Oklahoma to the State of Oklahoma. I felt compelled to introduce H.R. 1112 after repeated attempts failed to resolve differences between the United States Fish and Wildlife Service, local citizens, and myself concerning uses determined to be appropriate and permissible upon the refuge.

In Oklahoma, as in most non-Western States, there is very little public land. In most areas, these small pockets of public land provide the only opportunity for the nonlandowning public to fish, hunt, or view wildlife in its natural setting. These areas provide excellent family-oriented recreational opportunities at little or no expense to the public.

Let me restate. I am proposing to transfer the management of the Tishomingo National Wildlife Refuge to Oklahoma as a pilot project. In a few years if it has become apparent the refuge is not adequately addressing the conservation needs of residential and migratory wildlife, we may debate returning management to the Federal Government.

However, during the last few years we have experienced an explosion of government overregulation. The public opinion backlash resulting from runaway regulation is threatening to nullify years of constructive environmental conservation efforts. If we lose the support of the local communities, we lose the ability to protect and conserve our wildlife resources in the future.

I have personally experienced this situation in the district I represent with the administration of the Tishomingo National Wildlife Refuge. During the past few months, the manager of the refuge, with the support of the regional and national administrators, has proposed a new management plan which would prohibit boating and fishing for three of the seven months currently allowed. It would prohibit year-round access to about 40 percent of the refuge waters as well as place all sorts of restrictions on types of tackle and fishing equipment permitted. In essence, the refuge manager, through his compatibility review, is shutting down well over 50 percent of the fishing opportunities available to the refuge and is setting up a bureaucratic nightmare for local anglers in deciding what type of lure they can use or whether the jug on the end of their trot line is government approved.

After I devoted considerable time and effort to resolve the situation at Tishomingo, I realized the problems I confronted were not limited to the uses which were and were not permitted in the refuge. Therefore, I decided to introduce H.R. 1112 to help resolve two separate issues limiting the refuge's effectiveness.

The first problem the bill will address is a decision of the U.S. Fish and Wildlife not to allocate funds at an appropriate level to adequately staff and manage the refuge. The second problem is that the unresponsiveness of the U.S. Fish and Wildlife to the public's concerns.

As we work toward establishing a fiscally responsible Federal Government, every segment of the government is facing tough budget decisions. Therefore, it may be understandable that the U.S. Fish and Wildlife has found it necessary to suspend some of the activities it had previously overseen on the refuge. However, the decisions made in response to the new budgetary decisions facing the service on how to allocate their remaining funds have not

fully taken into account the needs of the migratory waterfowl or the public.

For example, the refuge manager is currently proposing to convert the picnic pavilion into an environmental education facility. While the manager wants to spend thousands of dollars to convert the use of the visitor's pavilion, access to certain areas of the refuge have been restricted or prohibited because of the inability to properly supervise activities in those areas. Moreover, the public which regularly visits the refuge is greatly opposed to the conversion.

However, access to certain portions of the refuge is not the only problem associated with inadequate funding. Grain cultivation on the refuge was discontinued some years ago, reportedly due to the lack of funding. The cultivation of grain on the refuge provided a supplement to the naturally occurring food sources.

Furthermore, U.S. Fish and Wildlife Service claims they are restricting boating, fishing, and access to portions of the refuge in order to control vandalism, off-road habitat impact, and disturbance of wildlife. If the U.S. Fish and Wildlife Service is unable to properly patrol and operate the refuge because of lack of funding, then it would seem appropriate to assign management to an entity. In this case, the State of Oklahoma, which will be able to adequately staff and therefore manage the area.

Turning to the issue of public accountability, the current administrative structure is not responsive to the concerns of the public. The decision to restrict activities in the face of public disapproval is illustrative of the problem. For example, whether or not the practices occurring prior to 1994 were intruding upon the migratory waterfowl is debatable. However, no forum exists to debate this question.

Currently, there is no accountability in regard to what is considered a compatible use. Therefore, if the USFWS is unable to work with the local citizenry, then the policy to assign management to a state wildlife management agency is an opportunity which should be pursued, not avoided.

In this situation, the frustrated public contacted me after they realized their concerns were not being given adequate consideration in the proposed management changes. I too experienced the same type of frustration when I tried to work with the two groups to resolve the differences. I contacted the USFWS concerning the proposed changes during the official comment period and early February 1995. However, my concerns were effectively ignored by the USFWS until I introduced H.R. 1112. After I introduced H.R. 1112, the USFWS suddenly became more than willing to discuss the problem.

We can all agree that is no way to pursue the resolution of disputes. Therefore, it is my hope shortening the chain of accountability between the public and the public's government will result in a more responsive and more efficiently managed refuge.

Mr. Chairman, we look forward to your questions.

Mr. SAXTON. Thank you very much, Bill.

Mr. SAXTON. Mr. Geren.

**STATEMENT OF THE HON. PETE GEREN, A U.S.
REPRESENTATIVE FROM TEXAS**

Mr. GEREN. Thank you, Mr. Chairman. I appreciate the opportunity to appear before you today and express my appreciation also to the other members of your subcommittee.

It is a pleasure to appear before you and join with Mr. Brewster to discuss his proposal to transfer the management of Tishomingo National Wildlife Refuge to the State of Oklahoma.

Mr. Chairman, as you know, I have the pleasure of following in Mr. Brewster's shoes as the new Democratic cochair of the Congressional Sportsmen's Caucus. The Caucus, which numbers 184 Members in the House and 46 in the Senate, was founded to protect the traditional rights of Americans to hunt, fish, and enjoy the outdoors.

In recent years, there has been an alarming trend of decreasing access to land to hunt, fish, and pursue outdoor activities. This is particularly true of Federal lands. On more than one occasion, we have heard the U.S. Fish and Wildlife Service say that they simply do not have the resources to satisfactorily manage the public recreational programs on the vast inventory of lands currently in the national refuge system. As a result, Americans have seen their ability to enjoy refuges, the very refuges that they pay for, that they own, seen their access to them diminish. The trend indicates that access to these lands will continue to decline.

In response to this, Congressman Brewster and others have proposed innovative solutions that will ensure that these lands are still accessible to Americans while ensuring that they are properly managed. Specifically, in this case, Mr. Brewster has proposed turning management of the Tishomingo Refuge over to the Oklahoma Department of Wildlife Conservation.

Mr. Chairman, the pervasive opinion in Washington for many years has been, Washington knows best. For some reason Federal bureaucrats and others in Washington think that they know what is better for Oklahoma, or for Texas for that matter, than do Oklahomans and Texans. Thankfully, this mindset seems to be fading and we are starting to realize as a Congress that Washington does not have a monopoly on wisdom.

Mr. Brewster's proposal establishes a pilot program whereby we can examine the effectiveness of a State in managing a Federal wildlife refuge. I have every reason to believe that they will do as good a job, if not better, than the Federal Government. In any event, I think the time has come to give them a chance. This legislation does just that and I urge my colleagues on the subcommittee to expeditiously consider it.

Mr. Chairman, during the course of this hearing I expect that you will hear testimony predicting a negative effect from this proposal on wildlife in and around the Tishomingo Refuge. Some may go so far as to say that proponents of this proposal do not care about our wildlife resources. This simply is not true. I can say without hesitation that I have never met anyone who is more committed to conservation, who is a better steward of our environment or who has a better understanding of the importance of wildlife management than our friend and colleague, Bill Brewster.

I appreciate again the opportunity to appear before you today and I urge your consideration of this initiative and see it as a pilot program that perhaps we could consider in other parts of the country as well.

Thank you, Mr. Chairman.

Mr. SAXTON. I thank both of the witnesses, our colleagues, for a very articulate testimony. Let me ask two questions and you can respond to them however you like.

Number one, how would you foresee that Oklahoma would proceed to manage the refuge differently? In what respects would you see changes made and to what extent do you think those changes would be made? Would it be a different planning process? A different hearing process? Obviously, if we are going to acquire lands for refuges, there has to be some good understanding of how they are going to be managed. And how would Oklahoma do you think proceed to do that through your conservation proposal?

Mr. BREWSTER. Mr. Chairman, obviously we would want the mission to remain the same: To be a refuge especially for waterfowl but for all wildlife.

I think you would see it managed quite differently in several ways. For instance, the land adjacent to it is Federal land as well. It is Corps land. It is managed by the State of Oklahoma now as a public hunting entity. The State of Oklahoma has equipment there to plant grain fields with.

As another example, Mr. Chairman, while the goose populations are at an all time high in Oklahoma, the refuge last year dropped to an all time low. And the population in January was 1,400 geese. Ten years ago that population was 30,000 geese on that one refuge. Because of the lack of proper handling, in my opinion, the lack of planting food plots, geese don't stop there anymore. If it is to remain a viable refuge for waterfowl, we have to have reasons for waterfowl to be there.

The State operates a much smaller refuge at Fort Gibson Lake and last year they had an estimated 25,000 mallards, an estimated 12,000 snow geese, and about 6,000 Canadians. At the same time the Tishomingo, which is much larger, is now down to 1,400 geese. In fact, Mr. Chairman, we have more geese on the golf courses in Oklahoma City than we have staying at refuges.

I believe we must change direction to once again have waterfowl utilizing that refuge. I believe our wildlife department can show numerous cases where they have done that through the years, and due to the fact that they already manage the property adjacent they have the equipment there and everything to plant grain and do a much better job.

Incidentally, Mr. Chairman, the State of Oklahoma is currently providing the law enforcement on the refuge. The State wildlife department provides all the law enforcement on the refuge today. So, the only change in function would be management of the refuge to best handle waterfowl and other wildlife for the Federal Government.

Mr. SAXTON. Thank you. I suspect that it would be fair to say that you are here out of a certain amount of frustration because of the lack of local input into the planning as to how the refuge is managed. I have seen similar frustration in New Jersey. I am won-

dering if you have given any thought to the possibility of providing for continued Federal management through a management plan that would be adopted through more meaningful local input from local officials, hunting groups, conservation groups, et cetera?

Mr. BREWSTER. Well, the main issue that created this to start with, there were two issues. One, the fact of the diminishing number of waterfowl that stopped there. Obviously, hunting occurs around the refuge, not on the refuge but around it. And for many, many years, well, the lake has been there 55 years so for many years, Goose Hill and some others have been great goose hunting areas. There are no geese stopping there any more. The numbers were considerably down. That is one concern.

The second concern is that it is the best crappie fishing in Lake Texoma. Obviously, fishing does not occur during the time that waterfowl is on the lake and it should not. We are all in agreement. We have gotten along very well for many years with the provision that fishing was closed from October to March and after March first fishing was reopened. When the management suggested stopping fishing completely and came back and said, well, we might open it up June 1st, it gave all the fishermen there quite a heartburn, many of us who have fished there since we were little children.

Mr. SAXTON. Thank you, Mr. Brewster. Mr. Studds.

Mr. STUDDS. Thank you, Mr. Chairman.

Gentlemen, I particularly am loath to ask a question about a refuge that I, quite frankly, had not heard of before today.

Mr. BREWSTER. Mr. Chairman, we would like to have you down. We would like to—

Mr. STUDDS. Well, it is dangerously far from the ocean; is it not?

Let me make one general observation since I may not be able to stay as long as I should. I have to say I am just a little bit uncomfortable at the thought of dealing with every conflict on a refuge by congressional action in order to resolve no matter what manner we might choose to resolve it. That makes me nervous, a lot. I understand from your testimony, Mr. Brewster, that one of the two principle problems here is inadequate funding, if I read your testimony correctly.

Mr. BREWSTER. That is correct.

Mr. STUDDS. How do you propose to resolve that by cutting in half the Federal contributions? Is Oklahoma going to more than make up for that?

Mr. BREWSTER. Mr. Chairman, Mr. Former Chairman I guess I should say.

Mr. STUDDS. Yes.

Mr. BREWSTER. Mr. Studds, it is hard to break the habit of calling you Mr. Chairman.

At any rate, it would alleviate some money to be used on other refuges. I think all of us know that the structure, money-wise, this time is going to be very, very difficult. If cost savings can occur and better management occur, that is what we would hope for all the way through.

The wildlife department in Oklahoma receives, as you know, money from Pitman Robertson and many other funds, especially on licenses. Lifetime license holders have contributed a pretty vast

amount of money to the State of Oklahoma's wildlife department. They do a great job handling wildlife. They tell me that for approximately half the funding, they think they can do an excellent management job of this facility. If that is correct, then the other money could be used in much needed places in many other refuges across the country.

Mr. STUDDS. But the problem may not have been inadequate funding if you do it on half as much.

Mr. BREWSTER. I think it has not been handled properly if that is the case because they are very adamant that they can handle it and handle the mission very well, plant grain and everything for the wildlife which is not being done now on half the funding. They probably don't pay as big of salaries as we do, either.

Mr. STUDDS. By the way, this isn't a compensable taking by Oklahoma; is it? Never mind. Never mind. I am sorry.

Mr. BREWSTER. However, we might need to change the Clean Water Act.

Mr. STUDDS. I think we are about do that. Thank you, Mr. Chairman.

Mr. SAXTON. Mr. Young.

Mr. YOUNG. Thank you, Mr. Chairman.

Mr. Brewster, I don't have any questions. I have read all the testimony before us. I have some questions for other witnesses.

I think this is a classic example where again the management of the refuge forgets one thing and that is partners. Now, they say they are right. They say this is the way they have been directed to do it. I notice this was originally set up for a migratory wildlife refuge and they are objecting because some of the species affected were bald eagles, pelicans, cormorants, herons, egrets, and grebes. I don't see any word about ducks or geese or those things that migrate. These may migrate but I thought it was set up for geese.

And you are absolutely right, I have had this fight with the Fish and Wildlife for years. They don't like to plant food; it is not natural. I have heard that.

Now, you are not going to have a refuge unless you have food. It may look good for those who want to say it is a refuge but it is not a refuge. You have to have food. And they always will say, well, this is not natural food. Well, I want to know what is natural and what is not natural. The last time I heard grain and rice and corn, God created just like they do flax, et cetera and et cetera.

You know my position on this legislation and we will see what we can do about it.

Mr. Geren, thank you for being here today. This is an example of where people have to understand you work with the little people. You achieve great goals. If you lose that support—

Mr. BREWSTER. Mr. Chairman, I would like to make one point. I did talk mainly about ducks and geese. However, any improvement in habitat affects all game and nongame species. But we certainly support the nongame species equally as with the ducks and geese, but my point, if we improve habitat for one type of bird, it improves that habitat in general for all those types.

Mr. SAXTON. Well, listen, I would just like to say thank you for coming and for bringing this specific matter to our attention. It is part of a bigger issue that we face and we are going to be looking

at policy changes that affect wildlife refuges in the program in a more total vein as well. And there are several changes that we might want to look at, particularly in how refuge plans come about and then how they are enforced. Refuge managers have a tremendous amount of power and those are some of the issues that we want to look at.

I am just reminded—sorry, Mr. Longley, we didn't have a chance to ask if you had any questions or statements.

Mr. LONGLEY. Not at this time, thank you.

Mr. SAXTON. Thank you.

We will certainly be looking at this bill. Mr. Young told me so. And we thank you for your contribution this morning.

Mr. BREWSTER. Thank you.

Mr. STUDDS. Mr. Chairman, may I just, obviously, I trust the new Majority is going to continue our effort to find a better word for the kingdom that has just been referred to as nongame. We have had a long, long history of attempting not to impugn the bravery of these critters and it does seem to me that nongame is not very nice. How do you know?

Watchable does not qualify.

Mr. YOUNG. Mr. Chairman, without objection I would ask Mr. Brewster to join us at the roster.

Mr. SAXTON. I thank the witnesses on our first panel for their testimony and Members for their questions. The members of the subcommittee may have some additional questions for the witnesses and we will ask them to respond in writing, if so. The hearing record will be open for these responses.

Mr. SAXTON. Now, I will introduce the second panel, a panel with Mollie Beattie, the Director of the U.S. Fish and Wildlife Service. I understand that while you alone are testifying, you will be accompanied by a staff witness, Nancy Kaufman.

Ms. BEATTIE. Mr. Chair, also Rob Shallenberger, who is the chief of our Division of Refuges.

May I ask for the Chair's and committee's indulgence, if we ran over our time a little we have some maps to show and I think it will just be an objective presentation of where and what we are proposing and maybe that would help in understanding but it may slow my testimony down a little.

Mr. SAXTON. You may proceed as long as you aren't too awfully long.

Ms. BEATTIE. Thank you. You will get home for supper, Mr. Chair.

STATEMENT OF MOLLIE BEATTIE, DIRECTOR, U.S. FISH AND WILDLIFE SERVICE, ACCOMPANIED BY NANCY KAUFMAN, DIRECTOR, SOUTHWESTERN REGION AND ROBERT SHALLENBERGER, CHIEF, DIVISION OF REFUGES

Ms. BEATTIE. Thank you for the opportunity to testify today on H.R. 1112. We are deeply discerned about this legislative proposal both as it relates to the management of Tishomingo Refuge and as it may affect the national wildlife refuge system as a whole, and we oppose its enactment.

We acknowledge that there are legitimate differences of opinion regarding management actions proposed at Tishomingo Refuge to

ensure that public use activities are compatible with the purposes of this refuge. However, we respectfully suggest that the proposed legislation will not resolve those differences and will likely create more serious problems as a result.

Let me explain by providing some general background on our review of refuge issues and the Tishomingo Refuge in particular.

I am going to ask Rob Shallenberger, maybe we need to move that a little closer so the Members can see it, but let me just tell you that Tishomingo Refuge was established in January 1946 through Public Land Order 312 on the Lake Texoma Project, "for refuge and breeding ground purposes for migratory birds and other wildlife." The original refuge included 13,450 acres, encompassing the Cumberland Pool and immediately adjacent lands.

Bob, do you have a graphic that you can show people the refuge as it relates to the rest of the lake?

Mr. SHALLENBERGER. This map which appears on the brochure, which is in your package there if you want to look at it closely, but only this upper portion at the top of the map, about 13,000 acres, is Tishomingo Refuge and the rest is Lake Texoma.

Ms. BEATTIE. In 1957, the 3,000-acre Tishomingo wildlife management plan unit—excuse me, management unit was added to the refuge immediately upstream of the Cumberland Pool. The Wildlife Management Unit is managed under a three-way cooperative agreement between the Department of Interior, the Department of the Army, and the Oklahoma Department of Wildlife Conservation. The Oklahoma Department of Wildlife Conservation also manages a much larger unit further upstream on the Washita River through a direct agreement with the Army.

The service has provided opportunities for a wide variety of recreational activities at Tishomingo Refuge since it was created, but the level and times of use have changed over time. The refuge now attracts over 100,000 visitors annually. Of these, 67 percent participate in wildlife observation and interpretation; 29 percent engage in fishing; about 2 percent in hunting; and about 1.5 percent in camping and picnicking.

The Cumberland Pool, a major part of the refuge, has itself also changed considerably. When Lake Texoma was created by the construction of Denison Dam, it was anticipated that this pool would capture transported sediment loads during floods in the Washita River basin. The result has been the transformation of an 11,000 acre deep water lake into a lake with less than 4,000 acres of deep water and 7,000 acres of shallow wetlands, mud flats, sandbars and sloughs. Much of the shallow fringes of the original deep pool have been invaded by trees and emergent marsh vegetation.

Rob, can you show the development of the Cumberland Pool over time.

Mr. SHALLENBERGER. That is an aerial photo that compares 1949 and 1978 with the same area. This is three years after the dam was created when it was only water in the lake and the same area all invaded with vegetation as a result of sedimentation along the river basin.

Ms. BEATTIE. And the original extent of the lake itself.

Mr. SHALLENBERGER. This is a photo showing the same configuration of the lake shortly after the dam was constructed.

Ms. BEATTIE. Thank you.

This natural process of sedimentation has enhanced habitat for migratory birds by creating a far wider diversity of nesting, feeding, and roosting areas. However, this change has also increased the conflict between some traditional recreational uses of the deep water pool and refuge wildlife.

Proposals by the service to mitigate increasing recreation and wildlife conflicts at Tishomingo Refuge are not new, nor have they occurred without controversy. In 1962, Refuge Manager Earl Craven established a buoy line to seasonally close a portion of the lake to boating activities. Refuge Manager Ernie Jamieson implemented a seasonal closure of the entire lake in 1972. In 1987, Refuge Manager Bill Hutchinson documented mortality of migratory birds in trotlines. These are fishing lines with multiple hooks which are fastened to the shore and left unattended in the water overnight or longer. That refuge manager attempted to enforce winter removal of those lines. All of these actions were aimed at preventing, or lessening, disturbances to migratory birds from recreational activities.

In each case these actions generated considerable backlash in the local community, including petitions to remove managers from their jobs. Our current proposals have again stirred similar controversy.

Here is what we have proposed and why.

First, we propose to prohibit set tackle fishing in the Cumberland Pool's shallowest areas. The purpose of this action is to minimize deaths of refuge wildlife caused by trotlines and other set tackle in the shallowest waters of the Cumberland Pool. These lines typically stretch between floating jugs or other objects and contain upwards of 100 hooks.

Current State fishing regulations prohibit use of trotlines or other set tackle in lakes managed by the Oklahoma Department of Wildlife Conservation and all States within three feet of the water surface. The principal problem occurs when temporary flood events increase the water levels of normally shallow areas, allowing the fishermen to set their tackle in these areas, often tied between trees. When the water drops, exposed lines and hooks entangle wildlife. Among the species affected are bald eagles, pelicans, cormorants, herons, egrets, and grebes. Under our proposal, the shallow areas would be identified and marked with buoy lines.

Rob, one more time could you show where that area is? Again, these are the shallowest areas in the lake.

Mr. SHALLENBERGER. The shallow areas are shown in the green and light blues where the river has flooded and deposited sediment. The proposed restricted areas are shown on this. Do you want to wait?

Ms. BEATTIE. Just show the shallow areas where we would restrict the trotlines.

Mr. SHALLENBERGER. Would be in this red area. This boundary of this line is the normally flooded pool at normal water levels.

Ms. BEATTIE. Trotline fishing would continue to be allowed on more than 3,200 acres, or 80 percent of the remaining deeper water in the Cumberland Pool, where it is compatible with refuge purposes which again are for the protection of migratory birds.

Second, we would propose to prohibit the use of plastic containers as fishing floats. This action is proposed to remedy a solid waste and contamination problem. Set tackle fishermen often use jugs with residue of oil, antifreeze, and pesticides remaining in them. These containers should be properly disposed of in approved landfills, not contaminating the waters of a national wildlife refuge.

Many of the containers are also transported to shoreline and flood plain areas, creating a litter problem around the lake. Low cost commercial floats are readily available as an alternative to plastic containers. I understand the cost is between \$2 and \$3.50. Also, use of these floats would likely reduce the frequency of discarded trotlines that entangle wildlife.

Third, we propose further restrictions on fishing and motorized boating in the Cumberland Pool. The pool is currently closed to fishing from October 1st to March 1st to prevent disturbance of the large concentrations of migratory birds that feed and roost in refuge waters during that period. However, managers have documented disturbance between—during March, April, and September that needs to be addressed by expanding the closure period from September 1st to May 1st. This action would not impact the vast majority of boating and set tackle fishing, which occurs during the summer.

This action would also not significantly affect fishing seasons in the Washita River, Pennington Creek, and the seven lakes in the Wildlife Management Unit or the traditional year-round rod and reel fishing at Tishomingo Refuge.

A night boating closure of the Cumberland Pool is also proposed to minimize disturbance to wildlife and to promote safety. This action would impact, on average, fewer than six people per night. Many trotline fishermen have supported this in our public involvement with this restriction as it would protect their lines from vandalism.

Can I show those closure areas, Rob?

Mr. SHALLENBERGER. The closure area is in red. The blue area would be open to nonmotorized boating and canoeing and the green area is the area that would be open to boating during the open season.

Ms. BEATTIE. Fourth, the service would propose to prohibit overnight camping on the refuge. Camping now occurs in two forms on Tishomingo Refuge: Primitive camping in outlying areas and semi-developed camping near the refuge headquarters. Most of the primitive camping is at sites ranging from 10 to 20 miles from headquarters, making oversight enforcement and maintenance by rangers and staff time-consuming and costly.

No designated camp sites or sanitation facilities are available. Consequently, these areas have become highly eroded and vegetation has been heavily damaged. Human feces, waste paper, and other garbage litter the camp areas and pollute the aquatic environment. Portable sanitation units have been tried in the past, but vendors in the area are not interested in servicing these remote areas. Trash barrels placed at the sites have been stolen.

What was tent camping now includes frequent visits by trailers and motor homes. No sanitation dump facilities exist for these vehicles either, and illegal dumping of waste is common. Ending

camping on the refuge will impact less than 1 percent of the visitors who have many alternative camping sites as close as four miles away. The Lake Texoma recreational area includes approximately 50 recreation-sites, 19 of which provide camping facilities on the Oklahoma side of the lake.

Fifth, the service proposes to develop the headquarters pavilion into an environmental education facility—a 20 by 50 foot shelter located near the refuge headquarters has become increasingly popular for use by local residents for nonwildlife-oriented activities such as family reunions, Easter egg hunts, church group meetings and picnics accompanied by softball games, touch football and other recreation.

When the shelter is occupied by these users, other visitors are generally excluded from the site. Refuge staff propose to use the shelter predominately for environmental education programs with school kids from neighboring communities, a use more in keeping with the purpose of the refuge. There are suitable alternative locations for nonwildlife-oriented group events, most notably Pennington Park in nearby Tishomingo.

In sum, the service has determined that several recreational activities in their present form are incompatible with the purposes for which Tishomingo Refuge was established. This is not a new issue nor is the service proposing radical solutions but rather a measured approach for real management problems. None of the proposed actions would eliminate or significantly affect recreational opportunities in the Tishomingo Refuge area.

The proposed transfer of the management of the Tishomingo Refuge to the Oklahoma Department of Wildlife Conservation, along with half of the operating funds, is offered as a means of preventing further restrictions on recreational use.

This proposal is not likely to accomplish this goal for several reasons. If, as the bill provides, the area remains within the refuge system, the laws and regulations requiring allowed uses to be compatible with refuge purposes would continue to apply.

[The statement of Ms. Beattie may be found at end of hearing.]

Mr. YOUNG. [Presiding.] With all due respect, you have gone over your time five minutes and we have a vote on, so I am going to suggest—I have already read the testimony and I believe the gentleman from Massachusetts has read it and I would like Mr. Brewster, just time for the next five minutes, if he could to ask questions because we are running out of time.

Ms. BEATTIE. Thank you, Mr. Chairman.

Mr. YOUNG. Mr. Brewster.

Mr. BREWSTER. I notice in your testimony you said that you weren't sure if the Fish and Wildlife Service could transfer management of the area to the State of Oklahoma.

Ms. BEATTIE. Yes. Congressman Brewster, the solicitor in the Department of Interior has some questions of constitutionality. Those are rather complex legal arguments. I would be happy to provide them in writing.

Mr. BREWSTER. OK.

[The information may be found at end of hearing.]

Mr. BREWSTER. Along with that, they already manage land for the Bureau of Reclamation, have for 11 years now. They manage

a considerable amount of land for the Corps of Engineers already and, in fact, managing the land adjacent to this property for the Federal Government. And I was curious what the difference was.

Ms. BEATTIE. Again, those are legal arguments of constitutionality that the solicitor has provided us—I think I would prefer—

Mr. YOUNG. Would the gentleman yield?

With all due respect, I would like to see those, too. We write the law. We created that refuge and we can create—we can transfer and let it sit still. Your solicitor better make sure he has got his case pretty well put together.

Ms. BEATTIE. I would be happy to provide—

Mr. BREWSTER. If it is unconstitutional, we are already violating the Constitution? All the other contracts we have done for many years there. I was just kind of curious about that statement because we have obviously managed the others quite well, the 10,000 acres for the Bureau of Reclamation. Only McGee Creek has been in effect 11 years along with numerous contracts with the Corps dating back 30 or 40 years.

You mentioned birds and trotlines. How many eagles have been caught on those trotlines?

Ms. BEATTIE. Three so far that I know of, Congressman.

Mr. BREWSTER. Three.

Ms. BEATTIE. Three bald eagles.

Mr. BREWSTER. Three since 1946.

Ms. BEATTIE. I don't know the time on that.

Mr. BREWSTER. It has been in place since 1946.

Mr. SHALLENBERGER. Three that have been documented.

Ms. BEATTIE. I don't know. I would assume the problem has exacerbated as the lake has filled in and so the graph I would assume shows an increasing number of kills because of the hydrology—hydrological occurrences there but we could get you that information.

Mr. BREWSTER. If you would.

[The information follows:]

TROTLINE MORTALITY

Documentation in refuge files of trotline mortality at Tishomingo refuge dates back to the early 1970's. The earliest photo record was of an entangled Canada Goose, taken in 1974. Entanglement of three bald eagles was documented in 1983, 1986, and 1987. The eagle collected in 1986 was sent to the National Wildlife Health Laboratory for examination where the pathologist described hook lacerations, myopathy of the heart muscle and emaciation due to the length of capture before death. Other photo documentation in refuge files include a pelican in 1992 and an owl in 1994. Written incident reports include other species, such as cormorants, kingfishers and herons. Both current and former staff also report numerous undocumented incidents where they have removed dead and dying pelicans, cormorants, egrets and grebes from trotlines at Tishomingo refuge.

Mr. BREWSTER. There is also a tremendous increase in the number of eagles in the area. We see eagles all over southern Oklahoma and it is not uncommon. Even in far western Oklahoma last year I saw an eagle where there are not supposed to be any. But I would like to have the documentation you have on that as well.

[The information follows:]

EAGLE POPULATION

For 1995, there are 20 nesting pairs of eagles in Oklahoma. All of these are the result of a captive breeding and release program between the Service and the Sutton Foundation. There were also 781 wintering eagles. This figure was lower than the current norm due to the relatively mild winter, as many eagles did not migrate that far south. For example, in 1993, with a colder winter, there were 1,007 wintering eagles counted.

In contrast, 10 years ago there were no nesting pairs of eagles in Oklahoma, and 761 wintering eagles were counted.

Mr. BREWSTER. One other thing, I notice you all apparently can't afford to plant food plots, et cetera, and there are those who say that food plots aren't natural but neither is the lake. There was no lake there until the Red River was damned. So, suddenly the lake is not natural. How can money be spent on the pavilion, et cetera, when we are closing roads, closing access and not planting food plants anymore?

Ms. BEATTIE. Congressman, we have about 800 acres of agricultural use there, much of it providing food to migratory waterfowl including winter wheat and such other grains that the waterfowl seem perhaps even more attracted to. Our problem was particularly with corn. That was discontinued for a number of wildlife, soil, and economic reasons in the sense that the cost benefit was low.

The corn was planted in flood-prone areas and we kept losing the corn so it was corn in particular that was a problem, but we still have a large amount of grain food being produced on that land that the birds use.

Relative to the cost of the transformation of the pavilion into an environmental education center, I believe the cost was a few hundred dollars for putting up some walls.

Mr. BREWSTER. A few hundred?

Ms. BEATTIE. Yes.

Mr. BREWSTER. OK and they were going to start charging \$50 for use of it?

Mr. SHALLENBERGER. That is under the current permit system, not for environmental education, but for the permitted uses that have been going on in the past.

Mr. BREWSTER. Unless it was for a bird watching group or something like that, then it was free?

Mr. SHALLENBERGER. That is correct.

Mr. BREWSTER. But it is going to be \$50 for anyone else for a family to have a family reunion or something there as they have for the last 30 or 40 years?

Mr. SHALLENBERGER. That is for the administrative costs of managing the permits, yes.

Mr. BREWSTER. New administrative costs on the other?

Mr. SHALLENBERGER. The primary purpose of the refuge is to provide habitat for wildlife and wildlife-oriented education.

Mr. BREWSTER. Yes, sir. I understand that anyone who goes to a refuge and has an opportunity to look it over is certainly being educated. But from the grain standpoint I would like to know what grains are being produced there now because driving through it last fall I was not able to ascertain any.

[The following was submitted:]

CROPLAND MANAGEMENT

Several misleading comments surfaced during hearing testimony regarding cropland management at Tishomingo refuge. The Service has been planting a diversity of crops at the refuge to provide supplemental food for geese and other wildlife for many years. Five years ago, refuge staff chose to plant milo in place of corn. Seasonal planting and growing dates for corn correspond with annual spring flooding at the refuge, resulting in the regular loss of corn crops. Milo, on the other hand, is planted after the flood season and matures in time for use by waterfowl in the early fall. Corn also requires specialized farming equipment and intensive use of herbicide, pesticides and fertilizer. Through conversion of crops and other changes in agriculture practices, the Service has been able to eliminate the use of chemicals in the refuge's cropland management program. Winter wheat continues to be the primary cropland food source on the refuge, averaging about 550 acres per year in forage production.

The Service plans to continue the use of crops to supplement wildlife foods at Tishomingo refuge. However, flooding and delta growth due to sedimentation have reduced refuge croplands from approximately 800 acres to less than 700 acres of farmable land and this process is expected to continue. The location of croplands within the flood pool of Lake Texoma will continue to limit the cropland alternatives, regardless which agency has primary management responsibilities.

On a related note, several witnesses at the hearing argued that goose populations using the refuge have declined in response to changes in the agriculture program. Actually, the reverse appears to be true. While there has been considerable variation in goose use of the refuge over the last several years, the overall trend has been upwards, not down, as reported. The peak refuge goose population for January 1995 was estimated at 29,000. The peak in December 1994 was approximately 31,000, including 12,000 Canada geese, 11,000 snow geese and 8,000 white fronted geese.

Mr. YOUNG. Would the gentleman yield? We have five minutes left for the vote. If you would like to ask more questions, we would have to adjourn and come back.

Mr. BREWSTER. OK. Let's do it.

[Brief Recess.]

Mr. YOUNG. The gentleman from Oklahoma please. Mr. Brewster, the committee will come back to order.

Mr. BREWSTER. Give me a chance to catch my breath, Mr. Chairman.

The point you did make concerning trotlining that, I think, is very valid that they don't need to be in shallow water, and it is my understanding that State law precludes trotlines being in water less than three feet.

Ms. BEATTIE. That is what we understand and that is why we are somewhat perplexed how the transfer of refuge management would affect that restriction. It seems to be illegal under State laws, too.

Mr. BREWSTER. Absolutely. I think they would be precluded from being set in water less than three feet regardless of whether State or Federal Government were in charge. I would hope that there would be a little more due diligence given to that by the State than there has been by the Federal Government in that regard.

Ms. BEATTIE. Congressman, I would like to point out if I might that is the only restriction that we are proposing on the type of fishing tackle, would be that restriction on trotlines.

Mr. BREWSTER. And the jugs that can be used on jug lines.

Ms. BEATTIE. Gentlemen, simply to try to restrict the contamination—

Mr. BREWSTER. I fished around Lake Texoma all my life, not all of it but I guess when I was starting, about seven. But I have yet

to ascertain any type of contamination from jugs. Is that a common problem that anyone has?

Ms. BEATTIE. The use of uncleaned jugs that contained chemicals such as I mentioned is a problem there, yes.

Mr. BREWSTER. Many are used that are unclean?

Ms. BEATTIE. Yes, sir.

Mr. BREWSTER. OK. I guess the only thing I would have to comment on, it is more of a comment than a question, is that it would certainly then appear that we have an opportunity to try a concept, and I can't tell you 100 percent that it will work but it will lessen the cost of this refuge, freeing up some money for other refuges, and I know by your letter that you sent out to your people about a month and a half ago that you are very concerned with the amount of money that is going to be available for managing refuges this year, as I am. Without refuges, you damage the quality of hunting wildlife as well as nonsporting wildlife as well.

The only other thing I have to mention, as you are aware we have off-shore drilling in that part of Lake Texoma and we would also have, I assume, possible contamination from those wells. Should we remove those as well?

Ms. BEATTIE. Congressman, I don't know the situation. I will look into it if there is any fear of contamination. It is certainly the first I have heard of it. Our refuge manager hasn't told us about it.

Mr. BREWSTER. It is the only part of my district that has off-shore oil production. We have a number of wells that have been there in the neighborhood for 40 to 50 years.

Ms. BEATTIE. Maybe, Congressman Studds will be more comfortable coming there if he knows you have wells.

Mr. BREWSTER. We will show him.

We appreciate your testimony and your forthrightness and your thoughts. A lot of things we agree on, a few things we don't.

Ms. BEATTIE. Thank you.

Mr. YOUNG. I thank the gentleman from Oklahoma.

Madam Secretary, I don't have any questions. My philosophy is we should be making this work and hopefully between now and this bill getting to the Floor we will see some progress, and the gentleman recommends that area not the government, and I am inclined to take his lead. So thank you for being here today and presenting your views as you see they should be. Thank you.

Ms. BEATTIE. Thank you, Congressman. We have offered either Ms. Kaufman or myself to accompany Congressman Brewster to Tishomingo and look at the situation. Thank you.

Mr. YOUNG. You are excused.

Our third and final panel of witnesses will be Ms. Ginger Merchant; Mr. James Waltman; Mr. K.E. Pennington; and Mr. Greg Duffy. Will you please take your respective seats, please.

We will go in that order, Ms. Ginger Merchant, Executive Vice President of the National Wildlife Refuge Association, and you are recognized for five minutes.

**STATEMENT OF GINGER MERCHANT, EXECUTIVE VICE
PRESIDENT, NATIONAL WILDLIFE REFUGE ASSOCIATION**

Ms. MERCHANT. Mr. Chairman and the members of the subcommittee, thank you for this opportunity to present the views of the association concerning H.R. 1112. The National Wildlife Refuge Association was founded by wildlife professionals and is the only national conservation organization that is focused exclusively on the national wildlife refuge system.

As introduced by Representative Bill Brewster, this bill would transfer the management of and 50 percent of the funding to the Oklahoma Department of Wildlife Conservation from the U.S. Fish and Wildlife Service. The bill would also appear to mandate continuation of pre-1994 uses of the refuge and the management of those uses, despite the documentation of harm to the wildlife and the wildlife habitat of the refuge.

The National Wildlife Refuge Association is quite concerned about the ramifications of this bill, both for the Tishomingo Refuge and for the national wildlife refuge system as a whole. We are, therefore, opposed to the passage of the bill, and additionally we urge the Congressman to reconsider this local controversy over the compatibility of some uses as they are currently occurring and to visit the refuge firsthand to explore the situation.

National wildlife refuges are different and very special places. They are unlike any other lands in the Nation. They are not meant to be parks and they are not recreational areas, although they do provide important opportunities for recreation when it is compatible with their wildlife purposes. The reason for this is that the national wildlife refuge system is on the only system established primarily for the conservation of the Nation's fish and wildlife heritage.

This unique habitat of lands and waters was initiated in 1903 by Republican President Theodore Roosevelt, a sportsman and a conservationist. The refuge system and individual refuges such as Tishomingo do provide important opportunities for wildlife-oriented recreation and environmental education. By law, the Congress has mandated in the past these secondary activities need to be found to be compatible with the purposes for which the refuges were established, and we have heard the director testify to the purposes of the Tishomingo Refuge.

The subcommittee asked us to address three questions in particular. The first question is whether this refuge could be managed by the State. The refuge association answers no. We feel a transfer of management is inappropriate. First, there is no reason that the Tishomingo National Wildlife Refuge cannot meet its established purposes under service management consistent with its legal mandate.

The habitat at Tishomingo Refuge provides a vital refuge and breeding ground and link for migratory birds in the central flyway. Second, a legislative transfer of the management of the Tishomingo Refuge in response to a local controversy over the compatibility of selected recreational issues would establish a dangerous precedent we believe for the entire national wildlife refuge system.

Importantly, the threat of the transfer of the western game ranges in the mid-1970's prompted the Congress to amend the Ref-

uge Administration Act to specify that refuges were to be managed by the U.S. Fish and Wildlife Service. The Congress acted to ensure that refuges be managed by Federal wildlife professionals to meet their establishing purposes for the benefit of the Nation and all America.

Third, the refuge association has recommended to the relevant House and Senate Appropriations Committees that the Congress endorse appropriate funding for a Blue Ribbon Commission to review the policies and procedures for adding and removing lands from the national wildlife refuge system, and that all proposals, including the one pertaining to the Tishomingo Refuge, be considered in the context of this commission's review.

The second question, the liabilities and benefits of such a transfer. I am going to begin to move a little more quickly here.

Concerning Tishomingo's wildlife and habitat resources, the refuge association is very concerned that passage of the bill would preclude the modifications that are proposed to bring the uses into compatibility.

Mr. YOUNG. Ms. Merchant, again, out of respect for other people, your time is up. If you capsuleize this in a short manner, the rest of you, I let Ms. Beattie earlier go longer. She asked that earlier and the Chair had granted that, but we are running out of time. I suggest you can summarize it as quickly as possible so we can go forth.

Ms. MERCHANT. I would be happy to do so. Thank you, Mr. Chairman.

In sum, we looked at the benefits and liabilities to the refuge's wildlife and habitat, to refuge visitors, and the economics to the community and the Fish and Wildlife Service, and attempted to look at the economics for the State agency as well. In conclusion, we felt that the liabilities of the transfer of management far outweighed the benefits to be accrued from that.

In summary, I would simply like to go back to the fundamental purposes of the refuge system. President Theodore Roosevelt's legacy, it is unique in all of the world. And I want to emphasize a true sportsman, President Roosevelt recognized the need for a sanctuary to protect migratory birds from slaughter and harassment at Pelican Island, Florida. The refuge manager at the Tishomingo Refuge is attempting to carry on this tradition in a professional and responsible way. And that he should be allowed to do so.

Mr. YOUNG. Your time is up.

[The statement of Ms. Merchant may be found at end of hearing.]

Mr. YOUNG. Mr. Waltman, Wilderness Society.

STATEMENT OF JAMES WALTMAN, WILDERNESS SOCIETY

Mr. WALTMAN. Thank you, Mr. Chairman, Congressman Brewster, it is a pleasure to testify before you today on behalf of both the Wilderness Society and the National Audubon Society. Both of our organizations have a long-standing commitment to the sound management and well-being of the national wildlife refuge system. Our organizations have over 8,000 combined members in your State of Oklahoma and over 800,000 members in the Nation.

I am also pleased to testify today on behalf of the Oklahoma Ornithological Society as well as the Oklahoma Audubon Council, or-

ganizations that are both umbrella groups of large numbers of local conservation groups which are very concerned as well by this legislation.

Our organizations strongly oppose H.R. 1112. The bill would transfer management of the Tishomingo Refuge to the State of Oklahoma, prevent the U.S. Fish and Wildlife Service from implementing a series of reasonable measures to protect refuge wildlife, and reduce available operating funds to the refuge by 50 percent. We believe that each of these actions is ill-advised.

While we understand that the Nation faces a very difficult budget situation, we respectfully submit that that legislation was not prompted by that concern. However, it was prompted by the opposition of a few vocal individuals to the Fish and Wildlife Service.

Tishomingo Refuge is one of over 500 national wildlife refuges found across the country. There is at least one refuge in each of the 50 States. This system has been a model for the world in its comprehensive protection and management of our Nation's wildlife. Of course, in addition, the refuges provides exceptional opportunities for fish and wildlife-dependent forms of recreation, including fishing, hunting, wildlife observation, and nature photography. All of the organizations I represent today strongly support those uses and their continuation.

Unfortunately, there have been some problems in the history of the refuge system. Chairman Young, I know you have sat through a number of hearings over the years on the Merchant Marine and Fisheries Committee where these problems were discussed. Fortunately, the Fish and Wildlife Service has reviewed—just about finished—a comprehensive review of all uses in the refuge system and, lo and behold, despite a lot of concern, a lot of rhetoric about how this review would shut down fishing and hunting what did they find? In fact, they found that almost every single refuge hunting and fishing program that they looked at was perfectly compatible with the purposes for those refuges. There were, unfortunately, a handful of refuges that required some modification and of course Tishomingo is one of those.

In fact, I want to add that, there has been a lot of discussion about how this administration is shutting down hunting and fishing in the refuge system, and I am not always a supporter of this administration but in fact they have opened more refuges to hunting and fishing in their first two years than the former administration had in its last two years. I think that is an important piece of information.

The Tishomingo Refuge, of course, provides a spectacular array of wildlife and wildlife-related recreational opportunities. As Mr. Brewster has said on more than one occasion, the refuge has "the best crappie fishing there is." I have read that a couple of times and we heard that again this morning and I believe him.

Unfortunately, certain forms of set tackle fishing gear have turned this refuge into a death trap for bald eagles, pelicans, egrets, and some other forms of migratory birds. These forms of fishing poses a serious and unacceptable threat to refuge wildlife.

And I have a little show and tell today. I would like to show a couple of pictures of some unlucky wildlife that has run into some of these trotlines. There is a bald eagle. This is one of the three

that has been found snagged and killed on the trotline fishing gear I believe in the last 10 to 12 years.

Mr. BREWSTER. Was that at Texoma?

Mr. WALTMAN. That is right. These are both at Tishomingo. The other is a white pelican. That is another specie that has had trouble with the trotlines.

Mr. BREWSTER. Were they legally set or illegally set?

Mr. WALTMAN. I am not sure, sir, and I will try to answer that question in the future.

My understanding is a lot of times the tackle might look like it is legal tackle but the water levels drop so quickly that after a little while they become illegal.

I also have a shopping bag here with some—

Mr. YOUNG. You are about ready to run out.

Mr. WALTMAN. These are just proof that some of jugs that were picked up from the refuge—a Clorox bottle, antifreeze bottle, an oil bottle. I know they find pesticides as well.

I will sum up real quickly.

We oppose this legislation because, one, it states that although the Refuge Administration Act will continue, it says that the State would manage these lands in a way that would continue the activities that were there prior to 1994 and these activities that we have all seen today are a serious problem for wildlife.

We are also concerned in general with transferring Federal lands over to State management. These lands were acquired with the money from taxpayers across the country and they should be managed as part of our natural heritage for all Americans.

And finally, the very serious funding problem, the bill would allocate 50 percent of current levels to the State of Oklahoma for the refuge.

Congressman Brewster, I think you have recommended that this area could be managed by the Blue River hunting and fishing area. Unfortunately, that area has its own problems. As I understand, they have few full-time staff people.

[The statement of Mr. Waltman may be found at end of hearing.]

Mr. BREWSTER. Maybe.

Mr. WALTMAN. That is what I read in the paper. We will check into your other questions.

Mr. YOUNG. Your time is up.

Mr. WALTMAN. Thank you.

Mr. YOUNG. Mr. Pennington of Oklahoma City, Oklahoma. Mr. Pennington.

STATEMENT OF K.E. PENNINGTON

Mr. PENNINGTON. Yes, I would like to say that I am K.E. Pennington, and never in my 70 years have I been prouder to say that I am from Oklahoma.

Mr. YOUNG. Thank you.

Mr. PENNINGTON. I have lived in the Tishomingo area for the last 33 years—I am not going to talk about some hypothetical situation. I started fishing and hunting in the Tishomingo area in 1947. The last trip I made to it was last Sunday. These things that we have been hearing about when they start talking about this area being home to 80,000 wildlife and 30,000 geese, I am reminded of the

1947 refuge which was true, but this management that they have bragged about so greatly has allowed this to deteriorate until in 1995 we had 1,400 geese in this area and as Congressman Brewster said, the Maxi geese program of the Oklahoma wildlife department has produced more geese in Oklahoma, than we had in this entire refuge area last year, and that is not hearsay, that is fact.

The area in question was originally a goose refuge but it has deteriorated to such a degree that we have no geese. Now they start fumbling for another reason to justify the fact that they are there, and they make a to-do about the destruction of eagles. In the public media in this area last week I challenged the director of the wildlife management area to produce one documented instance of an eagle being killed on the Tishomingo Wildlife Refuge. I am not convinced this is correct. I got no response from him.

The gentleman from the hatchery area said there was a possibility that in the early 1980's there might have been one. The Oklahoma Department of Wildlife is if not overburdened by regulations can make this an area usable by a greater number of people than are now using it. This department has a nongame section that is the envy of the central U.S.

In the last few years, they have instigated a blue bird program that has doubled the number of blue birds in the State of Oklahoma. Wood ducks, the same thing, and this is not false—there is documented proof not something that we promise to do.

Closing this fishing area that has been used for the last 50 years, perhaps not in complete harmony, but we have used it under every manager that we have had, this rock and lock. And I say rock and lock. What they can't place a 2,000 pound granite boulder in front of, they lock up. And the access roads that these folks talk about people utilizing to view this area have been closed by placing two-ton rocks in the middle of the road. The only decent observation spot on this part of Lake Texoma to view the beauty of the entire thing has a 22,000 pound granite stone preventing people from driving out to where they can view it. Now if that is utilizing it for what it is supposed to be, I am very, very badly mistaken.

And we do, as Congressman Brewster said, manage with very little strife, the area immediately across the road, and have for a number of years, and they can do this management at half the cost and with one-tenth the disagreement among the people. I would urge the committee to give this your consideration and pass this resolution.

Mr. YOUNG. Thank you, Mr. Pennington, and you did finish on time, too. I want to compliment you on that. The time is up.

[The statement of Mr. Pennington may be found at end of hearing.]

Mr. YOUNG. Mr. Duffy. Greg Duffy.

STATEMENT OF GREG D. DUFFY, DIRECTOR, OKLAHOMA DEPARTMENT OF WILDLIFE CONSERVATION

Mr. DUFFY. Mr. Chairman, on behalf of the Department of Wildlife and sportsmen of the State of Oklahoma and the citizens of this Nation, I appreciate this opportunity to come before you to address your committee today.

The Department of Wildlife Conservation is very concerned about recent plans to restrict public utilization of the various outdoor recreational activities that were previously permitted on national wildlife refuges and in particular fishing and boating opportunity at Tishomingo National Wildlife Refuge.

Oklahoma has less than 5 percent of its total land base in State and public ownership, and this makes the public lands that are in our State very important that they remain with as little restriction as possible to maintain the resources in the State and still fulfill the public needs for the enjoyment of those natural resources.

Through the past 10 years, numerous refuge management practices have been implemented that have reduced the overall effectiveness of the refuge at Tishomingo. Public access and utilization have been curtailed and the wildlife management practices have been limited. Under the newest compatibility proposals, the service created the nonboating sanctuary areas in shallower portions. We heard about all those from Ms. Beattie earlier and I won't go through those again. And the public which is the citizens particularly of the area that do enjoy fishing in those waters find it somewhat obtrusive to their needs for recreational opportunities for the area and do not feel, I guess, that a good job has been done adequately, nor does our department, with settling the program that we are trying to accomplish.

Previously, Mr. Chairman, current State law requires that all fishing lines such as trotlines as we are calling them, the fixed lines, the jug lines, have the owner's name affixed to them and that the line be attended at least once every 24 hours. Somehow it doesn't seem justifiable to further restrict users of a reservoir or of a public fishing area because of a problem that may exist only because of lack of enforcement of a current law. If this law were enforced, I venture to speculate that few fishermen would be attending lines with exposed hooks.

Like I say, the law requires attending every 24 hours. The owner of the line has to put his name on the jug or attach or affixed to the line. So if we are having a problem with that law, let's enforce that law. Let's don't make another prohibition and another prohibition for hundreds of fishermen who try to follow the law.

In this conclusion I would like to mention the national wildlife refuge system has been a successful partner in restoration of wildlife species throughout the Nation. However, it is the Oklahoma Department of Wildlife Conservation's position that opportunity for public utilization and access of the natural resources of these areas is desirable and unnecessary restrictions to those opportunities eliminated.

The Department of Wildlife is willing to assume management responsibility for the refuge if suitable terms can be provided and feel that the interests of the citizens and wildlife resources can best be served by this action.

Again, I want to thank you for the opportunity to provide our insight to the committee and ask that Mr. Don Ritter provide his comments.

[The statement of Mr. Duffy may be found at end of hearing.]

STATEMENT OF DON RITTER

Mr. RITTER. Thank you. I would like to share a little bit.

I am currently chairman of the Department of Wildlife Conservation. One thing that jumped out at me when Ms. Beattie was sharing her information, it seems like we are talking about two completely different things. That is perception here in Washington of what transpired.

I drive by Tishomingo. I think what they have there and what we see locally is not the same thing, even with the representation of aerial photos from 1949 and 1979 or 1978. You know, when I go over there I look at what is happening in 1995, the siltation, the erosion, the problems that are occurring now. A photo from 1978 doesn't do justice to what is out there. And I think if you went to that area and you looked at the places they want to close off, the fishing and boating access, you would probably laugh at what you saw. It is great for fishing, but to restrict people access to that, there is someone not looking closely at what the resource is there to provide.

I hear a lot of talk about the wildlife refuge system. As a sportsman, what I am concerned about is the resources which are the goose, the duck, the things that utilize those areas. I want to see more of the valuable things that we want to protect in that system.

I hear of a focus of protecting a system but we are not looking out for what we can do for the resources in that system as the numbers have declined from 30,000 down to 1,400 geese in January sort of scares me with that prospect that we are not focusing on what we want to do for the sportsmen through that legacy that Teddy Roosevelt put out there for us.

The Department of Wildlife Conservation is a group which is looked over by eight commissioners who are independent businessmen. We are the only self-funded State agency in Oklahoma. We are very frugal with what we have to work with, with the moneys that we deal with with our sportsmen's dollars, and the department feels comfortable that they can manage that area with the limited funding and do a much superior job as far as providing access to sportsmen, providing habitat for waterfowl, food, resources for the migratory bird that has come through there with the funding levels that have been proposed at half that amount, and I would ask that you would give the department an opportunity to show what can be done again with that area in the future and let the numbers prove themselves out over a given time period.

[The statement of Mr. Ritter may be found at end of hearing.]

Mr. YOUNG. I thank the panel for its testimony. I am going to let the gentleman from Oklahoma ask questions. The first question, though, I would like to ask Mr. Waltman. I want to smell where those jugs came from.

Mr. WALTMAN. The jug came from a local citizen member of—

Mr. YOUNG. Do you have his name?

Mr. WALTMAN. Yes, I do.

Mr. YOUNG. I want to know his name. They don't have the name on the jugs? I mean I could pick those out of the trash can. That show and tell stuff is awfully touchy when you really don't have documentation to back it up.

Mr. WALTMAN. I would love to document it. The name was on the—

Mr. YOUNG. I want to know the gentleman's name. Did he send them to you? In reality, those aren't jugs from that lake and unless you can prove that they were done to—

Mr. WALTMAN. I received those yesterday in the mail, opened them out of the box this morning, and dragged them up here, so I have not myself looked at them enough except to see there was an Ajax bottle, antifreeze, and an oil jug.

Mr. YOUNG. It is very convenient. It appeared to be an Ajax bottle, an oil bottle—

Mr. WALTMAN. Can I—

Mr. YOUNG. No, I am not finished.

It is very convenient that they would send to you to show today and no one claims the bottles are where they came from. That disturbs me.

The average bottle used, if I am not mistaken, is a bottle, probably a milk bottle. I used to do a little trotline fishing in my life. We didn't have milk bottles. We have used glass balls at that time in California. I do know one thing, a milk jug, it is lighter, more convenient, and more available.

The gentleman from Oklahoma.

Mr. BREWSTER. Thank you, Mr. Chairman.

Several questions. To Ms. Merchant, you said that I should visit the refuge. Have you been to the refuge?

Ms. MERCHANT. No, Congressman, I had hoped to get down there before this hearing but I have not yet had the opportunity, and I would be happy and welcome the opportunity to get on to the refuge and to meet with you and others to look at this situation firsthand.

I think one of the important points that Mr. Ritter made, and I think it is part of the problem here, is that the perceptions are so different as to the refuge itself, the uses that are occurring, what the problems are, and it is not a straightforward issue; it is a complex issue.

Mr. BREWSTER. Yes, ma'am, it is quite different than the way you presented it as a refuge instance, because the first time I was there was in 1950, and I have been in there within the last three months so I am quite knowledgeable about the refuge.

In addition, you said that you didn't want to take it away from wildlife professionals. Are you saying our State wildlife department is not a group of professionals?

Ms. MERCHANT. Absolutely not, and this was in my written testimony but I wasn't able to get to that section. We are in no way criticizing the Oklahoma department. In fact, in my testimony I note fishing regulations that the department has attempted to enforce, and so it is simply a matter of the fact that national wildlife refuges are different and are meant to be different and by Congress' own action are intended to be managed by Federal wildlife officials for the benefit of the trust species that the Nation is obligated to protect and for the benefit of all Americans.

Mr. BREWSTER. Yes, ma'am. As one who spends between 10 and 20,000 a year in dollars on conservation, I am certainly interested in having as much wildlife, game and nongame, as possible.

You mentioned economics. One of the reasons we got into this to start with, the local people were concerned because a large number of our motel rooms are occupied by fishermen who come there to go crappie fishing in the spring and at that point, the proposal was to eliminate crappie fishing in what was the best part of the lake so you thought you said it would damage economics, implementing the plan would damage economics of the area drastically.

Mr. WALTMAN, you said you had 8,000 members in Oklahoma and 500,000 members nationwide.

Mr. WALTMAN. I think combined with National Audubon, we have about 800,000.

Mr. BREWSTER. What percentage of those are urban and what percentage are rural?

Mr. WALTMAN. I can't answer that question.

I would like to add something. I feel a little bit like those of us working in Washington are getting picked on and, unfortunately, there was a woman from Tishomingo named Connie Taylor, who is a professor at the Southeast Oklahoma State University—

Mr. BREWSTER. What is her name?

Mr. WALTMAN. Connie Taylor, Past President of the Oklahoma Academy of Science. She would have loved to have been here today and requested an opportunity to testify to support the Fish and Wildlife Service but was not allowed. I hope you will receive her written testimony instead and pay it strong attention.

[The information received may be found at end of hearing.]

Mr. BREWSTER. The gentleman to your right obtained his degree in biology at Southeastern and very well may know her.

Beyond that, you mentioned what a great model the refuges are. I think that is probably correct in general. But when this one has deteriorated in the last 10 years from 30,000 geese to 1,400 geese at the same time we have an all-time high geese population in Oklahoma, at the same time the State wildlife department operates a refuge up the road about 70, 80 miles whose geese numbers have increased about fivefold, and had last year 18,000 geese at the same time this had 1,400, how can you say it would not be better to give someone else an opportunity to see if they can do the job better?

Mr. WALTMAN. Congressman, it sounds to me like the State of Oklahoma has done a good job for its geese, but I also know the Tishomingo National Wildlife Refuge has become an even more important area for bald eagles. I know they told me up to 100 bald eagles, shore birds, and other species.

Mr. BREWSTER. We have them on other refuges as well.

Mr. WALTMAN. I just suggested that the habitat has changed as the Fish and Wildlife Service explained today and some of the species that used to prefer the deeper water habitat are elsewhere and others have acclimated themselves quite well in the new habitat.

Mr. BREWSTER. We have another vote coming up and I am going very quick on a couple of questions or statements.

You said this picture was from Tishomingo. I have been led to believe by the manager there that there might have been an eagle caught on a trotline some years ago. I would like to know where the picture came from, whose was it so I can get a copy of it. I would like to have documentation as to the date.

Mr. BREWSTER. The other things, a lot was discussed about the economics. Mr. Duffy, you operate many refuges around the State as well as many public hunting areas and you do the grain planting, do the things to bring the refuge back to where it is productive habitat for wildlife with the funding that is proposed in the bill?

Mr. DUFFY. Without a doubt. Our typical expenditure on an area of this size would be around \$100,000.

You know, I guess the biggest cost saving that we can see, you know, between the State and the federally managed areas, number one, I expect our people to work most of a week, you know a 40-hour work week, and whenever they do, they work hard and they work 40 hours a week, plus. Our typical biologist isn't fortunate enough I guess to be drawing \$50 or \$60,000 a year, nor our technical people, you know \$35 or \$40,000. Our wages are much lower. Our expenses are much lower. We have much more competitive, and as Commissioner Ritter pointed out, we have an eight-man commission who watches every penny we spend and these are businessmen that are highly successful who have third careers in private business who know what things cost and know how to manage.

Mr. BREWSTER. You would propose to keep the mission as is, to protect the wildlife resource of our Nation, both game and nongame, as far as the mission for—that is what we have in the bill and you understand that.

Mr. DUFFY. Yes. Our agency would be able to compensate. That is the same mission of our agency.

Mr. BREWSTER. And you already have the land adjacent to it that you have managed for many years at this point?

Mr. DUFFY. The agency does manage those lands, since about 1948.

Mr. BREWSTER. Any idea how many acres in Federal land you manage now, just a rough guess?

Mr. DUFFY. About 650,000 acres of Federal land, State management/Federal ownership, to about 325,000 acres.

Mr. BREWSTER. You manage 650,000 acres of Federal land currently?

Mr. DUFFY. Yes, sir.

Mr. BREWSTER. Thank you, Mr. Chairman.

Mr. YOUNG. I thank the gentleman.

I am inclined to listen to the people that have been there and lived there. Mr. Pennington, especially you have been there a long time and I am inclined to hear what you are saying.

One of my biggest frustrations in this job over the years has been those that are from I call outside trying to tell those who live there how they should do business. And I will say, Ms. Beattie has been pretty responsive to some of the suggestions that have been made in other areas, and I suggest maybe this is one of those areas we ought to be looking at the manager and seeing if this is really a question of personalities or compatibility. I am not saying that willy-nilly because if I had my way a lot of refuges are going to be sublet out.

I hate to use the term "outlet," but in Alaska you know we have the largest, if the gentleman will bear with me, group of refuges in the world and the increase of money to manage those refuges by

outsiders has been phenomenal. It is time we start looking for local people to be involved and I have said this over and over again. Park service is worse. They don't hire anybody locally in that area. They have brought them from outside and that is why you have lost your support.

And when I see the head of the wildlife foundation and a person from Oklahoma City who is there every day and loves that area and one of the directors talking about what they think could be done to improve it, that makes an impression.

And lastly, the Representative of that area who is elected by the people, if he thinks there is a problem, there is a problem. That is true representation.

I want to thank the panel for being here.

Mr. BREWSTER. If the gentleman would yield just a moment, you keep mentioning Pennington of Oklahoma City. Mr. Pennington lives about seven miles from the refuge between Mannville and Tishomingo, Oklahoma, and has lived there most of his years.

Mr. YOUNG. I understand. That is why I complimented him. You see, you shouldn't stop me.

Theodore Roosevelt, Ms. Merchant, was a hunter and a fisherman, and had not wanted exclusive uses on refuges. What happened because of a lawsuit, there is a more restrictive classification of refuges today than maybe tomorrow and the day after. And most of these refuges were created with the support of the people.

Ms. MERCHANT. Mr. Chairman, my organization includes many sportsmen, hunters, and fishermen. That is a concern that we share and I think that again I would simply emphasize that I think the most important thing that we could all do at this point is take another look at the complexities and the realities of the situation on the ground. There are genuinely different perceptions that I think need to be resolved.

Mr. YOUNG. Again, let me stress this. No professional or agency is going to survive without the support of the people. That is very basic and I have said this all through my career. And I have watched this slow deterioration of the Park Service, Fish and Wildlife, even BLM, all start retreating because there seems to be an infiltration that they have all the answers and you do not have all the answers.

The gentleman from Oklahoma.

Mr. BREWSTER. One more point I would like to make, I consider this to be an innovative proposal of something that will save U.S. Fish and Wildlife Service some dollars. With this Nation approaching \$5 trillion in debt with over 15 percent of this year's budget going to pay the interest on the debt, if we don't start doing some things differently, doing some innovative things, we will be selling assets in the not too distant future. It is right around the corner. So if we don't get serious about doing some things differently, and maybe this is an approach that might work, I certainly hope that some of the associations around that like to throw out propaganda to all their members would consider the fact that we are not too far away from the point that our creditors are going to demand the sale of assets. Hopefully, we can do something to prevent that from happening.

Mr. YOUNG. I thank the gentleman from Oklahoma, thank the panel, and this meeting is adjourned.

[Whereupon, at 3:55 p.m., the subcommittee was adjourned; and the following was submitted for the record:]

104TH CONGRESS
1ST SESSION

H. R. 1112

To transfer management of the Tishomingo National Wildlife Refuge in
Oklahoma to the State of Oklahoma.

IN THE HOUSE OF REPRESENTATIVES

MARCH 2, 1995

Mr. BREWSTER (for himself, Mr. YOUNG of Alaska, Mr. COBURN, Mr. ISTOOK, Mr. LARGENT, Mr. LUCAS, Mr. WATTS of Oklahoma, Mr. ABERCROMBIE, Mr. BAESLER, Mr. BAKER of California, Mr. BALLENGER, Mr. BARCIA, Mr. BARRETT of Nebraska, Mr. BONILLA, Mr. BROWDER, Mr. CAMP, Mrs. CHENOWETH, Mr. COBLE, Mr. CONDIT, Mr. CRAMER, Mr. CRAPO, Ms. DANNER, Mr. DEAL of Georgia, Mr. DELAY, Mr. DICKEY, Mr. DOOLEY, Mr. EDWARDS, Mr. FIELDS of Texas, Mr. GANSKE, Mr. PETE GEREN of Texas, Mr. GENE GREEN of Texas, Mr. HALL of Texas, Mr. HANCOCK, Mr. HAYES, Mr. HERGER, Mr. HOBSON, Mr. LAUGHLIN, Mr. LIPINSKI, Mr. MCINNIS, Mr. MONTGOMERY, Mr. NEY, Mr. ORTIZ, Mr. ORTON, Mr. PARKER, Mr. PETERSON of Minnesota, Mr. POSHARD, Mr. ROBERTS, Mr. ROSE, Mr. SCHAEFER, Mr. SCHUMER, Mr. SMITH of Michigan, Mr. STENHOLM, Mr. TANNER, Mr. TAUZIN, Mr. THORNTON, Mrs. THURMAN, Mr. VOLKMER, and Mr. ZELIFF) introduced the following bill; which was referred to the Committee on Resources

A BILL

To transfer management of the Tishomingo National Wildlife
Refuge in Oklahoma to the State of Oklahoma.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. TRANSFER OF MANAGEMENT OF TISHOMINGO**
2 **NATIONAL WILDLIFE REFUGE.**

3 (a) **TRANSFER.**—Within 30 days after the enactment
4 of this Act, the Secretary of the Interior shall transfer,
5 with the consent of the Governor of Oklahoma, the man-
6 agement of the lands and waters within the Tishomingo
7 National Wildlife Refuge in Oklahoma to the State of
8 Oklahoma for administration by the Director of the Okla-
9 homa Department of Wildlife Conservation (or any succes-
10 sor agency). Such lands and waters shall be managed for
11 the same uses and in the same manner as they were man-
12 aged by the United States Fish and Wildlife Service prior
13 to calendar year 1994. Such lands and waters shall con-
14 tinue to be a national wildlife refuge, and the laws, rules,
15 and regulations applicable to the national wildlife refuge
16 system shall continue to be applicable to such lands and
17 waters on and after the effective date of such transfer.

18 (b) **AUTHORIZATION OF FUNDING.**—For each fiscal
19 year commencing after the enactment of this Act, there
20 is authorized to be appropriated to the Secretary of the
21 Interior to make annual grants to the State of Oklahoma
22 for management of the lands and waters transferred under
23 subsection (a) an amount equal to 50 percent of the
24 amount made available to the Secretary of the Interior in
25 fiscal year 1994 for the management of such refuge.



TESTIMONY OF MOLLIE BEATTIE, DIRECTOR, UNITED STATES FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR, BEFORE THE SUBCOMMITTEE ON FISHERIES, WILDLIFE AND OCEANS OF THE HOUSE RESOURCES COMMITTEE, REGARDING H.R. 1112, TO TRANSFER MANAGEMENT OF TISHOMINGO NATIONAL WILDLIFE REFUGE TO THE STATE OF OKLAHOMA

May 16, 1995

Mr. Chairman, thank you for the opportunity to testify on H.R. 1112, a bill to transfer management of the Tishomingo National Wildlife Refuge to the State of Oklahoma. I am accompanied by Nancy Kaufman, our new Regional Director for the Southwestern region, and Robert Shallenberger, Chief of our Division of Refuges.

We are deeply concerned about this legislative proposal, both as it relates to the management of Tishomingo refuge and as it may affect the National Wildlife Refuge System as a whole, and we oppose its enactment.

We acknowledge there are legitimate differences of opinion regarding management actions proposed at Tishomingo refuge to ensure that public use activities are compatible with the purposes of this refuge. However, we respectfully suggest that the proposed legislation will not resolve those differences and will likely create more serious problems as a result. Let me explain by providing some general background on our review of refuge uses and the Tishomingo refuge.

A 1989 study by the General Accounting Office concluded that some

permitted uses on refuges were harmful to wildlife and diverting attention from wildlife management. A more in-depth review by the Service in 1990 identified 133 uses on 78 refuge units that managers believed were incompatible. The National Wildlife Refuge System Administration Act authorizes the Secretary to allow uses only if they are compatible with refuge purposes. This review led to an accelerated effort to correct these problems.

After settling a lawsuit on incompatible uses within the Refuge System in 1993, the Service reviewed all ongoing uses to determine the adequacy of authority to control such uses, prepared written compatibility determinations on all uses under Service control, and ensured compliance with the Refuge System Administration Act, the Refuge Recreation Act and the National Environmental Policy Act. The settlement also required the Service to end incompatible uses or modify them to become compatible.

A total of over 5200 uses were documented in the review. Of these, 46 problem uses on 30 refuges were addressed in fiscal year 1994 through modifications, enforcement of existing regulations or terminations of uses. Another 23 uses on 19 refuges were recommended for termination or modification in this fiscal year. Pursuant to report language accompanying the fiscal year 1995 Interior Appropriations Act, Congress was notified of these proposed actions in January of this year.

No action has been taken on these uses, including proposed changes in public use programs at Tishomingo refuge. Evaluation of uses on an additional 30 refuges is still in progress, and Congress will be notified of proposals to take any needed actions resulting from this evaluation.

Despite considerable rhetoric to the contrary, the compatibility reviews to date have had very minimal impact on traditional refuge uses, in particular hunting and fishing. This is, in large part, due to the fact that managers have been periodically reviewing these and other uses under longstanding refuge policy guidance and have taken actions to ensure they remain compatible. However, on some refuges, managers have determined that further actions are necessary. Such is the case at the Tishomingo refuge.

Some background information on Tishomingo refuge will help lay the foundation for the proposed actions. Tishomingo refuge was established in January 1946 through Public Land Order 312, on the Lake Texoma project, "for refuge and breeding ground purposes for migratory birds and other wildlife." The original refuge included approximately 13,450 acres, encompassing the Cumberland Pool and immediately adjacent lands.

In 1957, the 3,000 acre Tishomingo Wildlife Management Unit (WMU) was added to the refuge, immediately upstream of the Cumberland

Pool. The WMU is managed under a three-way cooperative agreement between the Department of Interior, the Department of Army and the Oklahoma Department of Wildlife Conservation (ODWC). The ODWC also manages a much larger unit further upstream on the Washita River, through a direct agreement with the Army.

The Service has provided opportunities for a wide variety of recreational activities at Tishomingo refuge since it was created, but the level and types of use have changed over time. The refuge now attracts over 100,000 visitors annually. Of these, 67% participate in wildlife observation and interpretation, 29% engage in fishing, about 2% in hunting, and about 1.5% in camping and picnicking.

The Cumberland Pool, a major part of the refuge, has itself also changed considerably. When Lake Texoma was created by the construction of Denison Dam, it was anticipated that this Pool would capture transported sediment loads during floods in the Washita River basin. The result has been the transformation of an 11,000 acre, deep-water lake into a lake with less than 4,000 acres of deep water and 7,000 acres of shallow wetlands, mudflats, sandbars and sloughs. Much of the shallow fringes of the original deep pool have been invaded by trees and emergent marsh vegetation. This natural process has enhanced habitat for migratory birds, by creating a far wider diversity of nesting, feeding and roosting areas. However, this change has also

increased the conflict between some traditional recreational uses of the deep water pool and refuge wildlife.

Proposals by the Service to mitigate increasing recreation and wildlife conflicts at Tishomingo refuge are not new, nor have they occurred without controversy. In 1962, Refuge Manager Earl Craven established a buoy line to seasonally close a portion of the lake to boating activities. Refuge Manager Ernie Jamieson implemented a seasonal closure of the entire lake in 1972. In 1987, Refuge Manager Bill Hutchinson documented mortality of migratory birds in trotlines -- fishing lines with multiple hooks which are fastened to the shore and left unattended in the water overnight or longer -- and attempted to enforce winter removal of these lines. All of these actions were aimed at preventing, or lessening, disturbance to migratory birds from recreational activities.

In each case, these actions generated considerable backlash in the local community, including petitions to remove managers from their jobs. Our current proposals have again stirred similar controversy.

Let's look at what the Service has proposed and why we have proposed it.

1) Prohibit set tackle fishing in the Cumberland Pool's

shallowest areas -- The purpose of this action is to minimize deaths of refuge wildlife caused by trotlines and other set tackle in the shallowest waters of the Cumberland Pool. These lines typically stretch between floating jugs or other objects and contain upwards of 100 hooks. Current state fishing regulations prohibit use of trotlines or other set tackle in lakes managed by ODWC and in all state lakes within three feet of the water surface. The principal problem occurs when temporary flood events increase the water levels of normally shallow areas, allowing fishermen to set their tackle in these areas, often tied between trees. When the water drops, exposed lines and hooks entangle wildlife. Among the species affected are bald eagles, pelicans, cormorants, herons, egrets and grebes. Under our proposal, the shallow areas would be identified and marked with buoy lines. Trotline fishing would continue to be allowed on more than 3,200 acres (approximately 80% of the remaining deeper water in the Cumberland Pool), where it is compatible with refuge purposes.

2) Prohibit use of plastic containers as fishing floats -- This action is proposed to remedy a solid waste and contamination problem. Set tackle fishermen often use jugs with residue of oil, antifreeze and pesticides remaining. These containers should be properly disposed of in approved landfills, not contaminating the waters of a national wildlife refuge.

Many of the containers are also transported to shoreline and flood plain areas, creating a litter problem around the lake. Low cost commercial floats are readily available as an alternative to plastic containers. Also, use of these floats would likely reduce the frequency of discarded trot lines that entangle wildlife.

3) Further restrictions on fishing and motorized boating on the Cumberland Pool -- The Cumberland Pool is currently closed to fishing from October 1 to March 1, to prevent disturbance of the large concentrations of migratory birds that feed and roost in refuge waters during that period. However, managers have documented disturbance during March, April and September that needs to be addressed by expanding the closure period from September 1 - May 1. This action would not impact the vast majority of boating and set tackle fishing, which occurs during the summer. This action would also not significantly affect fishing seasons in the Washita River, Pennington Creek and the seven lakes in the WMU or the traditional year-around rod and reel fishing at Tishomingo refuge. A night boating closure of the Cumberland Pool is also proposed to minimize disturbance to wildlife and to promote safety. This action would impact, on average, fewer than six people per night. Many trotline fishermen support this restriction as it would protect their lines from vandalism.

4) Prohibit overnight camping on the refuge -- Camping now occurs in two forms on Tishomingo refuge: primitive camping in outlying areas and semi-developed camping near the refuge headquarters. Most of the primitive camping is at sites ranging from 10-20 miles from headquarters, making oversight, enforcement and maintenance by refuge staff time-consuming and costly. No designated camp sites or sanitation facilities are available. Consequently, these areas have become highly eroded and vegetation has been heavily damaged. Human feces, paper and other garbage litter the camp areas and pollute the aquatic environment. Portable sanitation units have been tried in the past, but vendors in the area are not interested in servicing these remote areas. Trash barrels placed at the sites have been stolen.

What was tent camping now includes frequent visits by trailers and motor homes. No sanitation dump facilities exist for these vehicles either, and illegal dumping of waste is common. Ending camping on the refuge will impact less than 1% of the visitors, who have many alternative camping sites as close as 4 miles away. The Lake Texoma recreation area includes approximately 50 recreation sites, 19 of which provide camping facilities on the Oklahoma side of the lake.

5) Develop the headquarters pavilion into an environmental education facility -- A 20 X 50 foot shelter located near the

refuge headquarters has become increasingly popular for use by local residents for non-wildlife oriented activities, such as family reunions, easter egg hunts, church group meetings and picnics accompanied by softball games, touch football and other recreation. When the shelter is occupied by these users, other visitors are generally excluded from the site. Refuge staff propose to use the shelter predominantly for environmental education programs with school children from neighboring communities, a use more in keeping with the purpose of the refuge. There are suitable alternative locations for non-wildlife oriented group events, most notably Pennington Park in nearby Tishomingo.

In sum, the Service has determined that several recreational activities, in their present form, are incompatible with the purposes for which Tishomingo refuge was established. This is not a new issue nor is the Service proposing radical solutions, but, rather, a measured approach to real management problems. None of the proposed actions would eliminate or significantly affect recreational opportunities in the Tishomingo refuge area.

The proposed transfer of management of the Tishomingo refuge to the ODWC, along with half of the operating funds, is offered as a means of preventing further restrictions on recreational use.

This proposal is not likely to accomplish this goal for several

reasons. If, as the bill provides, the area remains within the Refuge System, the laws and regulations requiring allowed uses to be compatible with refuge purposes would continue to apply. Neither we nor the Congress can delegate to the ODWC complete control over Federal property. Even if that were not the case, the existing ODWC regulation prohibiting trotline fishing in state-managed lakes would also apply. The uses in question still could not occur.

If one-half of the current refuge funding is transferred to the ODWC, they would either have to match that amount with State funds or reduce management at the refuge. The funding request for fiscal year 1996 is approximately \$340,000; half of this would be \$170,000 in additional State funds. They would also have to assume responsibility for backlogged facility and maintenance needs.

Furthermore, the ODWC is already dependent upon the Refuge staff and funding for cooperative management of the Tishomingo Wildlife Management Unit. The ODWC current annual budget for the Unit is approximately \$5,000, while the refuge contributes nearly \$17,000 annually. Since 1990, the Service has spent an additional \$70,000 in major maintenance activities at the Unit. All this assistance to the ODWC would be lost if the bill is enacted, with or without the proposed transfer of funding.

Enactment of the bill would also mean relocating the Service's employees, who live in or near the town of Tishomingo (population 3,000). The loss of these jobs, and the funds we spend locally each year for supplies and maintenance contracts, would cost the Tishomingo area approximately \$250,000 annually, a not insignificant impact for a small town. We have no way of knowing if the State would move new employees to the refuge, or purchase supplies locally, to make up this loss of spending.

Another issue is the prospect that management programs of this refuge would shift over time to emphasize State agency resource priorities, such as resident species. Herein lies the Service's greatest concern regarding the transfer of refuges to state agencies as a means of addressing local user conflicts. Refuges like Tishomingo were established primarily to provide habitat for migratory bird species whose seasonal habitat needs transcend state, and even international, boundaries. Many other refuges are managed primarily to support recovery of Federally listed threatened or endangered species.

While we enjoy a fruitful cooperative relationship in resource management with the States, we have different responsibilities and management priorities. It would be difficult, if not impossible, to ensure that the Federal commitment to conservation of trust species would be maintained by the States over time if there were any large-scale transfer of management of refuges such

as Tishomingo to the States.

Lastly, the bill would establish a bad precedent by starting to dismantle the Refuge System in a piece-meal fashion every time there is a local land use dispute. We believe these disputes should be worked out at the local level wherever possible. The removal of an area from Service management, or from the Refuge System, in response to such a dispute -- particularly, as here, one which impacts a very small percent of refuge users, is an extreme response.

Any removal from the Refuge System, or from Service management, should not be done on such an ad-hoc basis, but only considered, if at all, after thoughtful criteria have been established to ensure an objective and uniform approach to the issue.

For all these reasons, we oppose enactment of H.R. 1112.

This concludes my prepared statement. I would be pleased to respond to any questions you may have.



National Wildlife Refuge Association

Dedicated to the protection and perpetuation of the National Wildlife Refuge System

TESTIMONY OF GINGER MERCHANT, EXECUTIVE VICE-PRESIDENT,
NATIONAL WILDLIFE REFUGE ASSOCIATION

BEFORE THE SUBCOMMITTEE ON FISHERIES, WILDLIFE AND OCEANS
OF THE HOUSE RESOURCES COMMITTEE

REGARDING H.R. 1112: TO TRANSFER THE MANAGEMENT OF THE
TISHOMINGO NATIONAL WILDLIFE REFUGE TO THE STATE OF OKLAHOMA

May 16, 1995

Mr. Chairman and members of the Subcommittee, the National Wildlife Refuge Association (NWRA) was founded by wildlife refuge professionals and is the only national conservation organization focused exclusively upon the National Wildlife Refuge System. I thank you for this opportunity to present the views of the NWRA regarding H.R. 1112.

As introduced by Representative Bill Brewster (D-OK), H.R. 1112, would transfer the management of and 50 percent of the FY 1994 funding for the Tishomingo National Wildlife Refuge from the U.S. Fish and Wildlife Service to the Oklahoma Department of Wildlife Conservation. The bill would also mandate continuation of pre-1994 (CY) uses of the Refuge and management of those uses, despite the documentation of harm to the wildlife and its habitat.

As evidenced by the article "Tishomingo NWR: refuge or deathtrap?" in our April newsletter, the NWRA is quite concerned about the ramifications of H.R. 1112 for the Tishomingo Refuge and for the National Wildlife Refuge System as a whole. The NWRA, therefore, opposes passage of this bill. Additionally, we urge Representative Brewster to visit the Refuge; reconsider this local controversy over the compatibility of some recreational uses as they are currently occurring; and to explore non-legislative solutions.

National Wildlife Refuges are special and different places. They are not meant to be parks or recreation areas, although they do offer important opportunities for recreation when it is compatible with their wildlife purposes. The reason for this is that the National Wildlife Refuge System is the only national network of lands and waters set aside primarily to conserve the nation's fish and wildlife heritage.

This unique network of habitats was initiated in 1903 by Republican President Theodore Roosevelt, a sportsman and conservationist. The Refuge System now plays a vital role in the conservation and management of migratory birds, for which the United States has international treaty obligations, and the conservation and recovery of threatened and endangered species.

The Refuge System and individual refuges such as Tishomingo can and do provide important opportunities for wildlife oriented recreation and environmental educational. By law, Congress has mandated that these secondary activities be found to be compatible with the purposes for which refuges were established. The Tishomingo Refuge was established in 1946 "for refuge and breeding ground purposes for migratory birds and other wildlife..." Public Land Order 312, January 24.

The Subcommittee asked that we address, in particular, the following three questions.

1) Whether this refuge (Tishomingo) should be managed by the State?

The NWRA answers "no". A transfer of management of the Tishomingo National Wildlife Refuge from the U.S. Fish and Wildlife Service (the Service) to the State of Oklahoma is inappropriate for the following reasons.

First, there is no reason that the Tishomingo Refuge cannot meet its establishing purposes under Service management consistent with its legal mandates-- the National Wildlife Refuge System Administration Act of 1966 and the Refuge Recreation Act of 1962 (16 U.S.C. 668dd-668ee and 16 U.S.C. 460k-460k-4 respectively).

In fact, the increasing siltation of Lake Texoma's Cumberland Pool is improving the Refuge's habitat for migratory birds as originally intended when this refuge was established in conjunction with the Denison Dam and Reservoir on the Red River. Thus, the habitat of the Tishomingo Refuge provides a vital refuge and breeding ground habitat link for the migratory birds of the Central Flyway. Over 250 bird species use the Refuge including: 132 neotropical species of special concern; 50-90 bald eagles; 80,000 ducks; 35,000 geese; and many species of waterbirds.

Second, a legislative transfer of the management of the Tishomingo Refuge in response to a local controversy over the compatibility of selected recreational activities would establish a dangerous and inappropriate precedent for the National Wildlife Refuge System. The threat of the transfer of the management of western game ranges from the Service in the mid-1970s prompted Congress to amend the Refuge Administration Act to specify that the nation's refuges were to be administered by the U.S. Fish and Wildlife Service (Game Range Act, Public Law 94-223). Thus, Congress acted to ensure that refuges be managed to meet their establishing purposes by federal wildlife professionals for the benefit of the nation and all Americans.

Third, the NWRA has recommended to the relevant House and Senate appropriations subcommittees that Congress endorse and appropriate funding for a Blue Ribbon Commission to review the policies and

procedures for adding and removing lands from the National Wildlife Refuge System; and that all proposals pertaining to the removal of lands or transfer of their management be included within the scope of the Commission's review. We believe our recommendation will be adopted and ask the Subcommittee not to move H.R.1112 independently.

2) The liabilities and benefits of such a transfer?

Tishomingo's wildlife and habitat resources/liabilities and benefits:

H.R. 1112 mandates that "Such lands and waters shall be managed for the same uses and in the same manner as they were managed by the United States Fish and Wildlife Service prior to calendar year 1994." Thus, despite the bill's subsequent reference to the continued applicability of refuge laws, rules and regulations, it would appear to preclude the modifications and restrictions proposed by the Service upon set tackle fishing, boating, picnicking and camping in order to make these activities compatible with the wildlife purposes of the Refuge.

The modifications proposed by the Service, are prompted primarily by the changing conditions of the Refuge habitats: both the siltation of the Cumberland Pool and seasonal flooding of approximately 5800 acres of basins and flats. These natural realities underlie the conflicts between wildlife protection and the recreational activities proposed for modification, not environmental extremism as has been suggested.

Is it extreme to:

- * restrict the use of trotlines to deep water and to prohibit their attachment to trees to prevent migratory birds from dying a slow and agonizing death due to entanglement;
- * prohibit the use of juglines using pesticide, oil and antifreeze containers;
- * restrict motorized boating to the deep open waters of the Cumberland Pool (80%), leaving the 20 percent of shallow waters and associated mudflats and shorelines as a sanctuary for wildlife year round;
- * expand the current seasonal closure (October-March) of the Cumberland Pool by three months (September-April) to protect migrating birds other than wintering waterfowl;
- * restrict boating and fishing to daylight hours consistent with existing regulations in order to control vandalism, off-road habitat impacts and disturbance of wildlife;

* prohibit camping by 1% of refuge visitors due to the adverse habitat impacts resulting from the lack of on-refuge developed sites and floodplain conditions, and to re-direct campers to the off-refuge facilities available nearby;

* convert the use of the Refuge's single group shelter to an environmental education facility in lieu of its current use for picnicking which can be accommodated at off-refuge sites available nearby?

Or are these proposals simply responsible management designed to comply with Refuge System law and goals, while providing for as many public recreational uses as appropriate and for environmental education opportunities not offered elsewhere?

It is important to note that after the close of the public comment period on the Environmental Assessment pertaining to boating and fishing that the Refuge manager made modifications to his proposed action as a result of constructive comments made by the local fishing public. It is also significant that the proposed modifications to fishing do not apply to all areas of the Refuge: the Washita River and Pennington and Sandy creeks are unaffected. Bank and wade fishing are to continue at present locations and times with one exception, Nida Point within the proposed sanctuary area. Another area (Murray 23) was opened October, 1994 to increase bank fishing opportunities. This area is now open all year as requested by fishermen and found to be compatible because of the major shift in bird use to the shallow southern shores of the Cumberland Pool. Ironically, the "pre-1994" mandate of H.R. 1112 would appear to require closure of the Murray 23 area during the winter months.

The NWRA sees no benefits to the habitat or wildlife resources resulting from a transfer of management of the Tishomingo Refuge to the Oklahoma Department of Wildlife Conservation. We are not in any way criticizing the Department and, note, that trotlines are prohibited in Department Fishing Areas and must be set 3 feet below the surface of other waters. This state regulation would appear to be inconsistent with the apparent intent of H.R. 1112 to prevent restriction of trotlines in the Cumberland Pool of the Tishomingo Refuge.

Refuge Visitor/liabilities and benefits:

The annual visitation of the Tishomingo Refuge exceeds 100,000. People are attracted from all across the nation, because it is a national wildlife refuge. The quality of experience for the public visiting the Tishomingo Refuge year-round for rod and reel fishing, non-motorized boating and wildlife observation would be diminished by the continuation of other activities in a manner incompatible with the migratory bird purposes of the Refuge. In addition, recreational opportunities that differ from those provided by the numerous

state and Corps of Engineers sites around Lake Texoma would be lost. Moreover, important opportunities for environmental education and use of the Refuge as an outdoor classroom would be lost.

Benefits, NWRA believes, would only accrue to those seeking the status quo concerning recreational activities or more of the same recreational opportunities offered in the Tishomingo community or elsewhere around Lake Texoma.

Precedent/liabilities and benefits:

The establishment of such a precedent would invite other members of Congress to also resolve local controversies through legislation transferring the management and/or lands of properly established national wildlife refuges to states. Such a precedent is likely to initiate the dismantling of this unique and valuable national network of lands and waters set aside for wildlife and future generations of Americans. The NWRA sees no benefit to the establishment of such a precedent, except that which would accrue to individual members of Congress and the particular local constituents in whose interest they were acting.

Economic/liabilities and benefits:

The loss of Service personnel and expenditures would mean an immediate financial liability of approximately \$300,000 for the local Tishomingo community of approximately 3000 people. The current annual economic benefits to the community include \$250,000 in expenditures by refuge staff and their families, plus another \$50,000 or more in refuge purchase agreements.

Over the long term, the community could be deprived of significantly greater revenue that could be realized by promoting ecotourism to the Refuge as other communities have done. For example, Socorro (NM) realizes an estimated minimum of \$3.2 million from visitation related to the migratory birds of the Bosque del Apache Refuge according to the Chamber of Commerce.

The Service would incur the loss of 50 percent (\$180,295) of the funding for Tishomingo that could be used for the operation and maintenance of the Refuge System, and the costs of transferring the Refuge's six member staff to other locations (\$150,000-250,000). Thus, the bill could exacerbate an already critical funding situation by a reduction of as much as \$430,295.

The NWRA also believes that assumption of the additional management responsibility for the Tishomingo Refuge will prove to be a long term liability for the State which is currently benefitting from direct and significant financial, equipment and work assistance from the Tishomingo Refuge staff on the Tishomingo Wildlife Management Unit and the Washita Arm Wildlife Management Area. The Refuge maintains \$2 million worth of equipment including tractors, graders,

and dumptrucks that are employed to assist state management efforts.

While the Oklahoma Department of Wildlife Conservation would receive 50 percent of the FY 1994 Tishomingo Refuge funding (\$180,295), we believe the economic liabilities to the Department and, importantly, to the community would far out weigh the benefits. Revenues gained from continuation of fishing by boat under the current season of March 1 - October 1, are unlikely to offset the economic liabilities of a transfer as 90 percent of boat fishing occurs between the dates of the shorter season, May 1 - September 1, proposed by the Service.

3) Whether up to 50 percent of funds appropriated for the Tishomingo Refuge should be provided to the Oklahoma Department of Wildlife Conservation?

The NWRA is opposed to the transfer of funds appropriated for the operation and maintenance of the Tishomingo National Wildlife Refuge to the state agency. If the State were to manage the Refuge it should be required to assume the financial responsibility. Quite simply, why should appropriated refuge funding be provided to an agency other than the Fish and Wildlife Service to manage a national wildlife refuge in contradiction of Refuge System law?

If the State were required to manage the Tishomingo Refuge consistent with Refuge System law and, thus, to adopt the modifications proposed by the Service to bring incompatible recreational uses into compliance, then why transfer the Refuge?

Summary

The National Wildlife Refuge System, President Theodore Roosevelt's legacy, is unique in all the world. A true sportsman, President Roosevelt recognized the need for a sanctuary to protect migratory birds from slaughter and harassment at Pelican Island, Florida. The refuge manager at the Tishomingo Refuge is attempting to carrying on that tradition in a responsible and professional manner. He should be allowed to do so.

The NWRA appeals to Representative Brewster as a sportsman and as an American to promote open communication, objective re-evaluation, understanding and cooperation between his constituents, the Oklahoma Department of Wildlife Conservation and the Service. We appeal to the Congressman to pursue a constructive "pilot" effort at Tishomingo, in lieu of an anti-federal bill (H.R. 1112) that would establish a precedent for dismantling the National Wildlife Refuge System as it approaches its centennial anniversary in 2003.

Thank you for your attention to the views of the National Wildlife Refuge Association on this important issue.



THE WILDERNESS SOCIETY

**STATEMENT OF JAMES R. WALTMAN
DIRECTOR, REFUGES AND WILDLIFE PROGRAM
THE WILDERNESS SOCIETY
BEFORE THE FISHERIES, WILDLIFE AND OCEANS SUBCOMMITTEE
REGARDING H.R. 1112
MAY 16, 1995**

The Wilderness Society appreciates this opportunity to testify on H.R. 1112, legislation concerning the future of the Tishomingo National Wildlife Refuge in Oklahoma. These remarks are also delivered on behalf of the National Audubon Society. Both of our organizations have a long-standing commitment to the sound management and well-being of the National Wildlife Refuge System. This testimony is also presented on behalf of the Oklahoma Audubon Council and the Oklahoma Ornithological Society, organizations that are deeply concerned by the legislation before the subcommittee.

Our organizations strongly oppose H.R. 1112. The bill would transfer management of the Tishomingo National Wildlife Refuge to the state of Oklahoma, prevent the U.S. Fish and Wildlife Service from implementing proposed measures to protect the refuge's migratory birds and other wildlife, and reduce available operations funding by 50 percent. We believe that each of these actions is ill-advised.

While we understand that the nation faces a difficult budget situation, we respectfully submit that the federal budget is not the motivation behind this legislation. Rather, this bill was prompted by the opposition of a few individuals to reasonable measures that the Fish and Wildlife Service has proposed to protect the waterfowl and other migratory birds of the Tishomingo refuge. The bill would set an inappropriate and dangerous precedent by transferring management of a federal refuge to a state agency while simultaneously skirting the long-standing legal protections for refuge wildlife.

The National Wildlife Refuge System

Tishomingo National Wildlife Refuge is one of over 500 refuges in the country, distributed across all 50 states. Since President Theodore Roosevelt established the first refuge at Florida's Pelican Island in 1903, the National Wildlife Refuge System has grown to become the world's most magnificent system of publicly owned lands managed to conserve fish and wildlife and their habitat. The system protects a remarkable diversity of native habitats -- from wetlands to prairies, forests to desert, tundra to seashores. These areas provide essential protection and management for the nation's waterfowl and other migratory birds. In addition, hundreds of threatened and

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endangered species are protected in the Refuge System as well as countless others that could one day become threatened or endangered without the habitat protection afforded by the system. The Refuge System also provides exceptional opportunities for fish and wildlife dependent forms of recreation, including fishing, hunting, wildlife observation, and nature photography.

Unfortunately, as the members of the former Merchant Marine and Fisheries Committee know all too well, many of our nation's refuges have been subjected to activities that have undermined the purposes for which the areas were established. These problems have been identified in numerous reports issued by Republican and Democratic administrations, the General Accounting Office, and private groups. In 1991, the Fish and Wildlife Service reported that nearly two thirds of the nation's refuges were subjected to at least one activity that undermined their mission--from water skiing through wading bird rookeries to over-grazing that destroyed waterfowl nesting habitat¹. (Attached to this statement is but a few examples of the findings of reports that have been issued on the plight of the Refuge System over the years.)

After years of pressure from conservation organizations and oversight from this subcommittee, our organizations concluded that litigation was necessary to resolve this long-standing problem with harmful secondary uses in the National Wildlife Refuge System. In October, 1992, National Audubon Society, The Wilderness Society, Defenders of Wildlife and several Audubon chapters sued the Department of the Interior to force compliance with the compatibility requirements of Refuge System law. To its credit, the Interior Department settled the lawsuit in October 1993 by agreeing to review all uses in the Refuge System and to phase out or modify uses that are not compatible with the purposes for which the refuges were established.

The agency's review has resulted in modification or termination of several dozen harmful non-wildlife oriented recreational and economic activities. Although the settlement caused initial confusion and concern by some hunters and anglers, the Fish and Wildlife Service has nearly completed its review of the Refuge System and has determined that almost all of the refuge hunting and fishing programs are compatible with the purposes for which the refuges were established. On a very small number of refuges, the Fish and Wildlife Service has proposed modifications of hunting and fishing programs to make them compatible with the refuges' wildlife conservation purposes.

Tishomingo National Wildlife Refuge

The Tishomingo National Wildlife Refuge was established in 1946 to conserve the abundant waterfowl and other wildlife of the Cross-Timbers region of Oklahoma. The Tishomingo refuge has been a treasure for the people of Oklahoma and the nation since

¹ *Report to the Director: A Review of Secondary Uses Occurring on National Wildlife Refuges* U.S. Fish and Wildlife Service, June, 1991.

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its establishment. Today, the refuge provides essential breeding, wintering, and stop-over habitat for more than 250 species of birds including large migratory flocks of waterfowl and shorebirds. Upwards of 40,000 geese and 80,000 ducks find habitat on the refuge. The refuge is also temporary home to several species of endangered and threatened species including bald eagles, least terns, and piping plovers. Each year, the unique wildlife values of the Tishomingo refuge draw more than 100,000 visitors. As one Member of Congress has said, the refuge has "the best crappie fishing there is."

Unfortunately, like many other refuges, public use of certain areas within the refuge, during certain periods of the year has severely disturbed the wildlife that the refuge was established to conserve. In fact, certain forms of set tackle fishing gear have turned the refuge into a death trap for bald eagles, pelicans, herons, egrets, grebes, owls, kingfishers, and other birds. Unrestricted boating on the refuge has denied refuge wildlife any open water sanctuary areas during important spring, summer, and fall months—a situation that is extremely rare in the Refuge System. Camping on the refuge has denuded vegetation, caused major erosion, and degraded water quality.

In accordance with the settlement of our lawsuit, the Fish and Wildlife Service proposed a number of reasonable restrictions to ensure compatibility of fishing and boating at the Tishomingo National Wildlife Refuge. The Service also determined that overnight camping on the refuge should be discontinued. The agency's proposed restrictions on set tackle fishing, boating, camping, and other uses of the Tishomingo National Wildlife Refuge are necessary to ensure that the refuge accomplishes the purposes for which it was established: to conserve migratory birds and other wildlife.

H.R. 1112 would undermine a long tradition of federal management of national wildlife refuges for migratory birds and other wildlife.

We strongly oppose the transfer of management of the Tishomingo National Wildlife Refuge to the state of Oklahoma. The Tishomingo Refuge was acquired in the 1940s by the federal government, with federal taxpayer funds, for the benefit of all of the people of the United States. The Tishomingo refuge and the federal public lands are among the unique natural assets that are the birthright of every American citizen.

The area was established to be part of a national network of federal lands managed for the nation's migratory birds and other wildlife. The United States, acting through the U.S. Fish and Wildlife Service and its predecessors, has had treaty responsibility for managing migratory birds since the early part of this century. Federal acquisition and management of refuges for wildlife has a long successful history that has always enjoyed bipartisan support.

We are particularly concerned with the proposed transfer in light of the recent history of the Blue River Public Hunting and Fishing Area, which Representative Brewster has indicated could manage the refuge. While the Blue River area was established as a conservation and hunting and fishing area, over the years it has been overwhelmed by camping, picnicking, and forms of recreation that have no association with fish and wildlife. In recent years when the state of Oklahoma proposed restricting

The Wilderness Society, page 4

certain activities to protect wildlife resources and enhance the quality of hunting and fishing, local opposition caused the state to retreat from its proposals. We are extremely concerned that if the State were to be granted management of the Tishomingo refuge, local opposition by a few individuals would overwhelm the state's resolve to manage the refuge in the best interests of wildlife.

H.R. 1112 would prevent the Fish and Wildlife Service from implementing reasonable restrictions on refuge public uses

To resolve the serious problem with incompatible activities at the Tishomingo National Wildlife Refuge, the Fish and Wildlife Service proposed a number of reasonable protective measures. These proposals were made in an Environmental Assessment that was made available to the public for review and comment.

First, the Service proposed prohibiting trotlines, jug lines, and other set tackle fishing in shallow areas of the refuge. By exposing eagles, herons, egrets, pelicans and other birds to unattended fishing lines adorned with as many as one hundred hooks apiece, these forms of fishing pose a serious and unacceptable threat to refuge wildlife. The state of Oklahoma recognized the danger posed by these activities and wisely banned such fishing techniques from fishing areas managed by the Oklahoma Department of Wildlife Conservation (ODWC). If anything, the Fish and Wildlife Service's plan does not go far enough. The Service should be consistent with the ODWC and prohibit all set tackle fishing in Tishomingo and other national wildlife refuges.

Second, the Service proposed prohibiting the use of pesticide, antifreeze, oil, and other toxic containers as floats for set tackle fishing. This restriction is simple common sense.

Third, the Service proposed closing the sensitive mudflats and shallow waters to motorized boating in order to provide an important sanctuary for shorebirds and other wildlife. Currently, the entire water area of the refuge is opened to unrestricted boating—a situation that is extremely unusual in the National Wildlife Refuge System.

Forth, the Service proposed extending the existing fishing closure to protect waterfowl, shorebirds and other migratory birds using certain areas of the refuge in the early fall and early spring. The vast majority of the refuge fishermen use the refuge during the late spring and summer months and would not be impacted by this measure.

Fifth, the Service proposed prohibiting overnight camping on the refuge. The refuge lacks any designated camp sites or sanitation facilities and thus camping has had serious negative effects on refuge habitats. Vegetation has been heavily damaged, erosion has been dramatic, and human feces and other wastes have polluted the aquatic environment. The Lake Texoma area contains more than 50 public and private campgrounds, ranging from highly developed to primitive areas, and including several thousand individual camp sites. There is no compelling reason to permit camping on the Tishomingo refuge.

The Wilderness Society, page 5

These protective measures have been strongly endorsed by state, local, and national conservation organizations. Unfortunately, a few vocal individuals have objected to these reasonable measures. H.R. 1112 caters to the objections of a few by attempting to prevent adoption of these reasonable measures. The bill requires that "such lands and waters shall be managed for the same uses and in the same manner as they were managed by the United States Fish and Wildlife Service prior to calendar year 1994" (Section 1(a)).

H.R. 1112 would reduce operations funding for the Tishomingo Refuge by 50 percent

It is no secret that the National Wildlife Refuge System is under serious budget constraints. The U.S. Fish and Wildlife Service has documented more than \$350 million maintenance backlog and a similar operational deficit. To address this problem, The Wilderness Society and National Audubon Society have joined with thirteen conservation and sportsmen's organizations to review the funding situation and prepare a list of funding recommendations, including user fees, management cost savings, and cost-sharing opportunities.

Tishomingo National Wildlife Refuge has not been spared the budget problem. In fact, the refuge is now operating well below previous staff and funding levels, a situation that is not uncommon in the Refuge System today.

H.R. 1112 would severely exacerbate the situation at Tishomingo by reducing operations funds by 50 percent from current levels. The bill would provide half of the current operating budget to the State of Oklahoma for management of the refuge. The Oklahoma Department of Wildlife Conservation is suffering from its own budget problems and cannot be expected to find additional funds to manage the refuge. In particular the Blue River Fishing and Hunting Area, which Representative Brewster has suggested could manage the refuge, is suffering its own budget shortfall. We understand that ODWC currently employs only one and a half full time staff people to manage this 3,300-acre area. Clearly the ODWC does not have "extra" staff or funds that could be used to manage the Tishomingo refuge.

Conclusion

Our organizations strongly oppose H.R. 1112. We believe that the U.S. Fish and Wildlife Service should continue to manage the refuge, that the agency's proposed protective measures should be implemented and in fact strengthened to include a complete ban on set tackle fishing gear, and that the Congress should work to provide adequate funding to ensure that the refuge meets its purpose of conserving birds and other wildlife.

A MAGNIFICENT SYSTEM IMPERILED

Over the last quarter century, over a dozen major reports have identified problems in the National Wildlife Refuge System. For example,

In 1968 . . . The "National Wildlife Refuge System Advisory Board on Wildlife Management", appointed by Secretary of Interior Stewart L. Udall wrote:

"The proximity of urban masses leads inevitably to pressure for larger picnic grounds, camping facilities, improved swimming beaches, motorboat marinas, water skiing, bridle paths, target ranges, and other assorted forms of play which are only obliquely related to refuge purposes." (from *Report on the National Wildlife Refuge System*)

In 1979 . . . The "National Wildlife Refuge Study Task Force" appointed by Assistant Secretary of Interior Robert Herbst wrote:

"Local pressures to use refuge lands for such benefits as grazing, timber harvesting, and public recreation prevent refuge managers from effectively managing refuges primarily for wildlife. . . Pressures to develop or degrade refuges for economic gain are growing exponentially" (from *Recommendations on the Management of the National Wildlife Refuge System*.)

In 1981 . . . The General Accounting Office wrote:

"The Service is properly operating and maintaining only about 46 percent of the nation's refuges. . . Local pressures to use refuge lands for such benefits as grazing, timber harvesting, and public recreation prevent refuge managers from effectively managing refuges primarily for wildlife." (from *National Direction Required for Effective Management of America's Fish and Wildlife*.)

In 1983 . . . The U.S. Fish and Wildlife Service wrote:

"Threats associated with pollutants, land uses, public uses, exotic species, individual development projects, etc. . . are currently causing or have the potential to cause significant damage to Service-managed natural resources. . . An average of 18.6 resource problems were reported per refuge." (from *Fish and Wildlife Service Resource Problems, National Wildlife Refuges, National Fish Hatcheries, Research Centers*)

In 1989 . . . General Accounting Office wrote:

"National Wildlife Refuges are frequently not the pristine wildlife sanctuaries implied by their name. Despite the requirements that only compatible secondary activities be permitted, refuge managers report that activities they consider harmful to wildlife resources (such as power boating and gas drilling, mining, jet-skiing, over-grazing, and off-road vehicles) are occurring on nearly 60 percent of the wildlife refuges." (from *National Wildlife Refuges: Continuing Problems with Incompatible Uses Call for Bold Action*.)

In 1991 . . . The U.S. Fish and Wildlife Service wrote:

"Incompatible and harmful uses are occurring on many national wildlife refuges. . . Refuge managers reported 836 use occurrences as being harmful to refuge operations. . . The survey results indicated that 63% of refuge units reported [at least one] harmful use." (from *Report of Secondary Uses Occurring on National Wildlife Refuges*)

In 1993 . . . The Interior Department's Inspector General wrote:

"We concluded that at all of the refuges we visited, the U.S. Fish and Wildlife Service had not maintained the refuges in a manner that would effectively enhance and protect the wildlife." (from *Maintenance of Wildlife Refuges, U.S. Fish and Wildlife Service*)

The National Wildlife Refuge System needs your help!!!

STATEMENT OF
K.E. PENNINGTON
BEFORE THE
SUBCOMMITTEE ON FISHERIES, WILDLIFE AND OCEANS
COMMITTEE ON RESOURCES
UNITED STATES HOUSE OF REPRESENTATIVES

May 16, 1995

Mr. Chairman, thank you for allowing me the opportunity to testify today. I am K.E. Pennington, a retired educator. I served eight years as a member of the Oklahoma Wildlife Commission. I have hunted and fished all my 70 years, almost 50 years on the Tishomingo Wildlife Area, beginning in 1946 when I got out of the Army and my last visit was this week. I will average over 150 days a year hunting and fishing. Twenty-three of the last 30+ years I spent teaching; the districts in which I taught drew impact aid from part of their district lands being inundated by the waters of the area under discussion. I feel that I know the area and its people.

The area in question was originally a goose refuge, but when the central flyway shifted away from Oklahoma, most of Tishomingo's mission ceased to exist. Since that time, there seems to have been a series of attempts to justify its continuance. Much "to-do" has been made about the destruction of eagles due to fishing lines, yet I challenged these people in the local media to cite one instance of such a documented death. There was no response. I'm convinced there have been none; I'm not sure what they are directing their efforts toward at present.

For years the goose, archery deer hunters and the fishermen coexisted, not in total harmony on either side, but never was there strife as is present today. Had it not been for the actions of one of your colleagues, this area would have virtually ceased to cater to fishermen this year. We are told by the management that it will be closed completely next year to bass, cat, and crappie fishing, thus eliminating the fishing we have known for 50 years. As missions cease to exist, regulations become more stringent.

The Oklahoma Department of Wildlife, if not overburdened by regulations, could make this area into an area utilizable for water, deer and small game, as well as non-game species, while catering to a far greater number of taxpaying, nature loving people for recreation costing half as much as the present operation. We now manage the upper arm of the Washita watershed and create far less controversy and strife, while still offering refuge for all the species presently found in this area. The Department has the enforcement people at the present time in the area to assure the safety of the species, as well.

Closing this area to fishing as it has been known here for fifty years, as proposed for the 1996 season, would have an impact on the economy of Tishomingo, a town which is even now considered a poverty area by all your standards. Bait houses, motels, cafes, service stations, and guide services, all would be greatly impacted by the proposed closure.

I would urge you to consider the savings, consider the sportsmen, and consider all those to be adversely affected and vote for HR 1112.

Thank you, Mr. Chairman.

WILDLIFE CONSERVATION COMMISSION

DON RITTER
CHAIRMAN
LIND STONE
VICE CHAIRMAN
MARK PATTON
SECRETARY
ED ABEL
MEMBER

JOHN B. "JACK" ZINK
MEMBER
JOHN D. OROENDYKE
MEMBER
WILLIAM CRAWFORD
MEMBER
VYRL KEETER
MEMBER



FRANK KEATING, GOVERNOR
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1801 N. Lincoln

P.O. Box 53465

Oklahoma City, OK 73152

PH: 405/221-3251

May 9, 1995

From: Director Greg Duffy *Greg Duffy*

To: The Honorable Jim Saxton
Chairman, Subcommittee on Fisheries, Wildlife and Oceans

Subject: Testimony Regarding Management Transfer of Tishomingo National Wildlife Refuge to Oklahoma Department of Wildlife Conservation (H.R. 1112)

I would like to introduce Mr. Don Ritter, Chairman of the Oklahoma Wildlife Conservation Commission and Mr. K. E. Pennington, former member of the Commission and long-time resident of the Tishomingo area.

The Department of Wildlife Conservation is very concerned about recent plans to restrict public utilization of the outdoor recreational activities that were previously permitted on National Wildlife Refuges and in particular fishing and boating opportunity at Tishomingo National Wildlife Refuge.

Through the past 10 years, numerous refuge management practices have been implemented that have reduced the overall effectiveness of the refuge. Public access and utilization have been curtailed and wildlife management practices have been limited. Under the newest compatibility proposals, the Service has created non-boating sanctuary areas in shallower portions of the lake citing erosion problems by boat wake as one of the justifications for this action. An equally effective management option would be to limit the areas as "no-wake," therefore eliminating the wake washing, yet allowing fishermen access. Other proposals to limit the materials used for floats for jug-fishing and trotlining are unreasonable and unwarranted. The Service justification that pollutants from these commercial and household containers are polluting the waters is not documented nor justified. Restrictions that prohibit trotlining from "fixed objects" and limiting



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the open areas to deep waters have been made to curtail wading bird entanglement as water levels drop exposing fishing hooks. Mr. Chairman, current state law requires that all lines, such as trotlines and jug-lines, have the owner's name affixed to the line and be attended at least once every 24 hours.

It doesn't seem justifiable to further restrict users because of a problem that may exist only because a lack of enforcement of current law. If this law were enforced, I venture to speculate that few fishermen would be attending lines with exposed hooks.

I previously mentioned that refuge wildlife management practices on the refuge have been changed and this change is having a negative effect on wildlife populations and I would like to further discuss this item. Historically, crops, such as corn, milo, and wheat were planted on the refuge to attract and hold large numbers of Canada geese. In recent years, refuge personnel have detracted from this long-standing practice and the waterfowl wintering capacity has diminished. Over the past 10 years, a decline in number of geese the refuge holds on January 1 has been observed. On January 1, 1995, the count was 1,475 birds, yet the 10 year average is approximately 13,000 geese. This low count comes at a time when continental goose populations are at near record levels.

In conclusion, the National Wildlife Refuge System has been a successful partner in restoration of wildlife species throughout the nation. However, it is the Oklahoma Department of Wildlife Conservation's position that opportunity for public utilization and access of the natural resources of these areas is desirable and unnecessary restrictions to those opportunities eliminated.

The Department of Wildlife is willing to assume management responsibility for the refuge if suitable terms can be provided and feel that the interests of the citizens and wildlife resources can be best served by this action.

I thank you for the opportunity to provide this insight to the committee and ask that Mr. Don Ritter provide his comments.

WILDLIFE CONSERVATION COMMISSION

DON RITTER
CHAIRMAN
AND STONEDIPHER
VICE CHAIRMAN
MARK PATTON
SECRETARY
ED ABEL
MEMBER

JOHN B. "JACK" ZINK
MEMBER
JOHN D. ORDENOVKE
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May 11, 1995

From: Commissioner Don Ritter

To: The Honorable Jim Saxton
Chairman, Subcommittee on Fisheries, Wildlife and Oceans

Subject: Testimony Regarding Management Transfer of Tishomingo National Wildlife Refuge to Oklahoma Department of Wildlife Conservation (HR 1112)

Having utilized the Tishomingo National Wildlife Refuge as a sportsman and addressing local citizens' complaints as a Wildlife Commissioner, I am somewhat sympathetic to the ultimate users of this area who are normally local residents and citizens of Oklahoma.

Some recent management activities have put the Tishomingo Wildlife Refuge on an adverse basis with local sportsmen. I believe the Oklahoma Department of Wildlife Conservation, through input from the Wildlife Commission, would be more sensitive to management needs of the refuge, as well as being more responsive to local concerns of the Tishomingo area sportsmen. With this local knowledge, as well as a specific long range management plan, I believe this refuge would provide practices that would better suit the refuge and develop a better relationship with local sportsmen.

I believe the area has not been fully utilized and local people have no way to convey their ideas, concerns, and frustrations to the U.S. Fish and Wildlife Service. The Oklahoma Department of Wildlife Conservation would work to fulfill the needs of a wildlife refuge but also work with local citizens and sportsmen to develop a facility they could use on a limited basis, but feel they have a voice in what happens on land in their local area.

This facility has been a top-notch facility in the past and through management by the Oklahoma Department of Wildlife Conservation could quickly return to a great facility. Local citizens who care are more committed and will do a better job to restore Tishomingo Wildlife Refuge to where it needs to be.



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Wildlife Management Institute

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Statement of Lonnie L. Williamson
before the
Subcommittee on Fisheries, Wildlife and Oceans
of the
House Committee on Resources
on
H.R. 1112
May 16, 1995

Mr. Chairman:

I am Lonnie L. Williamson, vice president of the Wildlife Management Institute. Headquartered in Washington, D.C., the 84-year-old Institute is staffed by trained and experienced wildlife biologists.

We appreciate the opportunity to express our views on H.R. 1112.

The Institute opposes enactment of H.R. 1112. We believe such would set a dangerous precedent that could result in considerable weakening of the National Wildlife Refuge System.

It is our firm belief that the restrictions placed on jug-fishing, trotlining, boating and other uses of Tishomingo Refuge are appropriate, given the migratory bird management purpose of the area and the bird mortality and harassment that have been caused by those activities. I believe that local sportsmen and other user groups would have supported those changes, had they known the full consequences of inaction on the refuge manager's part. In any event, local misunderstandings should not be sufficient reasons to divest the National Wildlife Refuge System of an important component.

Use-compatibility assessments are required by law, and any use on refuges must conform to the purpose for which the area was established. That is as it should be in order to conserve the public's resources. There are disagreements about uses on nearly all refuges at one point or another. At various times, we might have hunters, anglers, graziers, loggers, oil drillers, miners, birdwatchers and others angered about their respective activities being controlled. I recall nudists being upset several years ago when their use of an East Coast refuge was restricted. If

Congress reacts to bickering about all such curtailments, H.R. 1112 would be but the first in a parade of bills transferring refuges to state and possibly private ownership. Local problems do not need Congressional fixes.

Another worry with this bill is the reduced funding for managing Tishomingo. The area already is falling into disrepair because of a lack of operations and maintenance money in the U.S. Fish and Wildlife Service. To cut the available funds by 50 percent would only worsen matters. The Oklahoma Department of Wildlife Conservation also is strapped for funds, as are other state fish and wildlife agencies. These agencies and NGOs, including the Institute, are working desperately on a "Wildlife Diversity Funding Initiative" to help bolster the states' ebbing fish and wildlife management capability. H.R. 1112 is inconsistent with this situation.

It is important also to note that the Oklahoma Department does not have the legislative authority or responsibility to manage migratory birds, which is the purpose of Tishomingo. That is a federal treaty responsibility enacted in 1916 and supported by the state wildlife agencies.

Though we oppose H.R. 1112, we are not against careful consideration of whether some refuge lands should be removed from the System. For example, the Optima National Wildlife Refuge, also in Oklahoma, is the result of a Corps of Engineers project which was supposed to provide significant waterfowl habitat. But due to an insufficient water supply, Optima has not provided the waterfowl habitat expected. Thus, the Service is left with a refuge primarily for fish and resident wildlife, which come under state authority. Optima-not Tishomingo-might prove more appropriate for state management, but only if a thorough evaluation so suggests. The Service already co-manages a number of refuges with various state wildlife agencies.

There are other examples in the Refuge System where the Service bought land that it didn't want in order to get land that it did. Likewise, some gifts of land included areas that were not needed for refuge purposes, but which came with the donation.

We suggest that this is a good time for the U.S. Fish and Wildlife Service to review the Refuge System and determine, among other things, if there are lands that should be disposed. However, this should be an orderly process by the Service using specific criteria and in cooperation with the appropriate state wildlife agencies and

other interested parties. Any disposal should be made only after recommendation by the Service. There should be no legislative taking of refuge land prior to the completion of this analysis.

Fifteen national conservation and sportsmen's organizations have banded together under a "Cooperative Alliance for Refuge Enhancement" (CARE). These diverse groups, ranging in philosophies from that of the Defenders of Wildlife to the National Rifle Association and including the Wildlife Management Institute, have a common interest in refuges being managed to sustain fish and wildlife populations to meet public needs. The Alliance, in concert with the U.S. Fish and Wildlife Service, intends to develop an action plan that identifies important management and use changes for the Refuge System. Perhaps the committee could benefit by waiting for the CARE recommendations before acting on proposals such as H.R. 1112.

Again, Mr. Chairman, we appreciate the committee's consideration of our views.

OKLAHOMA ACADEMY *of* SCIENCE

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May 8, 1995

Honorable Jim Saxton, Chairman
Subcommittee on Fisheries, Wildlife, and Oceans
House Resources Committee
U. S. House of Representatives
Washington, D.C. 20515

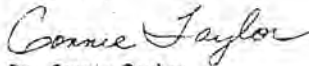
Dear Honorable Saxton:

We are very concerned about the House Bill 1112 introduced by Rep. Brewster that will transfer the Tishomingo National Wildlife Refuge, Tishomingo, Oklahoma, from the U. S. Fish and Wildlife Service to the Oklahoma Department of Wildlife Conservation.

I understand there will be hearings on May 16, 1995 concerning this bill. Would there be an opportunity for me to testify at this hearing. If time is not available, will it be possible to send information for the hearing record. This would include the resolution of the Oklahoma Academy of Science supporting the National Wildlife Refuge System.

Please advise me as soon as possible.

Sincerely,



Dr. Connie Taylor
Professor of Biology
Okla. Academy of Science
President-elect

NATIONAL WILDLIFE REFUGE SYSTEM RESOLUTION

OKLAHOMA ACADEMY OF SCIENCE

WHEREAS, the National Wildlife Refuge System is a vital and integral part of the conservation of wildlife in North America, both for endemic and migratory species, and

WHEREAS, the National Wildlife Refuges of Oklahoma are essential for the preservation and conservation of many species such as the bald eagle, gray bat, Ozark big-eared bat, and plains bison, and

WHEREAS, the primary functions of our National Wildlife Refuges are wildlife production and protection, and

WHEREAS, the secondary functions of the National Wildlife Refuges are wildlife maintenance, environmental preservation, education, and interpretation, research and publication of data, and cooperative programs, and

WHEREAS, other uses of wildlife refuges come from wildlife-oriented recreation and non-wildlife oriented activities, and

WHEREAS, many multipurpose uses are compatible and reinforce each other, and

WHEREAS, limited monetary and personnel resources are a reality of the National Wildlife Refuge System, and some activities directly compete with wildlife habitat management for money and divert personnel from direct wildlife management activities,

THEREFORE, BE IT RESOLVED that the Oklahoma Academy of Science supports the multipurpose use of public lands, but believe the use of National Wildlife Refuges for wildlife production and protection should be their primary purposes. Conflicting activities which interfere directly with the breeding and reproduction of wildlife on our refuges or conflict with other purposes of the Refuge System should be controlled, reduced, or eliminated.

*Passed April 21, 1995
Spring Field Meeting*



United States Department of the Interior

OFFICE OF THE SOLICITOR
Washington, D.C. 20240

DEC 16 1994

MEMORANDUM

TO: Tom Collier, Chief of Staff
Assistant Secretaries
Heads of Bureaus and Offices

FROM: Wilma A. Lewis *WAL*
Associate Solicitor
Division of General Law

SUBJECT: Inherently Federal Functions

I. Introduction

This memorandum describes, in general terms, the types of functions performed by the Federal Government that are "inherently Federal" by nature, and thus cannot be contracted or compacted out to private citizens or tribal organizations.^{1/} This issue arises in the context of Title IV of the Indian Self-Determination and Education Assistance Act, as amended, which is entitled "Tribal Self-Governance." Section 403(k) of the Act provides in pertinent part:

(k) DISCLAIMER.--Nothing in this section is intended or shall be construed to expand or alter existing statutory authorities in the Secretary so as to authorize the Secretary to enter into any agreement under sections 403(b)(2) and 405(c)(1) with respect to functions that are inherently Federal. . . .

Indian Self-Determination and Education Assistance Act Amendments of 1994, Pub. L. No. 103-413, 108 Stat. 4250 (1994) ("the Act") (emphasis added).^{2/} Thus, the Act explicitly excludes functions that are inherently Federal from the scope of the Self-Governance program.

^{1/} Although some authorities discussed in this memorandum refer to this doctrine as "inherently governmental," we will, for consistency, use the term "inherently Federal" throughout.

^{2/} Sections 403(b)(2) and 405(c)(1) refer to programs, services, functions and activities administered by the Department of the Interior, but not through the Bureau of Indian Affairs.

II. Executive Summary

Inherently Federal functions have generally been described as involving the exercise of "significant authority pursuant to the laws of the United States . . ." Buckley v. Valeo, 424 U.S. 1, 126 (1976). They also have been described as those functions which require "either the exercise of discretion in applying Federal authority or the use of value judgment in making decisions for the Government." Office of Legal Counsel Memorandum for Janis A. Sposato, General Counsel, Justice Management Division, April 27, 1990, ("OLC Memo") at 6, n.4 (quoting OMB Circular No. A-76 §§ 5b, 6e (Rev. Aug 4, 1983)). In a policy statement, the Office of Management and Budget opined that these functions involve, among other things, the interpretation and execution of Federal law so as to:

- (1) bind the United States to take or not to take some action by contract, policy, regulation, authorization, order, or otherwise;
- (2) determine, protect, and advance its economic, political, territorial, property, or other interests by military or diplomatic action, civil or criminal judicial proceedings, contract management, or otherwise;
- (3) significantly affect the life, liberty, or property of private persons;
- (4) commission, appoint, direct, or control officers or employees of the United States; or
- (5) exert ultimate control over the acquisition, use, or disposition of the property, real or personal, tangible or intangible, of the United States, including the collection, control, or disbursement of appropriated and other Federal funds.

OMB Policy Letter 92-1 (September 23, 1992) at 2. Section 900.106(d) of the Proposed Rule to implement the Indian Self-Determination and Education Act Amendments of 1988, 59 Fed. Reg. 3166, 3180-81 (Jan. 20, 1994), contains an illustrative list of activities or functions that are noncontractible Secretarial or Federal functions under most circumstances. The Secretaries of DOI and DHHS proposed

the rule jointly.^{3/} A copy of section 900.106(d) is attached to this memorandum as Attachment A. Attachment B contains an illustrative list of functions that OMB, as a matter of policy, considers to be inherently Federal functions.

By contrast, OMB has noted that:

Inherently [Federal] functions do not normally include gathering information for or providing advice, opinions, recommendations, or ideas to Federal officials. They also do not include functions that are primarily ministerial and internal in nature, such as building security; mail operations; cafeteria operations; housekeeping; facilities operations and maintenance; warehouse operations; motor vehicle fleet management and operations; or other routine electrical or mechanical services.

OMB Policy Letter 92-1 at 2. An illustrative list of functions that are not considered to be inherently Federal is contained in Attachment C.

In instances where it is unclear whether particular functions or activities are inherently Federal, each function or activity should be evaluated individually, with the final determination in each case based on the totality of the circumstances.

III. Discussion

A. Constitutional Analysis of Inherently Federal Functions

The prohibition against the contracting out of inherently Federal functions has its roots in the United States Constitution. The Constitution provides that "[t]he executive Power shall be vested in a President of the United States of America," and charges the President to "take Care that the Laws be faithfully executed." U.S. Const., art. II, § 1, cl. 1; art. II, § 3. The Appointments Clause provides the mechanism for the delegation of executive powers to Federal officers under the President's control. It provides:

[The President] shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law; but

^{3/} The proposed rule was never finalized, and was developed prior to tribal comment.

the Congress may by law vest the Appointment of such inferior Officers; as they think proper, in the President alone, in the Courts of Law or in the Heads of Departments:

U.S. Const., art. II, § 2, cl. 2.^{4/}

In Buckley v. Valeo, 424 U.S. 1 (1976), the seminal case in this area, the Supreme Court examined the scope of the Appointments Clause in the context of a constitutional challenge to the Federal Election Commission. The appellants in that case claimed that the Commission could not exercise the powers conferred on it, consistent with the separation of powers doctrine, in view of the fact that some of the Commission's members were appointed by Congress. In addressing that issue, the Court concluded that the Commission's authority to gather, organize and make information available to the public--described by the Court as the Commission's "recordkeeping, disclosure, and investigative functions"^{5/}--raised no constitutional problem. With respect to the Commission's enforcement power as well as its rulemaking and adjudicative powers, however, the Court concluded that such functions could be performed only by persons who are "Officers of the United States."^{6/} As the introduction to the proposed rule to implement the Indian Self-Determination and Education Act Amendments of 1988 aptly notes:

^{4/} The Appointments Clause has a "horizontal" and "vertical" component which underlies the separation of powers principle. The horizontal component protects against the exercise of executive power by any other branch of the Federal Government (e.g. Congress) or by any individual appointed by, or subservient to, such other branch. The vertical component protects against the delegation of executive power to private parties. See OLC Memo at 3 and n.2. In the context of Section 403(k) of the Tribal Self-Governance Act of 1994, Indian tribes would be treated like private parties for purposes of the vertical component, particularly since Congress specifically excluded any delegation of inherently Federal functions.

^{5/} Buckley, 424 U.S. at 110.

^{6/} The Court in Buckley defined the term "Officer of the United States," as used in the Appointments Clause, as follows:

[A]ny appointee exercising significant authority pursuant to the laws of the United States is an "Officer of the United States," and must, therefore, be appointed in the manner prescribed by § 2, cl. 2 of that Article.

Buckley, at 424 U.S. 126.

Buckley dealt specifically with "functions necessary to ensure compliance with Federal statutes and rules"--the conduct of litigation to vindicate public rights under Federal statutes, administrative determinations and hearings, and related informal procedures, 424 U.S. at 137-140. These were held to be exclusively vested in Officers of the United States because it is the President to whom "the Constitution entrusts the responsibility to 'take care that the laws be faithfully executed.' Art. II, sec. 3" 424 U.S. at 138. There was no restriction, however, on delegation of responsibility for investigation and information gathering related to such enforcement.

Buckley also addressed other administrative powers--such as rulemaking and the issuance of advisory opinions--and found them not to be "sufficiently removed from the Administration and enforcement of public law to allow it to be performed" by persons not "Officers of the United States," 424 U.S. at 140-41.²⁷ In Bowsher v. Synar, 478 U.S. 714, 733 (1986), the executive power was defined, for Appointments Clause purposes, to include the interpretation and effectuation of all public law.

59 Fed. Reg. 3166, 3168 (January 20, 1994).

In short, the Supreme Court in Buckley focused on the exercise of significant authority pursuant to Federal law in determining whether one must be properly appointed under the Appointments Clause to do certain functions. Only Officers properly appointed under the Appointments Clause may determine the policy of the United States, make funding decisions, or interpret and apply Federal law in any way that binds the United States or affects the legal rights of third parties, for each of these actions involve the exercise of significant authority pursuant to Federal law.²⁸

²⁷ The Federal Election Commission's advisory opinions were, in effect, binding because anyone acting in good faith reliance on them was presumed to be in compliance with the applicable statutory provision. Buckley, 424 U.S. at 110-11.

²⁸ Based on an analysis of Constitutional requirements as set forth in Buckley, section 900.106(d) of the Proposed Rule to implement the Indian Self-Determination and Education Act Amendments of 1988 contains an illustrative list of activities or functions
(continued...)

The Supreme Court also addressed the Appointments Clause in Bowsher v. Synar, 478 U.S. 714 (1986). In that case, the Court reviewed the functions performed by the Comptroller General pursuant to the Balanced Budget and Emergency Deficit Control Act of 1985. Under the Act, the Comptroller General, an officer of the legislative branch, was required to prepare a report containing Federal revenue and expenditure projections as well as reductions on a program-by-program basis necessary to reduce the deficit to the fiscal year target. *Id.* at 732. The Supreme Court deemed this duty to be executive in nature because the Act granted the Comptroller General "the ultimate authority to determine the budget cuts to be made" by requiring the President to incorporate all provisions in the Comptroller General's report without change. *Id.* at 733.

Thus, the disclaimer in the Indian Self-Determination and Education Assistance Act Amendments of 1994 that excludes inherently Federal functions from the scope of the Self-Governance program is in accord with the dictates of the Constitution.

B. The Executive Branch's Legal and Policy Interpretation of Inherently Federal Functions^{9/}

The Office of Legal Counsel of the Department of Justice analyzed the Appointments Clause in an April 27, 1990, memorandum regarding the "Constitutional Limitations on 'Contracting Out' Department of

^{9/}(...continued)

which are noncontractible Secretarial or Federal functions under most circumstances, 59 Fed. Reg. at 3180-81. The Secretaries of DOI and DHHS proposed the rule jointly. The proposed rule was never finalized, and was developed prior to tribal comment. A copy of section 900.106(d) of the proposed rule is attached to this memorandum as Attachment A.

^{2/} The Office of Legal Counsel has advised us that it is preparing a comprehensive memorandum on the separation of powers doctrine, including a discussion of inherently Federal functions. Also, OLC has indicated that the new memorandum will analyze the Appointments Clause, and Article II, § 3 of the Constitution, which charges the President to take care that the laws be faithfully executed. The latter Constitutional provision will be characterized as relating to "delegation of authority" matters as distinguished from Appointments Clause issues. Accordingly, while the April 27, 1990, OLC memorandum discussed in this section is, at this time, the most current statement of OLC's position on inherently Federal functions, OLC has advised that the analysis contained in the 1990 memorandum may be changed in the upcoming memorandum.

Justice Functions Under OMB Circular A-76.^{10/} The memorandum notes that OMB Circular A-76 reflects the constitutional concerns the Court expressed in Buckley, in that it recognizes that "[c]ertain functions are inherently Federal in nature," defined as functions "which require either the exercise of discretion in applying Government authority or the use of value judgment in making decisions for the Government." OLC Memo at 6 (quoting OMB Circular No. A-76, §§ 5b, 6e (Rev. Aug. 4, 1983)).^{11/} OLC emphasized that:

[U]nder Buckley private individuals may not determine the policy of the United States, or interpret and apply Federal law in any way that binds the United States or affects the legal rights of third parties. Nor can any private individuals make funding decisions. . . . Properly appointed Federal officials must maintain both legal and effective control over the direction of United States policy in this area as well as control over the allocation of Federal funds.

Id. at 7. Among the inherently Federal functions listed in OMB Circular A-76 and acknowledged by OLC were "criminal investigations, prosecutions and other judicial functions; management of Government programs requiring value judgments," and "selection of program priorities." Id. at 6, n.4 (quoting OMB Circular No. A-76, § 6e(1)). OLC noted, by contrast, that:

[I]nformation gathering, investigative, and advisory functions that do not involve final actions affecting third party rights may be performed by private parties or "independent" contractors. Similarly, purely ministerial and internal functions, such as building security, mail operations, and physical plant maintenance, which neither affect the legal rights of third parties outside the Government nor involve the exercise of significant policymaking authority may be performed by persons who are not Federal officers or employees.

^{10/} OMB Circular A-76 sets forth procedures for determining whether commercial activities should be performed under contract with commercial sources or in-house using Government facilities and personnel.

^{11/} OLC noted the possibility that the definition of inherently Federal functions in OMB Circular A-76 might be broader than the "significant authority" criterion adopted in Buckley. OLC Memo at 7, n.5.

Id. at 6.

On September 23, 1992, OMB issued a policy letter which describes inherently Federal functions for purposes of establishing Executive Branch Policy. OMB Policy Letter 92-1.^{12/} According to OMB, an inherently Federal function, as a matter of policy, is a function "so intimately related to the public interest as to mandate performance by Government employees." Id. at 2. Consistent with Circular A-76, OMB described these functions to include activities requiring either the exercise of discretion in applying Government authority or the application of value judgments in making decisions for the government. Id. OMB further explained that inherently Federal functions involve, among other things, the interpretation and execution of Federal laws so as to:

- (1) bind the United States to take or not to take some action by contract, policy, regulation, authorization, order, or otherwise;
- (2) determine, protect, and advance its economic, political, territorial, property, or other interests by military or diplomatic action, civil or criminal judicial proceedings, contract management, or otherwise;
- (3) significantly affect the life, liberty, or property of private persons;
- (4) commission, appoint, direct, or control officers or employees of the United States; or
- (5) exert ultimate control over the acquisition, use, or disposition of the property, real or personal, tangible or intangible, of the United States, including the collection, control, or disbursement of appropriated and other Federal funds.

^{12/} The policy letter begins with the statement: "This policy letter establishes Executive Branch policy relating to service contracting and inherently [Federal] functions." Policy Letter 92-1. OMB emphasized that it was not purporting to define inherently Federal in a legal sense, but only as a matter of policy.

Consistent with the OLC memorandum, OMB also concluded that:

Inherently [Federal] functions do not normally include gathering information for or providing advice, opinions, recommendations, or ideas to Government officials. They also do not include functions that are primarily ministerial and internal in nature, such as building security; mail operations; cafeteria operations; housekeeping; facilities operations and maintenance; warehouse operations; motor vehicle fleet management and operations; or other routine electrical or mechanical services.

Id.

Senator John McCain gave important guidance to the meaning of "inherent Federal functions" in his statement accompanying H.R. 4842:

It is not possible at this time to list all the elements of Federal programs which may not be subject to self-governance compacts, but such a list certainly could include discretionary administration of Federal fish and wildlife protection laws, promulgation of regulations, obligation and allocation of Federal funds, the exercise of certain prosecutorial powers, and other discretionary functions vested in Federal officials.

Also, in a letter to Senator McCain, dated September 28, 1994, Secretary Babbitt stated:

Nothing in [H.R. 4842] or P.L. 93-638 would change jurisdictional responsibilities for administering federal laws governing natural resources, including fish and wildlife resources, or exempt Indian tribes from adhering to federal laws and standards with respect to the protection and management of such resources. Indeed, I am obligated by virtue of my oath of office to uphold and carry out these federal laws. This responsibility includes conditioning approval of self-determination and self-governance compacts as necessary to fulfill my responsibilities under such laws.

As OMB recognized in its policy letter, the determination whether a function is inherently Federal is often a difficult one. In instances where it is unclear whether particular functions or activities are inherently Federal, the facts of each case should be analyzed with consideration given to factors such as: whether there

are legislative restrictions or authorizations; the degree to which official discretion would be limited; the finality of the contractor's actions affecting third parties; the degree to which the contractor's activities involve "wide-ranging interpretations of complex, ambiguous case law and other legal activities, as opposed to being circumscribed by detailed laws, regulations and procedures;"^{13/} the extent to which the matter for decision involves recurring rather than unique fact patterns; whether the contractor has discretion to determine an award or penalty; the contractor's ability to take action significantly and directly affecting the life, liberty or property of third parties; the availability of special agency authorities such as the power to deputize private persons; and whether the function is already being performed by private parties. See Policy Letter 92-1 at 5-6. OMB noted that in engaging in such a policy analysis, each case should be evaluated based on the totality of the circumstances, with no single factor in itself determinative of the issue. *Id.* at 4.

To further assist you in determining whether a particular function is inherently Federal, we offer the following examples of guidance provided by the Solicitor's office. In a memorandum dated July 28, 1994, to the Acting Director, Office of American Indian Trust, the Associate Solicitor, Division of Indian Affairs, advised that the ultimate decision to acquire land in trust for an Indian tribe could not be delegated to a P.L. 93-638 contractor, both because it involves a nondelegable trust function, and because it is an inherently Federal function. However, predecisional technical activities, such as gathering appraisals or examining title records, are clearly contractible. Similarly, in a memorandum dated October 20, 1993, to the Acting Deputy Commissioner of Indian Affairs, the Associate Solicitor, Division of Indian Affairs, advised that technical services relating to the management of Individual Indian Monies (IIM) were contractible under P.L. 93-638, but that affirmative statutory trust duties of the Secretary could not be delegated to non-Federal entities.

IV. Conclusion

In instances where there is doubt as to whether a particular activity or function is inherently Federal within the meaning of the Indian Self-Determination and Education Assistance Act Amendments of 1994, a case-by-case analysis should be employed. The final determination should be based on the totality of the circumstances consistent with the general principles set forth above.

Attachments

^{13/} In the context of preserving compactibility under the Self-Governance program, standards could be negotiated in the compact so as to limit discretion through detailed regulations and procedures.

reflects an intent to benefit Indians, because of their status as Indians, as primary or significant beneficiaries of the appropriations, as evidenced in the statutory or committee report language or the budget justifications submitted to the Appropriations Committee; or

(C) Regulations or administration of a program or portion of a program identify Indians, because of their status as Indians, or reflect a Departmental intent to benefit Indians, because of their status as Indians, as primary or significant recipients of the services to be provided by the program or portion of the program.

(2) In order to be subject to the mandate of (a)(1) above, a program or portion thereof must be authorized by Congress within one of the categories listed in (a)(1) for which Congress has appropriated funds.

(b) The Secretary of the Interior, upon the request of any Indian tribe and from funds appropriated for the benefit of Indians pursuant to the Act of November 2, 1921, 42 Stat. 208, Snyder Act and any Acts subsequent thereto, is authorized under section 103(a) of the Act to contract with any Indian tribe or tribal organization for:

(1) The strengthening or improvement of tribal government including, but not limited to, the development, improvement, maintenance, preservation, or operation of tribal facilities or resources;

(2) The planning, training, or evaluation of their activities designed to improve the capacity of an Indian tribe or tribal organization to enter into a contract(s) pursuant to section 102 of the Act and the additional cost associated with the initial years of operation under such a contract(s); or

(3) The acquisition of land in connection with paragraphs (b) (1) and (2) of this section. Provided, That in the case of land within Indian country as defined in Chapter 53 of title 18 U.S.C. or which adjoins on at least two sides lands held in trust by the United States for the tribe or for individual Indians, the Secretary of the Interior may, upon request of the tribe, acquire such land in trust for the tribe.

(c) The Act directs the Secretary to contract for "programs or portions thereof." The term "program" is defined in § 900.102 as "the operation of services for tribal members and other eligible beneficiaries." Service delivery programs subject to contracting under these regulations are generally performed at the reservation level, but may be performed at higher organizational levels within the DHHS and DOI. In providing services under a contracted program, the tribe or tribal

organization may perform functions which would otherwise be performed by Federal employees, such as determining the eligibility of applicants for, and the amount and extent of, education, benefits, or services in accordance with the terms of the contract and applicable regulations of the appropriate Secretary. Provided, That the Secretary shall not make any contract which would impair the ability to discharge trust responsibilities to any Indian tribe or individuals or obligation under the Constitution to ensure the laws are faithfully executed.

(d) Contracting for the operation of services to tribal members and other eligible beneficiaries does not permit the transfer to the tribe or tribal organization of inherently Federal responsibilities involving the exercise of significant authority under the Constitution, and functions integral to the exercise of discretion, judgment or oversight vested in the Secretary by law or by virtue of the Secretary's trust responsibilities. Such functions and responsibilities may only be carried out for the Federal Government by Federal officials and are not contractible under the Act. Examples of Federal responsibilities and functions carried out for the Secretary and under the Secretary's authority which are not contractible include, but are not limited to, the following:

(1) Allocation, award (including discretionary grant funds), and obligation of Federal funds and approving amounts of Federal expenditures.

(2) The selection or nonselection of individuals for Federal Government employment and the direction and control of Federal employees including the approval of position descriptions and performance standards for Federal employees except as authorized under section 104 of the Act.

(3) Administration of Federal contracting and grant laws for the Federal Government, including monitoring and auditing of Federal contract and grant projects necessary to maintain the continuing trust, programmatic and fiscal responsibilities of the Secretary. These Federal responsibilities and functions include, but are not limited to, determining what property or services are to be acquired or supported by the Federal Government, the award and administration of Federal contracts and grants, and determining for the Federal agency involved whether contract and grant costs are reasonable, allocable, and allowable.

(4) Deciding Federal administrative appeals or hearings, and the exercise of supervisory review.

(5) Determination of the Secretary's views and recommendations concerning Federal administrative appeals or litigation and representation of the Secretary in Federal administrative appeals or litigation.

(6) Formulation of the Secretary's and the President's policies as expressed in budgetary and legislative recommendations and views and the publication of regulations, policies or notices in the Federal Register.

(7) Nondelegable Secretarial duties relating to trust resources.

(8) Federal agency determinations to issue discretionary Federal licenses or permits.

(9) Federal agency determinations to:

- (i) Acquire, use or dispose of, (whether by sale, lease or otherwise) lands, interests in lands, natural resources or other property;
- (ii) To establish the terms (financial or otherwise) of acquisition or disposition; and
- (iii) In this connection, to render title opinions on behalf of the United States or to order, prepare instructions for, and approve appraisals, surveys and title examinations.

(10) Federal agency decisions determining the rights, or claims or obligations of others in relation to the United States and the correlative rights, claims, and obligations of the United States.

(11) Executive Branch determinations of, or Federal agency decisions or orders imposing sanctions or penalties for, violations of Federal statutes, regulations or orders, or breaches of permits, grants, leases or contracts.

(12) In determining whether Federal responsibilities and functions are contractible, the Secretary shall consider whether the responsibility or function:

(1) Involves the discretionary exercise of Governmental authority for or on behalf of the Secretary or the making of value judgments in making decisions for the Federal Government (as distinguished from the operation of services for tribal members, or activities eligible for funding as contract support costs described in § 900.109(b), gathering information, providing advice or purely ministerial functions);

(2) Impermissibly limits the degree of Federal discretion as indicated by the finality of the proposed contractor action or the degree to which contractor discretion would be circumscribed by detailed laws, regulation or procedure;

- [APPENDIX A] -

The following is an illustrative list of functions considered to be inherently governmental functions:¹

1. The direct conduct of criminal investigations.
2. The control of prosecutions and performance of adjudicatory functions (other than those relating to arbitration or other methods of alternative dispute resolution).
3. The command of military forces, especially the leadership of military personnel who are members of the combat, combat support or combat service support role.
4. The conduct of foreign relations and the determination of foreign policy.
5. The determination of agency policy, such as determining the content and application of regulations, among other things.
6. The determination of Federal program priorities or budget requests.
7. The direction and control of Federal employees.
8. The direction and control of intelligence and counter-intelligence operations.
9. The selection or nonselection of individuals for Federal Government employment.
10. The approval of position descriptions and performance standards for Federal employees.
11. The determination of what Government property is to be disposed of and on what terms (although an agency may give contractors authority to dispose of property at prices within specified ranges and subject to other reasonable conditions deemed appropriate by the agency).

¹ With respect to the actual drafting of Congressional testimony, of responses to Congressional correspondence, and of agency responses to audit reports from an Inspector General, the General Accounting Office, or other Federal audit entity, see special provisions in subsection 4(c) of the text of the policy letter.

12. In Federal procurement activities with respect to prime contracts,

(a) determining what supplies or services are to be acquired by the Government (although an agency may give contractors authority to acquire supplies at prices within specified ranges and subject to other reasonable conditions deemed appropriate by the agency);

(b) participating as a voting member on any source selection boards;

(c) approval of any contractual documents, to include documents defining requirements, incentive plans, and evaluation criteria;

(d) awarding contracts;

(e) administering contracts (including ordering changes in contract performance or contract quantities, taking action based on evaluations of contractor performance, and accepting or rejecting contractor products or services);

(f) terminating contracts; and

(g) determining whether contract costs are reasonable, allocable, and allowable.

13. The approval of agency responses to Freedom of Information Act requests (other than routine responses that, because of statute, regulation, or agency policy, do not require the exercise of judgment in determining whether documents are to be released or withheld), and the approval of agency responses to the administrative appeals of denials of Freedom of Information Act requests.

14. The conduct of administrative hearings to determine the eligibility of any person for a security clearance, or involving actions that affect matters of personal reputation or eligibility to participate in Government programs.

15. The approval of Federal licensing actions and inspections.

16. The determination of budget policy, guidance, and strategy.

17. The collection, control, and disbursement of fees, royalties, duties, fines, taxes and other public funds, unless authorized by statute, such as title 31 U.S.C. § 952 (relating to private collection contractors) and title 31 U.S.C. § 3718 (relating to private attorney collection services), but not including:

(a) collection of fees, fines, penalties, costs or other charges from visitors to or patrons of mess halls, post or base

exchange concessions, national parks, and similar entities or activities, or from other persons, where the amount to be collected is easily calculated or predetermined and the funds collected can be easily controlled using standard cash management techniques, and

(b) routine voucher and invoice examination.

18. The control of the treasury accounts.
19. The administration of public trusts.

- [APPENDIX B] -

The following list is of services and actions that are not considered to be inherently governmental functions. However, they may approach being in that category because of the way in which the contractor performs the contract or the manner in which the Government administers contractor performance. When contracting for such services and actions, agencies should be fully aware of the terms of the contract, contractor performance, and contract administration to ensure that appropriate agency control is preserved.

This is an illustrative listing, and is not intended to promote or discourage the use of the following types of contractor services:

1. Services that involve or relate to budget preparation, including workload modeling, fact finding, efficiency studies, and should-cost analyses, etc.
2. Services that involve or relate to reorganization and planning activities.
3. Services that involve or relate to analyses, feasibility studies, and strategy options to be used by agency personnel in developing policy.
4. Services that involve or relate to the development of regulations.
5. Services that involve or relate to the evaluation of another contractor's performance.
6. Services in support of acquisition planning.
7. Contractors' providing assistance in contract management (such as where the contractor might influence official evaluations of other contractors).
8. Contractors' providing technical evaluation of contract proposals.
9. Contractors' providing assistance in the development of statements of work.
10. Contractors' providing support in preparing responses to Freedom of Information Act requests.
11. Contractors' working in any situation that permits or might permit them to gain access to confidential business information and/or any other sensitive information (other than situations covered by the Defense Industrial Security Program described in

FAR 4.402(b)).

12. Contractors' providing information regarding agency policies or regulations, such as attending conferences on behalf of an agency, conducting community relations campaigns, or conducting agency training courses.

13. Contractors' participating in any situation where it might be assumed that they are Agency employees or representatives.

14. Contractors' participating as technical advisors to a source selection board or participating as voting or nonvoting members of a source evaluation board.

15. Contractors' serving as arbitrators or providing alternative methods of dispute resolution.

16. Contractors' constructing buildings or structures intended to be secure from electronic eavesdropping or other penetration by foreign governments.

17. Contractors' providing inspection services.

18. Contractors' providing legal advice and interpretations of regulations and statutes to Government officials.

19. Contractors' providing special non-law enforcement, security activities that do not directly involve criminal investigations, such as prisoner detention or transport and non-military national security details.

THE NATIONAL WILDLIFE REFUGE IMPROVEMENT ACT OF 1995

THURSDAY, MAY 25, 1995

HOUSE OF REPRESENTATIVES, SUBCOMMITTEE ON FISHERIES, WILDLIFE AND OCEANS, COMMITTEE ON RESOURCES,

Washington, DC.

The subcommittee met, pursuant to call, at 10:04 a.m., in room 1334, Longworth House Office Building, Hon. Jim Saxton (chairman of the subcommittee) presiding.

STATEMENT OF HON. JIM SAXTON, A U.S. REPRESENTATIVE FROM NEW JERSEY, AND CHAIRMAN, SUBCOMMITTEE ON FISHERIES, WILDLIFE AND OCEANS

Mr. SAXTON. We are going to begin in spite of the fact that there are more members coming who are not here and our first panel has not completely arrived yet. However, there is an ESA hearing down the hall at 12:00, and so we want to be sure that we are finished by that time.

I would like to begin by welcoming you all here today for our third in the series of hearings on the management of our National Wildlife Refuge System. Our first two hearings focused on the compatibility of secondary uses on refuge lands. According to the Fish and Wildlife Service Refuge Manual, an activity on a refuge may be determined to be compatible if it will not materially interfere with or detract from the purposes for which the refuge was established.

Currently, refuge managers are responsible for determining on a case-by-case basis whether activities carried out on refuge lands are compatible. Some have argued that this directive gives individual refuge managers too much discretion. Some refuge managers argue that they are not given enough discretion to successfully carry out their missions. This debate will certainly surface again today.

Improving the management of the refuge system has been the subject of a number of bills and Congressional hearings in recent years. In the last Congress, the National Wildlife Refuge System Management and Policy Act of 1993 was introduced in the House of Representatives by Representatives Sam Gibbons as well as by Mike Synar and in the Senate by Senator Bob Graham. This legislation would have established purposes for the system, prohibited new or existing uses of a refuge unless determined to be compatible with the purposes of the refuge and the system, and would have

required the development of a comprehensive plan for the refuge system.

On March 18 of this year, Chairman Young introduced H.R. 1675, the National Wildlife Refuge Improvement Act of 1995, which I am certain he will explain later in detail. Briefly, however, the bill establishes the mission and purposes of the National Wildlife Refuge System. In the bill, it makes clear that one of the stated purposes of the system is to provide opportunities for fish- and wildlife-dependent recreation. Clarification of this purpose will please many of our constituents a great deal.

I am looking forward to hearing more about the particulars of the legislation from Chairman Young, and I will currently recognize Mr. Studds, the panel's Ranking Minority Member, for his opening statement.

[H.R. 1675 and analysis may be found at end of hearing.]

**STATEMENT OF HON. GERRY E. STUDDS, A U.S.
REPRESENTATIVE FROM MASSACHUSETTS**

Mr. STUDDS. Thank you, Mr. Chairman. At today's hearing the subcommittee, as you have indicated, will finally address the fundamental question in the debate about administration of the National Wildlife Refuge System, namely what is the purpose of that system. I believe that the fundamental purpose is and has always been the conservation of fish and wildlife and their habitat. Others, including, as you know, the unspeakably distinguished gentleman from Alaska, believe that providing opportunities for wildlife-dependent recreational activities should also be a purpose of the system. I for one would not want to be out in those woods when the Chairman is engaging in wildlife-dependent recreation.

The Fish and Wildlife Service should and will continue to provide opportunities for a broad range of fish- and wildlife-dependent recreational activities within the system, however I do not believe that one type of use should be elevated above others. This is especially true if those uses would be virtually exempt from the process of determining compatibility, as appears to be the case under H.R. 1675. The refuge system represents a substantial public investment in conservation, and we should not confuse uses of the system with its fundamental purpose.

There has been a lot of rhetoric accompanying this debate over the years. There seems to be a perception fueled at times by organizations with a financial stake in fanning the flames that there is some sort of conspiracy to close down the refuge system to fishing and hunting. And the more that honest sportsmen believe that the government is out to get them, the more they contribute to organizations to fight the evil encroachment. The settlement of the compatibility lawsuit only fueled those fires. Unfortunately, sharp rhetoric with only a casual association with the facts is a cottage industry these days.

I ask my colleagues to look at the facts. The compatibility lawsuit did not result in the termination of a single hunting or fishing program. In its review of over 5600 activities and over 500 units of the system, the Fish and Wildlife Service proposed only one change in a hunting program and three changes in fishing programs. In fact, the current Administration opened more refuges to

hunting and fishing in its first two years than were opened during the last two years of the preceding Administration. So I plead with my colleagues to dispense with the rhetoric and take a good, honest look at the facts. Thank you, Mr. Chairman.

Mr. SAXTON. I thank the Ranking Member, and I ask unanimous consent at this point that all members have their opening statements placed in the record.

[Statement of Hon. Don Young follows:]

STATEMENT OF HON. DON YOUNG, A U.S. REPRESENTATIVE FROM ALASKA, AND
CHAIRMAN, COMMITTEE ON RESOURCES

Mr. Chairman, I am pleased that you are holding this hearing today. The National Wildlife Refuge System provides habitat for wildlife and recreational opportunities for thousands of our citizens. Efficient management of the System is necessary in order to maximize both of these uses. I believe that H.R. 1675, the National Wildlife Refuge Improvement Act of 1995, provides the legislative framework necessary to accomplish these goals.

This legislation would be the first comprehensive refuge reform bill since the enactment of the National Wildlife Refuge System Administration Act of 1966. While that landmark statute has served our Nation well, it is time that we update that law and, by so doing, improve the management of our Refuge System.

Our Nation's Wildlife Refuge System must be managed more effectively in the future. This System, which was first envisioned by President Theodore Roosevelt in 1903, needs to have a statutory list of purposes, uniform guidelines to determine what activities are permissible, comprehensive conservation plans, and the enthusiastic support of the American people who finance this System not only with the payment of their tax dollars, but also by purchasing duck stamps and paying excise taxes on fishing and hunting equipment.

These are goals of the National Wildlife Refuge Improvement Act. This legislation will build upon and improve current law by: making wildlife-dependent recreation, including fishing and hunting, a purpose of the Refuge System; defining the term "compatible use"; allowing historical uses to continue on newly acquired lands unless those uses are determined to be incompatible; requiring conservation plans for each refuge within 15 years; providing that fishing and hunting are permitted unless a finding is made that these activities are inconsistent with either the purpose of the refuge or public safety; and emphasizing a cooperative relationship with the States who have primacy on the management of fish and wildlife.

This legislation will restore the Wildlife Refuge System to the goals and intent of Congressman Dingell's National Wildlife Refuge System Administration Act of 1966. It will ensure that this System is alive and well for all our constituents in the 21st Century.

I look forward to hearing from our distinguished witnesses, and I am confident that we will move this legislation forward in the very near future.

Mr. SAXTON. Before I introduce our first panel of witnesses, I would like to just take one moment to put the issue of secondary uses in some perspective. Over the past five years several hearings on secondary uses and compatibility have been held. Legislation has been introduced to solve the problem of secondary uses, and it is also noteworthy that a lawsuit has been filed against the Fish and Wildlife Service relative to this issue. In the end, however, after a year-long review, the Service determined that of the nearly 4800 secondary uses that occurred on refuges and were under the Service's jurisdiction, less than one-half of one percent needed to be modified or eliminated because of the concern expressed in the lawsuit.

Much of the rhetoric that has surrounded this issue over the last few years would have led the public to believe that the system was under fierce attack by pro-development forces bent on turning the refuge system into a series of theme parks. The numbers show that this is not true. As Mollie Beattie points out in her written testi-

mony, refuge managers have been routinely reviewing uses under longstanding policy guidance to ensure compatibility. I would presume that other Federal agencies would be very pleased if after a year-long study, their error rate was found to be less than two percent.

So having made those opening remarks, I would like to welcome our first panel. I understand that Norm Mineta is not going to be able to make it this morning. He has asked that his testimony be included in the record. And so, if there is no objection, we will move on that point.

[Statements of Hon. Norman Y. Mineta and Hon. John D. Dingell may be found at end of hearing.]

Mr. SAXTON. I would like to also welcome Wally Herger, our colleague from California; Marty Meehan, our colleague from Massachusetts; and Wes Cooley, our colleague from Oregon. And I would just like to point out to the witnesses that we do operate under the five-minute rule. Your entire statement will be included in the record, so if you would summarize for us in the five minutes that we have made available, we would appreciate that very much. I recognize Mr. Herger from California.

STATEMENT OF HON. WALLY HERGER, A U.S. REPRESENTATIVE FROM CALIFORNIA

Mr. HERGER. Thank you, Mr. Chairman and members of the subcommittee, for this opportunity to testify on behalf of the families in the Tulalake region of my district.

Mr. Chairman, my district includes much of the northern portion of the State of California and encompasses three National Wildlife Refuges, the Tulalake National Wildlife Refuge, the Lower Klamath National Wildlife Refuge and the Clear Lake National Wildlife Refuge.

These refuges are the homes of over 1300 families who farm roughly 22,000 acres of refuge land under Federal leases. Although I support the objectives of the refuges, I have serious concerns regarding the duplicative and extremely burdensome restrictions the Department of Interior is placing on the leased land farming, particularly with regard to pesticide use.

Mr. Chairman, the Kuchel Act of 1964 designated 22,000 acres of prime farmland in the Tulalake and Lower Klamath National Wildlife Refuges for lease farming in perpetuity. Today these leased lands annually generate row and grain crops valued at nearly \$16 million, generate hundreds of thousands of dollars in tax revenues and return nearly \$2 million in lease receipts to the Federal Government. The Kuchel Act specifically gave farming on leased lands a priority equal to the preservation of refuge habitat.

Unfortunately, however, farmers are now forced to contend with a morass of Federal regulations and requirements that are literally shutting down their operations. Most of these regulations stem from a Department of Interior pesticide policy which prohibits farmers from using a number of substances that in fact pose no actual threat to fish or wildlife in the area.

These are pesticides that have been approved under Federal and state law and have undergone rigorous testing and review. Yet notwithstanding these safeguards, farmers are still prohibited from

using them. These duplicative and excessive regulations unnecessarily expose crops to destruction by harmful pests. As a result, farmers are less able to obtain bank financing, their crop yields are significantly reduced and their families are put under severe economic stress. As we speak, many families which have been farming in the region for four and five generations are in jeopardy of losing everything they have.

Mr. Chairman and members, the Department of Interior's pesticide policy has created confusion, fear and distrust among the farmers in the Klamath Basin. These farmers, who are careful and responsible stewards of the land, are mystified as to why, despite their efforts to reduce their use of pesticide and refrain from using them when migratory birds are present, the Department continues to penalize them. Often the Department rejects pesticides without consideration of such things as careful application procedures or the cost and availability of alternatives. When alternatives are suggested, they are at times more dangerous to fish and wildlife than the rejected chemicals.

Mr. Chairman, a report from the California Environmental Protection Agency and Department of Food and Agriculture indicates that pesticides currently used by Tulelake farmers are not harming flora or fauna and have not resulted in any documented fish or bird kills as a result of their application. In fact, farmers in the area have been very proactive in their efforts to promote the recovery of endangered species. It appears that the Department of Interior is simply abusing its regulatory authority based on an inherent distrust of pesticides and other traditional farming practices and to accommodate extreme environmentalists who wish to eliminate row cropping in the area.

Mr. Chairman, changes to the way we manage our wildlife refuge, and particularly the leased land within the Klamath Basin Refuge, are long overdue. We must quit treating leased land as simply an extension of the larger refuge. Rather, we should regulate them in a way which reflects their unique status and which adequately protects not only habitat but also farmers and their families. I urge this committee to take the appropriate steps toward restoring this balance as it considers amendments to the National Wildlife Refuge Administration Act in the weeks ahead. Thank you again for this opportunity to testify.

[Statement of Hon. Wally Herger may be found at end of hearing.]

Mr. SAXTON. Thank you very much, Mr. Herger.

Mr. Meehan.

STATEMENT OF HON. MARTIN T. MEEHAN, A U.S. REPRESENTATIVE FROM MASSACHUSETTS

Mr. MEEHAN. Mr. Chairman, members of the subcommittee, thank you for inviting me to testify today concerning my bill, H.R. 1407, the Oxbow National Wildlife Refuge Expansion Act, within the context of your subcommittee hearings regarding improvements to the refuge system.

The Oxbow National Wildlife Refuge was established in 1972 with approximately 711 acres of land formerly part of Fort Devens, Massachusetts. As with all refuges, Oxbow was established to pro-

tect wildlife and habitat. In Oxbow's case, this includes migratory birds, endangered species such as the Blanding Turtle and several types of wetlands and floodplains.

Oxbow comprises a variety of habitat types and correspondingly supports a variety of wildlife species. Over 70 percent of the current area of Oxbow is composed of various kinds of wetlands. The importance of these wetlands have been recognized and they have been listed as priorities for protection under the North American Waterfowl Management Plan and under provisions of the Emergency Wetlands Resources Act.

The refuge supports an incredible variety of flora and wildlife. These species include 18 types of reptiles, 13 species of amphibians, white-tailed deer, coyotes, and raptors. The refuge is teeming with the best nature has to offer.

Oxbow is a component of a larger Greenway buffer and floodplain composed of numerous state and Federal conservation and wildlife management areas. Within Oxbow, the U.S. Fish and Wildlife Service maintains hiking trails and canoe launches, which complement the Service's mission of the conservation of this refuge. In fiscal year 1994 over 21,000 individuals visited Oxbow and enjoyed these facilities.

Additionally, limited and regulated hunting and fishing is permitted at the refuge. In fiscal 1994, 330 fishing visits and 710 hunting visits were logged by the Fish and Wildlife Service.

As I am certain the subcommittee knows, Fort Devens is slated for closure in 1996. In anticipation of this closure, I worked with a variety of interests in my districts, from local Boards of Selectman to municipal planning boards and local conservation groups, to acquire approximately 800 acres of Fort Devens for inclusion in the Oxbow National Wildlife Refuge. With the assistance of the Department of the Army and Interior, and my colleagues on what was formerly known as the Committee on Armed Services, this was accomplished.

On the 25th of October 1994, Interior Secretary Bruce Babbitt and Assistant Secretary of the Army Robert M. Walker signed an agreement to begin cooperative efforts to protect, conserve and enhance the fish and wildlife and surrounding habitat until such time as the land is officially transferred to the Fish and Wildlife Service.

At the insistence of local conservation groups and elected officials, I introduced H.R. 1407. This bill was introduced to continue the evolutionary expansion of the Oxbow National Wildlife Refuge. The bill contains three essential elements: the transfer of land commonly known as the South Post of Fort Devens for inclusion in Oxbow; a conveyance of approximately 100 acres to the Town of Lancaster; and lastly, language to ensure the continued responsibility of the Department of Defense for environmental cleanup under the Comprehensive Environmental Response, Compensation and Liability Act.

These conveyances will only occur if the Department of Defense designates these lands as excess property. In the interim the Department of Army is committed to managing these lands and using them for training purposes. Each of the conveyances, beginning with the conveyance that was used to establish Oxbow, was accomplished at no expense to the government.

To conclude, the Oxbow National Wildlife Refuge plays a significant role in conserving the natural resources of Northeastern Massachusetts and provides a variety of compatible recreational opportunities.

I ask unanimous consent to include a report prepared by the Fish and Wildlife Service in 1993 for the House Committee on Appropriations that provides a detailed survey and evaluations of the lands proposed for conveyance in H.R. 1407.

Again, I would like to thank the subcommittee and I am prepared to answer any questions you may have. Thank you, Mr. Chairman.

Mr. SAXTON. Thank you very much. Mr. Cooley.

**STATEMENT OF HON. WES COOLEY, A U.S. REPRESENTATIVE
FROM OREGON**

Mr. COOLEY. Mr. Chairman and members of the committee, I would like to thank you for calling this hearing to examine the nation's Wildlife Refuge System and appreciate the opportunity to address issues of great importance to my Congressional district. My district encompasses much of Southern Oregon and borders parts of my good friend from California, Congressman Herger's district. Because of the proximity of these two districts, we share many common matters of concern. In particular, we both represent farmers and ranchers in the Klamath region, many of whom operate on lands within the Tulelake and Lower Klamath National Wildlife Refuge, which are leased to them by the Bureau of Reclamation.

The 22,000 acres of leased land came about as a result of an unfair historical circumstance in which lands given to the Federal Government by the State of Oregon and California for the purpose of homesteading, reclamation and irrigation were instead placed inside wildlife refuges. This was fine for those portions of land that were unsuitable for farming, but for those lands that amounted to prime farm land, this was clearly unfair.

In 1964 the Kuchel Act was attempted to resolve this issue. Instead of homesteading these lands through the Act, that provided that these lands should be leased for farming in perpetuity. Since that time, the lands have made valuable contributions to the area's economy, producing over \$16 million worth of crops, including onions, sugar beets, potatoes and a variety of grains. The area grows nearly 40 percent of California's fresh potatoes and 35 percent of the nation's horseradish.

In the last several years, the Department of Interior has made farming on the leased lands increasingly difficult. Most importantly, they have heavily regulated traditional farming practices, placing restrictions on federally approved pesticides and making other amendments to the leasing terms. This has imposed heavy bureaucratic burdens on these farmers and ranchers, not to mention that it renders their crops subject to infestation, reducing their yields and decreasing their economic value.

Leased land farmers and other farmers in Klamath Basin have struggled over the years to cope with a variety of environmental constraints, and this is the latest, largest attack on their livelihood. These farmers have responded by attempting to address environmental issues head-on, taking progressive measures to improve the

environment of the Klamath Basin. Leased land farmers have substantially reduced their use of pesticides over the years. In addition, as with potatoes, farmers often use significantly fewer inputs than farmers in other parts of the country use. They have hired consultants, worked with Federal and state and local officials and university extension services and invested untold sums, all to maintain their livelihood as they have for generations.

The Kuchel Act states that these people can farm on leased land, but apparently more clarification is needed. Congressman Herger and I are very interested in clarifying the role of farming on these lands, farming, which I might add, is not a secondary purpose of these refuge lands, but rather a coequal purpose significantly guaranteed by law. We hope that this subcommittee can assist in this effort.

Refuges in the Klamath Basin serve a very valuable purpose, providing resting habitat and food for over 1 million waterfowl that travel along the Pacific Flyway. They are valuable parts of the area that should be maintained, however farming is also a significant part of the Klamath Basin and for those farmers on leased lands must be relieved of the unreasonable burden imposed upon them by the Bureau and Department of Interior.

Mr. Chairman, I thank you for holding this hearing and I will listen to concerns of the people of my district and also Congressman Herger's. Thank you.

[Information submitted on Klamath may be found at end of hearing.]

Mr. SAXTON. Well, we thank you very much, all three, for your testimony. We have informally agreed here that we are going to bypass questions at this point. We have an ESA meeting down the hall at 12:00 and Secretary Babbitt will be here, so we have got to conclude by that time. But let me just say that with regard to Mr. Cooley and Mr. Herger, we appreciate your problems that have to do with EPA and Agriculture as they relate to the refuge system. And as we move through this, the bill that we will markup here, hopefully in the next few weeks or month, we will certainly take your concerns into consideration.

Mr. Meehan, I just would relate to you that your concern about Fort Devens, I think we have adequately taken care and appreciate your testimony with regard to it. Last evening during the markup, as you probably know, on the National Security Committee, our committee released its concerns and possible responsibility regarding the transfer of land from Fort Devens to the refuge that you have requested that it be transferred to. So we thank you all very much for being here, and appreciate your testimony.

And Mr. Miller would like to be recognized.

Mr. MILLER. Mr. Chairman, Mr. Herger or Mr. Cooley—in both of their statements they refer to a diminishment of farm income and crop yields and what have you, and I just wonder if that—if we might have testimony supporting that submitted to the committee as we deliberate that.

Mr. SAXTON. OK, very good. Thank you very much for being with us.

Mr. HERGER. Thank you very much.

Mr. COOLEY. Thank you.

Mr. SAXTON. Our next testimony this morning is a panel of one. That, of course, is Mollie Beattie, who is no stranger to any of us on this panel. She is the Director of the U.S. Fish and Wildlife Service. I understand that while Ms. Beattie will be testifying alone, she will be accompanied by a staff at the witness table who she will introduce.

Ms. Beattie, we thank you for being with us and you are free to proceed accordingly.

**STATEMENT OF MOLLIE BEATTIE, DIRECTOR, U.S. FISH AND
WILDLIFE SERVICE**

Ms. BEATTIE. Thank you, Mr. Chairman. My staff, who have a better flair for showmanship, and I must say a lower threshold for the corny than I, have insisted that I bring along this likeness of Theodore Roosevelt to remind us of who started the refuge system, when and for what purpose. It was my staff's hope that in carting this up here, that the watchful eye of Roosevelt would help us to keep focused on the purity of his original vision, which I would abstract from a 1915 quotation of his. He said it was keeping for our children's children as a priceless heritage all of the delicate beauty of the lesser and the burly majesty of the mightier forms of wildlife. A reflection, he said, of a new understanding that wild beasts and birds are by right not the property merely of the people who are alive today, but the property of unborn generations whose belongings we have no right to squander.

I believe that nothing we do in the 104th Congress or in the policies of the National Wildlife Refuge System should detract from or add complexity to that supreme vision. On the other hand, the challenge of resource management in 1903 was a great deal simpler than it is in 1995.

As the Service wends its way through preliminary project proposals, appraisals, public hearings and Congressional appropriations, I have always noted with envy that Pelican Island, the first refuge, was created in 1903 with a stroke of Teddy Roosevelt's pen. Teddy Roosevelt visited Breton Island, Louisiana, one day in 1904, and it was a national wildlife refuge the next day. Both of these original refuges were for the purposes of protecting seabirds from the depredations of uncontrolled hunting. The president turned them into sanctuaries.

A century later we have over 500 refuges, about 92 million acres. Those who know no more than the early roots of the refuge system believe that they are sanctuaries and are surprised, to say the least, to find that the refuges are open to a variety of recreational activities, including hunting and fishing. Those who do not know much about the refuge system seem not to distinguish between them and the other big Federal land systems, especially the national parks and forests, and are surprised to find out that the refuges have a far more specialized approach to public recreation than do other acres of Federal land. This second interpretation is reinforced by the simple fact of the growing pressure on public land on any open space for all of society's natural resources needs, from recreation to agriculture to resource extraction.

At this hearing you have heard and will hear about many of these pressures which are intensifying on the wildlife refuges as

both open space for human recreational and economic activity and undisturbed habitat for wildlife conservation both become increasingly rare commodities. In other words, it sometimes seems as if we have two schools of thought on the refuge system, first, they are lands where people can't do anything and second, they are lands where people should be able to do anything. All of us are trying to find a middle way, and I believe this is the problem that, at its essence, we have been trying to solve for the last two years in working toward organic legislation for the National Wildlife Refuge System.

The question we have to answer is this, I believe, given that we now know that all uses of refuges cannot and need not be excluded, by what standard should we choose. I do not believe we can answer this question without a guiding principle, and I believe that the guiding principle must be Theodore Roosevelt's. That is contributing to the keeping for our children's children all the lesser and greater forms of wildlife, especially those assigned to Federal jurisdiction. Those are migratory birds, anadromous and interjurisdictional fish species and marine mammals. I agree that this principle must be translated into clear and detailed guidance for the refuge manager.

Clearly, for us to be able to wisely administer the refuge system, this purpose must be supreme above all others and all proposed uses of the system must be judged against it. When, and only when, any use is contributory to its fulfillment should it be allowed and encouraged. In general, if uses of refuges are confused with and given equal status with this primary principle, we will have severely compromised its integrity. Uses of refuges that encourage the public's enjoyment of wildlife like fishing, bird watching and hunting are essential and should be given the highest, if not exclusive, priority in our administration of activities on the refuges. But to give them identical status with the supreme purpose of the refuge system, that is the conservation of wildlife, is to confuse means, that is hunting, fishing and other forms of wildlife enjoyment, and ends, that is conservation, and to leave us without the proper guidance for deciding what public uses are compatible with what specific refuges and wildlife.

Mr. Chairman, I am very grateful to the committee and especially to you personally for working with us on this issue. I am hopeful that our combined efforts to craft appropriate organic legislation will make it possible to achieve this vision. In my formal testimony I have addressed four elements which I believe should be embodied in legislation, a clear mission and purpose, well defined affirmative responsibilities of the Secretary to preserve integrity of the system, legislative direction relating to the management of permitted uses and guidance on the development of refuge planning documents.

Thank you for the opportunity to testify today. I would be happy to answer any questions you might have.

[Statement of Mollie Beattie may be found at end of hearing.]

Mr. SAXTON. Thank you very much, Ms. Beattie. I have just one question, which is, I think, central to this discussion. You indicated in your very articulate testimony that we are looking for a middle way to identify what types of uses are suitable for inclusion in the

refuge system. And the term you used was specifically middle way, and I think that is very accurate. It seems to me that it is necessary for us to do that inasmuch as the public support for the refuge system must continue among all interested parties.

Obviously, the extreme environmentalist part of our society is interested in maintaining the refuge system under certain conditions, and there are other groups who are interested in a variety of uses such as hunting and fishing and for other purposes who have other interests. I believe part of Mr. Young's bill—as a matter of fact, I drafted part of the bill—which provides for a change in the way management plans are put together and adopted and the status of the land during that period of time when those management plans are being put together. In other words, instead of immediately closing down to all historic uses upon taking title, Fish and Wildlife Service, under the proposed legislation, would be required to leave the refuge open to historic uses until such time as a management plan is adopted.

Would you comment on that and let us know what your feelings are?

Ms. BEATTIE. Yes, Mr. Chairman. We recognize this problem and the fact that it has created a great deal of frustration, especially among local people who have supported the acquisition and establishment of a refuge and who then are immediately precluded from engaging in the activities on which their support was built. We think that is a very manageable problem, and we have addressed ourselves to it based on our work with you on this bill. We think it is very possible, in this rather protracted process I described of establishing a refuge, to in fact do a preliminary compatibility check on all uses going on and issue an interim compatibility, or if necessary incompatibility, finding until such time as we have the data and the staff to handle it in a permanent way. And that way we would have a smoother transition to the refuge establishment and think that that is, again, a very manageable problem.

Mr. SAXTON. Thank you. We also provided for a long period of time, in my view at least, in the legislation for the development and adoption of conservation plans. I believe it is 15 years?

Ms. BEATTIE. 15 years, yes.

Mr. SAXTON. Can you respond to that provision in terms of the length of time? Is that an excessively long period of time? Does the Fish and Wildlife Service need that much time in order to develop a conservation plan?

Ms. BEATTIE. In my experience, Mr. Chairman, that is about the standard amount of time that you find in a natural resource management plan, ten to 15 years is fairly standard. And I don't think you have meant to exclude an amendment process if one is needed in that period, but generally speaking ten to 15 years seems to balance the need to always take the long-term view against the practical. And that is certainly within the realm of normal practice.

Mr. SAXTON. Well, thank you. In terms of that length of time, then, it seems to me that the treatment of historic uses in a slightly different way as expressed by the bill would make a great deal of sense, and we appreciate your comments on these matters.

Ms. BEATTIE. Thank you.

Mr. SAXTON. Mr. Studds.

Mr. STUDDS. Thank you, Mr. Chairman. Ms. Beattie, I want to thank you for bringing my favorite Republican, except of course for the four who are here, from the days when Republicans were really conservatives. It is very nice.

Do you think your imaginative and hokey staff could provide a similar cutout of Richard Nixon for our hearing that begins at 12?

Ms. BEATTIE. Mr. Congressman, I have found them willing to do just about anything for the cause.

Mr. STUDDS. I really appreciate that, because I think it is another healthy reminder.

A couple things very quickly. The bill before us, H.R. 1675, provides authority for the Secretary to turn over the management of refuges to state fish and game agencies. Do you support that proposal?

Ms. BEATTIE. Congressman, let me address that in a general way. We have not thoroughly reviewed this bill, as it was introduced only a couple days ago, a few days ago, so I don't want to speak directly to those provisions. But let me say that generally there are two concerns. One is that this is a National Wildlife Refuge System. We believe it should be managed for national, Federal priorities, which are to some degree distinct from state priorities. We have, as you know, a distinct definition of who manages what between the states and the Federal Government, so the Federal Government has a different set of priorities.

This is not to say that the states cannot blend those priorities into their own and do a very good job of managing wildlife refuges. We have attempted this or attempted to contract with states for the management of various programs and, in a lesser extent, the management of actual acres on national wildlife refuges. There are as many successes as there have been failures on that. The successes are very good ones. They are neither case very many.

So our concern would be, first of all, that we could merge the Federal and state priorities and maintain that Federal aspect to management of the National Wildlife Refuge System. The states can often—within that, the states can often do a better job than we can, where there is—it is more efficient for them where they are able to merge those priorities rather easily. So, again, we do have some successes.

The concern—the other concern is a legal concern which came up at our hearing last week. And it is one that, again, I have not fully researched and we—fully understood, promised to get back to the committee and will do so. And that is a legal concern relative to the constitutionality or the limit, the constitutional limits of delegating the management of National Wildlife Refuge System. I have a stack in front of me of letters from lawyers—

Mr. STUDDS. I am sorry to hear that.

Ms. BEATTIE [continuing]. going over this issue. Yes, well, as I said, I don't fully understand it.

Mr. STUDDS. OK.

Ms. BEATTIE. One of the letters from the lawyers sort of sets a limit on what they think can be and cannot be delegated to states for management. And, again, this issue really came up for the first time, in at least contemporary awareness, under the Indian, so-called Indian Self Government Act passed last year, which has to

do with delegating management of Federal resources to the tribes, a principle we very much support. However, there are legal limits, and in looking for those discovered this concern.

Mr. STUDDS. OK.

Ms. BEATTIE. So those are the two concerns at the moment, but I also want to point out that we do have a number of successes in this area.

Mr. STUDDS. Sure. I have before me a genuinely alarming document from the Wildlife Conservation Fund of America, who is going to appear, I gather, later on. Let me just read you a couple of excerpts and see if you have any response. The headline is "Clinton's people have cut a back-door deal that severely threatens hunting. At immediate risk are hunting, fishing and trapping on the 91 million acre National Wildlife Refuge System. Clinton's Department of the Interior, which includes the Fish and Wildlife Service, and Clinton's Department of Justice, which serves as Interior's lawyer, not only gave away everything the settlement suit asked for, but gave away a lot of control over a multitude of uses, including hunting, fishing and trapping on all 494 refuges. The deal requires the Fish and Wildlife Service, among other things, to stop all hunting, fishing and trapping if all the data requested is not produced now and every year thereafter. It is of course impossible to meet the deadlines. Goodbye hunting. Fish and Wildlife is being ordered by the Clinton team to close down refuges and lock the gates." This goes on several pages later to ask for a tax-deductible contribution to help spread the message.

Do you have any response to that characterization of the Administration's position? I believe it was your predecessor, Mr. Turner, who signed off on that, was it not?

Ms. BEATTIE. Signed off on the——

Mr. STUDDS. The settlement.

Ms. BEATTIE [continuing]. legal settlement? Yes, that is true, and the settlement was, in our minds, not much of a change from standing operating procedure either then or now, which is simply to review all uses for their compatibility. Our agreement was that we would write down our determinations so that the public would have access to the reasoning behind them. That was not a huge concession on our part and certainly one that improves, we would think in the long run, the management of the refuge system.

Outside of that, if the President has ordered us or the Clinton Administration to close hunting and fishing, we probably should be dismissed. As I think the Chairman read, we have opened more refuges to hunting in these two years than the previous Administration did in its last two. So I believe that record counteracts most of that document.

Mr. STUDDS. So if I were an ardent sportsman and hunter, if I were the gentleman from Alaska, I ought not to be alarmed in spite of this rhetoric?

Ms. BEATTIE. Again, I hope the facts would stand that we have been opening refuges to hunting as quickly as we could review compatibility and as quickly as we could afford it.

Mr. STUDDS. So I don't need to make a tax-deductible contribution. Thank you.

Ms. BEATTIE. You could to the Fish and Wildlife Service.

Mr. STUDDS. Thank you very much.

Ms. BEATTIE. Or to the Appropriations Committee.

Mr. SAXTON. The gentleman's time is expired. The gentleman from Alaska.

Mr. YOUNG. Thank you, Mr. Chairman. Thanks for having a hearing on this legislation, which I am the prime sponsor, as well as John Dingell, who is really the father of this legislation in 1966.

This is the first time we have reviewed the refuge system and I think it is time. I think we do have to make some adjustments. And much as I love Mollie Beattie, other fish and wildlife secretaries will come after her, and I don't like the discretion given to the executive branch on the uses of the refuge system.

Mr. Chairman, may I suggest respectfully that what started this was the settlement of the Audubon Society, and it was her predecessor who signed off on it, so I am not casting aspersion. As far as the tax operation that you just mentioned in the letter, I don't take great offense to that type letter. I have read about nine different ads in the paper recently, and all the way from New York Times to LA Times, et cetera, about how I am the rape or ruin and ruiner of all lands and wildlife and please send money to save our beautiful, pristine areas, wilderness society, et cetera, et cetera. So that is a common practice. If there is anything I could change it would be this nonprofit status for every special interest lobbying group so we at least know where their moneys are going.

Mr. STUDDS. Not only that, it is an exaggeration.

Mr. YOUNG. Well, it is an exaggeration. I am one that protects the wildlife and have always done so. I hope that we can see the wisdom, and I noticed that you are not in your testimony saying no or yes on this legislation, but understand what we are trying to do is make sure that the supporters of the refuge system still exist. This government cannot, regardless of what agency or what administration, cannot continue to exist as a democracy without the participation of the people.

There is illusion and there is some truth in the refuges now being set aside for other than the uses of hunting, fishing, conservation, bird watching, et cetera. I always love when you bring Theodore Roosevelt. I happen to be one of the few people that belong to Boone and Crockett, one of the 123. It is quite a privilege for myself. But he set aside the conservation uses primarily for the continuation of species for, yes, the preservation and the use of man. He was not an exclusive user. Ms. Beattie, I know very frankly, has said that we have opened, and I have seen that before, more hunting areas. Well, that bothers me in the sense it says we have opened more hunting areas. And reality is, very frankly, the greatest supporter are the conservationists within the organization of the hunting community, the trapping community and the fishing community.

And I hope this bill goes along, Mr. Chairman, that we see the wisdom of allowing—because I have listened to you, Ms. Beattie, say again we don't know the legal ramifications. We created this act. We can write it any way we want to, and I want to see where the lawyers are coming from and why they are even saying that as far as contracting it to the states or to the native corporations or to native group or tribe. If it isn't legal, and that is an opinion

of your judicial department, if it is illegal, then we will write it so it is legal, because I think that is the way you gain support.

I have argued with every administration I have had, Republican, Democrat, et cetera, parks and partners, refuge people, refuge managers and partners, BLM and partners, working together and saying—don't get me started talking about boots now. Working together saying we are together, what can we do to do what the ultimate goal of the refuge is. And I get a little apprehensive, and the reason this bill was introduced, when I see a director or a president deciding that he or she knows what is best in the intent of the refuge, because every one of these refuges were created with the support of those that lived around the community in which they were created, other than Alaska. They were created because they thought this is what we could have in the future and we were protecting the areas.

Now the term compatibility, which is in the original bill, it concerns me when there is a possibility of a lawsuit that can be filed against the administration or administration head saying by a group, which is nonprofit, for the gentleman from Massachusetts, with one of those lawyers who is no longer employed because we have got too doggone many of them in the country, so they filed a suit which causes not only the Federal Government and the taxpayers money, but it causes a misinterpretation of the refuge.

So this bill is really set up trying to make it easier for whatever administration—and I will say my administrations in the past weren't any better, but no agency has the right to interpret what we intended with the original act, nor the 1966 act, nor those people who live in that community.

And so, Mr. Chairman, I compliment you and I am pleased Ms. Beattie did not take a position on this bill and I am hoping to work together. I would like to see something positive come out of this Administration concerning ESA, concerning the wetlands, which we did not have, concerning the refuge system, something that we can work together on, because your support comes from the people and if the people turn on you, this Congress will turn on you. This will protect and continue the utilization of the refuge system, which I highly support. Thank you, Mr. Chairman.

Ms. BEATTIE. Thank you.

Mr. SAXTON. The gentleman from Alaska did not ask a question. It was a very eloquent statement. Let me ask a question that was very directly related to what the gentleman spoke about. He spoke about parks and partnerships and refuges and partnerships. This bill, as I understand the language, provides for full public participation. As a matter of fact, we would advertise in the Federal register that a management plan is in the process of being adopted and invite public participation. Do you support that provision and would you change it in any way one way or the other?

Ms. BEATTIE. I can't address it technically, I am sorry, Mr. Chairman, in terms of its specifics, but yes, we endorse the idea of public participation and in fact welcome it. I ran the public land system in Vermont. There had been no public participation on the planning for those lands. We instituted it. Not only did we find a great deal more support than we had had from the public, but we

also discovered that our land managers found their jobs a lot easier as opposed to a lot harder.

Mr. SAXTON. Some refuges also have groups that are ongoing supporters. Some of them call them, I believe, friends of the refuge or whatever the name may be, where a group of people meet with the refuge manager or with refuge personnel on an ongoing basis to help to give input. Is it necessary for us to put—desirable for us to put a provision in the bill to encourage that practice?

Ms. BEATTIE. Encouraging, not requiring would be, of course, welcome. We have a number of outreach efforts. I would call that one. We also have our volunteer system. I have spent afternoons on national wildlife refuges and never actually seen an employee of the national wildlife refuge, the place being entirely possessed by volunteers who are wonderful. We also have our private lands program run out of many of our refuges where we reach out to private landowners, work with them on a voluntary basis to involve them both in the management of the refuge and help encourage them to manage their land in a way that encourages the purpose of the refuge. And all those have had a tremendous effect on our public support, and anything you could do to encourage those efforts would be, of course, welcome.

Mr. SAXTON. Thank you. Mr. Miller

Mr. MILLER. Thank you, Mr. Chairman. First of all, let me thank you very much, Ms. Beattie, for your testimony and for all of the work you have done during your tenure in office and the help that you have provided us in California as we worked out a number of these hot spots over the management of these lands and of our resources and the willingness of you and your people to work with the entire community, if you will, of farmers and sportsmen and environmentalists in our urban communities that have a great stake in some of your management decisions. We appreciate that.

I think the Chairman of the committee, Mr. Young, you know, properly states that there is a great deal of consistency among the members of this committee as to the goals of this program, and hopefully of this legislation, in recognizing that systems like refuge systems do in fact need a support system of people who not only use them, but in some cases support them without using them because they believe in the concept. And your job, unfortunately, is to manage those various points of view. But I think we have to remember in the conduct of this legislation, and I don't mean this in a combative sense, but at some point on some given day somebody has to take responsibility for the management of these resources. Fortunately or unfortunately, now, that falls to you in this position.

And while this legislation, I think, properly broadens public input and all the rest of it, that doesn't mean the controversy is any less. And I hope that we can work out this legislation, and your willingness and your testimony to work with this, I think, is helpful. I think we do fall victim, and again, I agree with Mr. Young, that the kind of rhetoric that we see in fund-raising letters, unfortunately, is just simply not constructive, especially when you have the range of people who are willing to work on this issue and try to resolve those conflicts for the preservation of the refuge system.

And I note with interest that none of the facts that are alluded to in the fund-raising letter are presented to us as a matter of testimony this morning. I assume that means that they simply were unsupportable or they were not prepared to have them subjected to cross examination. But yet rhetorically they are out there inflaming people against your management or your attempt to resolve these issues or this committee or what have you, to start to put people into camps that diminishes the opportunities to come to a consensus over resources and assets as valuable as the one you manage in the refuge system.

And I think your testimony, you know, directly goes to the allegations that were made in the fund-raising letter and refutes them rather directly. And I would just hope that, members of this committee, we would not let ourselves get broken down into these camps whether the fund-raising—you know, no matter who sends out the fund-raising letters, that we address the needs to manage these resources. And at some point—

Mr. YOUNG. If the gentleman will yield—

Mr. MILLER. Again, I would—I had asked that Mr. Herger and Mr. Cooley submit information. I would also appreciate if you would submit information that you may have as to the impacts that they discussed. And it may have to come from, actually, the Bureau of Reclamation, I think, also because they are sort venturing this.

Mr. YOUNG. If the gentleman will yield.

Mr. MILLER. On yields and incomes and what we know about the impacts of those decisions in the Tulelake area. And finally, let me say, and then I will yield, you know, I don't think we ought to write legislation that takes away from you the same kind of management tools that any landlord would want over the land that they are charged with managing. And, you know, very often we see people on Federal leases coming here and whining and crying, and not a single private landowner would put up with those actions or those prices or—if that was in fact private land. And I think there has got to be some compatibility there in terms of a respect for the taxpayers and the people of this country that we hold that land in trust for. Mr. Young.

Mr. YOUNG. The gentleman, I hope he takes time to read the bill, because the bill does exactly what he says.

Mr. MILLER. No, I—that is what I am saying. It doesn't say with the outside group status, and I just don't want us to fall into that trap.

Mr. YOUNG. The thing that we have to keep in mind, again, this is not directed at this Administration or Mollie Beattie. This is directed at those groups that have the legal right to misinterpret what is the original intent of the refuge, and Ms. Beattie or any other secretary has no recourse then to try to reach a solution that may not be meant as the original intent of the refuge. And they don't even support the refuges.

And I am going to say that the other problem we have, regardless of who the president is and who the secretary is, if there is a refuge manager, the only way you can change that refuge manager's conduct, even though he is wrong, and she knows he is wrong, is to transfer him. You can't fire him. And if you transfer

him, God help the pressure that happens to you. I have seen this happen twice before and I am saying let us try to rigidly keep the intent of the refuge land if we can. That to me is support.

Mr. MILLER. I agree with the gentleman. I just want to make sure that the legislation also allows for the managers to unfortunately at times have to make decisions that may be immensely unpopular but happen to be right in terms of the long-term interest of the refuge. I mean, we cannot just say we are going to always do what is popular, because that will not necessarily lead to the best regime in terms of the management of these resources. My time is out. You are in control. Thank you very much. I am out of here.

Mr. SAXTON. Thank you. Thank you, Mr. Miller. I would like to recognize now the gentleman from the Eastern Shore of Maryland. I am sorry, the gentleman from Massachusetts. That is correct.

Mr. TORKILDSEN. Thank you, Mr. Chairman. I thank my colleague from Maryland for giving me the line for questioning. Just very directly, I appreciate the Chairman of the full committee filing the bill and getting the debate going, and I appreciate the Fish and Wildlife Service keeping an open mind toward it, because I do think there needs to be some type of framework in place.

The situation up in my own district is that we have the Parker River Wildlife Refuge, and how it is used is a subject of debate. There is one endangered species we have up there, the Piping Plover, which is continually debated about what is the best way to see it back to sustainability. The response has been to close the Parker River refuge entirely for a period of time during the summer while recovery efforts for the Piping Plover elsewhere in Massachusetts, such as nearby Cranes Beach and the Cape Cod Wildlife Seashore, has not been to close those areas but to use other means to protect them. The numbers would suggest that using alternative means have been more successful than total closure, and yet people who wish to advocate that for the refuge find that they do not have an audience.

So if we could at least have some type of framework, one, for the purpose of the refuge, and two, how to evaluate which efforts are indeed most successful, I think that would be helpful to everyone involved so that we don't have a situation where it looks like there is substantially different treatment of one area versus another. I think if anyone advocated total closure of the Cape Cod National Seashore, you would see a miniature revolt in place happening, but because Parker River refuge is not as well known or perhaps as well traveled, closing it was never deferred at all. So I would like to see a thorough review of that area as part of this and just say that if we have a framework, at least individuals will know what to expect and we won't have to deal with the arbitrary decisions being made on a refuge-by-refuge basis. I think we would all benefit from that.

The purpose—and, you know, I concur with the primary purpose has to be one of conservation and to protect wildlife, especially those which are endangered or threatened species, but within that allow other types of use that are consistent. And with that as an overall goal, I think we should be able to have bipartisan support on what form this legislation should take.

So that is more of a comment than a question, but if you would care to respond to it, I would be happy to hear whatever thoughts you had on it.

Ms. BEATTIE. I have two responses, Congressman. First of all, we will look into the question that you asked about why closure here and not complete closure there and find out what the specifics are. Generally, I just want to reemphasize, obviously, that there should be a revolt, I think, if we closed a national seashore unless we were in a true emergency situation. And that is the thing that we really haven't done a good job of and need to do a good job of in the future, which is distinguishing the refuge system from the other types of public land.

The response for the Piping Plover, or any other endangered species, will necessarily be different on a refuge than it would on a national seashore, and to some extent the principle—and again, I am not answering your first question because I don't know the details and I will have to get back to it—but the principle probably should be that the refuge should take the heaviest hit in terms of protection efforts than a national seashore or certainly other state and local beaches, so you may see because of the essence and purpose what we need to do is make the public understand that difference.

And I also want to just note, as I am sure you know, that despite these difficulties and the kind of displacements and inconveniences and changes for the public, the progress on the Piping Plover is significant and with great public support, not to say we are not conscious and they are not conscious of the inconveniences. So we ought to take credit for that success while we are trying to solve that problem.

Mr. STUDDS. Will the gentleman yield just for a quick clarification?

Mr. TORKILDSEN. I will be glad to yield.

Mr. STUDDS. I appreciate it. Just to be clear, Cape Cod National Seashore is not—first of all, it is not a wildlife refuge. It is a national seashore. Secondly, beaches are regularly closed there to off-road vehicles when the plovers are nesting and hatching. We have had closures both in Martha's Vineyard and county beaches and on the Cape in the National Seashore precisely for the plover, so we are there, too.

Mr. TORKILDSEN. If the gentleman will yield back, or reclaiming my time, the nature of closing to off-road vehicles, we certainly understand that. Is the gentleman saying that the beaches are closed just to off-road vehicles, or they are closed to all human foot traffic of any type?

Mr. STUDDS. Those areas where the chicks have just hatched are closed to people, period. They are protected.

Mr. TORKILDSEN. OK, thank the gentleman.

Mr. STUDDS. Not universally popular, I might add.

Mr. TORKILDSEN. Oh, it is certainly not north of Boston, either. It is quite controversial.

Mr. STUDDS. Is there something north of Boston? I thought that was Canada.

Mr. TORKILDSEN. It is called, yeah, New Hampshire or something else.

Mr. SAXTON. If I may just pursue the plover.

Mr. TORKILDSEN. I will be glad to yield.

Mr. SAXTON. One further question with regard to plovers. I understand that we now have something in the neighborhood of 1200 nesting pairs, that we are up from six or 800 to a higher number. It is working?

Ms. BEATTIE. It is working and that was my point. I don't know the exact numbers. I did at one point, but I—

Mr. SAXTON. Any guess at when plovers would be considered recovered?

Ms. BEATTIE. I will have to get back to you on that, but we do have an estimate, certainly. I just simply don't know it today, Mr. Chairman.

Mr. SAXTON. Just since we are talking about that issue, if you could get that back to us I would appreciate it.

Ms. BEATTIE. Certainly.

Mr. TORKILDSEN. Mr. Chairman, if I may very quickly, just one follow-up point, too. If in the review that you are doing, if you could also look at areas that are not part of a refuge or even a seashore. And again I mention specifically what is called Crane's Beach—

Ms. BEATTIE. OK.

Mr. TORKILDSEN [continuing]. which is very close to the Parker refuge. They have set up their own system of symbolic fencing and the like, and I believe they have had a far more significant increase in nesting pairs than the Parker refuge has. So if you could include that in your review, that would be most appreciated.

Ms. BEATTIE. Be happy to.

Mr. SAXTON. The gentleman from Maryland, who was, incidentally, born in New Jersey, in my district almost.

Mr. GILCHREST. The great State of New Jersey. I left there in 1964, Jim. I go back occasionally, though. I get my accent back and it is great.

I had one off-subject question. You mentioned Vermont. Did you live in Vermont?

Ms. BEATTIE. I am from Vermont, yes.

Mr. GILCHREST. Where are you from in Vermont?

Ms. BEATTIE. A town called Grafton, 600 people.

Mr. GILCHREST. No, not publicly at any rate. Grafton? I used to live in East Fairfield.

Ms. BEATTIE. Oh.

Mr. GILCHREST. North of Stowe.

Ms. BEATTIE. There is a very big county—grassroots-based county conservation effort going on in Fairfield County now that is, I think, going to be a model for the nation.

Mr. GILCHREST. Is that right? That is great. Maybe—in fact, my two sons camped up there the last couple of days and they hiked up Mount Mansfield and went swimming in Lake of the Clouds. Beautiful spot, I would like to have been there.

Ms. BEATTIE. This is the kind of testimony I like. It is making me homesick.

Mr. GILCHREST. That was my first indoctrination into acid rain. I climbed up Mount Mansfield about 15, 20 years ago, and I said why are all these trees dead. And that was why. At any rate, I would like to talk about Underhill State Park and those beautiful

places, but that is where the boys camped. They were the only ones there all week. Nobody else was there.

Ms. BEATTIE. It is a wonderful place.

Mr. GILCHREST. It is the Sunset Ridge Trail that is a great place. I would recommend it for anybody, northern Vermont.

Ms. BEATTIE. I am gratified, Congressman. I meet people in Washington who ask me what state Vermont is in. I am gratified to know you know it is a state.

Mr. GILCHREST. It is a pretty place. I hope it remains that way for 1000 more years.

Mr. MILLER. I would ask unanimous consent that the gentleman be given an additional two minutes.

Mr. GILCHREST. You know, you can see all of the Adirondack Mountains when you are on the top of Mount Mansfield. You can see the entire Lake Champlain Valley and you can see Mount Washington in New Hampshire. And if you look to the north, you can see Canada. It is a spectacular place.

Ms. BEATTIE. Senator Jeffords recently said that it is such a beautiful place and so desirable that the state government is soon going to have a department of who gets in.

Mr. GILCHREST. Oh, well, I can't—on a clear day you can see the World Trade Building in New York City.

Since I have all this extra time, I will get right to the questions, Mr. Chairman. New Jersey has some nice places, too.

Let us see, on the refuges at the present time there is hunting and fishing on a number of the refuges?

Ms. BEATTIE. Yes, about half.

Mr. GILCHREST. How does the Federal Government work with the state to determine the length of the season for whether it is Canada geese or whether it is deer or whatever it is, and who determines the bag limit? Do you comply with the state regs on that?

Ms. BEATTIE. Yes, may I refer that question to the person to my left who so far hasn't earned his pay this morning?

Mr. GILCHREST. Sure.

Mr. SHALLENBERGER. Typically the regulations are consistent with state regs. In some cases where there may be an additional conflict on a refuge with another management purpose, they may be more restrictive or they may not be open as many days, but typically it is the same, certainly no less restrictive.

Mr. GILCHREST. But in the case situation, for example, on the Eastern Shore of Maryland where we—over the last number of years we began to reduce the season and the bag limit for Canada geese. It was more restrictive than what the Federal Government's criteria was. In those instances where the state is more restrictive, are they allowed to be more restrictive?

Mr. SHALLENBERGER. Yes.

Mr. GILCHREST. On the refuges as well?

Mr. SHALLENBERGER. Yes, in the case of the Canada geese or other migratory birds, those regulations are set through a national process and through flyways, not specifically for refuges. So states can be more restrictive than—the Federal Government sets the framework within which the state—

Mr. GILCHREST. I see.

Mr. SHALLENBERGER [continuing]. sets its regs.

Mr. GILCREST. If—how likely is it, and I know this is probably impossible to predict. Is it likely that hunting as a result of recent events could be restricted on refuges, Federal refuges?

Mr. SHALLENBERGER. As a result of which event?

Ms. BEATTIE. What kind of recent events, Congressman?

Mr. GILCREST. Well, I just read it in here. Let me find it again. Well, let me just say is it likely—and I am assuming this legislation is being brought forth to add some consistency to the fact that you can hunt on a Federal refuge and you can hunt and fish on Federal refuges. And maybe I shouldn't make the assumption that the bill is brought forward to make sure that that stays in effect, so your reaction, I would assume, is such that it is unlikely that there will be restrictions to hunt on a Federal refuge?

Ms. BEATTIE. Congressman, it is not just our reaction. It is our history. Congressman Studds referred to this compatibility review that we recently did, and so far there are still a few questions outstanding and I don't expect to be—to have any conflicts there, but so far through a use of many thousands of—a review of many thousands of uses, we found one incompatible, what we would call incompatible, hunting program on 30 or 40 acres in California, and the state agreed that it was incompatible as well. So it was a rather non-controversial closing. So our history shows that it is unlikely to—that we will find hunting and fishing incompatible. Our history also shows, however, that we need to retain the discretion to make that decision.

Mr. GILCREST. If I could just ask for 30 seconds, since the gentleman from California gave me two minutes. What would this bill do that you don't already do as far as hunting and fishing on Federal refuge?

Ms. BEATTIE. I can't answer directly, again. We haven't—we are not responding to the bill and look forward—in detail, and we look forward to working with it with the committee and other interests over the next few weeks, but generally the situation that we think is necessary to avoid is a situation which any use of refuges is effectively declared unreviewable, that it is a blanket permission for a use of refuges anywhere such that we lose the discretion to limit or, in rare cases, eliminate that use if it is conflicting with the purpose for which the refuge was set aside. And that is the situation that we think would put us backwards rather than forwards in trying to find a guide to administering the National Wildlife Refuges. If we had, in the rare case, a situation where one conflicted with the other, we need the discretion to be able to say the migratory birds for which this refuge is set aside have to prevail. And I think most conservationists would agree with that. But to set any use in, bird watching or fishing or anything else, as a purpose of the refuge system makes it impossible for us to resolve the conflicts in favor of wildlife if such conflict, although rare, could develop. And that to us is a—it wouldn't put us much farther forward. In fact it would put us backward from where we are today.

Mr. GILCREST. Thank you very much.

Mr. SAXTON. The gentleman's time has expired. I thank the gentleman for the questions. And, Ms. Beattie, I would like to thank you for your testimony this morning. There may be other questions that members of the committee have which we will be happy to

submit in writing. And if you would respond in kind, we would appreciate it.

Ms. BEATTIE. Thank you for the opportunity to be here.

Mr. SAXTON. Before I introduce the next panel, I would like to announce that the gentleman who represents the Eastern Shore of Maryland, who was born in New Jersey, who loves Vermont and other place, is going to slide over here and take my place for a little while. And I will introduce the next panel. Mr. Bill Horn, who is Director of the National Affairs of Washington Counsel for the Wildlife Legislative Fund of America; Mr. Richard Parsons, Counsel for Government Affairs, the Safari Club International; Ms. Susan Lamson, Director of Conservation, Wildlife and Natural Resources Division of the NRA; Mr. Max Peterson, Executive Vice President of the International Association of Fish and Wildlife Agencies; Mr. Rollin Sparrowe, the President of the Wildlife Management Institute. If you would all take your places, we would appreciate it. I would remind you that we are operating under the five-minute rule and we will proceed accordingly.

OK, Mr. Torkildsen doesn't have time constraints. Apparently the gentleman from Maryland does have time constraints, so Mr. Torkildsen will be taking my place here temporarily. Thank you. You may proceed.

STATEMENT OF WILLIAM P. HORN, DIRECTOR OF NATIONAL AFFAIRS, WASHINGTON COUNSEL, WILDLIFE LEGISLATIVE FUND OF AMERICA

Mr. HORN. Mr. Chairman, thank you. On behalf of the Wildlife Legislative Fund of America, I appreciate the invitation to appear today and present our views on this legislation affecting the Wildlife Refuge System. We strongly endorse H.R. 1675 and applaud the leadership of the Resources Committee and the Congressional Sportsmen's Caucus for introducing this bill. Quick enactment will serve the interests of wildlife conservation, the refuge system and America's first and foremost conservationists, the sporting community.

Wildlife related recreation on the 92 million acre refuge system is thriving. Fully compatible hunting and fishing and activities now occur on over 260 units of the system, and migratory bird hunting occurs on nearly one-third of refuge units. Hunters log over 1 million visits annually to the system, and these public refuge lands play a critical and increasingly important role in providing fishing and hunting opportunities to America's anglers and hunters.

Congress has long recognized this important role for the refuge system. The enactment of the Refuge Recreation Act and Refuge Administration Act nearly 30 years ago outlined that support and we were extremely pleased to see that the author of those landmark measures, Representative John Dingell, has joined H.R. 1675 as a co-sponsor.

The arrangement under those statutes, though, was a closed until opened situation, and frankly it worked quite well for nearly 30 years. It worked because of the effective consensus that had existed among the Fish and Wildlife Service, state fish and game agencies and the interested public that hunting and fishing were

fully compatible activities and contributed to the conservation of fish and wildlife.

Unfortunately, that consensus is gone. Many interests are now hostile or indifferent to hunting and fishing. They would use the closed until open regime to erect administrative barriers, making it more difficult, if not impossible, to keep units open to traditional pursuits.

We think it is time for Congress, through this bill, to express again its support for appropriate wildlife-dependent recreation including fishing and hunting on refuge units. And it is time to change the presumptions in law so that wildlife-dependent recreation would be permitted in the absence of compelling reasons to adopt specific closures.

Let me add that Interior Secretary Babbitt articulated, at least last year, his support for an open until closed approach at a Congressional Sportsmen's Caucus breakfast he attended last September. At that time, he stated his belief that the burden of proof should be on those seeking to close units to wildlife-dependent recreation. This organization obviously hopes that the Secretary remembers his remarks and will work with this subcommittee and support at least these features of H.R. 1675.

Let me add, too, that there has been some concern about whether this bill, by making wildlife-dependent recreation a purpose of the system, strips the agency of its management discretion. Our review of the measure indicates quite to the contrary, that the bill does provide the agency significant discretion to close areas where it is appropriate. First, the purposes language says that wildlife-dependent recreation as "appropriate" is the purpose of the system. And it indicates further in the text that closures may be made on the basis of fish and wildlife management principles, whether or not the wildlife-dependent recreation may be inconsistent with the purposes of the specific refuge unit or for public safety. We believe that those criteria provide the director and the Service more than adequate discretion to regulate these types of important wildlife-dependent recreational activities and protect the fundamental conservation values of the system.

The bill contains other important features I would like to briefly touch on. The specific authorization for cooperative management agreements with state fish and game agencies for management of specific refuge units is long overdue. As Federal budgets shrink, such agreements provide one way of conserving refuge resources and achieving budget efficiency, and we have every reason to believe that appropriate units can be effectively administered by state agencies consistent with Federal law.

Other language reaffirming the primacy of state authority over resident fish and wildlife is also applauded. Creeping Federal encroachment in this traditional state field has become a growing concern, and the provisions in the bill will help reestablish the balance between Federal and state agencies that has served us so well for many years.

Finally, we are pleased with the section regarding interim management. As discussed with Chairman Saxton, the approach of closing activities has caused some hard feelings, and the maintenance

of those traditional activities until the Service then takes steps to close it makes good sense.

Let me finish by saying that on a couple of occasions members have raised issues and statements related to the 1993 out-of-court settlement on the Wildlife Refuge System. To answer those questions substantively, I would like to submit for the record a June 3, 1994, letter signed by 20 wildlife conservation organizations submitted to then Senate Appropriations Chairman, Senator Byrd, which explained in some substantive detail the concerns and fears with the out-of-court settlement.

[The letter may be found at end of hearing.]

Mr. HORN. I would rather have this in the record than the fundraising missives referred to before.

And with that, Mr. Chairman, thank you very much.

[Statement of William P. Horn may be found at end of hearing.]

Mr. TORKILDSEN. Without objection it will be included in the record. Thank you for staying within your time limit. Just so everyone will know, we do have a 15-minute vote on. I will ask Mr. Parsons to proceed with his testimony. After that the committee will go in recess so that we can vote, and then we will reconvene. Mr. Parsons.

STATEMENT OF MR. RICHARD PARSONS, COUNSEL FOR GOVERNMENT AFFAIRS, SAFARI CLUB INTERNATIONAL

Mr. PARSONS. Thank you, Mr. Chairman. On behalf of Safari Club International, we would like to thank you for the opportunity to present our views. We consider this issue of management of the refuge system to be very important, and we are in support of the bill by Congressman Young. Young, though, clearly establishes a basic mission for the system itself, which is to conserve and manage fish, wildlife and plants and their habitats found within the system for the benefit and future generations of the people of the United States. Within that mission the bill sets forth several co-equal purposes of the system, one of which is fish and wildlife-dependent recreation, including fishing, hunting, wildlife observation and environmental education.

We think the mission statement is important because it recognizes two major things. First, conservation is the main goal of the system, and second, conservation must be recognized within a human framework and therefore it is conservation for the benefit of present and future generations that is the main goal of the system. This is critically important and makes this an excellent mission statement.

Conservation for some esoteric or altruistic reason removed from a human framework is never likely to have the financial and political support necessary to succeed, but when it is recognized that the mission is conservation of wildlife with the purpose of benefiting people, then the refuge system becomes a relevant and important thing to many groups of people, one of the most important of which is the sportsmen's community.

It is our belief that the lack of a general statement of mission and purpose has been a major factor in the long, sad and often wasteful debate over the continuation of hunting and fishing in the refuge system. We think it is appropriate now for the Congress to

speak to the issue, since these are national public lands and since we have seen so much turmoil over the goals and purposes of the system. We also think it is important to recognize the contribution and continuing role of the sportsman in the refuge system and in wildlife conservation in general. The sportsman has been a prime mover for wildlife conservation in this country and all around the world for over a century.

In the United States, just as in the rest of the world, this century has seen people abandon rural areas and the farms and move to the cities. Our population is almost entirely urbanized. Very few people have an appreciation for the outdoors or an understanding of the complexity of the issues involved with conserving wildlife in its habitat. While most people care about wildlife and the environment, it is in a removed and superficial way. They simply do not have the time or interest to take more than a passing interest in wildlife conservation.

But sportsmen and sportswomen are different. To them, the outdoors and the pursuit of fish and game animals are essential parts of life. The kind of deep involvement in the rhythms of nature that are required of the sportsman also make the sportsman a major supporter of conservation efforts such as the National Wildlife Refuge System. Sportsmen realize the importance of bringing a critical watershed, for example, into the public trust so that the wildlife values will be preserved. Because of their use and enjoyment of the outdoors, they have an abiding interest in conserving it. They spend billions of dollars every year in the pursuit of their interests, and this in itself creates a vested interest to assure that we maintain both the quality and quantity of key lands.

As we move into the 21st century, there is nothing to indicate that this trend of urbanization will stop. In fact, the urban areas are becoming so large and their dependence on natural resources such as water are so great, that they themselves often become serious issues for wildlife conservation. At the same time, human conflicts with wildlife are increasing as wildlife becomes better adapted to humans in their surroundings. Deer and coyote are a few good examples.

The role of the sportsman becomes more important than ever in this kind of setting. The sportsman forms the hard and abiding core of the people who care enough about wildlife conservation to pay the necessary expenses and support the necessary governmental activity to assure that wildlife has a continuing place in the landscape. It is the sportsman who has the background and knowledge to follow the twists and turns of the complicated issues surrounding wildlife conservation and then appear in governmental forums to assure that the necessary things are done. It is also the sportsman who will, year after year, support wildlife research, assuring that we have the knowledge we need to conserve wildlife. And it is the sportsman who will contribute to poacher hotlines and other law enforcement activities to assure that the wildlife resource is not abused.

It is unfair, to say the least, to deny the use of this wildlife refuge system to sportsmen who have been its primary supporters. With the challenges facing the system today, it would be unwise to alienate this large and active group of supporters. An example of

the support given by sportsmen is occurring right now in Washington, D.C., where our group, along with a number of others, have set up a cooperative alliance for refuge enhancement. This group is looking at the funding situation of the refuge system and considering ways to improve it.

Thank you, Mr. Chairman.

[Statement of Safari Club International may be found at end of hearing.]

Mr. TORKILDSEN. Thank you, Mr. Parsons, for your testimony and for also staying within the five-minute limit. This committee will be in recess and will reconvene after the vote.

[Recess]

Mr. TORKILDSEN. The hearing will reconvene. Now we will hear testimony from Ms. Lamson. Please proceed, Ms. Lamson.

STATEMENT OF MS. SUSAN LAMSON, DIRECTOR OF CONSERVATION, WILDLIFE AND NATURAL RESOURCES DIVISION, NATIONAL RIFLE ASSOCIATION

Ms. LAMSON. Thank you, Mr. Chairman. The National Rifle Association of America appreciates the opportunity to comment on the future management of our National Wildlife Refuge System. We wholeheartedly support H.R. 1675 because it recognizes the important role of the hunting community and its contributions to the management of the system as well as to all of our national fish and wildlife resources. Over 70 percent of our membership hunt and engage in other forms of wildlife-dependent recreation.

The prime sponsor of the bill has had the foresight to take last year's organic legislation and skillfully improve upon it. While retaining many of the core elements of that bill, H.R. 1675 addresses the two major concerns that the NRA expressed in testimony last year. The first was a lack of recognition for the rightful place of wildlife-dependent recreation and environmental education as a primary purpose of the system. The second concern was over the increased fiscal burden that the bill would have placed on already scant resources for no apparent natural resource gain. By making wildlife-dependent recreation and environmental education a primary purpose, H.R. 1675 recognizes people as a primary, not a secondary or a subsidiary component of the refuge system.

We fully agree with Chairman Young in his statement upon the introduction of H.R. 1675 that the American people have the right to enjoy the benefits derived from the investment they make through their tax dollars, Federal duck stamp purchases and entrance fees.

Elevating these activities to a primary purpose is also supported by the comprehensive review of all secondary uses on refuge lands recently completed by the Fish and Wildlife Service. Out of 526 hunting and fishing programs being conducted on refuge lands, only one hunting program and one fishing program were identified as being potentially incompatible with the purpose of a particular refuge unit. It should be noted that elevating these activities to a primary purpose does not give carte blanche for these types of activities to occur on all refuges, nor does the bill mandate that the Service ensure that all other primary purposes of the system be applied on all refuges. This point is reinforced in the requirements for

preparing comprehensive conservation plans whereby the purposes of the system applicable to a particular refuge must be defined and described.

Under the compatibility process required by H.R. 1675, we find that it supports wildlife-dependent recreation activities as a primary purpose of the system in four ways. First, the bill recognizes these activities as presumptively compatible with the purposes of the system. Secondly, it requires the Secretary to permit hunting and fishing activities on refuge lands if such activities are found to be compatible, using clearly defined and unbiased criteria. Third, it allows hunting and fishing activities to continue on newly acquired lands unless such activities are determined incompatible, thereby establishing what I believe to be a very good, "good neighbor" policy during the transition in landownership. Fourth, the bill subjects these activities to a less demanding review process than for secondary uses, thus ensuring that the process is not exhaustive fiscally and administratively on the system.

H.R. 1675 also subjects the evaluation and reevaluation of uses within the refuge system to a public review and comment process. The NRA supports this process and recommends that it be applied to the reevaluation of fish and wildlife-dependent activities, which I think is an oversight in the drafting of the bill.

Now, the NRA's second concern with last year's bill was its failure to recognize the significant fiscal constraints currently experienced throughout the refuge system. By not subjecting wildlife-dependent activities to fiscally burdensome compatibility determinations, H.R. 1675 will assist the Service in conserving its limited fiscal resources, not further exacerbating the problem of the System's \$400 million operations and maintenance deficit.

Mr. Chairman, we look forward to assisting in the process of making this bill into law. Thank you.

[Statement of Susan Lamson may be found at end of hearing.]

Mr. TORKILDSEN. Thank you for your testimony, Ms. Lamson. Now we will hear from Mr. Peterson.

STATEMENT OF MR. R. MAX PETERSON, EXECUTIVE VICE PRESIDENT, INTERNATIONAL ASSOCIATION OF FISH AND WILDLIFE AGENCIES

Mr. PETERSON. Thank you, Mr. Chairman. If you would accept my longer statement for the record, I will brief it in the interest of time.

Mr. TORKILDSEN. That will be much appreciated.

[Statement of R. Max Peterson may be found at end of hearing.]

Mr. PETERSON. Thank you, Mr. Chairman. As you know, the International Association of Fish and Wildlife Agency was founded in 1902. It represents the 50 state fish and wildlife agencies, so some discussion here today about the relationship between this bill and the state fish and wildlife agencies I would be glad to address. But first, let me say that we support this bill.

We have been working through several Congresses now to try to agree on an organic act for the refuge system. We believe this builds on the efforts of last year with Senator Graham's bill. It addresses some of the concerns that were expressed in the House, including by Chairman Dingell. And I would recommend that mem-

bers of the committee might go back and read Chairman Dingell's testimony of last year, because it outlines the historical context of how we got where we are and some of the, I think, misinterpretation of the 1962 and 1966 Act in which it is clear that refuges purposes historically included compatible wildlife-dependent types of recreation as distinguished from other kinds of secondary recreation that came in later in the 1960's.

Let me say that when we looked at this bill we looked at three different criteria for deciding whether to support the bill. First is whether it recognizes the appropriate role of the state fish and wildlife agencies; and needed coordination and cooperation between the Fish and Wildlife Service and the states. We have said many times these refuges are not islands. They don't exist out there by themselves. They exist within now what we commonly call the ecosystems or larger areas. And so there needs to be and has to be coordination with what is happening around them to be fully successful. That has generally happened. This bill makes it clear that that is intended to happen as a matter of practice when planning goes on.

The second thing we looked at in the bill, does it really ensure that among the purposes of the system, and there are some six purposes stated on page 5 of this bill, do those purposes include appropriate and compatible wildlife related recreation and environmental education.

The third is that we want to be sure that when we write processes into law, that they are not so time consuming and onerous that they cause the expenditure of enormous amounts of time of people that are out there that we expect to manage the system, because we can create processes that use up so much time that the person can't manage the system for running the process.

We believe that this bill meets all three of those criteria. The other thing that we believe it does is it makes it clear that when a refuge is established you don't have to stop the world that day. We have had a great deal of unhappiness of people when suddenly a refuge is created and all the uses have to stop for some indeterminate length of time while people prepare a plan. If you remember, that became an issue in establishing the refuge in Arkansas a couple of years ago so the proposed legislation clearly says that existing uses are to continue until there is an evaluation been made of them. This bill says you don't stop the world until you complete a long planning process, you can allow those uses to continue on an interim basis. The Secretary can immediately stop any of them that he wants to stop. He is not required to stop them, though, until he goes through a planning process.

It is very difficult for people who have been supporting a refuge through land acquisition, which is the way most refuges are now created, which requires the consent of the governor of the state. So the governor consents to an acquisition of land and everybody says oh, great, this is going to be a nice, big wildlife refuge, and then the next day they find out they can't use the area because it is now closed. You say well, why is it closed? Well, we have just always done it that way! There isn't any good reason but under statute we are required to close it until we go through a planning process.

That is just not understandable to common, ordinary people who help put their money into the refuge.

We have some other suggestions in the bill. We do not believe that a use ought to be allowed to continue that is detrimental. The Secretary ought to have the clear authority to stop a use that is considered detrimental. And we may want to reinforce that in the bill itself or the report to make it clear the Secretary retains that responsibility.

The state fish and wildlife agencies have been one of the strongest supporters of the refuge system historically and expect to continue to be. The provision in the bill for some cooperative management, we think, needs to be in the statute. So what is going on out there now in some places, such as cooperative law enforcement, cooperative environmental education, cooperative planning, ought to be allowed to continue. The extent to which it is done should be dependent on a case-by-case basis.

Mr. Chairman, that ends my summary.

Mr. TORKILDSEN. Thank you, Mr. Peterson, for your testimony. Now we will hear from Mr. Sparrowe.

STATEMENT OF MR. ROLLIN SPARROWE, PRESIDENT, WILDLIFE MANAGEMENT INSTITUTE

Mr. SPARROWE. Thank you. We at the Wildlife Institute have a long history of working with the National Wildlife Refuge System, including fairly recently trips into the field to look at activities and programs on specific refuges in the midst of all of this dialog.

We participated in extensive discussion with groups on each piece of legislation over the past few years and would simply comment that we have gone from what we viewed as perhaps too green, too restrictive, too protective, to now teetering on the verge of maybe going a little too far the other way on behalf of the hunting and fishing community. I say that being one who is frequently associated with that community myself.

The intent here is to improve the National Wildlife Refuge System. Since last year's turmoil, many of the groups participating in discussions of refuge legislation and the future of the refuge system have sat down with the Fish and Wildlife Service, including the new coalition that was mentioned earlier in testimony here. We know a lot more about the refuge system. We know, in fact, that there are serious problems of money and staff shortages and operational budgets.

I would simply point out that last year's concern by the hunting and fishing community was predicated on the Fish and Wildlife Service trying to cope with the 4 to 5 million dollar shortfall in funding. What is likely to happen, based on the tea leaves and the proposals for appropriations of '96, is that the refuge system, if it takes a proportional cut by the Service, would take at least three times that much reduction. I see no way we are not going to be faced with some of these same choices again with limited budgets, and we are going to be back in the same fix. Some of that doesn't seem to match with the mandates to be more liberal with recreation for the future.

We agree there is a need for systemwide purposes. Originally the Institute, when this dialog started, did not feel a need to support

wildlife-dependent recreation as a purpose. The loss in public confidence brought about by all of this turmoil, we feel now, may lead to a situation where we ought to support that. We can go either way and think that the agency can manage the refuge system with it. We say that even though we are firmly convinced that the furor about possible loss of hunting opportunity was vastly overstated and the facts and the outcomes prove that. On the other hand, maybe in the future with changes in attitudes and so on, if it can be stated clearly, it can work as a purpose.

Now, I say that with a caveat. One of my predecessors, who was the first director of the Fish and Wildlife Service, Ira Gabuelson, had a major role in building the refuge system, and I reviewed his book on wildlife refuges just yesterday. The record shows clearly that refuges were not established to provide hunting opportunity, but rather to provide a base of habitat which helps maintain a resource that can be hunted if managed properly.

This is a fundamentally different statement of purpose than saying we are buying these refuges to provide hunting opportunity. The other purposes must come first. We must have wildlife and carry out the primary purpose of the refuges if recreational activities are going to be pursued. I think we have got to keep that in mind for this legislation or any other to be effective.

Further, each purpose of the system, whether protection for an endangered species or allowing wildlife-dependent recreation, can't necessarily or automatically be a purpose of every refuge unit or every acre on every refuge. There has to be discretion by managers. One of our deep concerns is that this furor has led to a loss of confidence in the managers of our national wildlife refuges, and I think we cannot afford that. In the long run, we have to have their support and give them the kind of guidance and laws that let them carry out their management and provide things that people and wildlife need from refuges.

We generally support the planning system as laid out in the bill and think it could be very effective. There are refuges that need plans that don't have them. We are a bit concerned that there is not mentioned a need for some sort of a broad, comprehensive document that lays out, at least at ten or 15 year intervals, where the refuge system is going. This would be most useful in addressing such things as land acquisition needs on a broad basis and balancing those with fiscal situations and so on. So something like the NEPA process and an EIS would be useful.

We would also comment that the government seems to have a problem getting that document out. We have all been waiting for it, and maybe they could use a boost from this committee.

Finally, we are concerned about a few of the specific provisions such as transferring management to states. We have a major role in evaluating state programs, and we don't see them very flush with opportunity to just wholesale take on more lands. So any of these fundamental changes in the way refuges are managed should be approached cautiously.

We would be pleased to work with the committee and any other parties in the future and debate details and provide more information and appreciate the chance to be involved in this hearing. Thank you.

[Statement of Rollin Sparrowe may be found at end of hearing.]

Mr. TORKILDSEN. Thank you for your testimony, Mr. Sparrowe. Because of time constraints, I will not be asking the panel any questions today. I would ask that all the witnesses be available to respond in writing to questions, not only that I may submit but that any member may submit. And if there is no objection, I will ask that the record remain open for those questions and responses. I thank all of the witnesses from this panel for their testimony today and ask the next panel to please assemble.

Ms. MERCHANT. Mr. Chairman, despite the fact that I am the first speaker listed on this panel, I would like to ask that Mr. Gottschalk be allowed to go first in the interest of the short time.

Mr. TORKILDSEN. Certainly, I have no objection to that. I would like to introduce the entire panel right now. Our final panel has Ms. Ginger Merchant, Executive Vice President of the National Wildlife Refuge Association, who is being accompanied by Mr. Robert Herbst of the National Wildlife Refuge Association Board, Mr. John Gottschalk of Arlington, Virginia, and Mr. James Waltman, the Director of Refuges and Wildlife Programs for the Wilderness Society. And certainly, Mr. Gottschalk, if you would like to start, please do.

STATEMENT OF MR. JOHN S. GOTTSCHALK

Mr. GOTTSCHALK. Thank you very much, Mr. Chairman. My prepared statement is available for the record. I guess I should say at this point that I was the Director of the Bureau of Sport Fisheries and Wildlife from 1964 to 1970. Then I was the earliest "Max Peterson" with the International Association of Fish and Wildlife Agencies, and during that period have maintained a very close association with the Wildlife Refuge System, in recent years not as close officially, but as one who participates in all of the many benefits that wildlife refuges provide to the American public.

To brief my statement, the first point is that I think we are approaching a situation in which we are going to cause a great deal of problems for the system if we equate uses of the system with purposes of the system. I would like to associate myself with the remarks of Mr. Studds, who made a point out of the fact that the refuge system, the National Wildlife Refuge System, has only one basic purpose, and that is to provide a foundation for the conservation of wildlife throughout the United States. It does not mean that there are not many opportunities for uses, and the so-called purposes which the legislation would identify as purposes with equal standing are actually, in effect, uses rather than purposes. I would like to make that my cardinal comment with respect to the legislation as a whole.

The second major point that I have has to do with the question of the relationship between the Fish and Wildlife Service and the respective state fish and game departments. This has been discussed in previous testimony, but from the standpoint of principle, I think we all have to recognize that the old adage that no man can serve two masters applies here. This is a national system. It is very difficult to conform a national system and all its parts to the responsibilities and requirements that occur only in a single state. And I think to provide the—I should say to place the respon-

sibility for management decisions in the state fish and game department for a program which is national in scope is a serious mistake. And I would object very strongly to that and suggest that if the legislation proceeds as it is, flying in the face of all the history which is in the books on the development of conservation principles in America, we are going to see a long period of legal dispute that I would have to say I thought we settled when I was the director.

At that time this whole question came up in respect to hunting and fishing on national parks and other Federal lands. We worked out an agreement then under which we agreed that whenever an area on a national wildlife refuge would be open to hunting, it would be opened under state regulations. As far as I know, that basic premise is still in effect and I would say that to change that now with this law would create a tremendous amount of litigation which nobody wants to see.

My other comments are not as germane as those two main points, and I will stop with this. Thank you very much for this opportunity to come over today.

[Statement of Mr. John S. Gottschalk may be found at end of hearing.]

Mr. TORKILDSEN. Thank you, Mr. Gottschalk, for your testimony and providing an alternative viewpoint. Is there any preference between the witnesses with who will testify next? Ms. Merchant.

STATEMENT OF MS. GINGER MERCHANT, EXECUTIVE VICE PRESIDENT, NATIONAL WILDLIFE REFUGE ASSOCIATION

Ms. MERCHANT. Thank you, Mr. Chairman. I will be happy to go next and appreciate the opportunity to testify today. Robert Herbst, a member of our Board of Directors who was with me, unfortunately had to leave. Mr. Herbst was also a former Commissioner of the Minnesota Department of Natural Resources and a former Assistant Secretary of the Department of Interior for Fish, Wildlife and Parks. I am submitting for the record today a letter from Mr. Herbst and former Assistant Secretary of Interior for Fish, Wildlife and Parks, Nathaniel Reed. At this point, I—

Mr. TORKILDSEN. Well, without objection they will be included in the record.

[The letter may be found at end of hearing.]

Ms. MERCHANT. Thank you. At this point I would like to summarize Mr. Ashe's testimony, which was submitted to the committee, in his absence.

[Statement of William Ashe may be found at end of hearing.]

Ms. MERCHANT. Before beginning to discuss how the refuge system should be administered, I think it is important to again emphasize that it is the only system of lands established primarily to conserve and manage the nation's fish and wildlife. That fact is especially significant in the lower 48 states where refuges comprise less than one percent of the land base.

Mr. Dingell's National Wildlife Refuge System Administration Act of 1966 is a good and sound law. We believe that the only reasons that it should be amended are to flesh out more comprehensive guidance that builds appropriately upon its solid foundation. For example, one of the most important reasons for enacting an organic act is to clarify the duties of the Secretary of Interior with

regard to refuges. The Secretary of Interior manages multiple and often competing agencies. Specifically, the Secretary should be explicitly directed to protect the ecological integrity of the system and its component units as well as to administer them to fulfill their purposes.

The test of compatibility for determining whether or not secondary recreational and economic uses should be permitted on refuges should not be weakened. Existing refuge law, both the Administration Act and the earlier Recreation Act, contain a simple and appropriate standard that uses will be or are compatible with the primary or major purposes for which refuges were established.

While the National Wildlife Refuge System Administration Act does not explicitly state the purposes of the refuge system that it established in 1966, it does open with the statement, "For the purpose of consolidating the authorities relating to the various categories of areas that are administered by the Secretary of the Interior for the conservation of fish and wildlife..." This statement strongly indicates, and the subsequent 1968 Leopold Report concurred, that the fundamental purpose of the system is the conservation and management of fish and wildlife. To change this fundamental premise is to forever change the National Wildlife Refuge System. We therefore urge that the systemwide purposes be limited to conservation.

It is clear from the history of the administration of the refuge system that ensuring the compatibility of secondary economic and recreational uses with the primary wildlife conservation purposes of refuges has been problematic. There can be little doubt that the elevation of secondary uses, such as wildlife-dependent recreation, to a systemwide purpose equal to the conservation purposes will further impede the conservation and management of fish and wildlife, if not subjugate it entirely.

Moreover, in attempting to promote hunting and fishing in particular, the bill erodes the ability of refuge managers to ensure that any form of wildlife-dependent recreation will remain compatible. We are not opposed to hunting and fishing. These are necessary and appropriate secondary recreational uses of refuges that many of our members avidly pursue and enjoy, but any use, however inherently compatible it may seem, can get out of hand and become incompatible with the refuge's primary purposes.

And lastly, we support H.R. 1407 regarding the Fort Devens lands and the Oxbow National Wildlife Refuge introduced by Representative Meehan and commend him for doing so.

Mr. TORKILDSEN. Ms. Merchant, thank you for your testimony. Mr. Waltman.

STATEMENT OF MR. JAMES R. WALTMAN, DIRECTOR OF REFUGES AND WILDLIFE PROGRAM, THE WILDERNESS SOCIETY

Mr. WALTMAN. Thank you, Mr. Chairman, for this opportunity to testify before you this morning on behalf of The Wilderness Society. In addition, the National Audubon Society has requested that they also be associated with my written statement.

My written testimony explains in some detail what we believe should be the principles behind refuge legislation and some of the

major concerns we have with H.R. 1675. Rather than restate what is in that testimony, I would like to make four basic points.

First, while we understand that there is new leadership in Congress, it is important for the members of this new subcommittee to know that a great deal of effort has been put into developing refuge legislation over the last four years. The individuals at this table and at least four of the organizations represented on the last panel worked exceedingly hard, over the last two years in particular, to develop legislation that would form a consensus. In fact, last fall we were able to reach agreement on legislation introduced and amended by Senator Bob Graham, the National Wildlife System Management and Policy Act, S. 823, an agreement, I should add, that few people believed possible when we started that process.

Unfortunately, the legislative clock ran out on us last year before we could reach closure on the bill, but it was not without having at least six of the organizations that you heard from today give that legislation their blessing. Our groups negotiated in good faith. We are, to be honest, frustrated and concerned that the legislation before you now is so fundamentally different than that we worked on last year.

Second, in its deliberations on this legislation, it is essential that the members of the subcommittee look beyond the rhetoric about perceived threats to refuge hunting and fishing programs and look at the real issues. Perpetuating these fears that the Fish and Wildlife Service or someone else is going to shut down refuge hunting and fishing programs, may make for big headlines and effective fund-raising, but they are baseless. In contrast to some of this rhetoric we have heard, opportunities for hunting and fishing in the refuge system have been expanded under the current Administration and its predecessors. I am reminded of the old commercial for the Wendy's fast food chain: "Where's the beef?" We hear these complaints over and over again.

A court challenge aimed specifically at refuge hunting under the existing legislation was rejected during the 1980's. The lawsuit that National Audubon Society, the Wilderness Society and other groups filed last year and the subsequent settlement to that lawsuit resulted in a very small handful of changes to refuge hunting and fishing programs. In contrast, the actions by the Service to modify and phase out harmful economic and non-wildlife oriented recreational uses in compliance with that settlement have been embraced by local sportsmen and other conservationists across the country.

Third, while we continue to believe that new legislation can improve the refuge system, the National Wildlife Refuge System Administration Act championed by Congressman John Dingell nearly 30 years ago is basically a sound law. Legislation should supplement that act and not undermine it. Unfortunately, in our initial review of H.R. 1675 we have identified at least half a dozen provisions that we believe would undermine existing law.

For example, H.R. 1675 would codify an administratively derived definition of compatibility that is a proven failure. This administrative definition states that a use will be compatible if it does not materially interfere with the purpose of that refuge. As we have found through a long array of reports from the Fish and Wildlife

Service, the General Accounting Office and other groups, this definition has proved unworkable.

Another thing that the bill would do is reverse the law's current directive that refuges are to be managed by the U.S. Fish and Wildlife Service. That directive was put in explicitly, again by Congressman John Dingell, in the 1976 Game Range Act Amendments to the Refuge Administration Act.

The bill would allow new exemptions from compatibility for a range of activities and the bill would conflict with existing language in the law pertaining to the relationship between the Fish and Wildlife Service and the state. In addition, the bill would remove practically all discretion of the Secretary of Interior to keep some refuges closed to certain activities.

Fourth, the National Wildlife Refuge System has a long history that has been guided by numerous pieces of legislation, executive orders and other relevant documents. As it considers legislation for the refuge system, this subcommittee should take the time to explore all of this history to determine what has worked and what has not.

What is the historic basis for the definition of compatibility in this bill before us? We believe that the proposed definition has no legitimate basis. In fact, it is a proven failure.

What role has recreation played in the history of the refuge system? While hunting and other wildlife-dependent forms of recreation clearly have an important association with the system, we believe that there is no basis for considering these activities to be considered on an equal footing with wildlife conservation. In fact, a close examination of the history of recreation and other uses on the National Wildlife Refuge System might surprise many of the members of the subcommittee.

While we believe that it may be appropriate to include language directing the Secretary of Interior as part of his responsibilities to provide opportunities for these activities within the system, the complicated network of provisions dealing with hunting and fishing in this bill are unnecessary and inappropriate.

Mr. Chairman, thank you very much for this opportunity to testify before you and I look forward to working with you and the other members of the subcommittee to ensure the sound management and well-being of the National Wildlife Refuge System. Thank you.

[Statement of Mr. James R. Waltman may be found at end of hearing.]

Mr. TORKILDSEN. Thank you. I thank all the witnesses for their testimony. I will just exercise my prerogative for a question or two. Looking at the figure of President Roosevelt, Teddy Roosevelt, to my right, I am reminded that he was our first great conservationist president. He also was an avid hunter, as well. I would just like to ask the panel of witnesses do you believe that hunting is consistent with conservation?

Ms. MERCHANT. I believe that hunting can be consistent with conservation and it is certainly a traditional and an appropriate use of the National Wildlife Refuge System. The issue that, I think, H.R. 1675 attempts to address is how should these uses be provided for and how should the determinations be made that they are

compatible. And I think clearly President Roosevelt, in establishing the first national wildlife refuge as a sanctuary for birds, recognized that hunting was not always appropriate even though it generally is compatible with conservation.

Mr. TORKILDSEN. Mr. Gottschalk?

Mr. GOTTSCHALK. Well, I certainly concur with those comments. I have been a hunter all of my life and a fisherman, too. Now mostly I am a bird watcher, but that has to do with age more than anything else. Hunting I consider to be more than just a sport. Hunting is an opportunity for an individual to become associated with nature in a way that no other participation in the outdoors permits him to become. It gets down to the root of our development as human beings coming from the dim, ancient past, evolving as we have, and as the philosophers have said, when you get so burdened down with the cares of the day, there is nothing better than taking your gun out in the field and going hunting to bring you back to the fundamentals of life. And I really think that hunting is an activity that has meant a great deal to the country. Its opportunities are going to become less as more and more of our people become oriented to urban objectives in life and lose that contact with the out of doors, which I think is unfortunate. And in that respect I believe that the continued use of refuges to provide opportunities for hunting is something that should be protected.

But again, I would reiterate that the primary purpose is to augment our efforts to provide a sound national basis for the conservation of all forms of wildlife and that hunting should have high priority as a use but should not be considered a purpose. Thank you.

Mr. TORKILDSEN. Thank you, Mr. Gottschalk. Mr. Waltman?

Mr. WALTMAN. Yes, I would just reaffirm what has been said, that hunting can be an effective management tool as well as an appropriate recreational activity when it is carefully managed and controlled. And I would also like to add that my organization and Audubon and the other groups we have worked with through the years on this issue have worked very closely with hunters and fishermen across the country when we deal with individual refuges.

We worked closely with the California Waterfowl Association and others in California to ensure that refuges in the Central Valley got their adequate fair share of water. We worked with fishermen in the Keys in Florida to keep jet skis out of there that were harassing the birds and harassing the fish that the fishermen were going after. We have worked with hunters and fishermen in the plains states to try to stem some of the overgrazing that has been a problem, not just for the species that some groups might like to go look at, but others that enjoy hunting.

So yes, there is a long tradition here, but again, these are uses, not purposes. And I don't know how more clearly you can get than what is written in the Refuge Administration Act. The existing law says the Secretary is authorized under such regulations as he may prescribe to permit the use of any area within the system for activities including, but not limited to hunting, fishing, public recreation and accommodations when he determines that such uses are compatible with the major purposes for which the areas were established. I don't know how much clearer you can get than that.

Mr. TORKILDSSEN. Thank you. Again, I thank the panel for the testimony. I would ask that you be available to answer questions in writing from any member of the committee. And if there is no objection, the record will remain open to reflect and record those questions and responses. Also, if there is no objection, all members will have five days to revise and extend their remarks. I thank all the witnesses for their testimony today and this hearing is adjourned.

[Whereupon, at 12:15 p.m., the subcommittee was adjourned; and the following was submitted for the record:]

104TH CONGRESS
1ST SESSION

H. R. 1675

To amend the National Wildlife Refuge System Administration Act of 1966 to improve the management of the National Wildlife Refuge System, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 18, 1995

Mr. YOUNG of Alaska (for himself, Mr. DINGELL, Mr. HANSEN, Mr. BREWSTER, Mr. DOOLITTLE, Mr. TAUZIN, Mr. PETE GEREN of Texas, Mr. GALLEGLY, Mr. HAYES, Mr. CALVERT, Mr. ORTIZ, Mrs. LINCOLN, Mr. HAYWORTH, Mr. CREMEANS, Mrs. CUBIN, Mr. COOLEY, Mr. SHADEGG, Mr. WATTS of Oklahoma, and Mr. THORNBERRY) introduced the following bill; which was referred to the Committee on Resources

A BILL

To amend the National Wildlife Refuge System Administration Act of 1966 to improve the management of the National Wildlife Refuge System, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; REFERENCES.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “National Wildlife Refuge Improvement Act of 1995”.

6 (b) **REFERENCES.**—Whenever in this Act an amend-
7 ment or repeal is expressed in terms of an amendment

1 to, or repeal of, a section or other provision, the reference
2 shall be considered to be made to a section or provision
3 of the National Wildlife Refuge System Administration
4 Act of 1966 (16 U.S.C. 688dd et seq.).

5 **SEC. 2. DEFINITIONS.**

6 (a) IN GENERAL.—Section 5 (16 U.S.C. 668ee) is
7 amended to read as follows:

8 **“SEC. 5. DEFINITIONS.**

9 “For purposes of this Act:

10 “(1) The term ‘compatible use’ means a use
11 that will not have a materially detrimental effect on
12 the fulfillment of the purposes of a refuge or the
13 purposes of the System specified in section 4(a)(3),
14 as determined by sound resource management, and
15 based on reliable scientific information.

16 “(2) The terms ‘conserving’, ‘conservation’,
17 ‘manage’, ‘managing’, and ‘management’, when used
18 with respect to fish and wildlife, mean to use, in ac-
19 cordance with applicable Federal and State laws,
20 methods and procedures associated with modern sci-
21 entific resource programs including protection, re-
22 search, census, law enforcement, habitat manage-
23 ment, propagation, live trapping and transplan-
24 tation, and regulated taking.

1 “(3) The term ‘Director’ means the Director of
2 the United States Fish and Wildlife Service.

3 “(4) The terms ‘fish’, ‘wildlife’, and ‘fish and
4 wildlife’ mean any wild member of the animal king-
5 dom whether alive or dead, and regardless of wheth-
6 er the member was bred, hatched, or born in cap-
7 tivity, including a part, product, egg, or offspring of
8 the member.

9 “(5) The term ‘person’ means any individual,
10 partnership, corporation or association.

11 “(6) The term ‘plant’ means any member of the
12 plant kingdom in a wild, unconfined state, including
13 any plant community, seed, root, or other part of a
14 plant.

15 “(7) The terms ‘purposes of the refuge’ and
16 ‘purposes of each refuge’ mean the purposes speci-
17 fied in or derived from the law, proclamation, execu-
18 tive order, agreement, public land order, donation
19 document, or administrative memorandum establish-
20 ing, authorizing, or expanding a refuge, refuge unit,
21 or refuge subunit.

22 “(8) The term ‘refuge’ means a designated area
23 of land, water, or an interest in land or water within
24 the System, but does not include navigational ser-
25 vitudes.

1 “(9) The term ‘Secretary’ means the Secretary
2 of the Interior.

3 “(10) The terms ‘State’ and ‘United States’
4 mean the several States of the United States, Puerto
5 Rico, American Samoa, the Virgin Islands, and
6 Guam.

7 “(11) The term ‘System’ means the National
8 Wildlife Refuge System designated under section
9 4(a)(1).

10 “(12) The terms ‘take’, ‘taking’, or ‘taken’
11 mean to pursue, hunt, shoot, capture, collect, or kill,
12 or to attempt to pursue, hunt, shoot, capture, col-
13 lect, or kill.”.

14 (b) CONFORMING AMENDMENT.—Section 4 (16
15 U.S.C. 668dd) is amended by striking “Secretary of the
16 Interior” each place it appears and inserting “Secretary”.

17 **SEC. 3. MISSION AND PURPOSES OF THE SYSTEM.**

18 Section 4(a) (16 U.S.C. 668dd(a)) is amended—

19 (1) by redesignating paragraphs (2) and (3) as
20 paragraphs (5) and (6), respectively;

21 (2) in clause (i) of paragraph (6) (as so redesign-
22 ated), by striking “paragraph (2)” and inserting
23 “paragraph (5)”; and

24 (3) by inserting after paragraph (1) the follow-
25 ing new paragraphs:

1 “(2) The overall mission of the System is to conserve
2 and manage fish, wildlife, and plants and their habitats
3 within the System for the benefit of present and future
4 generations of the people of the United States.

5 “(3) The purposes of the System are equally—

6 “(A) to provide a national network of lands and
7 waters designed to conserve and manage fish, wild-
8 life, and plants and their habitats;

9 “(B) to conserve, manage, and where appro-
10 priate restore fish and wildlife populations, plant
11 communities, and refuge habitats within the System;

12 “(C) to conserve and manage migratory birds,
13 anadromous or interjurisdictional fish species, and
14 marine mammals within the System;

15 “(D) to provide opportunities as appropriate for
16 fish- and wildlife-dependent recreation, including
17 fishing and hunting, wildlife observation, and envi-
18 ronmental education;

19 “(E) to preserve, restore, and recover fish, wild-
20 life, and plants within the System that are listed or
21 are candidates for threatened species or endangered
22 species under section 4 of the Endangered Species
23 Act of 1973 (16 U.S.C. 1533) and the habitats on
24 which these species depend; and

1 “(F) to fulfill as appropriate international trea-
2 ty obligations of the United States with respect to
3 fish, wildlife, and plants, and their habitats.”.

4 **SEC. 4. ADMINISTRATION OF THE SYSTEM.**

5 (a) ADMINISTRATION, GENERALLY.—Section 4(a)
6 (16 U.S.C. 668dd(a)) (as amended by section 3 of this
7 Act) is further amended by inserting after new paragraph
8 (3) the following new paragraph:

9 “(4) In administering the System, the Secretary
10 shall—

11 “(A) ensure that the mission and purposes
12 of the System described in paragraphs (2) and
13 (3), respectively, and the purposes of each ref-
14 uge are carried out, except that if a conflict ex-
15 ists between the purposes of a refuge and any
16 purpose of the System, the conflict shall be re-
17 solved in a manner that first protects the pur-
18 poses of the refuge, and, to the extent prac-
19 ticable, that also achieves the purposes of the
20 System;

21 “(B) provide for conservation of fish and
22 wildlife and their habitats within the System by
23 ensuring effective coordination, interaction, and
24 cooperation with owners of land adjoining ref-
25 uges and the fish and wildlife agency of the

1 States in which the units of the System are lo-
2 cated;

3 “(C) assist in the maintenance of adequate
4 water quantity and water quality to fulfill the
5 purposes of the System and the purposes of
6 each refuge;

7 “(D) acquire under State law through pur-
8 chase, exchange, or donation water rights that
9 are needed for refuge purposes; and

10 “(E) plan, propose, and direct appropriate
11 expansion of the System in the manner that is
12 best designed to accomplish the purposes of the
13 System and the purposes of each refuge and to
14 complement efforts of States and other Federal
15 agencies to conserve fish and wildlife and their
16 habitats.”

17 (b) POWERS.—Section 4(b) (16 U.S.C. 668dd(b)) is
18 amended—

19 (1) in the matter preceding paragraph (1) by
20 striking “authorized—” and inserting “authorized to
21 take the following actions:”;

22 (2) in paragraph (1) by striking “to enter” and
23 inserting “Enter”;

24 (3) in paragraph (2)—

1 (A) by striking "to accept" and inserting
2 "Accept"; and

3 (B) by striking ", and" and inserting a pe-
4 riod;

5 (4) in paragraph (3) by striking "to acquire"
6 and inserting "Acquire"; and

7 (5) by adding at the end the following new
8 paragraph:

9 "(4) Enter into cooperative agreements with
10 State fish and wildlife agencies, pursuant to stand-
11 ards established by the Director, for the manage-
12 ment of all or parts of a unit or units within the
13 System consistent with this Act."

14 **SEC. 5. COMPATIBILITY STANDARDS AND PROCEDURES.**

15 Section 4(d) (16 U.S.C. 668dd(d)) is amended by
16 adding at the end the following new paragraph:

17 "(3)(A)(i) On and after the date that is 3 years
18 after the date of the enactment of the National
19 Wildlife Refuge Improvement Act of 1995, the Sec-
20 retary shall not initiate or permit a new use of a ref-
21 uge or expand, renew, or extend an existing use of
22 a refuge, unless the Secretary has determined that
23 the use is compatible with the purposes of the refuge
24 and the purposes of the System specified in sub-
25 section (a)(3).

1 “(ii) On lands added to the System after the
2 date of the enactment of the National Wildlife Ref-
3 uge Improvement Act of 1995 existing uses of any
4 refuge, including fishing and hunting, shall be per-
5 mitted to continue on an interim basis until the Sec-
6 retary determines that these uses are not compatible
7 with the purposes of the refuge or with the purposes
8 of the System specified in subsection (a)(3) or are
9 otherwise inconsistent with this Act.

10 “(iii) The Secretary shall permit fishing and
11 hunting on a refuge if the Secretary determines that
12 the activities are consistent with the principles of
13 sound fish and wildlife management, are compatible
14 with the purposes of the refuge and the purposes of
15 the System specified in subsection (a)(3), and are
16 consistent with public safety. No other determina-
17 tions or findings, except the determination of con-
18 sistency with State laws and regulations provided for
19 in subsection (m), are required to be made for fish-
20 ing and hunting to occur. The Secretary may make
21 the determination referred to in this paragraph for
22 a refuge concurrently with the development of a con-
23 servation plan for the refuge under subsection (c).

24 “(B) Not later than 24 months after the date
25 of the enactment of the National Wildlife Refuge

1 Improvement Act of 1995, the Secretary shall issue
2 final regulations establishing the process for deter-
3 mining a compatible use under subparagraph (A)
4 that—

5 “(i) designate the refuge officer responsible
6 for making initial compatibility determinations;

7 “(ii) require an estimate of the timeframe,
8 location, manner, and purpose of each use;

9 “(iii) identify the effects of each use on
10 refuge resources and purposes of each refuge;

11 “(iv) require that compatibility determina-
12 tions be made in writing;

13 “(v) provide for the expedited consider-
14 ation of uses that will likely have no materially
15 detrimental effect on the fulfillment of the pur-
16 poses of a refuge or the purposes of the System
17 specified in subsection (a)(3);

18 “(vi) provide for the elimination or modi-
19 fication of any use as expeditiously as prac-
20 ticable after a determination is made that the
21 use is not compatible;

22 “(vii) require, after an opportunity for
23 public comment, reevaluation of each existing
24 use, other than those uses specified in clause
25 (viii), when conditions under which the use is

1 permitted change significantly or when there is
2 significant new information regarding the ef-
3 fects of the use, but not less frequently than
4 once every 4 years, to ensure that the use re-
5 mains compatible with the purposes of the ref-
6 uge and the purposes of the System specified in
7 subsection (a)(3);

8 “(viii) require reevaluation of each fish and
9 wildlife-dependent recreational use when condi-
10 tions under which the use is permitted change
11 significantly or when there is significant new in-
12 formation regarding the effects of the use, but
13 not less frequently than in conjunction with
14 each preparation or revision of a conservation
15 plan under subsection (e) or at least every 15
16 years;

17 “(ix) provide an opportunity for public re-
18 view and comment on each evaluation of a use,
19 unless an opportunity for public review and
20 comment on the evaluation of the use has al-
21 ready been provided during the development or
22 revision of a conservation plan for the refuge
23 under subsection (e) or has otherwise been pro-
24 vided during routine, periodic determinations of

1 compatibility for fish- and wildlife-dependent
2 recreational uses; and

3 “(x) provide that when managed in accord-
4 ance with principles of sound fish and wildlife
5 management, fishing and hunting in a refuge
6 are generally compatible with the conservation
7 of fish and wildlife and plants and their habi-
8 tats and have no materially detrimental effect
9 on the fulfillment of the purposes of the refuge
10 and the purposes of the System.

11 “(4) The provisions of this Act relating to de-
12 terminations of the compatibility of a use shall not
13 apply to—

14 “(A) overflights within the airspace of a
15 refuge, except as otherwise provided by law or
16 a memorandum of understanding with the Sec-
17 retary;

18 “(B)(i) a Federal navigation or commu-
19 nication aid that exists on any refuge on the
20 date of the enactment of the National Wildlife
21 Refuge Improvement Act of 1995 or on lands
22 at the time the lands are added to the System;
23 or

24 “(ii) the routine maintenance of estab-
25 lished access to, and replacement of, such an

1 aid, if replacement of the aid has no greater im-
2 pact on wildlife resources than the original aid
3 and utilizes no more land;

4 “(C) a highway right-of-way in existence
5 within any refuge on the date of enactment of
6 the National Wildlife Refuge Improvement Act
7 of 1995 and routine maintenance of the right-
8 of-way, if to the maximum extent practicable
9 the right-of-way is managed and maintained so
10 as to be compatible with the purposes of the
11 refuge; and

12 “(D) activities authorized, funded, or con-
13 ducted by a Federal agency (other than the
14 United States Fish and Wildlife Service) which
15 has primary jurisdiction over the refuge or a
16 portion of the refuge, if the management of
17 those activities is in accordance with a memo-
18 randum of understanding between the Secretary
19 and the head of the Federal agency with pri-
20 mary jurisdiction over the refuge governing the
21 use of the refuge.”.

22 **SEC. 6. REFUGE CONSERVATION PLANNING PROGRAM.**

23 (a) IN GENERAL.—Section 4 (16 U.S.C. 668dd) is
24 amended—

1 (1) by redesignating subsections (e) through (i)
2 as subsections (f) through (j), respectively; and

3 (2) by inserting after subsection (d) the follow-
4 ing new subsection:

5 “(c)(1)(A) Except with respect to refuge lands in
6 Alaska (which shall be governed by the refuge planning
7 provisions of the Alaska National Interest Lands Con-
8 servation Act (16 U.S.C. 3101 et seq.)), the Secretary
9 shall—

10 “(i) propose a comprehensive conservation plan
11 for each refuge or related complex of refuges (re-
12 ferred to in this subsection as a ‘planning unit’) in
13 the System;

14 “(ii) publish a notice of opportunity for public
15 comment in the Federal Register on each proposed
16 conservation plan;

17 “(iii) issue a final conservation plan for each
18 planning unit consistent with the provisions of this
19 Act and with fish and wildlife conservation plans of
20 the State in which the refuge is located; and

21 “(iv) not less frequently than 15 years after the
22 date of issuance of a conservation plan under clause
23 (iii) and every 15 years thereafter, revise the con-
24 servation plan as may be necessary.

1 “(B) The Secretary shall prepare a comprehensive
2 conservation plan under this subsection for each refuges
3 within 15 years after the date of enactment of the Na-
4 tional Wildlife Refuge Improvement Act of 1995.

5 “(C)(i) The Secretary shall manage each refuge or
6 planning unit under plans in effect on the date of enact-
7 ment of the National Wildlife Refuge Improvement Act of
8 1995, to the extent such plans are consistent with this
9 Act, until such plans are revised or superseded by new
10 comprehensive conservation plans issued under this sub-
11 section.

12 “(D) Uses or activities consistent with this Act may
13 occur on any refuge or planning unit before existing plans
14 are revised or new comprehensive conservation plans are
15 issued under this subsection.

16 “(E) Upon completion of a comprehensive conserva-
17 tion plan under this subsection for a refuge or planning
18 unit, the Secretary shall manage the refuge or planning
19 unit in a manner consistent with the plan and shall revise
20 the plan at any time if the Secretary determines that con-
21 ditions that affect the refuge or planning unit have
22 changed significantly.

23 “(2) In developing each comprehensive conservation
24 plan under this subsection for a planning unit, the Sec-

1 retary, acting through the Director, shall identify and de-
2 scribe—

3 “(A) the purposes of each refuge comprising
4 the planning unit and the purposes of the System
5 applicable to those refuges;

6 “(B) the distribution, migration patterns, and
7 abundance of fish, wildlife, and plant populations
8 and related habitats within the planning unit;

9 “(C) the archaeological and cultural values of
10 the planning unit;

11 “(D) such areas within the planning unit that
12 are suitable for use as administrative sites or visitor
13 facilities;

14 “(E) significant problems that may adversely
15 affect the populations and habitats of fish, wildlife,
16 and plants within the planning unit and the actions
17 necessary to correct or mitigate such problems; and

18 “(F) the opportunities for fish- and wildlife-de-
19 pendent recreation, including fishing and hunting,
20 environmental education, interpretation of the re-
21 sources and values of the planning unit, and other
22 uses that may contribute to refuge management.

23 “(3) In preparing each comprehensive conservation
24 plan under this subsection, and any revision to such a
25 plan, the Secretary, acting through the Director, shall, to

1 the maximum extent practicable and consistent with this
2 Act—

3 “(A) consult with adjoining Federal, State,
4 local, and private landowners and affected State con-
5 servation agencies; and

6 “(B) coordinate the development of the con-
7 servation plan or revision of the plan with relevant
8 State conservation plans for fish and wildlife and
9 their habitats.

10 “(4)(A) In accordance with subparagraph (B), the
11 Secretary shall develop and implement a process to ensure
12 an opportunity for active public involvement in the prepa-
13 ration and revision of comprehensive conservation plans
14 under this subsection. At a minimum, the Secretary shall
15 require that publication of any final plan shall include a
16 summary of the comments made by States, adjacent or
17 potentially affected landowners, local governments, and
18 any other affected parties, together with a statement of
19 the disposition of concerns expressed in those comments.

20 “(B) Prior to the adoption of each comprehensive
21 conservation plan under this subsection, the Secretary
22 shall issue public notice of the draft proposed plan, make
23 copies of the plan available at the affected field and re-
24 gional offices of the United States Fish and Wildlife Serv-
25 ice, and provide opportunity for public comment.”.

1 **SEC. 7. EMERGENCY POWER; STATE AUTHORITY; WATER**
2 **RIGHTS; COORDINATION; AUTHORIZATION OF**
3 **APPROPRIATIONS.**

4 Section 4 (16 U.S.C. 668dd) is further amended by
5 adding at the end the following new subsections:

6 “(k) Notwithstanding any other provision of this Act
7 the Secretary may temporarily suspend, allow, or initiate
8 any activity in a refuge in the System in the event of any
9 emergency that constitutes an imminent danger to the
10 health and safety of the public or any fish or wildlife popu-
11 lation.

12 “(l) Nothing in this Act shall be construed to author-
13 ize the Secretary to control or regulate hunting or fishing
14 of fish and resident wildlife on lands or waters not within
15 the System.

16 “(m) Nothing in this Act shall be construed as affect-
17 ing the primary authority, jurisdiction, or responsibility of
18 the several States to manage, control, or regulate fish and
19 resident wildlife under State law or regulations in any area
20 within the System. Regulations permitting hunting or fish-
21 ing of fish and resident wildlife within the System shall
22 be, to the extent practicable, consistent with State fish and
23 wildlife laws and regulations.

24 “(n)(1) Nothing in this Act shall create a reserved
25 water right, express or implied, in the United States for
26 any purpose. This Act does not affect any Federal or State

1 law in existence on the date of the enactment of this Act
2 regarding water quality or water quantity.

3 “(2) Adjudication of water rights, if any, that may
4 exist appurtenant to refuge units shall be pursued initially
5 in available State administrative or judicial forums.

6 “(o) Coordination with State fish and wildlife agency
7 personnel or with personnel of other affected State agen-
8 cies pursuant to this Act shall not be subject to the Fed-
9 eral Advisory Committee Act.”.

10 **SEC. 8. CONFORMING AMENDMENT.**

11 Section 4(a)(3)(i) (16 U.S.C. 668dd(a)(3)(i)) is
12 amended by striking “paragraph (2)” and inserting “para-
13 graph (5)”.

SECTION-BY-SECTION ANALYSIS OF H.R. 1675,
THE NATIONAL WILDLIFE REFUGE IMPROVEMENT ACT OF 1995

Section 1. Short Title. References. The short title of the legislation is "The National Wildlife Refuge Improvement Act of 1995". When the bill makes amendments to existing law, it is amending the National Wildlife Refuge System Administration Act of 1966.

Section 2. Definitions. This section contains definitions for terms used in the Act including "compatible use", "fish and wildlife", and "purposes of the refuge".

Section 3. Mission and Purposes of the System. The mission of the System is to conserve and manage fish and wildlife and their habitats found within the System for the benefit of present and future generations.

The purposes of the System are to:

- conserve and manage fish, wildlife and plant populations and their habitat within the System. This includes conservation and management for migratory birds, anadromous or inter-jurisdictional fish species, and marine mammals found within the System;
- to provide opportunities for fish- and wildlife-dependent recreation;
- to preserve threatened, endangered or candidate species, and the habitats important for those species within the System; and
- to fulfill international treaty obligations regarding fish, wildlife, plants and their habitats.

Section 4. Administration of the System. The Secretary shall:

- ensure that the purposes of the refuge and the System are carried out. The purposes of the refuge are to be met first, and then the purposes of the System to the extent practicable.
- ensure effective coordination, interaction and cooperation with adjoining landowners;
- maintain adequate water supplies by acquiring water rights through purchase, exchange or donation in accordance with State law; and
- expand the Refuge System in a manner which accomplishes the goals of the System and complements the efforts of other State and Federal conservation efforts.

The Secretary may enter into an agreement allowing the States to manage parts of the System.

Section 5. Compatibility Standards and Procedures.

The Secretary shall:

- not expand, renew or extend any existing use unless it is determined to be compatible with the purposes of the refuge and the System;
- allow existing uses to continue until the Secretary determines that such uses are not compatible;
- permit fishing and hunting on a refuge when those activities are consistent with sound fish and wildlife management, compatible with the purposes of the refuge and the System, and consistent with public safety; and
- issue regulations establishing the process for determining whether a use is compatible.

Overflights within the airspace of a refuge, existing Federal navigation and communication aids, highway rights-of-way, and actions of Federal agencies, other than the Fish and Wildlife Service, which have primary jurisdiction over the refuge lands are not subject to compatibility determinations.

Section 6. Refuge Conservation Planning Program. The Secretary shall prepare a conservation plan for each refuge. A public comment period must be held on the draft conservation plan, and the plans must be reviewed every 15 years.

Units are to be managed under existing plans until new plans are written. Activities consistent with the Act may occur before existing plans are revised or new plans prepared.

Plans shall identify and describe:

- the purposes of the refuge;
- the fish, wildlife and plant populations, their habitats, and the archeological and cultural values found on the refuge;
- significant problems that may adversely affect the wildlife populations and habitats, and ways to correct or mitigate those problems;

- areas suitable for administrative sites or visitor facilities; and
- opportunities for fish- and wildlife-dependent recreation.

The Secretary must ensure adequate public involvement in the preparation of plans.

Section 7. Emergency Powers; State Authority; Water Rights; Coordinations; and Authorizations of Appropriations.

The Secretary may temporarily suspend, allow or initiate any activity in the event of an emergency.

Nothing in the Act allows the Secretary to regulate hunting or fishing outside the System, affects the fish and wildlife management authority of the States, or creates a reserved water right for the United States.

The bill authorizes such sums as are necessary to carry out the purposes of the Act in the future.

testimony by
NORMAN Y. MINETA, M.C.
 before
 House Committee on Resources
 Subcommittee on Fisheries, Wildlife and Oceans
 May 25, 1995

Thank you, Mr. Chairman, for the opportunity to testify today before your Subcommittee.

As you know, I have introduced legislation, H.R. 1253, to re-name the San Francisco Bay Wildlife Refuge after our former colleague Don Edwards. This legislation, which I introduced on March 15, currently has 44 cosponsors. As your Subcommittee considers changes to the National Wildlife Refuge System, I appreciate your keeping my legislation in mind.

Mr. Chairman, Don Edwards began his extraordinary career in Congress when he was first elected to the House in 1962. Don served ably and honorably through 1994, representing the needs and the wishes of the people in and around San Jose, California. I am proud that I had the privilege to have served with him.

Undoubtedly, one of Don's lasting achievements is the creation of the San Francisco Bay National Wildlife Refuge. Don's legacy will forever be tied to the Refuge and, Mr. Chairman, I can think of no more appropriate way to honor Don Edwards for his many years of distinguished service to this body and to his constituents than to name the San Francisco Bay National Wildlife Refuge after him.

Today, the San Francisco Bay National Wildlife Refuge is one of our Nation's most treasured natural resources. Currently measuring more than 23,000 acres, this land is home to numerous plant and wildlife species and provides critical habitat for species that are threatened and endangered. The refuge protects thousands of acres of threatened wetlands around the San Francisco Bay, and it is a center for recreation and education.

The existence of the San Francisco Bay National Wildlife Refuge is due to the persistent work of one man — Don Edwards. From the time he entered Congress, Don worked tirelessly for the protection of the Bay.

In 1972, Don was successful in passing legislation to establish the refuge. That legislation authorized the Federal Government to acquire 20,000 acres around the Bay to stop the development that was harming the area's ecological balance.

In the years that followed, Don continued to work to secure appropriations for land acquisition for the refuge, and to expand the authorization of the refuge. In fact, in 1988 Don introduced legislation to double the size of the refuge. Later that same year President Reagan signed the bill into law, leading to what is now the largest urban refuge in the United States.

Throughout his time in Congress, Don Edwards maintained a close working relationship with local community and environmental groups in the Bay Area. I can think of no more fitting tribute to Don's work than to re-name the San Francisco Bay National Wildlife Refuge in his honor.

I hope that your Subcommittee, Mr. Chairman, will see fit to move H.R. 1253 as a stand-alone bill or as part of a larger package relating to wildlife refuges. Again, thank you for allowing me to testify before you, and I look forward to working with you on this and other issues in the future.

**Testimony for the Honorable John D. Dingell
Before
Subcommittee on Fisheries, Wildlife and Oceans
Committee on Resources
May 25, 1995**

Mr. Chairman, it is a pleasure to appear before this Subcommittee.

I am especially pleased to be here to testify on H.R. 1675, the National Wildlife Refuge Improvement Act of 1995. One of the highlights of my service in the Congress has been my close association with our Wildlife Refuge System.

As you know, I authored the National Wildlife Refuge System Administration Act of 1966 and played a leading role in the passage of the Refuge Recreation Act of 1962. I have also served for the past 25 years as a Congressional member of the Migratory Bird Commission where we have worked to acquire more than 600,000 acres of habitat for countless migratory birds and other wildlife.

This nation clearly owes much of its strength and tradition to its bountiful fish and wildlife heritage. The National Wildlife Refuge System is vital to the preservation of this heritage. Since its humble beginnings at the turn of the century, the System has helped to assure that this Nation's fish and wildlife resources endure for future generations.

During our discussion of this issue, it is important to note that prior to 1966, no single law governed the administration of our wildlife refuges. At that time, it was recognized by Congress that this country's expanding population and the spread of urbanization would require greater coordination and management to protect many species of fish and wildlife. The original Act met this need by providing the Secretary of the Interior with the authority and the enforcement tools required to manage our national wildlife refuge system. It also established procedures governing the acquisition of new areas and the expansion of existing refuges.

The results of this statute clearly speak for themselves. The System has grown considerably from 300 refuges totalling 28 million acres in 1966 to 506 refuges totaling more than 91 million acres today. In addition, a broad spectrum of public interests and values that were identified as vital objectives at the time of passage have been met.

These achievements include the conservation, protection and propagation of native species of fish and wildlife threatened with extinction. We have also been able to preserve the diversity of our environment, and to protect fragile ecosystems that serve as prime locations for wildlife-related recreations such as hunting, fishing, wildlife observation and photography.

In recent years, many have begun to argue that increasing pressures for economic uses of refuges and advancements in the field of wildlife management techniques require the Act to be updated. Several studies conducted by the General Accounting Office and the Fish and Wildlife Service have identified problems on our refuges ranging from overuse and toxic contamination to lack of funding and proper management.

There are certainly positive reforms we can implement by enacting an organic act. However, I firmly believe that our efforts to improve the administration of the National Wildlife Refuge System must not result in the baby being thrown out with the bathwater.

That is why I am here today to voice my support for H.R. 1675. Chairman Young has introduced a responsible and well-reasoned measure to guide our wildlife refuge system into the next century. The bill, which I have cosponsored, embraces many of the strengths associated with our current wildlife refuge system. It also enumerates a clear mission and statement of purposes for the system while providing for a comprehensive and workable planning mechanism to further the management and care of our refuges.

I am open to these changes. However, we must ensure that the flexibility of the current system, which relies on the professional judgements of refuge managers to determine how best to administer a refuge, is not subsumed,

As an avid sportsman, I am pleased that H.R. 1675 wisely recognizes that wildlife-dependent recreations, such as hunting and fishing, occupy a unique and protected role in relation to our wildlife refuges. Through the

years, hunters have been a driving force behind the establishment of this Nation's wildlife refuges. In addition to offering financial support through the purchase of duck stamps, they have helped to preserve the ecological balance on many of our refuges. For this and many other reasons, we must guarantee, through a proper regulatory framework, that these lands are readily available to them for proper use. After all, they pay a major part of the acquisition costs.

As I have noted, H.R. 1675 is a good bill in many respects. Nevertheless, there are several areas, such as the sections relating to the administration of the System, and compatibility standards and procedures, which can be improved and strengthened. Chairman Young has expressed to me his willingness to work to make these modifications, and I look forward to working with him.

In the final analysis, I believe that any legislation that is approved by Congress must meet one important requirement. It must contribute to sound, professional wildlife management that is built on a strong foundation of past successes, while dealing with some of the difficult problems of incompatible use.

H.R. 1765 clearly moves us in the proper direction with regard to improving the Administration of our wildlife refuge system. I look forward to working with you, Mr. Chairman, and the members of the Committee to advance our shared interests. In doing so, we will preserve our refuges, as well as the species of flora and fauna that occupy these national treasures, for our decedents. I can think of few more worthwhile endeavors.

Mr. Chairman, thank you for allowing me to present my views to the Subcommittee.

United States House of Representatives
Committee on Resources
Subcommittee on Fisheries, Wildlife and Oceans
The Honorable Jim Saxton, Chairman

Statement of The Honorable Wally Herger
May 25, 1995

Thank you, Mr. Chairman, and Members of the Subcommittee, for this opportunity to testify on behalf of the families in the Tulalake region of my district.

My district includes much of the northern portion of the state of California and encompasses three national wildlife refuges - the Tulalake National Wildlife Refuge, the Lower Klamath National Wildlife Refuge and the Clear Lake National Wildlife Refuge. It also borders the district represented by my good friend from Oregon, Rep. Cooley, who is also testifying before the subcommittee this morning.

These refuges are an important part of the Pacific Flyway, the corridor along which waterfowl travel from summer abodes in Canada to winter homes in Mexico. They are also the home of over 1300 families who farm over 22,000 acres of refuge land under federal leases. Although I support the objectives of the refuges, I have serious concerns regarding the duplicative and extremely burdensome restrictions the Department of Interior is placing on leased land farming, particularly in the area of pesticide use.

In 1905, the State of California ceded to the Federal government nearly 160,000 acres specifically for purposes of reclamation, irrigation and homesteading. Consistent with this grant, the Federal government helped construct the Klamath Project for irrigation purposes and made available a small portion of this land for homesteads. Also consistent with this grant, in 1908 and then in the 1920s and 1930s, the Federal government, by Executive Order, withdrew from entry lands to form the three area wildlife refuges, with the limitation that lands suitable for irrigation would be farmed. The Bureau of Reclamation leased land for farming that had been included within the boundaries of the Tulalake and Lower Klamath Wildlife Refuges.

My biggest concern is over these 22,000 acres of prime farm land in the Tulalake and Lower Klamath National Wildlife Refuges that were designated for lease by the Bureau of Reclamation for farming. These lands had been farmed for decades and area residents always anticipated that they would someday be available for homesteads. Rather than provide these lands for homesteading, however, the 1964 Kuchel Act retained federal ownership while dedicating these lands to farming in perpetuity. Under the Act, the Federal government retained title to the land with the explicit instruction that it did not have the right to redefine the purpose of the ceded lands which could be irrigated.

Although the Kuchel Act did not open refuge land up for homesteading, it did provide that farming could continue on these lands under federal leases in perpetuity. Today these leased lands annually generate row and grain crops valued at nearly \$16

million. These crops also provide hundreds of thousands of dollars of local and state tax revenues and nearly two million dollars in lease receipts to the federal government.

The Kuchel Act specifically gave agricultural undertakings on leased lands a priority equal to the preservation of refuge habitat. Indeed, farming on these lands is one of the foremost purposes of the refuges. Unfortunately, however, farmers are now forced to contend with a morass of federal regulations and requirements that are literally shutting down their operations. Most of these regulations stem from a Department of Interior pesticide policy which prohibits farmers from using a number of substances that, in fact, pose no actual threat to fish or wildlife in the area. These are pesticides that have been approved under federal and state law and have undergone rigorous testing and review. Yet, notwithstanding these safeguards, farmers are still prohibited from using them. This duplicative and excessive regulation unnecessarily exposes crops to destruction by harmful pests. As a result, farmers are less able to obtain bank financing, their crop yields are significantly reduced, and their families are put under severe economic stress. As we speak many families that have been farming in the region for four and five generations are in jeopardy of losing everything they have.

The Department of Interior's pesticide policies have created confusion, fear and distrust among farmers in the Klamath Basin. These farmers are mystified as to why, although they have substantially reduced their use of pesticides over the years and generally do not apply pesticides when migratory birds are present, the Department continues to penalize them. Often, the Department rejects pesticides without consideration of such things as careful application procedures or the cost and availability of alternatives. When alternatives are suggested, they are at times more dangerous to fish and wildlife than the rejected chemicals.

Studies by the California Environmental Protection Agency and Department of Food and Agriculture confirm that pesticides currently used by Tulelake farmers have not been harmful to flora or fauna and have not resulted in any documented fish or bird kills as a result of their application. In fact, farmers in the area have been very proactive in their efforts to promote the recovery of endangered species. It appears that the Department of Interior is simply abusing its regulatory authority based on an inherent distrust of pesticides and other traditional farming practices and to accommodate extreme environmentalists who wish to eliminate row cropping in the area.

Changes to the way we manage our wildlife refuges, and particularly the leased land within the Klamath Basin refuges, are long overdue. We must quit treating leased lands as simply an extension of the larger refuge. Rather, we should regulate them in a way which reflects their unique status and which adequately protects not only habitat but also farmers and their families. I urge this committee to take the appropriate steps toward restoring this balance as it considers amendments to the National Wildlife Refuge Administration Act in the weeks ahead. Thank you.

TULELAKE TEST

BACKGROUND ON LEASED LANDS IN KLAMATH BASIN

May 19, 1995

Current Situation

For the last several years, leased land farmers in the Tulelake and Lower Klamath National Wildlife Refuges have been constrained from using the full array of tools necessary to productively grow their agricultural crops. The Department of the Interior, through the Bureau of Reclamation (BOR) and the Fish and Wildlife Service (FWS), has primarily restricted farmers' use of pesticides, many of which are crucial to protecting the row crops grown on the lands. These restrictions are handled in the form of Pesticide Use Proposals (PUPs), which farmers and the County Departments of Agriculture must submit to the local Bureau of Reclamation office. The PUPs implement the Department's pesticide policy, which seeks to select the "least hazardous material when chemical control measures are warranted" for use on federal lands. The PUP process has been evolving over the last year and this has led to added confusion.

In the last year, the Department has attempted to streamline the PUP process while "educating" local and regional personnel to better understand the Department's policy. This has resulted in the submittal and subsequent approval of fewer PUPs. For example, in 1992 260 PUPs were approved for use in 1993. The County Ag Departments reduced the number of applications to 97 for 1993 and the Department rejected 24 (73 approved). In 1995, 102 were submitted and the Department rejected 36 (66 approved).

Before 1994, the PUP review process required three levels of Agency/Bureau review and two levels of Department (Washington, D.C.) review. This meant that the process was lengthy and that Washington often overruled locally made decisions, frustrating and confusing local farmers. In 1994, the Department began to shift more responsibility to the region and, instead of requiring two levels of D.C. review, consolidated a great deal of authority with Dr. Linda Lyon, Fish and Wildlife Service National Integrated Pest Management Coordinator (D.C.) and Allen Ardoin, Bureau of Reclamation Pesticide Specialist (Denver).

Allen Ardoin recently retired under disability and Dr. Lyon has been attempting to shift greater amounts of responsibility to the region while ensuring that the region maintains her (and the Department's) very high standards for use of pesticides on Federal lands. The local and regional offices of the Fish and Wildlife Service and Bureau of Reclamation now establish an interdisciplinary team (IDT) to review all PUP applications and send those with potentially severe environmental effects to Dr. Linda Lyon for final approval. This still means that Washington rejects applications that are approved locally. Farmers, local ag officials, and California ag and environmental officials believe this is because the Department is not sensitive to the needs or aware of the careful application methods of leased land farmers.

Congressman Herger has written numerous letters to the Department requesting a

better description of the PUP approval process and reasons why pesticides approved locally are then rejected in Washington (the recent response is attached). Those rejected have tended to be on the Department's Table 1 list, which includes those pesticides considered acutely toxic to fish and wildlife. California officials and farmers believe this list does not consider actual risks of exposure and rather rejects chemicals based on their straight toxicity. California's pesticide approval laws are more strict than Federal laws, and all pesticides used on crops have been rigorously tested and approved for use.

The PUP process and the rejection of key pesticides remain unsatisfactory to leased land farmers, who are frustrated by the Department's apparent disregard for their cropping needs. It is important to note that the current regime stems in part from the Department's decision to more heavily scrutinize farming activities on the leased lands and environmental group pressures to eliminate row cropping in the area (which tends to be more pesticide intensive). Unfortunately, it seems that the Department of the Interior is moving in this direction as well.

Regional Interior officials held a meeting with environment groups in late January and farmers obtained notes from this meeting through the Freedom of Information Act. The notes indicate that environmental groups do not want row cropping on the leased lands within the refuge and believe only those crops that provide benefits to waterfowl (grains) should be grown (17% of the acreage is row crops but they amount to 67% of the sales value). Unfortunately, a FWS official indicates that the way to accomplish this is by restricting pesticides because this would make row crops less attractive.

The Department further contends that if its pesticide policy were applied literally to the leased lands, they would have to shut down farming. They claim their restrictions on pesticide use are more related to Acts of Congress, namely the Endangered Species Act, the National Environmental Policy Act (NEPA), the Migratory Bird Treaty Act, and the Kuchel Act.

History

In 1905, the States of California and Oregon ceded to the Federal government 160,000 acres of land for purposes of reclamation and irrigation. The Federal government slowly allocated an amount of these lands for irrigation and reclamation (not before California threatened to take their lands back because of the slow pace), and dedicated those lands unsuitable for farming to the four area wildlife refuges: the Lower Klamath National Wildlife Refuge, the Upper Klamath Wildlife Refuge, the Tulelake National Wildlife Refuge, and the Clearlake National Wildlife Refuge (all by Executive Order). The government included a 22,000 acre portion within the Lower Klamath and Tulelake National Wildlife Refuges (mostly Tulelake) but made it available for leasing by farmers. As this was prime farm land, area residents believed these lands should have been homesteaded while the Federal government debated within itself as to what should be done with the lands (FWS believed it should become purely refuge land while the BOR believed it should be farmed).

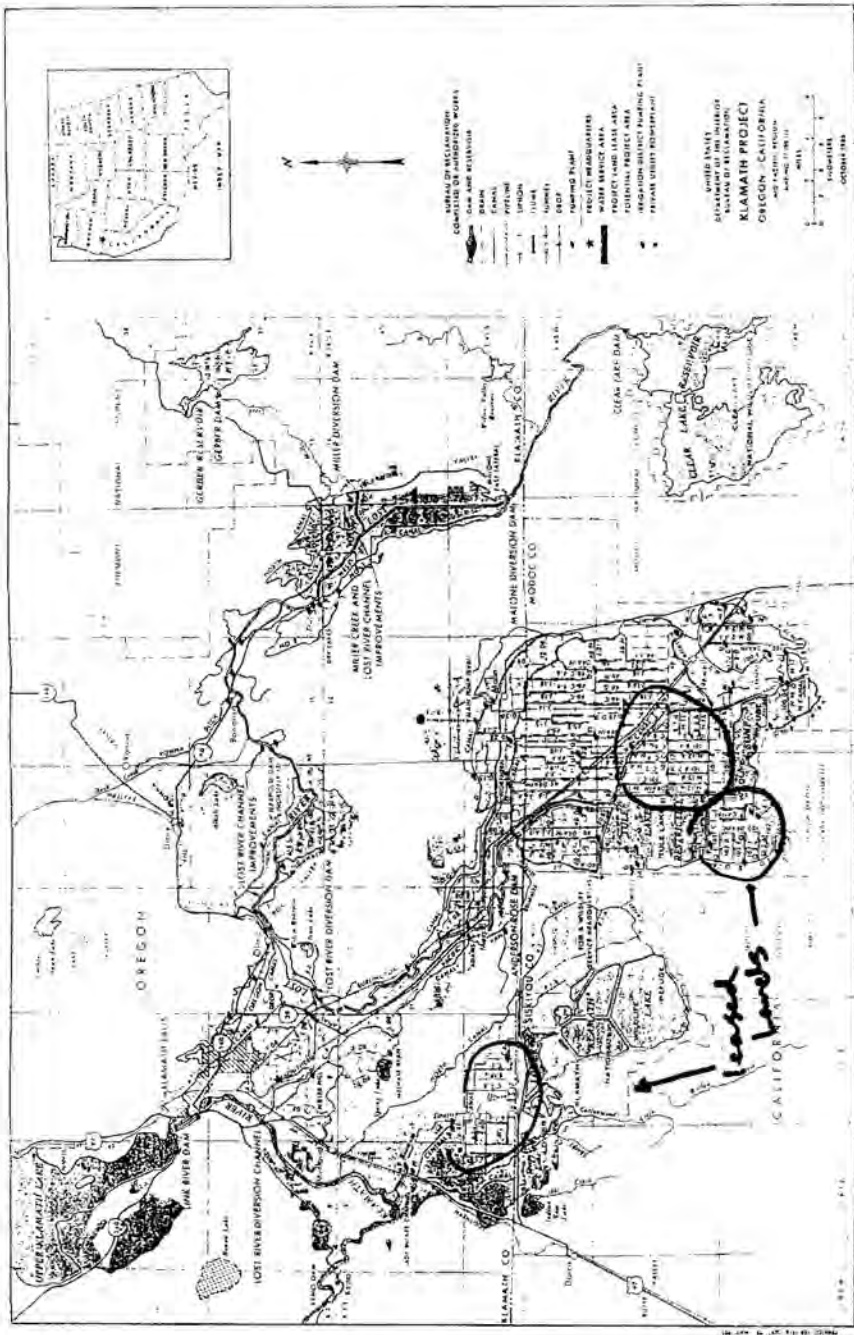
In 1964, the Kuchel Act sought to resolve this issue by permanently dedicating these lands to be leased for farming and simultaneously maintained for the benefit of waterfowl. An area many believed should have become private land to remain consistent with California and Oregon's reasons for ceding the land in the first place would instead be leased for farming in perpetuity. The operative phrase of the Kuchel Act states, "such lands shall be administered by the Secretary of the Interior for the major purpose of waterfowl management, but with full consideration to optimum agricultural use that is consistent therewith."

By law, the lands are technically managed by the Bureau of Reclamation although they lie within the refuges. The BOR and the FWS developed an agreement in 1977 that stipulates that the two will share management responsibilities. Farmers annually submit bids to the Bureau of Reclamation to farm the leased lands and the receipts are between \$1 and \$2 million dollars per year (25 percent of which goes back to the counties). In 1993, the lands produced crops valued at nearly \$16 million.

Environmental pressures have recently increased due to scrutiny of the entire Klamath Basin ecosystem, which includes among others, four endangered species, the peregrine falcon, the bald eagle, the shortnose sucker fish, and the Lost River sucker fish. The Department of the Interior has established a Klamath Basin Ecosystem Restoration Office in the region and water supplies have been restricted to help recover the fish. Environmental groups have also directly targeted leased land farmers in letters to the GAO and the Department requesting that the Department of the Interior: 1) conduct Endangered Species Act consultations on use of pesticides on leased lands; 2) adopt an Integrated Pest Management Plan (IPM) for the area; 3) eliminate row crops and only allow crops beneficial to wildlife; and, 4) place further restrictions on use of pesticides in leases. In February 1994, the environmental groups sued the Department on the ESA issues and settled with the Department in late 1994. The Department completed its ESA consultation regarding pesticide applications in February 1995.

Farmers in the Klamath Region feel they are in a no win situation. Despite working with the agencies, trying to proactively deal with criticisms and using Integrated Pest Management (IPM) approaches to pesticide applications, they see little relief in sight. The Department has contracted with an independent firm to develop an IPM by January 1997 and farmers remain uncertain as to whether this will resolve their problems. This is why they are hopeful that Congressmen Herger and Cooley can assist them in obtaining relief through the Resources Committee reform of policies affecting the National Refuge System.

The Ferguson Company has begun to develop possible amendments to the refuges bill (S. 823) which passed the Senate Environment and Public Works Committee during the 103d Congress that would help to address these issues. Although, we are uncertain at this point what shape the Committee's legislation will take, S. 823 seemed like a good starting point. We will get you this information as soon as we have it formulated. We will also likely meet with Committee staff to help them to better understand these issues.



TESTIMONY OF MOLLIE BEATTIE, DIRECTOR OF THE U.S. FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR, BEFORE THE SUBCOMMITTEE ON FISHERIES, WILDLIFE AND OCEANS, HOUSE RESOURCES COMMITTEE, REGARDING H.R. 1675, THE NATIONAL WILDLIFE REFUGE SYSTEM IMPROVEMENT ACT OF 1995.

May 25, 1995

Thank you, Mr. Chairman, for providing the opportunity to testify today on H.R. 1675, the National Wildlife Refuge System Improvement Act. The Subcommittee is to be commended for its high level of interest in the National Wildlife Refuge System.

This Administration supports the concept of comprehensive legislation for the management of the Refuge System.

Unfortunately, H.R. 1675 was not introduced in time for us to review it in detail prior to submitting this statement. For this reason, our comments will not address specific provisions of the bill. Instead, I would like to address those major concepts or concerns which we feel should be included in any Refuge System organic legislation, many of which were effectively addressed in the reported version of S. 823 in the last Congress, which was not enacted.

Working in concert with lands managed by States and other federal agencies, the Refuge System makes a critically important contribution to the conservation of this Nation's fish and wildlife resources. Yet the System faces many difficult challenges and exciting opportunities as it approaches its 100th anniversary.

The National Wildlife Refuge System is the Nation's only Federal land system with conservation of fish and wildlife as its primary mission. In addition, refuges provide unique opportunities for wildlife-dependent recreation and education, attracting more than 30 million visitors a year. The first refuge was established at Pelican Island, Florida in 1903. Currently, the Refuge System includes almost 92 million acres on 506 units, distributed across all 50 states and several territories.

The principle legislation governing the management of national wildlife refuges is the National Wildlife Refuge System Administration Act of 1966. Proposed amendments to this Act have been the subject of previous Congressional hearings dating back to 1990.

I would like to cover three major concepts which we believe must be addressed in any legislation amending the Refuge System Administration Act. First and foremost, new legislation should serve to make this Act truly comprehensive and system-wide in nature by establishing a clear mission and statement of purposes for the Refuge System. Without legislatively defined direction, the System is a ship without a rudder. The current System has evolved into a loosely organized collection of many individual units, each established to achieve its own, often narrowly defined purposes. What is lacking is a system-wide perspective on the conservation role of refuges.

We believe the "purposes" section of any such legislation should emphasize the need for a network of lands and waters managed to conserve the national diversity of fish, wildlife and plants. Those groups of species for which the Service has trust responsibilities should be specifically addressed. These include migratory birds, most threatened and endangered species, and certain anadromous and interjurisdictional fishes and marine mammals.

The Service strongly supports the continuing role of the Refuge System in providing opportunities for fish and wildlife-dependent recreation and education, where consistent with the primary conservation purposes of individual refuges. Many would like this to be a System purpose. We note that all of the discussion of this issue in the last Congress was based upon the supposition that refuge-specific determinations would continue to be made as to whether these activities were compatible with the conservation purposes for which a given refuge was established. Regardless of how Congress deals with the role of hunting and fishing in the System, it is essential that such activities continue to be subject to refuge-specific compatibility determinations.

While we are open to various alternatives on this issue, we would prefer that this concept be embodied in legislation as an affirmative responsibility of the Secretary to provide fish and wildlife-dependent activities within the System.

Our second major concern is that comprehensive refuge legislation establish a clear stewardship obligation on the part of the Secretary of the Interior to maintain the integrity of the Refuge System. Congress has clearly established the duty of the Secretary to maintain the National Park System for the benefit of future generations. This duty was best expressed in the National Parks and Recreation Act of 1978.

We believe that Refuge System legislation should likewise include language establishing a statutory mandate for the Secretary to ensure for the long-term welfare and well-being of the System for the benefit of future generations. It should also direct the Secretary to carry out the purposes of individual refuges and the System, and to promote the conservation mission of the System.

A third concept that should be reflected in any comprehensive refuge legislation relates to the management of allowed uses on national wildlife refuges. Both the National Wildlife Refuge System Administration Act of 1966 and the Refuge Recreation Act of 1962 provide a clear mandate to ensure that allowed uses are compatible with the purposes for which refuges were established. The issue of compatibility has received considerable public and Congressional attention over the last several years.

A 1989 study by the General Accounting Office concluded that some allowed uses on refuges were harmful to wildlife and diverting

attention from wildlife management.

A lawsuit was subsequently filed in October 1992, alleging that the Service was violating the Refuge System Administration Act, the Refuge Recreation Act and the National Environmental Policy Act by allowing certain incompatible uses to continue. In settling the lawsuit, the Service agreed to review all allowed uses, to determine the extent of Service authority to control such uses, to prepare written compatibility determinations on all uses under Service control and to ensure compliance with the Refuge Recreation Act and the National Environmental Policy Act. The settlement also required the Service to terminate incompatible uses or modify them to become compatible.

A total of over 5,600 uses were documented in the settlement review. Of these, 46 problem uses on 30 refuges were resolved in fiscal year 1994 through modifications, enforcement of existing regulations or terminations of uses. Another 23 uses on 18 refuges were recommended by managers for termination or modification in this fiscal year as a result of the settlement review. The analysis of uses on another 30 refuges is still in progress. Of the 5,600 uses documented, the Service identified some 850 which it does not have full authority to regulate and control under the Refuge System Administration Act.

Despite considerable rhetoric to the contrary, the compatibility

reviews to date have had very minimal impact on traditional refuge uses, in particular hunting and fishing. In fact, only one hunting-related change, covering 30 acres, and three fishing-related changes, including Tishomingo NWR, which the Subcommittee considered last week, are being proposed as a result of the review. This is, in large part, due to the fact that managers have been routinely reviewing these and other uses under longstanding policy guidance and have managed hunting and fishing in a professional manner to ensure compatibility.

We believe that the debate surrounding the compatibility issue and the actions taken by the Service as a result of the lawsuit settlement have led to significant improvements in our management of allowed uses on refuges. We are also continuing efforts to enhance our policy guidance and expand training of managers.

Yet we would support the inclusion of language in comprehensive refuge legislation relating to compatibility if it provides useful direction. For example, we support the concept of expanding the compatibility determination process to include consideration of both individual refuge purposes and legislated purposes of the Refuge System. We would also support language regarding periodic recertification of compatibility, as well as requirements that compatibility determinations be made in writing and be based upon available scientific information and the best professional judgment of the manager.

In this regard, Mr. Chairman, you have also asked several questions about our land acquisition process. There are approximately 1 million acres of unacquired land found within the approved boundaries of existing refuges where acquisition is subject to Land and Water Conservation Fund (LWCF) funding. At current appropriation levels, it would take 25 years to acquire all of these lands if all LWCF appropriations for the Fish and Wildlife Service were devoted to that purpose.

Approximately 1,790,000 additional acres have been identified as important wildlife habitat and approved for preliminary acquisition planning activities. We strongly believe the States and the private sector have important roles to play in protection of much of this habitat, and do not intend to seek to add all such lands to the Refuge System. In most of our planning processes, significant portions of the lands in the individual study areas are not ultimately recommended for addition to an existing refuge or inclusion in a proposed new refuge. We, therefore, have no way of knowing what percent of this 1.7 million acres would ultimately be approved for inclusion within the System.

While this "backlog" may seem large, the combined acreage from these two categories is less than 20% of the land currently under Service control in the "lower 48" States, and only 3% of the entire Refuge System. The System is a dynamic organization of

lands that will always have gaps to be filled. In order to be strategic with our limited funding, we have used a Land Acquisition Priority System since 1987 to ensure that land acquisition budget requests are directed towards projects that best meet the Service's highest goals, objectives and mandates.

I would also add that we do not necessarily seek to acquire all lands within a refuge boundary. In many cases the landowners do not want to sell, and their past stewardship of the land was what made it desirable for inclusion in the refuge in the first place. In such cases, we are more than willing to be good neighbors and direct our efforts elsewhere. As a matter of policy, we rarely utilize condemnation except as a mutually agreed-upon effort to settle title problems or resolve differences in land values, and we neither have nor seek regulatory powers over such inholdings.

We are aware, Mr. Chairman, that you have been interested in ensuring that traditional uses of newly acquired refuge lands not be prohibited during the period between acquisition and completion of refuge planning. There are two basic reasons under current law why this has occurred.

The first is that, legally, no activity under our jurisdiction may occur unless we determine that it is compatible with refuge purposes. This requires substantive information on the level of use and on all of the diverse biological resources on the refuge.

This information is sometimes lacking when new refuges are established. On a more practical level, it takes time to staff new and expanded refuges, making it impossible to immediately collect pertinent biological information and to properly manage public activities to ensure public safety.

We recognize that this situation needs correction, but we are concerned that the indirect effects of any legislative solutions be carefully considered before action is taken. To help resolve this problem, we propose to change our procedures to ensure that interim compatibility determinations are made on existing types of wildlife-dependent uses prior to acquisition. This would be accomplished as part of the pre-acquisition planning process, with opportunity for public review and comment. Thus, uses like hunting or fishing that were found compatible through this process prior to acquisition would be allowed to continue until a permanent comprehensive management plan for the refuge has been completed. At that point, the interim compatibility findings could be made permanent. We would support inclusion of procedural guidance along these lines in refuge legislation.

While still on the subject of compatibility, I would like to bring up one additional topic. In the last Congress, the Administration proposed a package of amendments to Senator Graham's refuge bill, S. 823. These dealt with mitigation of adverse impacts of agency actions on refuges, clarifying control

of airspace over refuges, ensuring continuation of navigational aids and highway rights-of-way and resolving specific problems with military uses at certain refuges in the Southwest. Because these amendments were tailored to the specific wording of that bill, we intend to review the language of H.R. 1675 to determine the extent to which a similar package of amendments need to be offered by the Administration. We will work closely with the Committee's staff on this matter.

An additional concept that we would support in comprehensive refuge legislation for the Refuge System is planning. We believe that it is extremely important to have in place both clear purposes for the System and the planning necessary to achieve those purposes. Earlier legislative proposals incorporated both a System "plan" and procedural guidance for development of plans for individual refuges or groups of related refuges. We believe that such guidance is useful and appropriate.

Our current Refuge System Plan and EIS, Refuges 2003, was released for public comment in March, 1993. A series of public hearings were held in throughout the country, and over 22,000 written comments were received.

Since the close of the comment period, we have moved ahead to refine our views on the "preferred alternative." Over the same period we have been very actively involved in several issues of

direct relevance to the future of the Refuge System, including the comprehensive refuge legislative proposals and the compatibility lawsuit. In view of the evolving nature of this debate and the very real prospect of legislative direction, we have delayed release of a final Refuges 2003 document and will continue to do so. We are also considering alternative ways to format the final System plan. However, we remain committed to the need for a document that articulates a "vision" of the System and a pathway to achieve it.

We believe that each refuge unit, or group of related refuges, should ultimately develop and implement a comprehensive management plan, consistent with individual refuge purposes and the legislated purposes of the System. The provisions of H.R. 1675 should ensure that there is substantive opportunity for public involvement in the planning process.

Having addressed the concepts that we feel should be included in the Bill, I would like to add a word of caution about the impact of any piece of legislation on the day-to-day work of the Refuge System staff on the ground. We must avoid well-intentioned but unworkable or unnecessarily complicated procedural requirements that will make it impossible for managers and their staff to do their work.

On this point, I can assure this Committee that there is no such

thing as a lazy or indifferent refuge manager. Frequently rising before dawn and toiling well into the night, refuge staff always humble and inspire me with their dedication to conservation. It is essential that we not add to their burdens by burying them in new paperwork.

The backlog of major maintenance projects on refuges is nearly \$400 million, of which \$153 million is for construction projects. We estimate it would require about \$70 million in annual maintenance funding, an increase of about \$23.5 million above the fiscal year 1996 requested level, and \$18 million above the fiscal year 1995 enacted level, in order to prevent the backlog from increasing. In the next budget cycle, we hope to propose greater internal efficiencies, increased use of cost recovery and greater use of cost sharing partnerships to help meet this need.

We are taking steps to improve the utility of our data management systems to ensure we are identifying and focusing attention on the highest priority projects. We are encouraged by the growing interest of the diverse community of non-governmental organizations who have recently come together to address these issues as the Cooperative Alliance for Refuge Enhancement (CARE).

Perhaps the most troubling thing I learned upon accepting the position as Service Director is the extremely low level of awareness and appreciation of the Refuge System by the American

public. Regrettably, the Refuge System is truly this nation's best kept secret, a "stealth" conservation system, if you will. We believe the only way to address this very real problem is through a comprehensive effort to share our message, to promote our wildlife-dependent recreational opportunities where they are compatible and to involve the public actively in the refuge management planning process. Again, this effort does not come without associated cost, but it is surely critical to the future of this unique and special System of wildlife lands.

If, at the end of the day, new refuge legislation leaves the Refuge system protected with a higher standard of land stewardship to ensure its well-being in perpetuity, then these efforts will have been worth it. If such legislation, however, would ultimately leave the System in a weaker position than before, then we should consider alternative means of advancing refuge conservation.

This concludes my prepared testimony. Again, Mr. Chairman, I thank you for your interest in the National Wildlife Refuge System and your commitment to the wise management of this Nation's rich natural heritage. I look forward to working with the Subcommittee as we seek to perfect H.R. 1675 and I will be pleased to answer any questions you have.



THE WILDLIFE LEGISLATIVE FUND OF AMERICA
 To protect the Heritage of the American Sportsman's Cause, Action and Education

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Statement of
 Mr. William P. Horn
 National Affairs Director and Washington Counsel of
 The Wildlife Legislative Fund of America
 Before the
 Subcommittee on Fisheries, Wildlife and Oceans
 Committee on Resources
 U.S. House of Representatives

May 25, 1995

Mr. Chairman. On behalf of the Wildlife Legislative Fund of America (WLFA), I appreciate the invitation to appear today and present our views on legislation affecting administration of the National Wildlife Refuge System (NWRS). We strongly endorse H.R. 1675, the "National Wildlife Refuge Improvement Act of 1995," and applaud the leadership of the Resources Committee and the Congressional Sportsmen's Caucus for introducing this important bill. Quick enactment will serve the interests of wildlife conservation, the Refuge System, and America's first and foremost conservationists, the sporting community.

The WLFA is an association of sportsmen's conservation organizations established to protect the heritage of American sportsmen to hunt, fish, and trap. Through its associated organizations, the WLFA represents an aggregate membership of more than 1.5 million sportsmen-conservationists.

The NWRS has a long and distinguished history as an institution for conservation. In 1903, when Teddy Roosevelt established the first Refuge at Pelican Island, he and fellow conservationists envisioned a network of Federal lands to specifically benefit wildlife. Since its early beginnings, the NWRS has effected the conservation of our nation's most valuable natural resources. Today, wildlife on the NWRS is thriving -- a tribute to the vision of America's conservation movement.

Wildlife related recreation on the 92 million-acre NWRS is thriving. Fully compatible hunting and fishing activities occur on over 260 units of the System and migratory bird hunting occurs on nearly one-third of the NWRS units. Hunters log over one million visits annually to the System. These public Refuge lands play a critical and

increasingly important role in providing fishing and hunting opportunities to America's anglers and hunters.

Congress has long recognized this role. The enactment of the Refuge Recreation Act and Refuges Administration Act thirty years ago outlined that support. Provisions regarding the Migratory Bird Fund also specify that Refuge units must provide an appropriate measure of hunting opportunities. We are extremely pleased to see the author of those landmark measures, Rep. John Dingell, as a cosponsor of H.R. 1675.

The "closed until open" arrangement in those Acts served well for a long time. It worked because of the effective consensus among the U.S. Fish and Wildlife Service, State fish and game agencies, and the interested public -- primarily sportsmen -- that hunting and fishing were fully compatible activities and contributed to conservation of fish and wildlife. These activities were an accepted part of Refuge system management and not a matter of dispute.

Unfortunately, that consensus is gone. Many interests are now hostile or indifferent to hunting and fishing. They would use the "closed until open" regime to erect administrative barriers making it more difficult, if not impossible, to keep units open to traditional pursuits. That was the heart of our concern about the Administration's 1993 refuge lawsuit settlement.

The rise of interests hostile to traditional activities on Refuge units is a primary reason why H.R. 1675 is vitally needed. It is time for Congress to express again its support for appropriate wildlife dependent recreation, including hunting and fishing activities, on Refuges. And, it is time to change the presumptions so that wildlife dependent recreation, including fishing and hunting, is permitted in the absence of compelling reasons to adopt a specific closure.

We strongly support the sections of the bill that make wildlife dependent recreation a purpose of the Refuge system, provide that hunting and fishing are compatible with fish and wildlife conservation and the principles of fish and wildlife management, and mandate that units be open unless there are specific reasons, such as public safety, to make a closure.

Let me add that Interior Secretary Babbitt articulated his support for an "open until closed" approach at a Congressional Sportsmen's Caucus breakfast last September. He stated his belief that the burden should be on those seeking to close units to hunting. The WLFA hopes that the Secretary remembers those remarks and will support at least these features of the bill.

H.R. 1675 contains other important features that we endorse. The specific authorization for cooperative management agreements with State fish and game agencies for management on Refuge units is long overdue. As federal budgets shrink, such agreements provide one way of conserving Refuge resources and achieving budget efficiency.

We have every reason to believe that many units can be effectively administered by state agencies consistent with federal law.

The language reaffirming the primacy of State authority over resident fish and wildlife is also applauded. Creeping federal encroachment in this traditional State field has become a growing concern. The statements in this bill will help reestablish the balance between federal and state agencies that has served us so well for so many years.

Planning on Refuge units has been haphazard in the past. Only in Alaska has the Service been required to prepare comprehensive plans. Those provisions directing plan preparation for lower 48 units appears to parallel the Alaska requirements and should work just as well.

We are also pleased with the section regarding interim management. The Service has created hard feelings in many locales by acquiring land and immediately closing down traditional compatible uses until it can complete a plan to reopen the area. This is another disturbing aspect of the "closed until open" arrangement. H.R. 1675's provision maintaining traditional uses until the Service acts to close those found incompatible is just common sense. It will do much to resolve many local issues and otherwise facilitate acquisition of lands through the use of Duck Stamp funds.

Thank you again for the opportunity to appear today. We urge fast actions on H.R. 1675 and want you to know that the Committee can count on strong support from the nation's first and leading conservationists -- its anglers and hunters.



Safari Club International

TESTIMONY OF SAFARI CLUB INTERNATIONAL

Before the Subcommittee on Fisheries, Wildlife and Oceans,

Committee on Resources
United States House of Representatives

on May 25, 1995

on the

NATIONAL WILDLIFE REFUGE IMPROVEMENT ACT OF 1995

Submitted by D. Patrick Bollman, President

Appearing Before the Subcommittee:

Congressman Ron Marlenee, Legislative Director
Mr. Richard Parsons, Counsel for Governmental Affairs



Chairman Saxton and other members of the Subcommittee:

Introduction and Summary

On behalf of Safari Club International, I would like to thank you for this opportunity to present the views of the one million sportsmen and women that we represent. We consider this issue of the management of the National Wildlife Refuge System to be very important.

Hunting occurs on 86.2 million acres of public lands in 272 of the refuges within the National Wildlife Refuge System. But since 1984, some animal rights groups have been trying everything within their power to terminate hunting in the System. Despite the fact that hunting has long been recognized as an acceptable and traditional use of the public lands and that it is a legitimate and important use from the wildlife conservation perspective, these people have opposed it simply because they want to see an end to hunting.

Contributing factors to the continuing foment over hunting in the Refuge System are that the System lacks a clear statement of its mission, it lacks a clear delineation of purposes for the system, and it lacks a definition of what is a compatible use. Also, when a new refuge is added to the system, traditional hunting and fishing activities are prohibited until they are found to be compatible and a refuge plan is completed. This can sometimes take years. The public has no input into the compatibility determination process.

The recent lawsuit brought by Audubon Society and its followers resulted in an out-of-court settlement in which the U.S. Fish and Wildlife Service agreed to review the compatibility of all uses of the System and to judge its ability to fund various uses. Although the Audubon lawsuit was not aimed at hunting or fishing uses, there were many indications that hunting and fishing uses would be casualties of the process.

The bill we are here to discuss today, proposed by Congressman Don Young, Chairman of the Committee on Resources and entitled the National Wildlife Refuge Improvement Act of 1995, solves these problems and brings sense to the management of these important public lands. It:

- clearly states the mission and goals of the System,

- makes hunting and other wildlife-dependent uses statutory purposes of the System.
- allows the continuation of traditional uses until the compatibility determinations are made, and
- guarantees that hunting and fishing are permitted uses unless found to be inconsistent with public safety or with the primary purpose of a particular refuge.

Safari Club International fully supports this bill. In this we are joined by the Congressional Sportsmen's Foundation, the Wildlife Legislative Fund of America, the International Association of Fish and Wildlife Agencies, the National Rifle Association and the Wildlife Management Institute.

Conservation Activities of SCI

I would like to take a moment to familiarize the Subcommittee with the conservation activities of Safari Club International (SCI). As the name implies, SCI is a worldwide organization of conservationists who are hunters. We represent the interests of more than one million sportsmen. Because our members pursue their interests on a global scale, we are involved in many international wildlife conservation issues. But the bulk of our chapters and our membership is in the United States and is deeply involved in conservation and education on issues of domestic concern as well as the international issues.

We have more than 115 chapters within the United States, and each one of them is involved with wildlife conservation at the local level. They are each required to hold at least one fundraiser per year. Often these funds go to state wildlife management agencies for research and law enforcement.

SCI also has major programs in conservation education. It owns and operates a world-class natural history museum in Tucson, Arizona. Children and visitors from around the country come to see SCI's state-of-the-art educational computer displays and dioramas depicting the role and place of wildlife in the world around us.

SCI owns and operates a conservation education training facility on a private ranch in the Bridger-Teton National Forest south of Jackson Hole, Wyoming. Every

year we train secondary-level resource people and teachers. Besides studying basic concepts of wildlife conservation and ecology, they learn about the role of the private sector and how it interacts with the various government agencies, including the National Wildlife Refuge System. One element of our training program always takes place in conjunction with the managers of the U.S. Fish and Wildlife Service's National Elk Refuge in Jackson Hole.

Through our chapters we also carry out Sensory Safaris ("fingertip" tours of wildlife mounts for the sight-impaired) and Sportsmen Against Hunger donations (game meat donated to the homeless and the poor).

History of the Refuge Issue

The National Wildlife Refuge System was founded by sportsmen and has always been supported by sportsmen. The enormous amount of acreage included in the System does not even begin to tell the story of its importance to wildlife conservation and to sportsmen -- you have to consider the wildlife value of the habitat included in the refuges to get a true picture of its significance for conservation.

The National Wildlife Refuge System is also an excellent example of cooperation between government and private sectors in assuring that important habitat is held as a public trust, for the benefit of all. As an example, SCI has supported the transfer of lands on Kodiak Island in Alaska into the Refuge System because those lands represent significant wildlife habitat values for a variety of species.

The uses of the National Wildlife Refuge System have been a contentious issue for many years. Some organizations have raised legitimate concerns over uses that were incompatible with the wildlife conservation purposes of the System. They have also been concerned with the perennial funding problems for operations and maintenance of the refuges.

Other organizations have however, since 1984, pursued a bogus and manipulative issue regarding the continuation of fishing and hunting in the System. One of these organizations has revealed, in its long-range plan, that it's goal is to end hunting completely in the refuge system. This is not because hunting is inconsistent with wildlife conservation, but because this organization and its allies are animal

rightists who simply oppose hunting. The campaign of this group has wasted an enormous amount of energy and money, and has distracted everyone from the truly serious problems facing the refuge system.

As a result of all of the attention to refuge issues, both legitimate and bogus, we have seen the following bewildering progression of lawsuits, environmental impact statements and draft legislation since 1984:

- 1984: Lawsuit to stop hunting in refuges (later dismissed for lack of standing)
- 1986: 10-year programmatic EIS begun by FWS
- 1988: draft EIS published
- 1989: draft EIS withdrawn; Congress asks for GAO study, oversight hearings
- 1990: Studds bill on refuge management (HR 4948); FWS begins work on second EIS (Refuges 2003)
- 1991: Green bill to stop hunting (HR 330); Studds refuge management bill (HR 2881); Gibbons/Graham refuge management bill (HR 3688, S 1862)
- 1992: House holds hearings; Audubon Suit over incompatible uses
- 1993: Draft EIS published, FWS settles Audubon lawsuit
- 1994: Gibbons/Graham bill on refuge management (HR 833, S 823); FWS review rumored to close hunting on many refuges; Sportsmen's groups pursue issue with FWS, help to form CARE to deal with funding shortfall
- 1995: Congressman Don Young sponsors National Wildlife Refuge Management Improvement of 1995, Congressman Saxton holds hearings.

Comments on the Bill

As I said at the outset, SCI fully supports Congressman Young's bill. The bill amends the National Wildlife Refuge System Administration Act of 1966. It sets forth a clear statement of the overall purposes of the Refuge System, calls for development of regulations to assure that the compatibility of uses of the system are evaluated, and establishes a comprehensive planning system for refuge management. These are important improvements in the management of the System.

In making our observations on the bill, I will address the following specific issues that you raised in the invitation to testify:

- the problems with the lack of a system-wide statement of purposes;
- the importance of making wildlife-dependent recreation a purpose of the system;
- the continuation of hunting and fishing on newly-acquired lands; and
- the importance of system-wide planning.

Description of the Mission Statement of List of Purposes

The Young bill clearly establishes a basic mission for the System, which is:

" ... to conserve and manage fish, wildlife and plants and their habitats found within the System for the benefit of present and future generations of the people of the United States."

Within that mission, the bill sets forth several co-equal purposes of the system. One of these is "fish- and wildlife-dependent recreation, including fishing and hunting, wildlife observation, and environmental education."

The mission statement recognizes two major things: first, that it is conservation that is the main goal of the System, and second, that conservation must be recognized within a human framework and therefore it is conservation for the benefit of present and future generations that is the main goal of the system.

This is critically important and makes this an excellent mission statement. Conservation for some esoteric or altruistic reason removed from a human framework is never likely to have the financial and political support necessary to succeed. But when it is recognized that the mission is conservation of wildlife for the purpose of benefitting people, then the Refuge System becomes a relevant and important thing to many groups of people, one of the most important of which is the sportsmen's community.

Moving to the statement of purposes, the inclusion of wildlife-dependent recreation as one of the co-equal purposes of the System recognizes the legitimacy and importance of those uses. This has been the consistent view of the U.S. Fish and Wildlife Service, as stated in 1986:

"... Service policy ... recognizes hunting as an acceptable, traditional and legitimate form of wildlife-oriented recreation."

The Young bill requires the adoption of regulations under which compatibility findings will be made, and specifies the components of the regulations. This regulatory program will allow public input and will assure that uses are re-evaluated when there are significant changes in circumstances.

Benefit of the Mission Statement and List of Purposes

The mission statement, specification of purposes and establishment of a regulatory program to evaluate compatibility are major improvements in the management of the Refuge System. They bring sense and order into a system that has grown up like the legendary Topsy.

The System began with the establishment of a single refuge in 1903, and then grew as opportunity allowed. No legislative attempt to address the overall management of the collection of refuges was even made until Congress passed the National Wildlife Refuge Administration of 1966. But that law, for all of its good points, was still not an "organic act" that provided a statement of mission and purpose for the system.

It is our belief that this very lack of a general statement of mission and purpose has been a major factor in the long, sad and wasteful debate over the continuation of hunting and fishing in the System. We think it is appropriate now for the Congress to speak to the issue, since these are national public lands and since we have seen so much turmoil over the goal and purposes of the system. We also think it is appropriate to recognize the contribution and continuing role of the sportsman in the Refuge System, and in wildlife conservation in general.

The sportsman has been a prime mover for wildlife conservation in this country and around the world for well over a century. In the U.S., the Pittman-Robertson/Dingell-Johnson/Wallop-Breaux funding program and the National Wildlife Refuge System are excellent examples. John Dingell, a champion of wildlife conservation in the Congress, said last year during testimony on the Graham bill, that:

"... it is important that we recognize our Nation's hunters and fishermen for providing the constant support that has been essential to the expansion and well-being of the Wildlife Refuge System ... We simply cannot take the refuges away from the hunters and fishermen -- who were the driving force for their establishment -- and put them under glass as museums or outdoor zoos or junior grade national parks.... If hunting and fishing under appropriate conditions is not a purpose of the Wildlife Refuge System then it seems to me that we have hopelessly lost our way."

In the United States, just as in the rest of the world, this century has seen people abandon rural areas and the farms and move to the cities. Our population is almost entirely urbanized. Very few people have an appreciation for the outdoors or an understanding of the complexity of the issues involved with conserving wildlife and its habitat. While most people care about wildlife and the environment, it is in a removed and superficial way. They simply do not have the time or interest to take more than a passing interest in wildlife conservation.

But the sportsman and sportswoman are different. To them, the outdoors and the pursuit of fish and game animals are essential parts of life. The kind of deep involvement in the rhythms of nature that are required of the sportsman also make the sportsman a major supporter of conservation efforts such as the National Wildlife Refuge System. Sportsmen realize the importance of bringing a critical watershed, for example, into the public trust so that the wildlife values will be preserved. Because of their use and enjoyment of the outdoors, they have an abiding interest in conserving it. They spend billions of dollars every year in the pursuit of their interests, and this in itself creates a vested interest in others to assure that we maintain both the quality and quantity of key lands.

As we move into the 21st century, there is nothing to indicate that the trend to urbanization will stop. In fact, the urban areas are becoming so large, and their dependence on natural resources such as water are so great, that they themselves often become serious issues for wildlife conservation. At the same time, human conflicts with wildlife are increasing as wildlife becomes better adapted to humans in their surroundings. Deer are now common in great numbers in urban and suburban areas. They are delightful to watch, but they are a hazard to cars, eat expensive ornamental plants, and carry infectious diseases.

The role of the sportsman becomes more important than ever in this kind of setting. The sportsman forms the hard and abiding core of the people who care enough about wildlife conservation to pay the necessary expenses and support the necessary governmental activity to assure that wildlife has a continuing place in the landscape. It is the sportsman who has the background and knowledge to follow the twists and turns of the complicated issues surrounding wildlife conservation, and then appear in governmental forums to assure that the necessary things are done. It is also the sportsman who will, year after year, support wildlife research, assuring that we have the knowledge we need to conserve wildlife. And it is the sportsman who will contribute to poacher hotlines and other law enforcement activities to assure that the wildlife resource is not abused.

It is unfair, to say the least, to deny the use of the system to sportsmen, who have been its primary supporters. Also, with all the challenges facing the System today it would be unwise to alienate this large and active group of supporters. An example of the support given by sportsmen is occurring right now in Washington, DC. A number of sportsmen's groups and other environmental organizations have formed the Cooperative Alliance for Refuge Enhancement. This group is looking at the funding situation of the Refuge System and considering ways to improve it.

Continuation of Hunting and Fishing on Newly-acquired Lands

The Young bill provides for the continuation of existing uses, including hunting and fishing, on newly-acquired land. The uses would be allowed to continue on an interim basis until they are determined to be incompatible with the purposes of the refuge or the purposes of the system.

This is appropriate, particularly in regard to fishing and hunting or any other wildlife-dependent use. It is most likely the existence of the wildlife-dependent uses that would lead to the acquisition of the lands in the first place, since they are an indicator of the wildlife values of the land. It is also most likely that these uses are compatible with the conservation mission of the Refuge System, particularly considering that hunting and fishing would have been carried out under state management. Lastly, as I stated above, it is the sportsmen who are going to be one of the most supportive groups in terms of the goals and purposes of the Refuge System.

System-wide Planning

The bill establishes a broad, mandatory planning program with full opportunity for public input. This will assure that all aspects of the uses of and impacts on these public lands are taken into account, and that each unit in the System is being managed in accordance with the mission and purposes of the System and of that particular refuge. The planning provisions are such an obviously sensible thing that we think they speak for themselves.

Conclusion

Our organization has participated in the discussion of the Refuge System for over eleven years. We think that Congressman Young has the right idea by establishing a clear Congressional mandate for the mission and purposes of the System, and by setting up a framework for compatibility determinations and for planning. Congress should adopt this bill and then let the U.S. Fish and Wildlife Service get on with the business of managing and operating these important parcels of land for wildlife conservation for the benefit of the people.

Safari Club International takes this opportunity to renew its commitment to work with all serious and interested parties to assure that the Refuge System is properly managed and adequately financed. The benefits of this System to the wildlife, to the sportsmen and women of America, and to the citizens in general are too important to let it continue to founder in a sea of controversy.

I thank you again for this opportunity to speak.

Submitted by:



D. Patrick Bollman, President

Presented by: Congressman Ron Marlenee, Legislative Director, Mr. Richard Parsons, Counsel for Governmental Affairs

TESTIMONY OF
SUSAN LAMSON
DIRECTOR
CONSERVATION, WILDLIFE AND NATURAL RESOURCES
INSTITUTE FOR LEGISLATIVE ACTION
OF THE
NATIONAL RIFLE ASSOCIATION OF AMERICA
REGARDING THE
NATIONAL WILDLIFE REFUGE SYSTEM MANAGEMENT AND POLICY ACT
MAY 25, 1995
BEFORE THE
SUBCOMMITTEE ON FISHERIES, WILDLIFE AND OCEANS
OF THE
HOUSE COMMITTEE ON RESOURCES

The National Rifle Association of America (NRA) welcomes the opportunity to comment on the future management of our National Wildlife Refuge System and H.R. 1675. NRA's 3.5 million membership includes over 70 percent who hunt and who, along with fellow members, participate in other forms of wildlife dependent recreation.

We commend Chairman Young's leadership in introducing this landmark, innovative and truly visionary legislation for the management of our Refuge System. The NRA wholeheartedly supports H.R. 1675 for it recognizes the important role of the hunting community and its contributions to the management of our Refuge System, as well as to all of our national fish and wildlife resources.

The sponsors of the bill have had the foresight to take last year's proposed "organic" legislation for the Refuge System and skillfully improve upon it. While retaining many of the core elements of that legislation, H.R. 1675 addresses concerns that the NRA expressed in testimony last year.

The NRA's concerns over last year's bill were in two major areas. The first was the lack of recognition for the rightful place of wildlife-dependent recreation and environmental education as

a primary purpose of the Refuge System. The second concern was over the increased fiscal burden that the bill would place on already scant resources for no apparent natural resource gain.

The first concern has been addressed in H.R. 1675. By making wildlife-dependent recreation and environmental education a primary purpose of the Refuge System, this legislation recognizes people as a primary, not a secondary or subsidiary component of the System. We fully agree with Chairman Young, in his statement upon the introduction of H.R. 1675, that the American people have a right to enjoy the benefits derived from the investment they make through their tax dollars, Federal Duck Stamp purchases, and entrance fees.

H.R. 1675's elevation of wildlife-dependent recreational activities to a primary purpose of the Refuge System is also supported by the comprehensive examination of all "secondary uses" recently completed by the Fish and Wildlife Service. Out of 526 hunting and fishing programs being conducted on System lands, only one hunting activity and one fishing activity were identified as being potentially incompatible with the purpose of a particular refuge unit. Elevating wildlife-dependent recreation activities to a primary purpose of the Refuge System, however, does not give "carte blanche" for these types of activities to occur on *all* refuges. Nor does this bill mandate that the Fish and Wildlife Service ensure that all other primary purposes of the Refuge System be applied on all refuges. This point is reinforced in the requirements for preparing comprehensive conservation plans whereby the purposes of the System *applicable to a particular refuge* must be defined and described.

The NRA supports the compatibility process required by H.R. 1675. Under this new process, the bill supports wildlife-dependent recreation activities as a primary purpose of the Refuge System in 4 ways. First, the bill recognizes these activities as presumptively compatible with the purposes of the Refuge System. Secondly, it requires the Secretary to permit hunting and fishing activities on refuge lands if such activities are found to be compatible with clearly defined and unbiased criteria. Third, it allows hunting and fishing activities to continue on newly acquired lands unless such activities are determined incompatible with the purposes of the refuge or with the purposes of the Refuge System -- thereby establishing a "good neighbor" policy during the transition in land ownership. Fourth, it subjects these activities to a less demanding review process than that for "secondary uses", thus ensuring that the process is not exhaustive, fiscally and administratively, on the System.

H.R. 1675 provides that the evaluation and reevaluation of uses within the Refuge System shall be subject to the public review and comment process. The NRA supports the process envisioned by H.R. 1675 and recommends that it be applied to the reevaluation of fish and wildlife-dependent activities.

The NRA's second concern with last year's bill was its failure to recognize the significant fiscal constraints currently experienced throughout the Refuge System. By not subjecting wildlife-dependent activities to fiscally burdensome compatibility determinations, H.R. 1675 will assist the Fish and Wildlife Service in conserving its limited fiscal resources, not further exacerbating the problem of the System's \$400 million dollar "Operations and Maintenance" deficit.

In summary, we appreciate this opportunity to comment on this landmark legislation and look forward to assisting in the process of making this comprehensive legislation for the management of our National Wildlife Refuge System a reality.

**TESTIMONY BEFORE THE HOUSE SUBCOMMITTEE
ON FISHERIES, WILDLIFE AND OCEANS
OF THE COMMITTEE ON RESOURCES
ON THE NATIONAL WILDLIFE REFUGE SYSTEM AND H.R. 1675,
THE NATIONAL WILDLIFE REFUGE IMPROVEMENT ACT OF 1995**

by

**R. Max Peterson, Executive Vice-President
International Association of Fish and Wildlife Agencies
May 25, 1995**

Thank you, Mr. Chairman, for the opportunity to appear before you today to discuss the National Wildlife Refuge System, and H.R. 1675, the National Wildlife Refuge Improvement Act of 1995. The Association generally and enthusiastically supports H.R. 1675 and will offer some clarifying thoughts in our testimony which we believe will improve the bill.

As you know, Mr. Chairman, the International Association of Fish and Wildlife Agencies was founded in 1902 as a quasi-governmental organization of public agencies charged with the protection and management of North America's fish and wildlife resources. The Association's governmental members include the fish and wildlife agencies of the states, provinces, and federal governments of the U.S., Canada, and Mexico. All 50 states are members. The Association has been a key organization in promoting sound resource management and strengthening federal, state, and private cooperation in protecting and managing fish and wildlife and their habitats in the public interest.

The Association believes that in spite of some problems, the National Wildlife Refuge System, encompassing over 500 refuges across the Nation, is, in general, a success story about which we can all be proud. The Association's member states fully support consistent, professional, coordinated management of the National Wildlife Refuges. Despite some valid criticism of some activities permitted on individual refuges, the National Wildlife Refuge System has been professionally managed in the past and should continue to be so managed in the future. The Association agrees with the 1968 Leopold report on the National Wildlife Refuge System which declared that "the national refuges should stand as monuments to the science and practice of wildlife management."

As you are aware, Mr. Chairman, the Association has worked over the past several Congresses towards meeting an objective of producing a bill which will be useful to the U.S. Fish and Wildlife Service and Refuge Managers in management of the System, and continue to meet fish, wildlife and habitat conservation objectives while providing for legitimate and appropriate fish and wildlife dependent uses of Refuges by the citizens of the United States.

Our principal concerns with National Wildlife Refuge legislation are that any legislation should meet three objectives. First, recognize the responsibilities and role of the State fish and wildlife agencies and the need for true coordination and cooperation between the U.S. Fish and Wildlife Service and the State fish and wildlife agencies in meeting the conservation objectives of the National Wildlife Refuges. Second, legislative affirmation that, where appropriate, fish and wildlife-dependent recreation and environmental education activities are among the purposes of the National Wildlife Refuge System. And third, an assurance that new processes created for compatibility determination and planning are not so onerous and time consuming that the professional Refuge Manager is engaged and consumed by process, and unable to meet on-the-ground needs and conservation objectives of fish, wildlife and habitat conservation. In other words, we want refuge managers to concentrate on scientifically sound resource management and not be diverted to managing a mountain of paperwork. H.R. 1675 meets these three objectives, thus our support for this proposal.

H.R. 1675 recognizes that the States have broad trustee and statutory responsibility for and primacy in the arena of fish, wildlife and their habitats within their borders, including on most Federal public lands. State fish and wildlife agencies have concurrent jurisdiction with the U.S. Fish and Wildlife Service for migratory birds, anadromous fish, and Federal listed threatened and endangered species.

H.R. 1675 recognizes that National Wildlife Refuges are important components of and contribute significantly to the ecosystems in which they are found. The bill recognizes that it is vital to consider the role of and relationship with adjacent private and state lands when determining how to meet the conservation objectives for both the Refuge and the ecosystem in which it is found. Cooperation and coordination with the State fish and wildlife agencies, most of which have developed statewide, comprehensive fish and wildlife resource and habitat conservation plans, is thus vital to meeting these objectives. We particularly appreciate the Federal Advisory Committee Act exemption in H.R. 1675 for the Secretary in coordinating conservation efforts with State agencies. Although the recently signed Unfunded Mandates Act contains a limited exemption to FACA for Federal/State coordination, it is not broad enough to cover the numerous coordination activities that must take place between States and the Fish and Wildlife Service in fish and wildlife conservation.

The Association also concludes that H.R. 1675 is a good step towards addressing our concerns that the planning and compatibility process do not become so burdensome that the professionally trained Refuge Manager spends all of his/her time satisfying process. As you are aware, Mr. Chairman, Refuges are seriously underfunded now, with more cuts looming. Adding processes that

are not essential to meeting Refuge conservation objectives for fish, wildlife and their habitats, and providing appropriate fish and wildlife-dependent recreational uses and environmental education for our citizens, simply adds workload to an already overloaded staff and results in delay and confusion.

Individual Refuge conservation planning is vital, and public input and involvement should be a critical part of that. The Association supports planning for individual Refuges or a related group of refuges in the same area. However, the Refuge Manager should take advantage of existing fish and wildlife surveys and inventories, habitat assessments, comprehensive resource and habitat plans, recreational surveys and impact studies, and other data from the State fish and wildlife agency and other sources to facilitate development of the Refuge conservation plan.

Likewise, existing written determinations of compatibility for existing uses on each National Wildlife Refuge, which were conducted in order to satisfy an October 1993 legal settlement with several conservation groups, should obviate the need to redo compatibility determinations under H.R. 1675 until significant change to the particular use triggers a re-evaluation. It is important that the passage of any National Wildlife Refuge legislation not require that these compatibility determinations be redone to satisfy a newly created standard developed as a result of passage of the legislation.

We do not believe that the Fish and Wildlife Service should be required to prepare a System-wide plan for the National Wildlife Refuge System. The System is comprised of Refuges established for many diverse and sometimes disparate objectives and scattered throughout the United States. We are not sure what objective a System plan would meet or direction it would provide beyond what is already indicated in H.R. 1675. As you are aware, Mr. Chairman, the USFWS has the authority now, and has prepared a comprehensive draft Environmental Impact Statement for the Refuge System. For many reasons, this has not gone to a final EIS, but, nonetheless, the FWS has the authority, when they deem necessary, to review the System comprehensively. We are not convinced that a mandate to do so on a regular basis would be that helpful. It would certainly be a large, expensive, time-consuming effort with little apparent usefulness to anyone.

The Association concurs with the establishment in H.R. 1675 of purposes for the NWR System to serve as general guidance for management of existing units and expansion of the Refuge System. These purposes will also establish benchmarks against which determinations of use compatibility can be tested. We agree with the purposes of the System as articulated in H.R. 1675, but suggest that the word "equally" is not necessary, and may be confusing and misleading. Priorities should reflect both purposes of individual refuges, the nature of the resources available, public input on draft plans, and the nature of

opportunities and problems on other lands within the State. Also, we have never advocated that all purposes be satisfied on all Refuges. We have always held that fish and wildlife dependent recreational uses should be provided for where they are appropriate and compatible with the purpose for which each Refuge was established. Likewise, although many Refuges do, not all Refuges have listed threatened or endangered species, significant migratory bird populations, interjurisdictional fish habitats, or marine mammals. The use of the word "equally" could be construed to suggest that not only do all purposes have to be satisfied on all Refuges, but equally so (leading one, in the extreme, to suggest that one-sixth of each Refuge be dedicated to achieving each purpose). While we are not suggesting that this was the intent of that language, we are not convinced that "equally" adds anything but uncertainty, and suggest that it be deleted.

We further concur with establishing hunting, fishing and environmental education as a purpose of the System, for several reasons. It seems clear to us that Congressional intent, as reflected in the relevant legislation and legislative history, has been to establish the primary purpose of the National Wildlife Refuge System as advancing the objectives of fish and wildlife conservation, including providing for, at least in part, fish and wildlife related recreational use in the form of hunting, fishing, trapping, nature observation, enjoyment and education, where such use is compatible with sound fish and wildlife management principles. The 1962 Refuge Recreation Act provided for consideration of other than wildlife dependent recreational uses if they were compatible with and would not prevent the accomplishment of, the primary purposes for which the areas were acquired or established, this being fish and wildlife conservation and in many cases, hunting, fishing and trapping. The 1966 Refuge Administration Act further gave to the Secretary of the Interior the authority to "...permit the use of any area within the System for any purpose, including but not limited to, hunting, fishing, public recreation and accommodations, and access whenever he determines that such uses are compatible with the major purposes for which such areas were established". In a separate section, the Act authorizes the Secretary to permit other habitat altering uses, such as easements for utilities, roads, ditches, etc., whenever he determines that these uses are compatible with the purposes for which these areas were established.

Also, making fish and wildlife dependent recreational uses and environmental education purposes of the System recognizes the important contributions of sportsmen to the NWR System through the use of federal waterfowl stamp funds, North American Wetlands Conservation Act and other Federal-private cost share programs for acquisition of Refuges. Identifying these activities as a purpose also reinforces that these uses are appropriate and legitimate activities on NWRs, which serve to provide opportunities for our citizens to learn more about fish and wildlife and their habitats through

experiences on NWRs. These activities will collectively engender greater public support for Refuges and insure that these lands continue to be dedicated primarily to conservation purposes.

We would further point out that fish and wildlife dependent recreation and environmental education, conducted under professional supervision of the Refuge staff, are minimally intrusive activities that generally do not require the establishment of significant physical facilities on Refuges. The allowable harvest of certain game species is done within the statewide seasons and bag limits provided for by the Federal and State agencies with responsibility for fish and wildlife conservation. Seasons, bag limits, and other harvest restrictions, are regularly reviewed with significant opportunity for public participation, and adjusted to reflect changes in population size, breeding success, habitat conditions, harvest levels, etc.

The Association concurs that fish and wildlife dependent recreational uses (including hunting and fishing) and environmental education should be permitted to continue on new lands added to the System on an interim basis until such uses are determined to be inconsistent or incompatible. The current process of immediately closing new refuges until a planning process is completed creates unnecessary confusion, ill will and local economic impact, particularly where there is no good reason to close an area except "that's the way we have always done it". We believe that most historic fish and wildlife dependent recreational uses or environmental education, for example, are compatible with perhaps only minor modifications placing temporal or seasonal restrictions on use to protect sensitive nesting areas, for example. We suggest that close cooperation with State fish and wildlife agencies, which also manage public lands for conservation and public use, can facilitate integration of these existing activities with conservation efforts for Refuges. The Secretary would retain the authority to stop or modify an existing use but would not be required to do so as he does now. You may recall that Congress required continuation of certain fish and wildlife related uses on the refuge lands added in Arkansas to the White River and Cache River NWRs through the Potlatch exchange.

We do not want to endorse continuing all existing uses on new lands added to the System until determined to be incompatible by the Secretary, as provided for in H.R. 1675, unless it is clear that such determinations can be made promptly. We realize that existing public right-of-ways, for example, need to be openly maintained. However, there may be uses on some lands which would be purchased for addition to the NWR System that are truly incompatible with the purposes of the refuge. Jet skiing, ORV use or similar activities quickly come to mind. We suggest there be legislative assurance that the Secretary can expeditiously terminate truly incompatible uses without lengthy and onerous process requirements. We would be willing to work with Committee staff on some language, if requested.

The Association looks forward to working with you and the Committee on fine tuning H.R. 1675 to improve the management of the NWR System, advance conservation objectives for fish and wildlife and their habitats, and provide for appropriate uses by the citizens of the United States. We commend Chairman Young and Congressman Dingell for their efforts reflected in H.R. 1675.

I would be pleased to address any questions at this time.

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Statement of Rollin D. Sparrowe
on
Management of the National Wildlife Refuge System
before
Subcommittee on Fisheries, Wildlife and Oceans
House Committee on Resources
May 25, 1995

Mr. Chairman:

I am Rollin D. Sparrowe, President of the Wildlife Management Institute, an organization formed in 1911 and staffed by professional natural resource managers to promote restoration and improved management of wildlife in North America. Our Institute has a long history of involvement in attempts to improve management of the National Wildlife Refuge System. For the past four years we have tracked emerging Senate legislation, and participated in dozens of meetings with various interests to discuss refuge management. We appreciate the opportunity to comment on the May 11, 1995 draft of the National Wildlife Refuge Improvement Act of 1995.

For the past decade, management of the National Wildlife Refuge System has been the subject of public controversy over such things as which uses are compatible with the purposes of individual refuges and the system, what those purposes are or should be, what the action plan is for the system of refuges for the future, and whether the system can be improved through comprehensive planning, legislation, or better management by the U.S. Fish and Wildlife Service.

Many of the groups participating in discussions of refuge legislation have entered into a new dialogue with the Fish and Wildlife Service - and each other - about the real problems facing refuge managers. Those managers have too little funding and inadequate staff to do all they need to do for refuges. There is a consensus among many groups that operational needs on refuges are so great that our needs as a public - for biology and management, and for public use - cannot be met with current funding. While that issue is not the focus of this hearing, the Committee should know that there is documentation available of the specific problems, and groups ready to work with the Congress and Fish and Wildlife Service to verify the nature of those problems and seek solutions.

Drafts of legislation and the dialogue associated with them have swung from heavily oriented toward rigorous planning mandates and constraining compatibility analysis, to the less complicated approach in this bill which emphasizes purposes, provides for reasonable planning and control of uses, and provides explicitly for public uses such as hunting and fishing. With such a sharp swing in its focus, it is important that legislation enacted effectively strengthen the Fish and Wildlife Service's capability to appropriately manage these lands. Otherwise, the statute will not serve the needs of the refuge system or the citizens of our country.

The following responds to the four main issues raised in your letter of May 11, 1995:

1. The need for system-wide purposes. Public dialogue on refuge management preceding this bill, illustrates the need for clearly stated purposes for the National Wildlife Refuge System. Perceptions have ranged from refuges as areas for complete protection of all wildlife, to areas intended primarily for hunting and outdoor recreation purposes. Clearly, refuges exist for a variety of reasons

ranging from complete protection for an endangered species, to preservation of an important habitat with its attendant wildlife, including the opportunity for various fish and wildlife dependent uses. The statement of purposes in the bill seems to us to adequately cover the many purposes of national wildlife refuges. We are not in favor of the word "equally" on line 3, page 5, for an important reason. Even if one takes a position that fish and wildlife oriented recreation is a strong purpose of many national wildlife refuges, it can hardly always be equal with other purposes based on either history or logic. Refuges were not established to provide hunting opportunity, but rather to provide a base of habitat which helps maintain a resource that can be hunted if managed properly. Thus, the other purposes must come first or there would be nothing to hunt. We would favor removing the word "equally" and simply letting the purposes stand as a complete list of refuge purposes. This would clearly establish fish and wildlife-dependent recreation as a purpose, but nested within many other purposes which must be fulfilled if that recreation is to proceed.

2. Wildlife Dependent Recreation as a Purpose. When the dialogue on refuge legislation started more than four years ago, we at the Institute did not feel that wildlife-dependent recreation needed to be a purpose of the system, but could be left up to administrative management by the Fish and Wildlife Service. While trying to cope with shortages of operational funding for refuges, the Fish and Wildlife Service unfortunately gave disturbing signals to the public about its priorities for continuing recreational use of refuges. Rumors of cutbacks in refuge

services, particularly hunting, lead to loss of public confidence that these traditional recreational pursuits would continue. Many now feel, and we agree, that fish and wildlife recreation should be clarified as one of the purposes of the system that should be permitted where appropriate. We say this even though we are convinced that actual threats to hunting on refuges were widely overstated.

The Fish and Wildlife Service should be accountable for reasonable consideration of public use of refuges as well as other management of refuge lands and wildlife. However, "purpose of the system," whether protection of an endangered species or allowing wildlife-dependent recreation, is not necessarily automatically a purpose of every individual refuge unit, or of every acre on every refuge. This must be left up to the managers to decide on a case by case basis, within reasonable guidelines that are established in this legislation. The language in this draft bill restates the role of hunting more strongly than is required. However, clarification of purposes will be helpful in the changing times and situations ahead.

3. Interim Uses on New Refuge System Lands. In general, existing fish and wildlife recreational activity should be able to continue on an interim basis on new lands added to the system unless there is some very specific reason for discontinuing it. Public involvement during the establishment of the refuge should involve up-front statements by the Fish and Wildlife Service if there are known problems that would lead to discontinuing these activities. The same should apply to commercial activities. It cannot be assumed that all public use patterns will continue as before

while every refuge is developed, but that should be clarified through public dialogue during the planning associated with development of a refuge, as described in Section 6 of the draft legislation.

4. Comprehensive Planning for the System and Individual Refuges. Previous drafts of refuge legislation have included extensive demands for structured planning, refuge by refuge, and on a system-wide basis. Such activities are expensive and with declining budgets and limited staff should be implemented only with moderation and thought to continuing other management programs. We are pleased to see in the current legislation, recognition of the need and utility of planning for groups of refuges as units where appropriate. Better planning is needed by the Fish and Wildlife Service for many refuges. Groups of refuges along migratory bird flyways, for example, may be managed in concert to provide benefits of different types at different times of the year as the birds migrate.

Legislation needs to find a balance between getting the job done and recognizing the limitations of refuge staff to do it. The current draft bill gives considerable flexibility to the Fish and Wildlife Service in meeting reasonable objectives for planning. What is most conspicuously missing, is any mandate for a plan for the entire refuge system. There needs to be a broad plan that describes for the public the nature of the refuge system, and long-term plans for its development and operation. Under the National Environmental Policy Act, an Environmental Impact Statement on overall management of the system could regularly reappraise and lay out longer term strategies on an approximately ten

year interval. We feel this would satisfy planning needs for the refuge system as a whole, as well as providing considerable opportunity for public input. However, successive administrations have found reasons to delay release of such a plan. Congress could help with a reasonable mandate to maintain a broad programmatic plan.

The following are specific comments about portions of the draft bill itself not addressed in response to the four questions.

Under Section 4, Administration of System, Part (4)(B) appropriately provides for coordination with landowners adjacent to refuges and the state wildlife agency. Further, Part (4)(E) is helpful in directing that refuge establishment compliment the efforts of other conservation agencies in conserving habitats. 4(b)(4), Powers, is likewise useful in providing for cooperative agreements with state wildlife agencies for management of all or parts of a refuge unit. This is an area that must be approached cautiously and carefully with Congress retaining oversight. We are pleased to see that standards established by the Director of the Fish and Wildlife Service will determine any such cooperative management. Those standards should be reviewed by Congress and the Secretary should report on any implementation of such agreements.

The Compatibility Standards and Procedures in Section 5 have been the subject of extensive debate. In general we find the deadlines for compatibility reviews and for reevaluations of compatible uses to be reasonable. We do have some specific concerns about parts of the section.

In 5(3)(A)(ii), we feel that in lines 22 and 23, the continuation of any existing use on an interim basis may be too open-ended. In the past, some units of the refuge system have included

purchasing lands that had activities on-going which would not be to the benefit of wildlife, whether recreational or commercial. The Secretary should have the authority to take appropriate action with full public notice during active planning for the refuge.

On page 9, line 4, we find the statement that the Secretary "shall permit fishing and hunting on a refuge" to be a stronger mandate than practical or reasonable in the management of refuges. This long paragraph between lines 4 and 17 seems to preclude the use of judgment in situations where some social, management, or other factor might make it prudent not to permit such public uses even though they might be biologically possible. We suggest that the Secretary should have the discretion rather than a presumptive mandate, and suggest that the word "may" be substituted for "shall" on line 4.

From page 9, line 18 through line 4 of page 12, is a generally useful statement of requirements issuing final regulations establishing the compatibility determination process. The Fish and Wildlife Service should be able to meet most of this easily. On page 10, lines 8 and 9 and on page 12, line 2, the confusing phrase "no materially detrimental effect" is used as a standard for compatibility determination. This term should be defined in the bill, or it is likely to perpetuate the kind of confusion that has occurred with compatibility determinations in the past.

Section (x) on page 11, line 22 through page 12, line 4 overstates a presumption that fishing and hunting is automatically compatible with refuge and system purposes. We agree that well-managed fishing and hunting is generally compatible with the conservation of fish and wildlife and their habitats. On many refuges, hunting and fishing can and should be allowed. The compatibility process should determine whether there would be any "materially detrimental effect" (definition needed) on fulfillment of refuge purposes. For example, it would be difficult to

conduct some public education programs in the middle of a hunting area while hunting was going on. Endangered species might require closure of certain areas or a whole refuge for various reasons, regardless of the compatibility of hunting and fishing with overall conservation. Public use of any kind may unacceptably limit wildlife access to needed feeding areas. We think this section ought to stop on page 12, line 2, after the words "habitats." Further, "the system" should replace the words "a refuge" on page 11, lines 24 and 25.

Under Section 7, regarding State Authority, we are concerned that page 18, lines 9 through 16, overstates the role of the states in management directly on the refuge. These are federal lands and should be managed, as is appropriately stated several places in this bill, through coordination and cooperation with the state agency and with mutual objectives. The phrase on lines 12 and 13 "in any area within the System" seems to imply state control over federal lands, which is inappropriate. If that phrase were omitted, paragraph (m) would be compatible with current policy.

Mr. Chairman we appreciate the opportunity to comment on this draft legislation, and to continue the dialogue about attempts to improve the National Wildlife Refuge System. We would be happy to participate in further discussion with others interested in the welfare of the refuge system.

TESTIMONY OF JOHN S. GOTTSCHALK ON PROPOSED LEGISLATION GOVERNING THE
OPERATION OF THE NATIONAL WILDLIFE REFUGE SYSTEM, BEFORE THE SUBCOMMITTEE ON
FISHERIES, WILDLIFE AND OCEANS, MAY 25, 1995.

Mr. Chairman, and Members of the Committee:

Thank you for this opportunity to comment on the proposed National Wildlife Refuge legislation. For the record, I have been a biologist and administrator for the Indiana Department of Conservation, and the U. S. Fish and Wildlife Service, serving as director of the Bureau of Sport Fisheries and Wildlife from 1964 to 1970. Upon retirement from the federal government in 1973 I became executive vice-president of the International Association of Fish and Wildlife Agencies, and worked for the Association in various capacities until 1986. During this period I served as volunteer president and later chairman of the Alliance for the Chesapeake Bay, and have worked with several other national and regional conservation and professional organizations. I respect the National Wildlife Refuge System for its major contributions to North American wildlife conservation.

Recent studies of the "System" have shown that refuges have been subjected to many uses inimical to the purposes for which the refuges were established. The fundamental issues have to do with questions of compatibility, that is, do the uses to which the refuges are subjected violate their purposes, and compromise the ability of the refuge, or the System, to perform as intended?

The proposed legislation (Page 5) gives six major System "Purposes" equal standing. However, the fundamental purpose of the System and its individual parts, is to protect and preserve the Nation's wildlife heritage. No other "purpose" transcends that broad and basic principle. The legislation should recognize that principle, and then specify those policies and programs mandated by law or treaty.

The draft legislation, (Page 5, Sub-section (3) (D)) would establish "fish and wildlife-dependent recreation, including fishing and hunting, wildlife observation, and environmental education" as purposes. I urge you to redefine these activities as "uses", rather than "purposes", to be authorized, but not

mandated. I see nothing wrong in identifying these uses as having priority over other uses that the Secretary may authorize as appropriate. Under the right circumstances all may be appropriate and in certain instances, necessary. Some will object to hunting on refuges but there are times and places where regulated hunting, particularly of deer, is essential to the preservation of the values of the refuge. However, to make hunting, or any other similar "use" a legislated "purpose" would lead to conflicts of interest and serious management problems.

There are many other uses that have been inflicted on refuges either by local public interest, or political pressure. Military training, local organization events, mushroom and wild-rice harvesting, are but a few examples. The draft (Page 6, Section 5) gives the Secretary the authority to specify those supplemental or incidental activities that may be permitted.

Whether new lands added to the system should be opened to hunting or fishing is seldom an issue when a refuge is authorized under normal procedures. Preliminary studies by the Fish and Wildlife Service, reveal most, if not all, of the considerations related to management of the proposed refuge, and appropriate plans for management outlined. That may not be true when a refuge is created without adequate study, or when a refuge is acquired "piece-meal". The Secretary should be given the authority to open or close newly acquired areas, for reasons involving the refuge's potential, until management plans have been completed.

It is essential that the Fish and Wildlife Service develop, and operate under, a broad policy and planning directive that provides a sound foundation for the detailed planning and ultimate management that will be carried out on each refuge. It would be the guide that the System managers would follow to achieve the objectives of the System as a whole, and a framework into which each refuge's objectives would fit. A decentralized planning process that produces a document at every refuge, for every refuge, to be used as a guide for appropriate management, subject to periodic up-dating, is much to be preferred over a centralized planning system. The language in the proposed legislation seems to meet these ideas. (Page 13, Section 6).

When I was director, perhaps the most acrimonious dispute in the history of American wildlife management took place over the question of who had the fundamental right to manage fish and resident wildlife on federal lands. Leaving the principle in that argument to the solicitors and attorney's general, it seems apparent that the language in the Bill (Section 7, (m) line 9) will rekindle that long-standing dispute. It would make the management of fish and wildlife subject to two masters, state and federal, a condition that can only breed disputes. It is unfortunate that this issue has been raised again. As far as I know, the status quo has been working for a quarter of a century. Under this regime, whenever the Fish and Wildlife Service determines that the population of wildlife in a particular refuge, or part of a refuge, may be hunted, usually in cooperation with the state, the area is opened in conformity with state regulations. I predict that the language in the bill, if it remains on passage, will immediately breed a contentious legal battle that will do nothing for conservation, and curdle state-federal relations in fish and wildlife management for years to come.

I have only one other comment, to the effect that the Refuge System does not constitute a national "Network". (Page 5, Section (3) (A), line 4). True, many refuges are part of a network of areas that work together to provide nesting, migration, and wintering habitat for migratory birds, especially waterfowl. On the other hand, there is little that binds areas as disparate as Moosehorn in Maine, and Cabeza Prieta in Arizona together in a "Network". The "System" is not a "Network", and to call it one is misleading. I believe a far better term would embody the concept of a "Complex", and recommend that term be used in lieu of "Network". (p. 5, para. (3) (A)).

Thank you for this opportunity to be heard.



National Wildlife Refuge Association

Dedicated to the protection and perpetuation of the National Wildlife Refuge System

May 25, 1995

**TESTIMONY OF WILLIAM C. ASHE, NATIONAL WILDLIFE REFUGE ASSOCIATION
BEFORE THE SUBCOMMITTEE ON FISHERIES, WILDLIFE AND OCEANS
OF THE HOUSE RESOURCES COMMITTEE REGARDING THE
NATIONAL WILDLIFE REFUGE SYSTEM IMPROVEMENT ACT OF 1995, H.R. 1675**

Mr. Chairman and members of the Subcommittee, I am the Northeast Regional Representative for the National Wildlife Refuge Association as well as a member of its Board of Directors and Executive Committee. The Association provides independent and practical wildlife refuge management expertise to key decision-makers such as yourselves. We appreciate the opportunity to testify before you today concerning an organic act to guide the future administration of the National Wildlife Refuge System—a unique and valuable national asset that is all too often the subject of controversy rather than appreciation.

Before beginning to discuss how the Refuge System should be administered, it is necessary to first recognize that it is the only system of lands established primarily to conserve and manage the nation's fish and wildlife heritage. That fact is especially significant in the lower 48 states where refuges comprise less than one percent of the land base. The largest refuges and the bulk of the System are found in Alaska and are appropriately treated differently in important respects under the provisions of the Alaska National Interest Lands Conservation Act (ANILCA).

OVERVIEW

The National Wildlife Refuge System Administration Act of 1966, as amended (16 USC 668dd-668ee), is a good and sound law. The only reasons it should be amended are to flesh out more comprehensive guidance that builds appropriately upon its foundation.

For example, one of the most important reasons for enacting an organic act is to clarify the duties of the Secretary of the Interior Department, who manages multiple and often competing agencies, with regard to refuges. Specifically, the Interior Secretary should be explicitly directed to protect the ecological integrity of the Refuge System and its component units as well as to administer them to fulfill their purposes.

And Congress, for good reason, has directed that the nation's refuges are to be administered by the U.S. Fish and Wildlife Service. The federal government has the responsibility for trust species such as migratory birds and mammals and interjurisdictional fish species. Despite the renewed tension between federalism and states' rights, a workable balance must be struck. Requiring "consistency" between refuge plans and state wildlife plans is not workable because the Fish and Wildlife Service has statutory and international treaty obligations that the states do not. What will work and should be encouraged is open and productive

communication, coordination and cooperation. For these same reasons, the Secretary should not enter into agreements with states that transfer the management authority for refuges, except in rare and unusual situations.

The test of "compatibility" for determining whether or not secondary recreational and economic uses should be permitted on refuges should not be weakened. Existing refuge law, both the Administration Act and the earlier Recreation Act (16 USC 460k-460k-4), contain a simple and appropriate standard: that uses will be (or are) compatible with the primary (or major) purposes for which refuges were established.

By contrast the provision in H.R. 1675 adopts, with additional weakening, a previously proposed administrative definition of compatibility that is clearly intended to protect secondary uses rather than the wildlife for which refuges were established. The H.R. 1675 standard--"will not have a materially detrimental effect on the fulfillment of the purposes of a refuge" (Sec.5(1))--makes two significant changes from existing law. First, it deletes "primary" before purposes and, second, it raises the threshold to "materially detrimental" which is synonymous with a "considerable degree" of detriment or "physical" detriment.

H.R. 1675 also includes several exemptions from compatibility that resulted from negotiations between the Department of Interior and Department of Transportation as a consequence of the more rigorous compatibility standard proposed in Senator Bob Graham's bill (S. 823) in the 103rd Congress. These provisions (Sec.5(4)(A)-(D)) are, thus, not appropriate in the current context. Moreover, they are inconsistent with existing law and should be deleted.

ISSUES RAISED FOR WITNESSES BY THE SUBCOMMITTEE

Refuge System-wide Purposes

The Problems Associated with the Lack of System-wide Purposes.

This fundamental deficiency was recognized over 25 years ago, by the National Wildlife Refuge System Advisory Board on Wildlife Management, Chaired by A. Starker Leopold, in its 1968 Report to Interior Secretary Stewart L. Udall (p.3). Simply put, the lack of clearly articulated statutory system-wide purposes is akin to a lack of identity and invites different identities to suit different times. Management continuity and long-term fish and wildlife needs can be, and often are, subordinated to demands for "responsiveness" in changing administrations.

In addition, some refuges or units thereof lack clear and explicit establishing purposes to provide the needed guidance in making compatibility determinations. The establishment of statutory system purposes that are utilized in addition to the unit establishing purposes will ensure proper decision-making.

Congress Should Clarify Refuge System Conservation Purposes

While the National Wildlife Refuge System Administration Act does not explicitly state the purposes of the Refuge System that it established, it does open with the statement:

" For the purpose of consolidating the authorities relating to the various categories of areas that are administered by the Secretary of the Interior for the conservation of fish and wildlife..." (16 USC 668dd(a)(1) emphasis added)

This statement strongly indicates, and the subsequent 1968 Leopold Report concurred (page 20), that the fundamental purpose of the System is the conservation and management of fish and wildlife. To change this fundamental premise is to forever change the National Wildlife Refuge System. We, therefore, urge that the System-wide purposes be limited to the conservation and management of fish and wildlife. And, specifically, we recommend that the articulation of purposes painfully, but successfully negotiated last year among the diverse organizations concerned (see Appendix 1) be substituted for those now in H.R. 1675.

Wildlife-dependent Recreation, Including Fishing and Hunting, Should Not be Made a Purpose of the System

It is clear from the history of the administration of the Refuge System that ensuring the compatibility of secondary economic and recreational uses with the primary wildlife conservation purposes of refuges has been problematic. Over two decades of reports including the various compatibility reviews (see Appendix 2) preceding the Fish and Wildlife Service's 1994 review, document the ongoing management challenges and threats to the nation's refuges. The current controversy over the compatibility of some recreational activities at the Tishomingo NWR (OK), that was the subject of a hearing before this committee just last week, is yet another vivid example.

There can be little doubt that the elevation of secondary uses, such as wildlife-dependent recreation, to a System-wide "purpose" equal to the conservation purposes will further impede the conservation and management of fish and wildlife, if not subjugate it entirely.

Moreover, in attempting to promote hunting and fishing in particular, the bill erodes the ability of refuge managers to ensure that any form of wildlife-dependent recreation will remain compatible. Let me be clear, we are not opposed to hunting or fishing. These are necessary and appropriate secondary recreational "uses" of refuges. But any use, however inherently compatible it may seem, can get out of hand and become incompatible with a refuge's primary wildlife purpose(s).

If one looks closely at the details of the interrelated provisions of the bill pertaining to this "special" category of uses-- wildlife-dependent recreation and environmental education-- and the test of compatibility, the problem becomes clear. If these uses are an equal system purpose, then they are inherently compatible with the system purposes. And since compatibility is no longer judged against a refuge's "primary" establishing purposes they will likely be presumed compatible here also. These two provisions combined with a special 15 year review cycle and a special "presumption" that hunting and fishing are compatible, will make it extremely difficult to take action to ensure that hunting and fishing or any other form of wildlife-dependent recreation remains compatible.

New Lands

Because of the applicability of NEPA and the need to approve new refuges the Fish and Wildlife Service should, and has for example with the Canaan Valley Refuge (WV), preplan how a refuge will be managed. To the extent possible, the compatibility of existing uses should be assessed at this stage for the benefit of all concerned. Any incompatible uses or concerns that may require monitoring of selected uses and subsequent re-evaluation should be identified. In this way the Service may ensure protection of the wildlife habitat and resources for which the lands are being acquired and provide the public with reasonable expectations with regard to the continuity of uses.

Uses permitted on individual tracts subsequently added to existing refuges, should be compatible with the purposes of those refuges and consistent with their management plans, unless there is a particular need to be more restrictive.

Refuge System-wide Plan

In order to ensure proper administration of the Refuge System as a whole, the Fish and Wildlife Service should be required to develop a System-wide plan that is updated at least every ten years. The plan should not be a "comprehensive management plan" like those for individual units, but rather a programmatic framework that addresses the current status and future directions of major policy and management issues for the System.

The System plan development should be the responsibility of the Division of Refuges, with refuge field staff supplying basic information about their stations. As this type of information should be maintained in any case, the development of the System plan should not additionally interfere with the ability of field staff to perform their other duties and responsibilities.

Conclusion

H.R. 1675 undermines rather than builds upon the solid and appropriate foundation of existing refuge law--the National Wildlife Refuge System Administration Act and Refuge Recreation Act. If passed in its present form, H.R. 1675 will forever change the fundamental purpose--the conservation of wildlife--for which individual refuges and the National Wildlife Refuge System were established. In addition to changing the unique Refuge System from a primary purpose to a multiple purpose system, H.R. 1675 will also dangerously erode the ability of refuge managers to ensure the compatibility of recreational and economic activities with the wildlife purposes of their refuges. If you cannot protect wildlife for the benefit of future generations on the national wildlife refuges, where can you?

OTHER ISSUES: HR 1407/RE: FORT DEVENS LANDS

Congressman Meehan (MA-5th) has introduced H.R. 1407 "to provide for the transfer of certain excess property at Fort Devens Military Reservation for inclusion in the Oxbow National Wildlife Refuge..." We support the bill as introduced by Mr. Meehan and commend him for doing so. As he knows, I have been involved in this effort for sometime as a former Town of Harvard Selectman, as president of the Nashua River Watershed Association and as NWRA's representative.

The lands involved in H.R. 1407 are that part of Fort Devens known as the "South Fort". In 1992, at the direction of Congress, the U.S. Fish and Wildlife Service did a study of Fort Devens to assess the value of its various habitats and to recommend what areas should be added to the adjacent Oxbow Refuge. South Fort was identified as having particular wildlife value by the Service.

The transfer of jurisdiction of South Fort to the Service, when it is executed by the Army, has overwhelming support at the local, state and national level. All of the surrounding communities support it. Over a score of organizations--most of them at the local and state level--have come out in support of the transfer. The reuse planning process just completed by the communities and state for the Main and North Fort portions of Devens presumed expansion of the Oxbow Refuge in the South Fort. At Harvard's 1995 Annual Town Meeting hundreds of citizens voted unanimously to support the transfer of South Fort to the Service for inclusion in the existing refuge, most of which is presently located within Harvard. (South Fort is located in the town of Lancaster.) Other nearby towns have taken similar positive actions.

While outside the scope of the present legislation, we would like the Committee to know that nearly 900 acres of floodplain, wetlands and critical uplands on the Main and North Forts are being transferred by the Army to the Service for inclusion in the Oxbow Refuge. This transfer was directed by legislation actively supported by Mr. Meehan and passed by the Congress in the fall of 1994.

9

1 “(A) to provide a diverse national network of
2 lands and waters designed to conserve and manage,
3 in perpetuity, native fish, wildlife, and plants of the
4 United States and their habitats;

5 “(B) to conserve, manage, and where appro-
6 priate restore fish and wildlife populations, plant
7 communities, and refuge habitats so as to provide in
8 perpetuity for the diversity of native fish, wildlife,
9 and plants and the ecological processes that sustain
10 them; and

11 “(C) to conserve and manage migratory birds,
12 anadromous or interjurisdictional fish species, ma-
13 rine mammals, and other fish, wildlife, and plants.

14 “(4) In addition, the purposes of numerous units
15 within the System are—

16 “(A) to preserve, restore, and recover fish, wild-
17 life, and plants that are listed as threatened or en-
18 dangered species or are candidates for listing under
19 section 4 of the Endangered Species Act of 1973 (16
20 U.S.C. 1533) and the ecosystems on which the spe-
21 cies depend;

22 “(B) to fulfill international treaty obligations of
23 the United States with respect to fish, wildlife, and
24 plants, and their habitats; and

8

1 important or substantial factor in the evaluation or re-
2 evaluation or could have changed the outcome of the eval-
3 uation or reevaluation.”; and

4 (6) by inserting before subsection (m) (as re-
5 designated by paragraph (2)) the following new sub-
6 section:

7 “(l) The term ‘System’ as used in this Act means the
8 National Wildlife Refuge System.”.

9 (b) CONFORMING AMENDMENT.—Section 4 (16
10 U.S.C. 668dd) is amended by striking “Secretary of the
11 Interior” each place it appears and inserting “Secretary”.

12 **SEC. ____04. MISSION AND PURPOSES OF THE SYSTEM.**

13 Section 4(a) (16 U.S.C. 668dd(a)) is amended—

14 (1) by redesignating paragraphs (2) and (3) as
15 paragraphs (6) and (7), respectively;

16 (2) in clause (i) of paragraph (7) (as so redesign-
17 ated), by striking “paragraph (2)” and inserting
18 “paragraph (6)”; and

19 (3) by inserting after paragraph (1) the follow-
20 ing new paragraphs:

21 “(2) The overall mission of the System is to conserve
22 and manage fish, wildlife, and plants of the United States
23 and their habitats for the benefit of present and future
24 generations.

25 “(3) The purposes of the System are—

1 “(C) to provide opportunities for compatible
2 fish- and wildlife-dependent recreation, including ac-
3 tivities such as hunting, fishing, wildlife observation,
4 and nature photography, and for compatible environ-
5 mental education.”.

6 SEC. ____05. ADMINISTRATION OF THE SYSTEM.

7 Section 4(a) (16 U.S.C. 668dd(a)) (as amended by
8 section ____04) is further amended by inserting after
9 paragraph (4) the following new paragraph:

10 “(5) In administering the System, the Secretary
11 shall—

12 “(A) ensure that the mission and purposes of
13 the System described in paragraphs (2) and (3) and
14 the purposes of each refuge are carried out, except
15 that if a conflict exists between the primary pur-
16 poses of a refuge and any purpose of the System,
17 the conflict shall be resolved in a manner that first
18 fulfills the primary purposes of the refuge, and, to
19 the extent practicable, also achieves the purposes of
20 the System;

21 “(B) protect each individual refuge and the
22 System from threats to the ecological integrity of the
23 refuge and the System;

24 “(C) assist in the maintenance of adequate
25 water quantity and water quality to fulfill the pur-

MAJOR REPORTS REGARDING THE NATIONAL WILDLIFE REFUGE SYSTEM
1994-1968

(along with selected quotes from the reports)

1. Fink, Richard J. 1994. *The National Wildlife Refuges: Theory, Practice, and Prospect*. Harvard Environmental Law Review Vol. 18(1), 135pp.

"Although the NWRS alone cannot protect the nation's wildlife, refuge lands, and waters, its managers can play a critical role in the future. **Recently proposed federal legislation, particularly Senate Bill 823 and House Resolution (sic) 833, would make important, constructive changes in the management of the NWRS.** Nevertheless, the proposed legislation is insufficient and can be improved." (p. 135)

2. National Wildlife Refuge System Management and Policy Act. 1993. Hearing before the Subcommittee on Clean Water, Fisheries and Wildlife of the Committee on Environment and Public Works on S. 823. U.S. Senate, Wash., D.C., June 9.
3. National Wildlife Refuge System Management and Policy Act. 1992. Hearing before the Subcommittee on Environmental Protection of the Committee on Environment and Public Works on S. 1862, U.S. Senate, Wash., D.C. June 19.
4. *Putting Wildlife First*. 1992. Report of the Commission on New Directions for the National Wildlife Refuge System. Commissioned by Defenders of Wildlife, Wash., D.C. 36 pp, (March).

"The [National Wildlife Refuge] System urgently needs reform. **We recommend swift congressional action on an organic act for the nation's federal refuges.** This act must set forth a clear, comprehensive, and far-sighted mission for refuges.... It must have congressional backing for a tighter process of screening proposed secondary refuge uses that threaten refuge functions. Congress must require and support much improved planning and a coherent, expanded research program on federal wildlife refuges.... There is a chance--a good chance, we believe--to make the refuge system serve the nation more effectively in preserving our biological heritage for the use and enjoyment of all...." (pp 24-25; emphasis added)

5. *Status of Efforts to Improve the Management of the National Wildlife Refuge System*. 1991. Hearing before the Subcommittee on Fisheries and Wildlife Conservation and the Environment of the Merchant Marine and Fisheries Committee. U.S. House of Representatives, Wash., D.C., March 21.

6. Mitchell, John G. 1991. *You Call This a Refuge?* in *Wildlife Conservation*. New York: Zool Soc, NY, Vol 94(2):70-93 (March/April).

"If you're like most Americans, you imagine our wildlife refuges as pristine, protected habitats, but this is hardly the case." (p 1)

7. U.S. Fish and Wildlife Service, Compatibility Task Group. 1990. *Report To The Director: A Review of Secondary Uses Occurring on National Wildlife Refuges*. FWS, (June); This report, although provided to the Director in June of 1990, was held by FWS and not published or made public until March of 1991.

"Incompatible and harmful uses are occurring on many national wildlife refuges...[and] managers reported 836 use occurrences as being harmful to refuge operations."(pp 10 and 211; emphasis added)

Survey results showed 63% of refuge units with one or more harmful use.(various tables throughout document)

"In nearly all cases where FWS does not hold fee title to the land, many activities occur that adversely affect the refuge..." (p 213; emphasis added)

"The legal purpose(s) of refuges are not clearly defined for every unit of the National Wildlife Refuge System. With the exception of refuges in Alaska, few refuge units have clearly articulated purposes, or refuge purposes are too narrowly defined." (p 214; emphasis added)

"Refuge management goals and objectives designed to carry out refuge purpose(s) are not consistently and adequately expressed for all units of the National Wildlife Refuge System. In addition to refuge purposes, each refuge should have approved goals and objectives. These specific goals and objectives should be established through a planning process. Such planning will help ensure better control of potential incompatible and/or harmful uses." (p 214; emphasis added)

"Adequate biological data is frequently lacking for making an accurate assessment of the specific and cumulative impacts of refuge uses for determining their compatibility with refuge purpose(s)." (p 215; emphasis added)

"FWS should seek legislation that would better define the purpose(s) of the units of the Refuge System." (p 214; emphasis added)

8. U.S. Department of the Interior. 1990. Office of Inspector General Audit Report: *Refuge Contaminants*, U.S. Fish and Wildlife Service. Report No. 90-74.

"The Service has not developed a program to effectively identify, resolve, and monitor refuges for contaminants...and cannot assess the...contamination, establish refuge baseline conditions from which to measure future changes, or ensure that present situations do not become future issues of concern."

"Although it is known that contaminants both on or near refuges have killed thousands of wildfowl, the Service presently lacks the programmatic capability to determine and address the extent of the problem."
9. *Review of the Management of the National Wildlife Refuge System*. 1989. Joint hearing before the Subcommittee on Environment, Energy, and Natural Resources of the Government Operations Committee, and the Subcommittee on Fisheries and Wildlife Conservation and the Environment of the Merchant Marine and Fisheries Committee. House of Representatives, Sept. 12
10. General Accounting Office. 1989. *National Wildlife Refuges: Continuing Problems With Incompatible Uses Call For Bold Action*. GAO/RCED-89-196; (Sept).

"National Wildlife Refuges are frequently not the pristine wildlife sanctuaries implied by their name.... Moreover, despite the requirement that only compatible secondary activities be permitted, refuge managers report that activities they consider harmful to wildlife resources (such as power boating and off-road vehicles) are occurring on nearly 60% of the wildlife refuges." (p 3)
11. *Ten Most Endangered National Wildlife Refuges*. 1988. The Wilderness Society, Wash., D.C., 25 pp., (October).

"Because so many refuges are seriously threatened, selecting the ten that are in the deepest trouble was not easy. Compounding the difficulty was the very limited amount of research carried out by the U.S. Fish and Wildlife Service, the Interior Department Agency that oversees the refuges" (p 1)

"To ease the threats facing the national wildlife refuges, we propose a five-point plan:
"1) Congress should pass an organic act that would spell out the goals and philosophy of the national wildlife refuge system...." (p 2)

12. *Survey: Compatibility Issues on the National Wildlife Refuge System*. 1988. The Wilderness Society, Wash., D.C. 14 pp., (May).

"In April 1987, The Wilderness Society asked 75 refuge managers to complete a questionnaire focused on the 'compatibility standard' on refuges. Compatibility is understood by the majority of respondents to mean that a proposed activity or use is compatible if it 'does not adversely affect the refuge fish, wildlife, or habitats' (64%)." (Transmittal letter to managers)
13. General Accounting Office. 1987. *Wildlife Management: National Refuge Contamination is Difficult to Confirm and Clean Up*. GAO/RCED-87-128; (July)
- 14 & 15. U.S. Fish and Wildlife Serv. Sept. 1985 & Apr. 1986. *Survey of Contaminant Issues of Concern on National Wildlife Refuges*. Div. Refuge Mgt.

"The list identifies 78 contaminant issues of concern on 85 refuges." (p 6)

"[P]otential impacts are often magnified by large wildlife concentrations or unique species that rely on a particular refuge." (p 9)
16. General Accounting Office. 1984. *Economic Uses of the National Wildlife Refuge System Unlikely To Increase Significantly*. GAO/RCED-84-108; (June 15).

"GAO found that the expansion levels estimated by the Department are unlikely to be fully realized for several reasons relating to demand for these activities, other refuge priorities, and the personnel resources available to implement an expansion policy." (cover: Exec. Summ.)

"GAO found that FWS has very little data on the nature and extent of ongoing oil and gas operations on wildlife refuges. As a result, FWS cannot assess their impacts or judge the likely effects of increased development." (p iii)
17. Special Issue, *The Wildlife Refuges*, 1983. in *Wilderness*, The Wilderness Society, Wash., D.C., Vol 47(162):2-35.

"Though overshadowed in the public mind by more conventional parklands, the National Wildlife Refuge System is rich with an unparalleled abundance of life--and embraces more land than the National Park System." (p 1)

"Shorn of a clear identity and possessed of no strong constituency, the refuge system is administered in a confusion of politics, power, and purpose." (p 1)

The Wilderness Society, 1983, continued:

"Many wildlife refuges are beset by a multitude of uses and outside pressures which threaten their fragile integrity." (p 1)

"Many of the problems now affecting the refuge system have reached the level of urgency; others have the potential for future degradation of the resource. And, of all the recommendations The Wilderness Society offers here, none is more important or inclusive than the call for passage of an 'organic' act designed specifically for the National Wildlife Refuge System, a single, comprehensive piece of legislation that, for the first time, would provide overall guidance for present and future management and use of refuge lands." (p 32)

18. U.S. Fish and Wildlife Service. 1983. *Fish and Wildlife Service Resource Problems: National Wildlife Refuges, National Fish Hatcheries, Research Centers*. FWS, USDI, (July).

19. Doherty, Jim. 1983. *Refuges on the Rockv*. in *Audubon*, National Audubon Society, Vol 85(4):74-116.

"The original reason for the refuges--to protect wildlife--seems secondary today. And now, as Doherty reports, 'the system is in the hands of a development-oriented administration that seems determined to wring out every last dollar it can.'" (p 4)

"The conspicuous uneasiness with which the refuge people in the field comport themselves these days--call it circumspection, call it fear--is disconcerting to say the least. People are afraid to say what they think--afraid, even, to simply *think* it. When honest dissent is so dramatically repressed, how can it be said that our government is working at all?" (p 6)

20. U.S. Fish and Wildlife Service. 1982. *Field Station Threats and Conflicts: National Wildlife Refuges, National Fish Hatcheries, Research Centers*. FWS, (August).

"[R]efuges averaged about twice as many threats per station as did fish hatcheries and research laboratories due primarily to their wider-ranging activities in wildlife resource protection and management. These threats will continue to degrade certain fish and wildlife resources until such time as mitigation measures are implemented. In some cases, this degradation or loss of resource is irreversible. It represents a sacrifice by a public that, for the most part, is unaware that such a price is being paid."(p 42)

21. General Accounting Office. 1981. *National Direction Required for Effective Management of America's Fish and Wildlife*. CED-81-107 (August 24).

"Effective management of the National Wildlife Refuge System has been limited because [Fish and Wildlife] Service has not provided needed guidance." (p ii)

"However, local pressures to use refuge lands for such benefits as grazing, timber harvesting, and public recreation prevent refuge managers from effectively managing refuges primarily for wildlife." (p 28)

"54 percent of the refuges are not being adequately operated and maintained ...[& there is a backlog]...in new development & rehabilitation projects." (p 33)
22. National Wildlife Refuge Study Task Force. 1979. *Final Recommendations On The Management of the National Wildlife Refuge System*. U.S. Fish and Wildlife Service, Department of the Interior, GPO, DC, April.

"Grazing, timber harvesting and agricultural practices on refuges may be abusive and should be used only when necessary for proper management of wildlife resources, keeping in mind the desirability of maintaining natural ecosystems." (p 9)

"Refuges are for wildlife and utilization by people should at no time be detrimental to wildlife resources." (p 11)

"Increased [manpower and money] must be made available to the refuge system so that public use can be planned for and accommodated to the fullest extent consistent with the [purposes] of each refuge and the Refuge Recreation Act of 1962...." (p 12)

"Pressures to develop or degrade refuges for economic gain are growing exponentially. As costs rise or availability of natural resources declines, developers cast increasingly longing eyes on resources in refuges. Energy is probably the most notable case in point...a clamor has grown to hasten development of energy.... In some cases this has been translated as a mandate for development regardless of ensuing environmental consequences. This philosophy and approach should not be applied to the refuge system." (p 59)

23. Defenders of Wildlife. 1977. *A Report on the National Wildlife Refuge System*. Wash., D.C., 83 pp.

Survey of conditions on refuges; "...describes a system of decaying buildings, crumbling dikes, antiquated equipment, and discouraged civil servants." (p 1)

24. National Wildlife Refuge System Advisory Board on Wildlife Management. 1968. *Report on The National Wildlife Refuge System*. Report to Secretary Stewart L. Udall; A. Starker Leopold, Chairman.

"[W]hat is still lacking is a clear statement of policy or philosophy as to what the National Wildlife Refuge System should be and what are the logical tenets of its future development." (p 3)

"We concur with the policy statement of the Fish and Wildlife Service that recreation on the refuges should in all cases be secondary to the primary purpose of management for wildlife enhancement, and under no circumstances should general recreation be permitted to interfere with this primary dedication." (p 20)

"Unfortunately, the proximity of urban masses leads inevitably to pressure for larger picnic grounds, camping facilities, improved swimming beaches, motorboat marinas, water skiing, bridle paths, target ranges, and other assorted forms of play which are only obliquely related to refuge purposes." (p 21)

"However carefully refuge sites may be selected, the lands are forever subject to invasion by government agencies with higher rights of eminent domain, such as military services, Atomic Energy Commission, Corps of Engineers, Bureau of Reclamation, and Bureau of Public Roads. After a refuge is acquired and developed, it often has to be defended." (p 25)



THE WILDERNESS SOCIETY

**STATEMENT OF JAMES R. WALTMAN
DIRECTOR, REFUGES AND WILDLIFE PROGRAM
THE WILDERNESS SOCIETY
BEFORE THE FISHERIES, WILDLIFE AND OCEANS SUBCOMMITTEE
REGARDING THE NATIONAL WILDLIFE REFUGE SYSTEM and H.R. 1675
MAY 25, 1995**

The Wilderness Society appreciates this opportunity to testify on an issue of such importance to the nation's fish and wildlife. The Wilderness Society, founded in 1935, is a non-profit membership organization devoted to preserving wilderness and wildlife, protecting America's prime forests, parks, rivers, deserts, and shorelands. The Society, with more than 270,000 members, has a long-standing commitment to the sound management and well-being of the National Wildlife Refuge System.

The Wilderness Society and a broad coalition of conservation organizations strongly supported legislation during the last sessions of Congress that would have improved the administration of the Refuge System. That legislation, sponsored by Senator Bob Graham and Congressman Sam Gibbons, would have supplemented the National Wildlife Refuge System Administration Act -- legislation championed nearly thirty years ago by Congressman John Dingell that put into law the principle that secondary uses of refuges must be compatible with the needs of wildlife.

While we were unable to reach final passage of "organic" legislation for the Refuge System last year, with the leadership of Senator Graham, Senator Baucus, and Senator Chafee, we were able to reach agreement with a broad spectrum of interests on the principles that should be at the center of refuge legislation. In fact, the final version of S. 823 pending on the floor of the Senate as the session wound to a close was supported by the International Association of Fish and Wildlife Agencies, the Wildlife Management Institute, the National Rifle Association, and the Wildlife Legislative Fund of America -- organizations that will all be testifying this morning. Unfortunately, the legislation before the Subcommittee (H.R. 1675) upsets many of the carefully crafted agreements that were reached a year ago.

We continue to believe that comprehensive legislation is necessary to enable the U.S. Fish and Wildlife Service to get beyond its nagging problems with harmful and incompatible uses in the Refuge System and allow the system to meet its great potential to conserve fish and wildlife. However, we can not support the legislation pending before the Subcommittee. On balance, we believe that the bill, as introduced, would undermine the integrity of the Refuge System. While we have not had time to fully

review H.R. 1675, from our initial review, we have a number of serious concerns with many of the provisions of the legislation. For example, the bill would:

- + codify in law a standard for reviewing compatibility of refuge uses that has proven unworkable;
- + inappropriately elevate recreation to a coequal purpose of the Refuge System along side conservation of fish and wildlife;
- + upset a delicate balance between the responsibility of the Fish and Wildlife Service to manage the Refuge System and the authority of states;
- + eliminate the discretion of the Secretary of Interior in allowing certain forms of recreation;
- + establish damaging exemptions from the compatibility procedures of existing law for certain categories of activities;
- + undermine the requirement in existing law that national wildlife refuges be managed by the U.S. Fish and Wildlife Service.

This testimony describes the basic components that we believe need to be in any comprehensive legislation for the Refuge System and describes some of our concerns with H.R. 1675.

Much of the recent debate surrounding the Refuge System has been fueled by a lawsuit that The Wilderness Society and other organizations brought several years ago to improve the administration of the Refuge System (National Audubon Society et al. v. Babbitt). Because misunderstandings and mischaracterizations of the lawsuit are rampant, we have attached an explanation of the litigation to the testimony.

THE NATIONAL WILDLIFE REFUGE SYSTEM

The National Wildlife Refuge System is the only network of federal public lands that have been established specifically to conserve fish and wildlife. The System covers more than 91 million acres and includes units in all 50 states and several U.S. territories. Extending from arctic Alaska to the subtropical Florida Keys, from coastal Maine to the far Pacific Islands, the Refuge System is the most comprehensive network of protected fish and wildlife habitats anywhere in the world. The Refuge System has a long and successful tradition of conserving and managing wetlands and contributes significantly to the conservation of America's native forests, prairies, tundra, desert, seashores, and marine communities.

Management of the National Wildlife Refuge System represents an important part of the federal government's share in the effort to protect and recover endangered and threatened species. Fifty-eight refuges have been established specifically to protect threatened and endangered species. Another 302 refuges provide listed species with habitat at some point during their life cycles. More than 170 threatened or endangered animals and at least 40 listed plants occur on national wildlife refuges and more than 350 candidate species have been recorded on refuges. More than 50 refuges provide designated critical habitat covering more than 430,000 acres and seventeen refuges are

involved in listed species propagation and release programs. As a testament to the success of refuge management, fifty-five percent of the endangered and threatened species that occur on national wildlife refuges are stable or improving. This is nearly twice the success rate of species that are not found on national wildlife refuges.

The Refuge System also provides exceptional opportunities for people to engage in forms of recreation that are dependent on the presence of fish and wildlife, including fishing, hunting, wildlife observation, and nature photography. For example, at least one form of hunting is currently allowed on 274 of the nation's 504 refuges and fishing occurs on 254 units. More than 37 million Americans visit national wildlife refuges each year for wildlife observation and interpretation. Such "wildlife dependent" recreation provides experiences through which the American public can develop an appreciation for fish and wildlife. Under the terms of the 1966 Refuge Administration Act, these activities may be permitted when they are adequately reviewed and managed to ensure that they are compatible with the purposes of the refuge -- a standard that has worked well and should be continued.

The Wilderness Society and other conservation organizations supported comprehensive legislation for the Refuge System during the last session of Congress because we believed that the Refuge System has the potential to accomplish significantly more on these fronts.

ESSENTIAL COMPONENTS OF REFUGE LEGISLATION

The National Wildlife Refuge System Administration Act (16 U.S.C. 668dd-668jj) formally established the Refuge System by assembling the various lands and waters under the control of the U.S. Fish and Wildlife Service into a single system and authorized the Secretary of Interior to "permit the use of any area within the System for any purpose, including but not limited to hunting, fishing, public recreation and accommodations, whenever he determines that such uses are compatible with the major purposes for which such areas were established." During the last session of Congress, our organizations supported legislation that would have supplemented that act by:

- + establishing a set of conservation purposes for the Refuge System;
- + strengthening the process for determining the compatibility of refuge uses;
- + requiring preparation of comprehensive plans for individual refuges and the Refuge System;
- + providing a mechanism to resolve conflicts between activities of other federal agencies and the needs of refuge wildlife; and
- + providing the Secretary of the Interior with affirmative duties to protect and provide for the Refuge System.

Below we address each of these essential components of comprehensive refuge legislation and comment on the ways in which H.R. 1615 would undermine them and the integrity of the Refuge System.

Conservation Purposes for the National Wildlife Refuge System

At least in theory, each national wildlife refuge in the System was established with a particular purpose or set of purposes. These purposes are articulated in Executive Orders or public land orders which have withdrawn much of the Refuge System from the public domain; acts of Congress which have formally authorized and described a number of refuges; language in statutes that have authorized purchase, lease, or easement of refuge lands, such as the Migratory Bird Conservation Act, Endangered Species Act, Fish and Wildlife Act, and North American Wetlands Conservation Act; and language contained in donation documents, cooperative agreements, and other documents.

For example, approximately 48 percent of the refuges contain lands acquired under the authority of the Migratory Bird Conservation Act to "conserve and protect migratory birds in accordance with treaty obligations . . . and [to conserve] other species of wildlife found thereon, including species that are listed pursuant to [the Endangered Species Act], and to restore or develop adequate wildlife habitat" (19 U.S.C. 715(i)).

The problem has been that there is no overarching statement of purpose for the National Wildlife Refuge System. In addition, even the individual refuge purposes are occasionally unclear. Twenty-six years ago, the esteemed Leopold committee on wildlife management identified this problem when it reported that the Refuge System lacked a "clear statement of policy or philosophy as to what the System should be and what are the logical tenets of its future development¹." The Commission recognized that without such an underlying philosophy, the refuge system would be unable to resist pressures "for larger picnic grounds, camping facilities, bridle paths, target ranges, and other assorted forms of play which are only obliquely related to refuge purposes."

The challenge before the Congress is to establish a set of purposes for the National Wildlife Refuge System that incorporates the relevant material from the various authorities underpinning the refuge system, is consistent with the system's history, and ensures that the System will address the most important conservation challenges facing the nation in the years to come.

That was accomplished last year with S. 823 as amended and approved by the Senate Environment and Public Works Committee (S. Rpt. 103-324) and agreed to by the organizations mentioned earlier in this testimony. In keeping with the history of the Refuge System, the purposes laid out for the System included:

"A) to provide a diverse national network of lands and waters designed to conserve and manage, in perpetuity, native fish, wildlife, and plants of the United States and their habitats;

¹ Leopold, A.S., C. Cottam, I.M. Gabrielson, and T.L. Kimball. 1969. A study of the national wildlife refuge system: The report of the advisory committee on wildlife management, appointed by Interior Secretary Stewart L. Udall. Trans. N. Am. Wildl. and Nat. Resour. Conf. 33:30-53.

B) to conserve, manage, and where appropriate restore fish and wildlife populations and plant communities, and refuge habitats so as to provide in perpetuity for the diversity of native fish, wildlife, and plants and the ecological processes that sustain them; and

C) to conserve and manage migratory birds, anadromous or interjurisdictional fish species, marine mammals, and other fish, wildlife, and plants."

In addition, the bill recognized that many refuges have been established for specific purposes, such as the conservation of a particular endangered species or migratory birds. It also recognized that the purposes of some refuges include providing opportunities for compatible fish and wildlife-dependent recreation. The bill made clear that these purposes were to be reaffirmed and not replaced by the new Refuge System purposes. Rather the new System purposes would supplement these traditional purposes with a clear directive to conserve the broad spectrum of fish and wildlife.

Ensuring Compatibility of Refuge Uses

Unfortunately, as the members of the former Merchant Marine and Fisheries Committee know all too well, many of our nation's refuges have been subjected to activities that have undermined the purposes for which the areas were established. Over the past quarter century there has been a nearly steady stream of reports by Secretarial blue-ribbon committees, the General Accounting Office, and outside interest groups about these problems. For example, in 1991, the Fish and Wildlife Service reported that nearly two thirds of the nation's refuges were subjected to at least one activity that undermined their mission--from water skiing through wading bird rookeries to overgrazing that destroyed waterfowl nesting habitat². (Attached to this statement is a summary of but a few examples of the findings of reports issued on the plight of the Refuge System over the years.)

During these years, there have been at least three "major thrusts" by the U.S. Fish and Wildlife Service to respond to the findings of these reports and correct the problems. We are currently in the "corrective measures are underway" stage of the cycle due to the Service's response to a lawsuit filed by The Wilderness Society and several other organizations in October 1992 (*National Audubon Society et al. v. Babbitt*) and the subsequent settlement of that litigation.

But the endless pattern of broken ... fixed ... broken ... fixed will never end unless two underlying problems are resolved: the lack of a clear standard for determining the compatibility of refuge activities and the lack of a sound process for reviewing these activities that provides the public an opportunity to review and comment on the agency's determinations.

² *Report to the Director: A Review of Secondary Uses Occurring on National Wildlife Refuges*. U.S. Fish and Wildlife Service. June, 1991.

During the research for our lawsuit, I personally interviewed more than 50 refuge managers and dozens of local conservationists. Time and time again I heard the same story. The managers did not understand how to interpret the vague administrative definition of compatibility put into effect during the mid-1980s; there was no guidance on what information compatibility determinations were to be based on; and there was no clear process for making the determinations. This problem is further illustrated by reviewing the Fish and Wildlife Service's 1991 report. Refuge Managers deemed nearly 200 activities *within the Service's authority to control* as "harmful" to achieving refuge objectives³, but because of the weak and confusing definition of a compatible use, they failed to find these activities "incompatible." (In addition, 132 other uses were considered "incompatible.")

S. 823, as passed by the Senate Environment and Public Works Committee, corrected these weaknesses by providing a clear definition of a compatible use--a use that "will not have a detrimental effect on the fulfillment of the primary purposes of the refuge or the purposes of the System"; requiring that determinations were to be based on the "best available scientific information;" and providing a sound process for making the determinations that included an opportunity for the public to review and comment.

Sound Planning for the Future of the National Wildlife Refuge System

Sound planning is an important process for any successful entity, whether it be a large corporation, a small town, or a national wildlife refuge. To properly manage the national wildlife refuges, the Fish and Wildlife Service should be directed to conduct thorough planning for these important public resources. Preparation of comprehensive plans for the National Wildlife Refuge System are essential to ensure integrated management and planned expansion of the system. Integrated management among refuges is particularly important in light of the Refuge System's function as a "chain of refuges" in conserving migratory birds. Fundamentally, it will be nearly impossible to manage the Refuge System as a *system* until it is planned as a system. While the Fish and Wildlife Service embarked on such a planning process in 1986, and released a draft of its plan "Refuges 2003" in winter of 1993, there is currently no prospects for release of a final version of the plan.

Affirmative Stewardship Responsibilities for the Secretary of Interior

Another fundamentally flaw in current Refuge System law is the absence of explicit mandates for the Secretary of the Interior to protect and provide for the National Wildlife Refuge System. The Refuge System has been a step-child within the federal government because it lacks such mandated affirmative duties. S. 823 would have corrected this shortcoming by providing a number of duties for the Secretary.

³ Defined to mean that "the net result of the activity is that it adversely affects the ability of the refuge managers to conserve or manage in accordance with the refuge goals and objectives"

S. 823 would have required the Secretary of Interior to ensure that the mission and purposes of the refuges and the Refuge System are carried out; protect the refuges and the Refuge System from threats to their ecological integrity; assist in the maintenance of adequate water supplies for refuges; and provide for the expansion of the Refuge System in a manner best designed to accomplish the purposes of the refuges and the Refuge System.

Resolving Conflicts between Refuges and the Actions of Other Federal Agencies

Threats to national wildlife refuges do not only come from public uses within their borders. They also result from the activities of other federal agencies in and around refuges. Current law requires that uses by other federal agencies on refuge lands over which the Service has primary jurisdiction be compatible with the purposes of the refuges. The law is less clear, however, regarding protection of refuges from activities of other federal agencies on lands where the Service has secondary jurisdiction or where the activities occur off the refuge. As introduced in the 103rd Congress, S. 823 addressed this problem by requiring other federal agencies to consult with the Fish and Wildlife Service and ensure that their activities do not impair the resources of national wildlife refuges. That provision was amended by the Environment and Public Works Committee to simply require other federal agencies to minimize and mitigate the adverse affects on the resources of a refuge that result from their activities. (Of course, the compatibility requirement would continue to apply to activities of other agencies on refuges that are currently subject to Fish and Wildlife Service jurisdiction and are therefore currently governed by that standard.)

MAJOR PROBLEMS WITH H.R. 1675

Unfortunately, H.R. 1675 contains a number of provisions that break the carefully crafted agreements embodied in S. 823 and that would, in fact, undermine the National Wildlife Refuge System. Some of our biggest concerns include:

H.R. 1675 Undermines Protection of Refuges

1) H.R. 1675 weakens the compatibility process by 1) codifying a definition of compatibility that has proven overly vague and unworkable; 2) limiting public review of compatibility decisions; 3) lowering the scientific standard for compatibility decisions; and 4) making it more difficult for the Fish and Wildlife Service to modify or phase out harmful activities that have occurred on newly acquired refuge properties.

H.R. 1675 would define a compatible use as one that "will not have a materially detrimental effect" on the fulfillment of refuge purposes. As discussed earlier in this testimony, this standard has led to the continuation of activities harmful to achieving refuge purposes.

In addition, H.R. 1675 provides for only limited public review and comment on periodic reviews of compatibility determinations that occur outside the 15-year planning cycle. Public participation in decision making is good public policy and should be

encouraged. I would assume that, were the Fish and Wildlife Service to find a particular refuge hunting program "incompatible" during one of its reviews, several of the groups testifying today would like an opportunity to review and comment on such a decision.

Furthermore, the bill replaces S. 823's requirement that decisions be based on the "best available scientific information" with a weaker standard of basing the decisions on "reliable scientific information." This change strikes us as particularly surprising considering the heightened sensibility expressed by the current Congress to the quality of science underpinning resource management decisions.

The bill would also reverse the burden of proof for review of the compatibility of all activities that exist on lands upon the date of incorporation into the system. While there may be an appropriate mechanism to expedite the review of wildlife-dependent recreation that has existed prior to acquisition of refuge lands or allow such activities to continue for a few years pending the development of the first refuge plan, we do not believe that the Fish and Wildlife Service should be forced to prove that activities are incompatible before modifying or phasing them out to protect the resources of newly acquired refuge properties.

2) H.R. 1675 inappropriately places wildlife dependent recreation as a "co-equal" purpose of the National Wildlife Refuge System alongside fish and wildlife conservation.

We oppose this provision because the underlying purpose of the National Wildlife Refuge System has been and should continue to be fish and wildlife conservation. We believe that it may be appropriate to direct the Secretary of Interior to provide opportunities for such uses within the System. Acknowledging the appropriateness of these activities under certain circumstances will ensure that such uses can not be challenged per se as violating Refuge System purposes.

Establishing wildlife-dependent recreation as a purpose of the Refuge System sets up a confusing situation in which the Service will be put in the untenable position of attempting to determine whether a use is compatible with purposes that include allowing the use. The circularity of this theoretical dilemma is extremely problematic.

3) H.R. 1675 would make destruction of refuge resources by other agencies easier

H.R. 1675 contains no provision to protect the Refuge System from harm caused from the activities of other federal agencies. In fact, the bill contains several provisions that weaken existing protection for national wildlife refuges.

Congressman Dingell's Refuge Administration Act allows the Secretary of Interior to permit easements and rights of way for various uses when he determines that such uses are compatible with the purposes for which the refuges were established. Any roads, navigation aids, communication aids and other structures built over the last thirty years therefore were done so under the compatibility requirement of Dingell's 1966 Act. H.R. 1675 repeals this requirement by granting exemptions from compatibility for highway rights of way, navigation aids, and other structures in place on the date of enactment of this bill.

H.R. 1675 inappropriately exempts highway rights of way from compatibility. This provision should be modified to limit its application to formal public roads passing through refuges that are currently and regularly used for motorized vehicular traffic. In addition, the language should be modified to ensure that compatibility will continue to apply to the expansion of such right of ways and the expansion of the uses to which they are subject.

In addition the bill inappropriately exempts from compatibility any activities on so-called "overlay refuges" that are authorized, funded, or conducted by an agency with primary jurisdiction over the area. This provision should be modified to exempt only those activities that are directly related to the primary mission of the agency with primary jurisdiction. For example, while it may be appropriate to exempt from compatibility the water management activities of the Corps of Engineers affecting a national wildlife refuge over which the Corps holds primary jurisdiction, the Corps should not be initiating activities that are unrelated to its primary mission unless such activities are compatible with the purposes of the refuge and the Refuge System.

The bill also defines the term "refuge" in a manner that excludes "navigational servitudes" a term that we are still reviewing. We are concerned that this provision could have the inappropriate result of exempting from compatibility certain activities that are currently subject to such reviews.

4) H.R. 1675 does not include an important provision of S. 823 that would have required the Secretary of the Interior to protect each refuge in the system and the Refuge System from threats to their ecological integrity. The new bill also inappropriately attempts to limit the acquisition of water rights for the Refuge System to what is provided under State water laws.

H.R. 1675 Undermines Appropriate Science-based management of hunting and fishing

1) H.R. 1675 would elevate hunting and fishing to purposes of the National Wildlife Refuge System. Again, we believe that it may be appropriate to direct the Secretary of Interior to provide opportunities for such uses within the System, but these activities should not be made co-equal purposes of the Refuge System along side wildlife conservation.

Clearly hunting has a long and important association with the National Wildlife Refuge System. Hunters have contributed greatly to the Refuge System as purchase of Duck Stamps has resulted in the acquisition of an estimated 1.7 million acres of the 92 million acre system or just under a third of the lands that have come into the system through acquisition. While the purposes of some refuges include providing opportunities for compatible fish and wildlife-dependent recreation, including hunting and fishing, such situations are not the rule.

For the first 20 years of its history, in fact, hunting was a rare exception in the National Wildlife Refuge System. In fact, most refuges were established to provide sanctuary from hunting, with the knowledge that by providing such areas, hunting

opportunities would be enhanced elsewhere⁴. The Migratory Bird Conservation Act of 1929 provided for the acquisition of areas for the purpose of providing inviolate sanctuaries for migratory birds.

By 1949 seven refuges permitted migratory bird hunting under the authority of the 1906 Reservation Trespass Act. That year, Congress amended the Migratory Bird Conservation Act to allow hunting on up to 25 percent of an area acquired under the authority of that Act. This percentage was raised to 40 percent in 1958. In 1962, Congress passed the Refuge Recreation Act which reaffirmed that hunting and other forms of recreation could be appropriate uses of national wildlife refuges when they were managed so as to not "interfere with the primary purposes for which the areas were established." The National Wildlife Refuge System Administration Act authorized the Secretary of Interior to "permit the use of any area within the System for any purpose, including but not limited to hunting, fishing, public recreation and accommodations, whenever he determines that such uses are compatible with the major purposes for which such areas were established."

Establishing hunting and fishing and other wildlife-dependent forms of recreation as a co-equal purpose of the National Wildlife Refuge System would not be consistent with the system's long history.

2) H.R. 1675 inappropriately and unnecessarily insulates individual hunting and fishing programs from thorough review for compatibility and limits the discretion of the Fish and Wildlife Service to determine whether hunting is in the public interest on a particular refuge. These provisions of H.R. 1675 appear to have been prompted by a fear that somehow the Fish and Wildlife Service was conspiring with anti-hunting groups to ban hunting in the Refuge System. While perpetuating these concerns may make for successful fundraising, they are not grounded in the truth.

The agency's review of refuge uses prompted by the settlement of our lawsuit has resulted in modification or termination of several dozen harmful non-wildlife oriented recreational and economic activities. In contrast, the Fish and Wildlife Service has consistently determined that almost all of the refuge hunting and fishing programs are being conducted in a manner that ensures that they are compatible with the purposes for which the refuges were established. On a very small number of refuges, the Fish and Wildlife Service has proposed modifications of hunting and fishing programs to make them compatible with the refuges' wildlife conservation purposes.

No activities are per se compatible or incompatible. Determinations of compatibility involve the careful evaluation of the timing, duration, location, manner, and level of a use.

⁴ Nathaniel P. Reed and Dennis Drabell, 1984, *The United States Fish and Wildlife Service*, page 45.

H.R. 1675 Undermines Refuge Managers Authority to Make Management Decisions

1) H.R. 1675 calls for preparation of plans for individual refuges or complexes of refuges but inappropriately requires that the plans be "consistent" with plans prepared by state fish and wildlife agencies. While planning can be improved with close coordination between the Fish and Wildlife Service and state agencies, this provision would seem to give these state agencies an undo amount of control in the management of national wildlife refuges.

2) H.R. 1675 inappropriately and unnecessarily upsets a careful balancing of the responsibility of the Fish and Wildlife Service to manage the Refuge System and the authority of states generally to manage resident wildlife populations within their borders by asserting "primary" authority of the States to manage refuge wildlife. Congressman Dingell's Refuge Administration Act already made clear that nothing in that act "shall be construed as affecting the authority, jurisdiction, or responsibility of the several States to manage, control, or regulate fish and resident wildlife under State law or regulations in any area within the System." This precise language was incorporated into the Multiple Use Sustained Yield Act (16 U.S.C. 528-531) as well as the Federal Land Policy and Management Act (16 U.S.C. 1701-1784). There is no reason to upset the delicate balance established in prior laws with the new language of H.R. 1675.

3) H.R. 1675 also inappropriately authorizes the transfer of management authority for national wildlife refuges to the States. This provision would appear to reverse the requirements of the 1976 "Game Range Act" amendments to the Refuge Administration Act, another act sponsored by Congressman Dingell, that the National Wildlife Refuge System be managed by the U.S. Fish and Wildlife Refuge.

CONCLUSION

The Wilderness Society and other conservation organizations strongly supported legislation during the last session of Congress to supplement the National Wildlife Refuge System Administration Act. While we continue to believe that such legislation is ultimately necessary to ensure that the Refuge System meets its great potential to conserve the nation's fish and wildlife, we have a number of serious concerns with H.R. 1675. We look forward to working with you and your staff on efforts to ensure the sound management and well-being of the National Wildlife Refuge System.

A MAGNIFICENT SYSTEM IMPERILED

Over the last quarter century, over a dozen major reports have identified problems in the National Wildlife Refuge System. For example,

In 1968 . . . The "National Wildlife Refuge System Advisory Board on Wildlife Management", appointed by Secretary of Interior Stewart L. Udall wrote:

"The proximity of urban masses leads inevitably to pressure for larger picnic grounds, camping facilities, improved swimming beaches, motorboat marinas, water skiing, bridle paths, target ranges, and other assorted forms of play which are only obliquely related to refuge purposes." (from *Report on the National Wildlife Refuge System*)

In 1979 . . . The "National Wildlife Refuge Study Task Force" appointed by Assistant Secretary of Interior Robert Herbst wrote:

"Local pressures to use refuge lands for such benefits as grazing, timber harvesting, and public recreation prevent refuge managers from effectively managing refuges primarily for wildlife. . . Pressures to develop or degrade refuges for economic gain are growing exponentially" (from *Recommendations on the Management of the National Wildlife Refuge System*.)

In 1981 . . . The General Accounting Office wrote:

"The Service is properly operating and maintaining only about 46 percent of the nation's refuges. . . Local pressures to use refuge lands for such benefits as grazing, timber harvesting, and public recreation prevent refuge managers from effectively managing refuges primarily for wildlife." (from *National Direction Required for Effective Management of America's Fish and Wildlife*.)

In 1983 . . . The U.S. Fish and Wildlife Service wrote:

"Threats associated with pollutants, land uses, public uses, exotic species, individual development projects, etc. . . are currently causing or have the potential to cause significant damage to Service-managed natural resources. . . An average of 18.6 resource problems were reported per refuge." (from *Fish and Wildlife Service Resource Problems, National Wildlife Refuges, National Fish Hatcheries, Research Centers*)

In 1989 . . . General Accounting Office wrote:

"National Wildlife Refuges are frequently not the pristine wildlife sanctuaries implied by their name. . . Despite the requirements that only compatible secondary activities be permitted, refuge managers report that activities they consider harmful to wildlife resources (such as power boating and gas drilling, mining, jet-skiing, over-grazing, and off-road vehicles) are occurring on nearly 60 percent of the wildlife refuges." (from *National Wildlife Refuges: Continuing Problems with Incompatible Uses Call for Bold Action*.)

In 1991 . . . The U.S. Fish and Wildlife Service wrote:

"Incompatible and harmful uses are occurring on many national wildlife refuges. . . Refuge managers reported 836 use occurrences as being harmful to refuge operations. . . The survey results indicated that 63% of refuge units reported [at least one] harmful use." (from *Report of Secondary Uses Occurring on National Wildlife Refuges*)

In 1993 . . . The Interior Department's Inspector General wrote:

"We concluded that at all of the refuges we visited, the U.S. Fish and Wildlife Service had not maintained the refuges in a manner that would effectively enhance and protect the wildlife." (from *Maintenance of Wildlife Refuges, U.S. Fish and Wildlife Service*)

The National Wildlife Refuge System needs your help!!!



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STATEMENT FOR THE RECORD
CONCERNING THE MANAGEMENT OF THE
NATIONAL WILDLIFE REFUGE SYSTEM
BEFORE THE
SUBCOMMITTEE ON FISHERIES, WILDLIFE, AND OCEANS
OF THE RESOURCES COMMITTEE
UNITED STATES HOUSE OF REPRESENTATIVES

SUBMITTED BY DR. JOHN W. GRANDY
ON BEHALF OF
THE HUMANE SOCIETY OF THE UNITED STATES
AND
WILDLIFE REFUGE REFORM COALITION

MAY 25, 1995

The Humane Society of the United States
2100 L Street, NW, Washington, DC 20037
(202) 452-1100 FAX (202) 778-6132

STATEMENT OF DR. JOHN W. GRANDY

Submitted to the Subcommittee on Fisheries, Wildlife, and Oceans
of the House of Representatives Committee on Resources

May 25, 1995

The Humane Society of the U.S. (HSUS) and the Wildlife Refuge Reform Coalition appreciate this opportunity to submit testimony on an issue of tremendous importance to our 3 million members and constituents: the management of the National Wildlife Refuge System. The HSUS is the nation's largest animal protection organization, with regional offices throughout the U.S. The Wildlife Refuge Reform Coalition is an organization comprised of over one hundred environmental and animal protection groups nationwide. The principal goal of the Coalition is to restore integrity to the management of the National Wildlife Refuge System.

Both the use of wildlife and the public interest in wildlife have undergone significant changes in our society in the past few decades. However, U.S. wildlife policy does not adequately reflect today's growing understanding of the values of wildlife and wild places. This imbalance is nowhere better demonstrated than in the current efforts to change the purposes of the National Wildlife Refuge System.

As the only federal lands established specifically for the protection of wildlife, the 500+ refuges of the System provide vital habitat for hundreds of species of birds, mammals and various endangered and threatened species. Unfortunately, however, the 1989 report by the General Accounting Office entitled National Wildlife Refuges: Continuing Problems with Incompatible Uses Call for Bold Action hinted at the extent to which National Wildlife Refuges are held hostage by incompatible activities and conflicting purposes. Refuge managers reported that more than 60% of the refuges are host to incompatible activities that "disturb wildlife habitat, disrupt breeding activities, or modify established animal behavior patterns." A later study by the U.S. Fish and Wildlife Service found that activities harmful to fish and wildlife and their habitat occur on nearly 63% of all national wildlife refuges. Secondary uses range from oil and gas drilling, farming, pesticide use, power boating and water skiing, off-road vehicle (ORV) use, and recreational and commercial killing of wildlife. These uses divert refuge management attention and resources from achieving wildlife protection and enhancement activities and directly or indirectly destroy the integrity of these areas as true Refuges for wildlife. As long as these activities are allowed on

Refuges, the importance and significance of these lands diminishes exponentially.

H.R. 1675, the National Wildlife Refuge Improvement Act of 1995, is not an improvement at all. In fact this bill, if passed, would only further entrench these harmful and incompatible secondary uses so that the public would no longer be able to enjoy the experience of visiting a wildlife refuge. It completely ignores public opinion and instead bows to the pressure of a small but vocal minority. Clearly the main function of this legislation is to increase the opportunities for hunting and fishing on the National Wildlife Refuge System. Yet over half of our refuges currently allow hunting and hunters represent less than 3% of the 40 million other wildlife-oriented visitors to refuges. In addition, wildlife refuges comprise only 5% of all huntable land in the United States. If hunting on refuges were banned tomorrow, hunters would still have more than one and a half billion acres on which to hunt--- 200 million acres of state land, 600 million acres of federal land, and more than one billion acres of private land. On the other hand, there are fewer and fewer places, in the face of continuing development and habitat destruction, to observe wildlife in its natural state.

Every year more than half a million ducks, geese, muskrats, beavers and other animals are killed on refuges and tens of thousands more are wounded and crippled. Yet The HSUS and the Wildlife Refuge Reform Coalition have received signatures from over 10,000 people stating that no hunting should occur on the National Wildlife Refuge System. H.R. 1675 completely flies in the face of public opinion and if passed, would change the National Wildlife Refuge System into a Wildlife Management and Recreation System. It takes our country's wildlife away from the public. Congress has recently shown a great deal of concern about the public's use and enjoyment of property, both public and private. If this concern is genuine, then H.R. 1675 constitutes a taking of the public's land. Hunters and fishermen, who stand to gain the most from this legislation, take the public's fish and wildlife. Loggers and miners take the public's trees and minerals. Federal public lands such as the National Wildlife Refuge System are meant to be enjoyed by all. As lands belonging to the people of this nation, refuges should be managed in accordance with the views of the majority of Americans. They are the public's resources.

Sport hunting is anti-ecological. In a natural environment, species remain strong because weak and sick animals are killed off by disease, predators and competition for limited food. Given a choice, however, hunters target vital, healthy animals and leave the sick ones to weaken a species' gene pool. Moreover, massive recreational killing of wild animals and the so-called "management" of animal populations by killing predator

species wreak havoc with the natural balance of the entire refuge habitat.

The management of North American black ducks is perhaps the best, or worst, example of the Refuge System gone awry. The black duck population, which is largely restricted to New England and eastern Canada, has declined by more than 60% since the late 1950's, and has been nearly stable at this depressed level since the early 1980's. Not only has nothing been done to restore this unique North American species, but black duck hunting is actually permitted on national wildlife refuges in New England.

In the past, Congress has attempted to limit harmful Refuge activities. In 1962, Congress passed the Refuge Recreation Act and in 1966, Congress passed the Refuge Administration Act. Yet harmful and incompatible activities on refuges have not only continued but increased. The definition of compatibility, which has been so lax as to allow these activities, is made even less stringent by the legislation currently being considered. No compatibility determinations would be required for the first three years after this legislation is enacted. The process for determining compatibility would not need to be based on the best available science. And the opportunity for public comments would be significantly decreased. Activities should only be allowed when there is available scientific evidence that the use will not detract from the purpose of wildlife protection and the purposes for the individual refuges, and when the management of that use will not divert funds or personnel away from refuge management programs for the fulfillment of those purposes.

The U.S. Fish and Wildlife Service faces political pressures and lacks the funding to properly manage secondary uses. Legislation is clearly needed to combat these issues. H.R. 1675 does exactly the opposite. It creates a presumption in favor of continuing harmful uses and requires no evaluation of these uses for 15 years. Furthermore, it dictates to the U.S. Fish and Wildlife Service that hunting and fishing are generally compatible with the purposes of wildlife refuges in protecting wildlife.

The purposes of the Refuge System, as set out in H.R. 1675, are at odds with one another. If the System is to protect and conserve wildlife, then hunting should not be presumed acceptable. And if the System is to promote opportunities for hunting and fishing, then it should not pretend to be protecting wildlife. If animals are to be killed on national wildlife refuges, it should be done as a last resort only, for wildlife management purposes, and in a humane manner.

Congress must make a decision about whether it wants to continue the legacy begun by President Teddy Roosevelt in 1903, or whether it wants to convert this system of federal lands into playgrounds. Surely the public has a right to expect a Wildlife

Refuge System which gives the benefit of the doubt to wildlife values. If wild animals cannot be protected on Wildlife Refuges, then where?

**Statement
of the Congressional Sportsmen's Foundation
Concerning H.R. 1675
"The National Wildlife Refuge Improvement Act of 1995"
Submitted to the House Resources Committee, June 1, 1995**

The Congressional Sportsmen's Foundation respectfully submits to the House Resources Committee a statement in support of H.R. 1675, "The National Wildlife Refuge Improvement Act of 1995."

H.R. 1675 defines wildlife-dependent recreation and establishes traditional public uses such as hunting and fishing as permitted activities unless shown to be inconsistent with the principles of sound wildlife management, public safety or the purposes of a specific unit.

This legislation reaffirms and restores to the refuge system the original goals and intent of the National Wildlife Refuge Administration Act. It recognizes and maintains the integrity of the primary use for which each refuge unit was established, while assuring maximum public benefit through allowance of other compatible uses. Importantly, it assures that America's sportsmen will receive an equitable return on their financial investment in the 92 million-acre refuge system. Sportsmen contribute through purchases of licenses, duck stamps and targeted excise taxes on equipment.

Passage of H.R. 1675 is of critical importance to America's 60 million sportsmen and to all future generations who will enjoy our nation's outdoor heritage. The Congressional Sportsmen's Foundation extends its gratitude to House Resources Committee Chairman Don Young (R-AK) and to the other members of the Congressional Sportsmen's Caucus who have sponsored this timely legislation.

The Congressional Sportsmen's Foundation is a non-profit foundation dedicated to preserving and promoting America's hunting and angling traditions.

**COMMENTS OF *IN DEFENSE OF ANIMALS* ON THE PROPOSED AMENDMENT
TO THE NATIONAL WILDLIFE REFUGE SYSTEM ADMINISTRATION ACT OF
1966, aka: THE NATIONAL WILDLIFE IMPROVEMENT ACT OF 1995**

Presented to

**The Fisheries, Wildlife and Oceans Subcommittee
House Resources Committee
U.S. House of Representatives**

May 25, 1995

Chairman Saxton and distinguished members of the Fisheries, Wildlife and Oceans Subcommittee: Herein are the comments of In Defense of Animals submitted for the record regarding the proposed *National Wildlife Refuge Improvement Act of 1995*.

In Defense of Animals is a national, non-profit animal advocacy organization with 65,000 members nationwide. We are dedicated to the protection and preservation of animals and their habitat. We are, therefore, strongly opposed to the National Wildlife Refuge Improvement Act of 1995 before you, (hereafter referred to as "the bill") which proposes to amend the National Wildlife Refuge System and Administration Act of 1966 for the reasons listed below.

RECREATIONAL ACTIVITIES OF HUNTING AND FISHING ARE INCOMPATIBLE WITH THE PURPOSE OF A NATIONAL REFUGE

This bill provides that "...when managed in accordance with principles of sound fish and wildlife management, fishing and hunting in a refuge are generally compatible with the conservation of fish and wildlife and plants and their habitats and have no materially detrimental effect on the fulfillment of the purposes of the refuge and the purposes of the System."

In actuality, hunting and fishing are by nature incompatible with the purpose of the refuge and the purposes of the System. A wildlife refuge: *n. shelter; asylum, retreat; sanctuary*, as commonly defined, would be completely contradicted by the presence of sport hunting and fishing, as has been proposed by this amendment. Wildlife refuges should be safe havens, or sanctuaries, for wildlife. They should be places where fish and wildlife are protected, not killed for sport.

Statistics show that only approximately 7-10% of the population of the United States consists of hunters. The public at large **does not support** the principle of hunting or fishing in national refuge areas.

Safety would also be an issue should hunting be introduced into national refuge areas. It would no longer be safe for any species, including humans, to roam the wilderness within the refuge, as stray bullets would be a real danger. Hikers, naturalists and educational and environmental groups would no longer wish to visit the refuge, as the presence of hunters would cause the wildlife to fear humans, in turn, changing their natural behaviors and preventing close observation of them in their natural habitat.

Finally, this amendment mandates a reevaluation of each "fish- and wildlife-dependent recreational use" (i.e., hunting and fishing) at least every 15 years, while other existing uses are to be reevaluated no less frequently than every 4 years. This provision is completely inappropriate. If fishing and hunting are to be allowed within a national refuge, this "use" should be reevaluated every 4 years to ensure that "the use remains compatible with the purposes of the refuge and the purposes of the System..."

HUNTING AND CULLING ARE NOT SCIENTIFICALLY-SOUND FORMS OF WILDLIFE MANAGEMENT

The bill authorizes the "taking" of fish and wildlife for purposes of "sound fish and wildlife management". Once again, these activities are contrary to sound principles of wildlife management. The principles of natural selection and sport hunting are diametrically-opposed, as hunters characteristically kill the strongest adult "trophy" animals, leaving the weaker members to reproduce, and leaving the young of these trophy animals to starve or succumb to predators. Controlled culling also acts to upset natural selection, as members of the species are randomly killed, again, possibly leaving the weaker animals to reproduce. What is conspicuously absent is the inclusion of other forms of wildlife population management, such as birth control. While this technique of wildlife management is still relatively young, it has proven very effective in controlling test populations of wildlife which are exceeding the carrying capacity of their habitat. It can also be administered cyclicly, so that natural selection is still allowed to operate, and the strongest, healthiest members of a species are allowed to reproduce. Lastly, wildlife management programs should be engineered and administered by biologists and scientific experts, not through legislative officials.

LACK OF PUBLIC COMMENT

The amendment provides that the Secretary shall permit fishing and hunting on a refuge if appropriate, and that "no other determination or findings, except the determination of consistency with State laws and regulations...are required to be made for fishing and hunting to occur." As national refuges are public lands, the public should have the opportunity to comment on the appropriateness of fishing and hunting in national refuge areas. Again, because it has been shown that the public generally does not support fishing and hunting in national refuge areas, this appears to be a clear abdication of the democratic process.

RESPONSIBILITIES OF THE SECRETARY - LACK OF EXPERT INPUT

This bill gives responsibility to the Secretary to manage and develop each conservation plan. As such, the Secretary is empowered to, among other duties, identify and describe the following:

- The distribution, migration patterns, and abundance of fish, wildlife, and plant populations and related habitats;
- The archaeological and cultural values of the planning unit;
- Significant problems that may adversely affect the populations and habitats of fish, wildlife and plants within the planning unit, as well as actions necessary to correct or mitigate such problems;
- The opportunities for fish and wildlife-dependent recreation, including fishing and hunting, environmental education, interpretation of the resources and values of the planning unit, and other uses that may contribute to refuge management.

With all due respect to the Secretary, many of these activities are items that should be in the hands of biologists, scientific experts and wildlife experts, not appointed or elected officials or the legislature.

REFUGE CONSERVATION PLANNING PROGRAM'S ALASKA EXEMPTION

Section 6 of this amendment exempts refuge lands in Alaska from the Refuge Conservation Planning Program. National refuge lands in Alaska should be treated no differently from other refuge lands in the System, and should be held accountable to the same national laws and programs. Alaska wildlife should be afforded the same protections as the rest of our nation's wildlife and species.

In summary, this bill is a threat to our national refuge system, our nation's wildlife and their habitat. It appears to be written to serve the interests of hunters and "sportsmen" rather than to protect and preserve wildlife and habitat of our National Refuge System. The provisions of this amendment are contrary to the intended purpose of the National Refuge System.

For the above-stated reasons, we respectfully request that the National Wildlife Refuge Improvement Act of 1995 be defeated. Thank you for the opportunity to comment on this matter.

May 25, 1995

The Honorable Don Young
Chairman, Resources Committee
The Honorable Jim Saxton
Chairman, Fisheries, Wildlife and Oceans Subcommittee
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

We the undersigned former Interior Department assistant secretaries for fish, wildlife and parks are writing to urge you to ensure that the integrity of the National Wildlife Refuge System is protected.

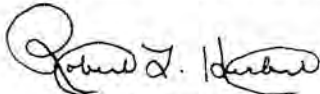
The Refuge System is a national treasure unlike any other. This complex of lands and waters was intended to be, and should be, managed primarily to conserve the nation's diverse fish and wildlife heritage. Because of the inherently federal trust responsibility for refuges and their migratory wildlife, it is in the best interest of the American people for the Department of the Interior/U.S. Fish and Wildlife Service to retain the ultimate management authority for all refuges within the System.

In addition, from our firsthand experience, we recommend that it is imperative that your legislation: 1) give the Interior Secretary affirmative duties to protect the ecological integrity of individual refuges and the System as a whole; and 2) not limit the Secretary's discretion unnecessarily.

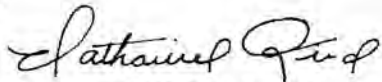
We recommend also that if wildlife-dependent recreation and environmental education are elevated, as you propose, from traditional secondary uses to Refuge System purposes that such be done with extreme caution and appropriate qualification. It is essential to the proper administration of the Refuge System to ensure that these activities are only purposes when and where they are appropriate and compatible with the conservation and management of refuge wildlife and habitat resources. Some refuges, such as Pelican Island (FL), can not accommodate any on-site recreation and other refuges may not be able to accommodate hunting or fishing because of low populations levels.

We thank you for your attention to our views.

Sincerely,



Robert L. Herbst



Nathaniel P. Reed

SURVEY AND EVALUATION OF WETLANDS AND WILDLIFE HABITAT

FORT DEVENS, MASSACHUSETTS

Prepared by the U.S. Fish and Wildlife Service
to be submitted to the House Appropriations Committee

Introduction

The U.S. Fish and Wildlife Service (Service) has completed a survey of the wetlands and wildlife habitat at Fort Devens, Massachusetts. The purpose of this survey was to evaluate the potential of installation lands for possible inclusion in the adjacent Oxbow National Wildlife Refuge (NWR), administered as part of Great Meadows NWR. Service biologists have reviewed wetlands and wildlife habitat types occurring on the installation, through an analysis of maps, aerial photographs, soil surveys, biological data collected by the Army, and field inspections. This report presents the findings of our survey.

Fort Devens, operated and maintained by the U.S. Army, is one of several proposed military base closures and realignments being considered under the Base Closure and Realignment Act (P.L. 100-526). A portion of this military installation has been found to support significant wildlife resources. The extensive wetlands occurring along the Nashua River floodplain, including associated wetland tributary drainages and headwaters, have been listed as a priority for protection under both the North American Waterfowl Management Plan (NAWMP) and the Emergency Wetlands Resources Act of 1986 (EWRA). The Nashua River is a direct tributary of the Merrimack River system, and as such is also included in the U.S. Environmental Protection Agency's Priority Wetlands of New England listing (1987).

Location and Background

Fort Devens is situated approximately 30 miles northwest of Boston in the northern part of the state, less than 10 miles from the New Hampshire border. Roughly half of the Fort's land area lies adjacent to the northern boundary of Oxbow NWR, the other half is adjacent to the western boundary, the Nashua River, and includes the western side of its floodplain. The 711-acre refuge was formerly Fort Devens training Area 4, and was transferred to the Service in the mid-1970s. The installation lies within four towns in two counties, with the southern 80 percent in Harvard and Lancaster (Worcester County) and the northern portion in Ayer and Shirley (Middlesex County) (refer to Maps 1, 2, and 3).

Fort Devens includes a total of approximately 9,400 acres. Over 6,000 acres are used for training/military maneuvers and 3,000 acres for housing, buildings, and other facilities. The installation is reportedly the largest single land holding in the north-central area of Massachusetts, and the areas of forest, wetland, recreation land and river "greenway" within its boundaries may constitute the largest single area of undeveloped land under a single management in this part of the state. Approximate acreage by town is as follows: Ayer - 1,140, Harvard - 2,720, Lancaster - 4,830, Shirley - 680.

For the purposes of habitat discussions, the Fort is roughly divided into three areas (see Map 4): (1) the training area or "South Post" located south of State Route 2, (2) the area referred to as the "Cantonment" (Areas 1, 1A-1E) north of Route 2, mainly developed lands but including some recreational areas such as a golf course and Mirror Lake, and (3) the extreme northern end of the Fort, including training Areas 2, 3, and the Airfield. Lands north of Route 2 are referred to collectively as the "North Post".

Description of Habitat

Fort Devens was originally established in 1917 as Camp Devens, and since then has been expanded and reduced in size several times over the years. With the approach of World War II over 4,100 acres were added by 1941, and another 1,100 by 1943. As with other military bases, it is important to note land-use patterns existing before military conversion, since this has "set the stage" for present habitat types found at Fort Devens. Much of the area now occupied by the installation was formerly farmland, with an interspersed of pasture, woodlots, orchards, and some cropped fields, as was typical in New England. Much of the Fort is basically old fields farmed until about 1940, now in various stages of re-growth. The diversity of habitat types in existence today reflects various successional stages of abandoned agricultural land of the 1930s and 1940s, reverting back towards a forested state.

The other extremely important factor at Fort Devens is the ongoing military training activity, which has had a direct effect on maintaining early successional stages of habitat types. Training is described as including special forces, combat engineers, heavy equipment operators, marksmanship, and more. Plant communities have been modified and altered by vehicles and equipment, fires caused by marksmanship practice, and in some areas intentional mowing or burning, such as the parachute drop zone. These activities have maintained a great diversity of habitat types, thereby supporting a corresponding high diversity of wildlife species.

South Post

The majority of the South Post is forested, with different forest communities covering approximately 62 percent of its 4,830 acres. Early-successional forest types including black cherry, grey birch, aspen, red maple and similar hardwood species make up 8 percent of the area. Mixed oak-hardwoods comprise the majority of forest, covering 26 percent, and mixed hardwood/evergreen stands (19 percent) are dominated by white pine, pitch pine, oaks, and other hardwoods. Roughly 9 percent of the forest at the date of aerial photography (1980) used for mapping covertypes was solely evergreen, dominated by white, red, and pitch pine. All covertypes are summarized in Table 1, and illustrated by Map 6, as mapped by a consultant under contract to the Army. Wetlands are summarized and discussed separately, as mapped by the Service's National Wetland Inventory project. Wetland acreages do not correspond directly with co-covertyping by the consulting firm, since these cover types focused on forestry applications. For example, in some cases forested wetland dominated by red maple was co-covertyped only as red maple forest by the consultant and not designated as wetland. Other lands on the South Post are dominated by mixed shrub communities (4 percent), including early-successional

species such as gray birch, black cherry, sweet fern, sumac, huckleberry, aspen, red cedar, goldenrods, grasses, and others. These areas have been created and/or maintained by disturbance or fire, and add to the diversity of habitat types and create edge effect between types. Additional lands on the South Post have been covertedyped as grasses and forbs, and are dominated by herbaceous plants. The Drop Zone is a 200-acre grassland habitat zone, actively maintained as open land to facilitate parachute jumping practice by a combination of mowing and burning. This particular area is dominated by grasses between one to three feet in height, such as beardgrass, and provides a unique and extensive unbroken grassland habitat of unusual size for the northeastern United States. Although shrubs are invading along the edges, it is an artificially maintained grassland "prairie" situation. Areas typed as having no vegetation due to heavy use, such as the firing range along the east side, make up approximately 4 percent of the area.

The large area in the center of the South Post that was left un-covertedyped is referred to as the "impact area". This area is used for target practice with various types of ordinance, for example mortar practice, and was not mapped for safety reasons. Study of aerial photos shows this area to be dominated by species tolerant of fire, due to frequent burns that are ignited by target practice activities. It appears to be an unusual and unique fire ecology situation, with obviously glaciated topography and rugged terrain, kettle holes, sandy dry soils, and species adapted to fire such as scrub oak and pitch pine. Much of the South Post contains sandy soils which are uncommon for an inland location in east-central Massachusetts and may be considered more characteristic of coastal areas of the state.

Cantonment and Airfield

The majority of the lands north of Route 2 are developed or urban covertedypes, with developed land, golf course, airfield, and filter beds comprising 56 percent of land types. Forested types occupy 36 percent of the land surface, with early-successional black cherry-aspen-hardwoods covering 2 percent, mixed oak-red maple-hardwoods 20 percent, white pine-hardwood mixes 11 percent, and white, red, and pitch pine occupying 2 percent. Shrub and herbaceous types each cover less than 2 percent of the land area.

Wetlands

The majority of wetlands occurring on Fort Devens lands are classified within the Palustrine system, with some open water acreage in the Riverine and Lacustrine systems. Wetland habitats, as mapped by the Service's National Wetlands Inventory project, are summarized in Table 2. A copy of the National Wetlands Inventory map for the Fort Devens area is attached as Map 7. Forested, shrub, and emergent wetlands on the east side of the Nashua River floodplain, within the Oxbow NWR, total slightly over 500 acres. There are an additional 190 acres of floodplain wetlands on the west side of the Nashua River, within Fort Devens Area 13, which are an integral part of the same system and exhibit an equally high degree of interspersed and diversity in the form of flooded oxbows and meander scars, emergent marsh, and mixed patches of shrub and forested wetland.

The South Post contains approximately 709 acres of deciduous forested wetlands, 73 acres of deciduous shrub-dominated wetlands, 36 acres of emergent wetlands, 44 acres of open water in the form of ponds, and 15 acres of riverine open water. Wetland mapping indicates that important wetland habitats occur along South Post tributaries to the Nashua, including Cranberry Brook (Area 5), Ponakin Brook (Area 7), Spectacle Brook (Area 9), and the Slaterock Pond drainage. Wetland habitats mapped on the South Post total 877 acres.

The important Nashua River floodplain wetlands extend north of Route 2 into the cantonment, and although mainly forested (153 acres) include similar high diversity in the form of small flooded oxbows, emergent marsh-dominated meander scars (11 acres), and shrub wetland (8 acres). Floodplain wetlands occurring along the Nashua River in Areas 1A, 1C, and 1 total 191 acres. Wetlands in Area 1 drain directly south into Oxbow MWR, and are hydrologically connected under the highway. Small isolated pockets of wetlands occur on the east side of the cantonment area, and include forest, shrub, and emergent-dominated wetland, and two ponds smaller than 10 acres each and the 25-acre Mirror Lake (102 acres total). Total acreage for wetlands occurring within Areas 2, 3, and near the airfield is 143 acres, the majority being forested (109 acres). Much of this forested and mixed forested-shrub wetland is either associated with the Nashua River or occurs along its immediate tributary, Nonacoicus Brook. The total acreage of wetlands for the entire Fort Devens installation, as mapped by the National Wetlands Inventory, is 1,313 acres.

Unique Plant Communities and Rare Species

Recent vegetation surveys conducted for the installation found a high diversity of plant species, primarily attributable to the broad range of soil types which support a large number of community types. Soil types present span the range from dry, sandy, well-drained soils to organic soils classified as hydric. Surficial geology, slope, and drainage patterns have influenced the development of unusual habitats. Some of these unusual habitats occurring on Fort Devens include dry, sandy pitch pine/scrub oak barrens or savannahs characterized by a fire-associated ecology; a wild lupine community of similar ecology; sandy alluvial banks, mudflats, and oxbow ponds bordering the Nashua River; kettlehole ponds with fluctuating water levels, and dry kettleholes; a calcareous fen along a stream; and acidic open bogs with floating peat mats and surrounding forested spruce/tamarack swamps. A total of 17 rare plant species have been documented at Fort Devens. These include one Category 2 Federal candidate species (blazing star), one State-endangered species (a spikerush), one State-threatened species (a sedge), 13 State watch list species, and one additional rare species. The distribution of rare plant species is illustrated on Map 9.

Major Wildlife Resource Values

The importance of Fort Devens to a wide variety of wildlife species is mainly due to the installation's diversity of habitat in various successional stages, its location adjacent to the Nashua River, the amount and distribution of wetland present, and the unbroken-undeveloped nature and size of the South Post. Wildlife values have been well documented by the Fort's Natural

Resources Office (NRO). Undeveloped lands of the installation are known to support migratory birds including waterfowl, wading birds, raptors, shorebirds, and passerines, resident mammals, reptiles and amphibians, and invertebrates. Installation lands support breeding activity for at least six state-listed rare species, and provide migration, feeding, and resting habitat for two federally-listed endangered species and at least 10 species of federal and state management concern. The distribution of rare wildlife species identified to date on Fort Devens is presented on Map 9. Additional rare species may be present. Wetlands along the Nashua River and the Slaterock, Ponakin, and Cranberry Brook drainages, and Area 1, have been identified on the Massachusetts Natural Heritage and Endangered Species Program's "Estimated Habitat Map of State-listed Rare Wetlands Wildlife".

Although Fort Devens has a NRO, there is an existing Cooperative Agreement between the Army and the Service concerned with the protection, development, and management of fish and wildlife resources on the installation. The agreement allows for research and management activities and provides for technical assistance by the Service on installation lands. The agreement has not been used.

Waterfowl and Wading Birds

Wetlands along the Nashua River and tributary drainages at Fort Devens have been identified as a priority for protection under the North American Waterfowl Management Plan, and the area is within one of seven Focus Areas for the State of Massachusetts under this plan. Wetlands and open water bodies on the installation provide important migration, feeding, and nesting habitat for waterfowl species including the black duck, wood duck, mallard, green-winged teal, hooded merganser, and Canada goose. The black duck is currently a species of concern under the plan because of declining populations, with habitat loss an important contributing factor. It is important to note that black ducks nest in upland habitats surrounding wetlands that provide brood-raising habitat, sometimes as much as a half-mile from water. Many additional waterfowl species use the area during migration. Additional species utilizing wetland and open water habitats on the Fort include great blue and green-backed herons, and common egrets. A great blue heron rookery is located in Area 5, at the south end, with additional nesting activity along the Cranberry Brook drainage.

Raptors

The diversity of open grasslands, shrub communities, and forested lands at Fort Devens provides for an abundant prey base, which supports many species of raptors. The peregrine falcon and bald eagle, both federally listed as Endangered, have been observed at the Fort during migration. Five peregrines have been banded at the Fort Devens raptor banding station since 1974. This station has been operated by master bander Michael Olmstead since 1974, on the top of Whittemore Hill (Area 6, South Post), establishing a valuable continuous record of raptor migration activity. Birds banded at Devens have been identified at Cape May, New Jersey and in Rhode Island, Massachusetts, New York, Pennsylvania, and as far away as Florida and Quebec, indicating its position within the Atlantic migration route.

Raptors expected to use the base area during the breeding season include the kestrel, red-tailed hawk, screech, barred and great horned owls, and possibly the forest dwelling sharp-shinned, cooper's, goshawk, red-shouldered, and broadwinged hawks. Many additional species have been identified during migration.

Other Birds

In addition to those birds already discussed, the base provides habitat for all those passerines (perching birds) commonly found in Massachusetts and southern New Hampshire - also woodpeckers, cuckoos, swallows, and upland game birds. There has been a general trend in New England for open land to be declining, with abandoned agricultural lands reverting to forest. Breeding bird surveys have indicated that open-field species such as the meadowlark, bobolink, savannah and grasshopper sparrows, and brush-land species such as the golden-winged warbler, field sparrow, and prairie warbler are declining due to habitat trends and loss of grassland. Open lands at Fort Devens provide habitat for these types of species.

The upland sandpiper, on the state's Endangered list, nests within the cleared grassland habitat of the parachute drop zone. This represents the only breeding colony in northern Worcester County. Various New England states have listed or are considering listing this species, and it may be considered at the federal level in the future. The fourth-largest known breeding colony in the state of the grasshopper sparrow, state-listed as a species of Special Concern, occurs in the drop zone (13-19 pairs each year).

The potential exists for the Henslow's sparrow (also of state concern) to occur on the Fort, but recent activity is presently unverified. Open fields and shrub thickets provide breeding, roosting, and feeding habitat for woodcock, a species of concern to the Service due to population decline. Ruffed grouse inhabit forested sections of the installation. Eastern bluebirds use nest boxes provided, and bank swallow, rough-winged swallow, and belted kingfisher nesting activity is worth noting. In addition to providing functions such as flood storage capacity and water quality maintenance, vegetated wetlands on the base provide breeding habitat for many species of birds, including red-winged blackbirds, swamp sparrows, yellow-throats, yellow warblers, woodcock, and barred owls. Additional species of either State or Federal management concern observed using the area during migration include such species as the pied-billed grebe, blackpoll warbler, American bittern, osprey, and northern harrier.

Mammals

The diversity and interspersed of open land, shrub, and forested habitat at Fort Devens are responsible for its ability to support bird and mammal species too numerous to provide a complete list. A partial list of resident mammals using early successional "open land" stages would include short-tailed shrews, meadow voles, and meadow jumping mice. Some species expected to use forested areas would include red, southern flying, and gray squirrels, woodland jumping, white-footed, and deer mice, red-backed voles, snowshoe hare, porcupine, fisher, and masked shrew. Species that use all habitat types (are

not confined to a single habitat type) include white-tailed deer, coyote, red and gray fox, raccoon, opossum, long-tailed weasel, eastern cottontail, woodchuck, eastern chipmunk, striped skunk, eastern, hairytail, and star-nosed mole, and little brown and other bats.

Wetland habitats and open waters of the Cranberry Brook, Ponakin Brook, Slaterock, Spectacle Brook, Nonaccicus Brook, and Cold Spring Brook drainages, as well as the Nashua floodplain and installation ponds, are known to support populations of mink, river otter, muskrat, and beaver. Beaver deserve special mention for their ability to modify habitat and increase diversity in the form of shallow open water ponds and marsh, thus creating habitat for many other species, as in the Ponakin and Cranberry Brook drainages. The rare northern water shrew, a state-listed Species of Special Concern, was observed during 1986 in the Slaterock drainage, Area 14.

Reptiles and Amphibians

Approximately 18 species of reptiles and 13 species of amphibians are believed to utilize upland and wetland habitats at Fort Devens. The reptile species include various turtles and snakes, and amphibian species include mole salamanders, newts, lungless salamanders, toads, treefrogs, and true frogs. Although many of these species are generally associated with wetlands, it is important to note that most require both wetland and surrounding upland habitats on the installation for various parts of their life-cycles. Examples of upland species would be the garter, hognose, and red-bellied snakes, red-backed salamanders, and eastern box turtle. Examples of species that depend on the Fort's wetlands to breed, but inhabit the undeveloped surrounding upland habitats for part of the year, are spotted and blue-spotted salamanders, American toads, wood frogs, and pickerel frogs. Examples of species that inhabit open water bodies or wetlands on the installation, but require the use of undeveloped surrounding upland habitats for nesting activities, are the snapping, spotted, painted and Blanding's turtles.

Several species present (breeding populations) on Fort lands have been state-listed as requiring special status: Blanding's turtle - Threatened; spotted turtle - Special Concern; blue-spotted salamander - Special Concern. Additional species observed (breeding status unknown) include the eastern box turtle - Special Concern, and the wood turtle - Special Concern. The Blanding's turtle is similarly protected in all other states where they occur, and it is worth noting that this species almost invariably nests from 300 to 3000 feet from their home marsh in well-drained, sandy upland. As with many species, the value of large, contiguous undeveloped areas for the species long-term protection outweighs exponentially that of an equal area of disjunct refugia spread among suburban environs. The blue-spotted salamander has so far been found to inhabit at least three of the many vernal pools scattered throughout the Fort, in the woodlands around Slaterock and Cranberry Ponds.

Invertebrates

One invertebrate species that is state-listed as of Special Concern has been identified within Area 8, referred to as the Mystic Valley amphipod. In addition, there is important habitat present for the Karner blue butterfly, a

species presently under consideration for Federal status as Endangered but not yet officially listed. Karner blues are found in wild lupine habitat in pine barrens and oak savannas in limited sections of the northeast and north-central United States. An unusual local colony of wild lupine, which this species is dependent on, is located in Area 14. This habitat may be extremely important for possible population re-establishment.

Related Resources

Fort Devens and Oxbow NWR are located approximately 16 miles northwest of Great Meadows NWR, which includes floodplain along the Sudbury and Concord Rivers. The Fort is approximately 45 miles west-southwest of Parker River NWR, which includes coastal marshes situated at the mouth of the Merrimack River, just south of the New Hampshire border in Massachusetts.

Lands along the Nashua River, including Fort Devens, Oxbow NWR, Bolton Flats State Wildlife Management Area, and numerous State Forest and other conservation lands (Map 3) in this area have been recognized as important wildlife habitat and a significant Greenway buffer by Federal and State agencies and local conservation groups. The Nashua River Watershed Association has described Fort Devens as the heart of this extensive conservation corridor along the Nashua and its major tributaries.

The 923-acre Bolton Flats Wildlife Management Area, managed by the Massachusetts Division of Fisheries and Wildlife, is located only about 4,000 feet upstream (south) of the Fort Devens/Oxbow NWR eastern border. This section of Nashua River floodplain includes over 4 miles of riverfront in Bolton, Harvard, and Lancaster. There are approximately 200+ acres of privately-owned floodplain wetlands separating Bolton Flats from the Fort and Oxbow NWR. These important wetlands are appropriate for future Service consideration for possible acquisition on a willing-seller basis. To the immediate west of the Fort, along the floodplain of the North Nashua River, are the 412-acre Cook Conservation Area (protected by the Town of Lancaster) and the adjacent 220-acre Lane-Comerford Conservation Area (Massachusetts Department of Environmental Management). Almost immediately downstream (north) of the Fort's airfield, at the confluence of the Squannacook and Nashua Rivers, are the protected Groton Town Forest/Ayer State Game Area/Sabine Woods/Groton Place lands (approximately 680 acres). Additional protected lands include Wachusett Reservoir State Reservation, the MCI-Shirley Greenway Trail (approximately one mile of riverbank conservation easement adjacent to the Fort), the 725-acre Squannacook River and 300-acre Nissitissit River Wildlife Management Areas managed by the Massachusetts Division of Fisheries and Wildlife, the 506-acre Rich State Forest, and other smaller areas.

Threats

Fort Devens has long supported the Greenway concept by designating its 10.2 miles of riverbanks as a conservation zone in its Master Plan. The Joint Boards of Selectmen representing the towns of Ayer, Harvard, Lancaster, and Shirley have identified the Nashua River floodplain and wetlands as a conservation/resource protection zone, on a proposed land use map forwarded to the Secretary of the Army.

In addition to managing the Nashua floodplain as a conservation zone, the Army has maintained the remainder of the South Post in an undeveloped state for training purposes. Undeveloped lands have also been utilized for outdoor and wildlife-oriented recreation. As a result of the Army's management and stewardship of these lands, the natural resource values have been maintained. In some cases these values have been enhanced due to increased habitat diversity resulting from military activities, and forestry/wildlife management activities conducted by the installation's Natural Resource Office.

With the impending closure and disposal possibilities, undeveloped portions of the installation may be left vulnerable to eventual subdivision and residential/commercial development. Management activities responsible for maintaining habitat diversity will cease. The important resource values previously discussed could be compromised. In addition, development of installation lands adjacent to Oxbow NWR could pose a threat to the existing refuge's wetland habitats, with potential impacts to water quality, disturbance, and habitat degradation.

Contaminants

Hazardous wastes at Fort Devens are described as having been generated mainly through routine maintenance operations, elimination of materials with expired shelf lives, spill cleanup, process operations, and laboratory operations. No major industrial operations are conducted at the installation, however small-scale industrial-type operations are located throughout the installation and consist of vehicle maintenance, painting, aircraft maintenance, training aids manufacture, photographic operations, and printing. Fifty eight potential hazardous waste sites have been recorded at Fort Devens by the U.S. Environmental Protection Agency (EPA), including: a 15-acre Explosive Ordinance Disposal range (South Post), where explosives and unusable munitions have been detonated and burned in open unlined pits since 1979; a 50-acre sanitary landfill (North Post), where household wastes, military refuse, asbestos, construction debris, waste oil, and incinerator ash have been dumped since the 1930s; and Building 1650 (North Post), where battery acids, PCBs, pesticides, and solvents have been stored.

It should be noted that it is the policy of the Department of the Interior to determine whether hazardous substances are present on real estate before such real estate is acquired. The Department's policy is that it will not acquire areas when the costs of remediation of contamination will be borne by the Department. Contamination on all sites will be addressed according to procedures set forth in the Installation Restoration Program Plan for Fort Devens, prepared by the U.S. Army Toxic and Hazardous Materials Agency, which is responsible for the identification, control, and/or elimination of migration of existing or potential contamination resulting from past installation activities. The EPA Superfund Section oversees the process under an Interagency Agreement. The Service is providing technical assistance to EPA/DOD to ensure that impacts to fish and wildlife resources are addressed in remedial investigations. Remedial action, if warranted, is scheduled to begin in early 1993.

Economic Concerns

The Pentagon's Office of Economic Adjustment (OEA) is coordinating overall government efforts by currently working with a local community committee which is developing the Base Re-Use plan. This committee is particularly interested in socio-economic issues. The Community Re-Use plan will be finished sometime in late 1992.

The community has held a series of meetings with various government agencies to explore its options. On November 16, 1991, the Service's Region 5 Director Ron Lamberston briefed the community leaders, Senator Kennedy, Congressman Atkins, and Governor Weld on the possible benefits of expanding Oxbow NWR. OEA reports that there has been strong local interest in expanding the Refuge. The Selectmen of Ayer, Harvard, Lancaster, and Shirley have unanimously voted support for refuge expansion. The local National Guard and Reserve outfits have also expressed interest in portions of the post.

Conclusion

This evaluation of habitat types and wildlife resources identifies the entire South Post as containing wildlife habitats recognized as a priority for protection at both the Federal and State levels. The area includes a diversity of habitat types and unique communities, and supports many species of Federal and State management concern. Similar valuable habitat exists north of Route 2, specifically Area 1 and portions of Areas 1A and 1C (Map 5). Area 1 contains wetlands that are hydrologically connected to Oxbow NWR, draining immediately into the refuge to the south. Areas 1A and 1C contain important Nashua River floodplain wetlands, as identified for protection under the North American Waterfowl Management Plan and Emergency Wetlands Resources Act. These areas are identified with green shading on Map 5 as significant wildlife habitats adjacent to Oxbow NWR. Total acreage for the shaded areas is 5,268 acres, including the entire 4,830-acre South Post and approximately 438 acres north of Route 2 (floodplain wetlands and upland forested buffer zone). Additional Fort Devens wetlands of importance to wildlife, but not adjacent to Oxbow NWR, include the Nashua River floodplain near the Airfield, Nonacoicus Brook wetlands, and Cold Spring Brook to the east.

FOREST & LAND COVER TYPES - SOUTH POST
FORT DEVENS, MASSACHUSETTS

Type	Description	Acreage by Area										Total
		5	6	7	8	9	10	12/14	13	15	1A	
BC	Black cherry - Hardwoods	101	24	93					25			243
BM	Grey birch - Red maple		31					15				46
PA	Aspen	11	18	14	5			12	44			104
RM	Red maple	27	29	93		11	18	24	86	25		313
OH	Oak - Hardwoods	48	13	7	15		16	68		7		174
OM	Mixed Oak	41	13	95	41	284	109	25	27	87		722
OR	Red Oak			68								68
WO	White pine - Oak	56	34	29				48		22		189
WH	White pine - Hardwoods	59	171	85	40	137	82	59	14	8		655
PO	Pitch pine - Oak			4	24	28			21			77
WP	White pine	60	6	20	34	38	41	87				286
PP	Pitch pine	52			21	2		18	51			144
RP	Red pine			15				6				21
PPO	Forested Wetland	22				32						54
PFO/SS	Forested/shrub wetland	8										8
BR	Shrubs	62	36	18	1	3		7	3			130
AL	Alder		6									6
PSS1	Shrub wetland	2				1	3	3	23			32
PSS1/EM	Shrub/emergent wetland	7										7
GF	Grasses & Forbs	35	48	7		5	4	17	3			119
DZ	Drop Zone			76	123							199
PEM	Emergent wetland	30		7				10				47
PEM/OW	Emergent/open water	8						13	20			41
POW	Open water	9				6		2				17
NV	No vegetation	68	11					43	96			218
	Transmission Line					32						32
	Impact Area										750	750
	Unmeasured/Other										128	128
TOTAL		704	440	631	304	579	273	457	413	149	750	4830

Source: USFWS summary, based on cover type mapping and area measurement by Leopold Forestry Service (1980 aerial photography)

TABLE 3

FOREST & LAND COVER TYPES - CANTONMENT & AIRFIELD AREAS
FORT DEVENS, MASSACHUSETTS

Type	Description	1	1A	1B	1C	1D	1E	2, 3, & Airfield	Total
BC	Black cherry - Hardwoods							73	73
PA	Aspen	6		6				24	36
RM	Red maple	34	17	30	11			146	238
OH	Oak - Hardwoods	24	64	195	110			43	436
OM	Mixed oak	6	7	126				107	246
WO	White pine - Oak							77	77
WH	White pine - Hardwood	31	139	210	54			7	441
WP	White pine	10		12				33	55
PP	Pitch pine							7	7
RP	Red pine			3				10	13
PFO	Forested wetland							14	14
BR	Shrubs	3		2				20	25
PSS1	Shrub wetland	2		2				25	29
GE	Grasses and forbs	2		24				20	46
PEM	Emergent wetland	7	11		6			2	26
PEM/OW	Emergent/open water			4					4
POW	Open water, pond			19					49
RIVER	Open water, river				15			23	38
NV	No vegetation			11				5	16
GC	Golf course		6	80					86
U	Developed land		35	478	231	1322	168		2234
FB	Filter beds							32	32
	Airfield							176	176
	Unmeasured/other							116	141
TOTAL		125	279	1232	427	1322	168	960	4538

Sources: USFWS summary, based on cover type mapping and area measurement by Leopold Forestry Service (1980 aerial photography).

TABLE 1

WETLAND ACREAGE - NATIONAL WETLAND INVENTORY
FORT DEVENS, MASSACHUSETTS

		<u>South Post</u>		<u>North of Route 2</u>		
<u>Type</u>	<u>Description</u>	<u>Acreage</u>		<u>Nashua R. & Area #1</u> <u>Acreage</u>	<u>East Side</u> <u>Acreage</u>	<u>Areas #2, #3</u> <u>Airport</u> <u>Acreage</u>
PFO1	Forested wetland, deciduous	602		153	27	54
PFO1/OW	Forested/open water, mixed	64				
PFO1/SS1	Forested/shrub, mixed	43 [709]		5 [158]		55 [109]
PSS1	Shrub wetland, deciduous	56		6	14	15
PSS1/EM	Shrub/emergent, mixed	17 [73]		2 [8]	17 [31]	
PEM	Emergent wetland (herbaceous)	20		3	2	7
PEM/OW	Emergent/open water, mixed	16 [36]		8 [11]		
POW	Open water-pond	44		2	17	2
L1OW	Open water-lake				25	
R2OW	Open water, river	15		12		10
Total Acreage		877		191	102	143

Note: { } denotes subtotals for Forested, Shrub, and Emergent types.

Source: USFWS (based on 1975-77 aerial photography)

TABLE 2



THE WILDLIFE LEGISLATIVE FUND OF AMERICA

To protect the heritage of the American sportsman's hunt, to fish and to trap.

National Affairs Office
1000 Connecticut Avenue, N.W.
Suite 1202
Washington, D.C. 20036
202-466-4407 FAX 202-466-8717

June 3, 1994

The Honorable Robert C. Byrd
Chairman, Committee on Appropriations
Subcommittee on Interior and
Related Agencies
United States Senate
311 Hart Senate Office Bldg.
Washington, D.C. 20510

Dear Chairman Byrd:

Traditional fishing and hunting programs face termination on units of the National Wildlife Refuge System unless Congress acts to change the policies of the U.S. Fish and Wildlife Service (FWS). A series of actions by the new leadership has put FWS in a position in which it must terminate traditional wildlife-oriented recreation programs or preservationists and anti-hunting ideologues will be able to use FWS's new agreements and policies to shut out anglers and hunters. FWS has painted itself -- and anglers and hunters -- into a corner and only Congress can provide corrective measures.

The FWS settlement of refuge litigation last fall was the first critical action. FWS agreed that fishing and hunting uses would be terminated "expeditiously" unless it made two express findings: (1) a written finding that fishing and/or hunting was a compatible use; and (2) a written finding that FWS had adequate budget to administer fishing and hunting programs. The out-of-court settlement appears to have raised the procedural bar that FWS has to jump over to continue traditional fishing and hunting programs. The Refuge Administration Act and Refuge Recreation Act govern these programs on Refuges. For years, FWS has made the necessary determinations with a minimum of paperwork and administrative expense. The settlement will significantly increase the complexity of the findings and require the commitment of greater personnel resources to prepare a record that will satisfy the plaintiffs who filed the lawsuit. This extra cost and complexity will make it more difficult to sustain fishing and hunting programs.

The second action was the Administration's proposed budget for fiscal year (FY) 1995. Funding to operate the Refuge system was increased two percent and most of that increase was related to NAFTA implementation with funds targeted for Texas and New Mexico. Refuge units in the other 48 states suffered reductions or paltry increases. In contrast, major budget increases were proposed for the endangered species program (34 percent) and endangered species land acquisition (188 percent).

The Honorable Robert C. Byrd
June 3, 1994

Page Two

The third action was Director Beattie's March 7, 1994 "Refuge Funding Actions" directive. That directive found that the Refuge system is underfunded to such a degree that units must be closed down. Moreover, it directs that an array of uses, which can include fishing and hunting, be stopped to save money. Only those wildlife recreational uses that "are (1) high quality, (2) low cost, (3) not duplicated on other public lands, and (4) reach a wide and diverse audience" are to be continued. Fishing and hunting programs will have a very difficult time meeting these criteria and will face shutdowns. For example, fishing and hunting opportunities are available on many Federal lands (BLM and Forest Service) and state lands -- "duplicated" if you will -- and this ensures that many existing Refuge programs cannot meet the third criterion. Furthermore, fishing and hunting programs often do not reach a "wide and diverse audience" as defined in this era of political correctness. We know that fishing and hunting programs on dozens of Refuges are slated for curtailment or elimination because of this guidance. In fact, Refuge managers are interpreting this guidance to mean that fishing and hunting programs are to be given low or no priority.

The fate of these programs is sealed by the interaction of the legal settlement and the Director's budget directive. It will be impossible for FWS to make written findings of adequate funding under the settlement or the Refuge Recreation Act with Director Beattie on record ordering unit closures because of funding shortfalls. Even if FWS could make such findings, it left itself open to be sued under the settlement. If parties disagree with FWS findings, they can go back to court and force closures based on inadequate funding. Plaintiff's exhibit number one in that lawsuit will be the Director's memorandum.

Administration officials assure us that they have no plan to terminate fishing and hunting on Refuges. These issues have been raised with senior FWS personnel and we have offered to assist FWS in avoiding these consequences. We expect our dialogue to continue but we are persuaded FWS cannot extricate itself from its self-imposed predicament.

The situation demands your attention and we urge that FWS be required to submit to the Subcommittee the recommendations from the field that outline fishing and hunting curtailments and closures arising from the budget guidance. We believe that these closures will occur unless Congress steps in.

One solution would be to increase funding for Refuge operations for the specific purpose of continuing fishing and hunting programs. FWS should be asked to identify what earmarked funding would be needed in order to make the findings required by the settlement. We urge that this amount be added to the Refuge

The Honorable Robert C. Byrd
June 3, 1994

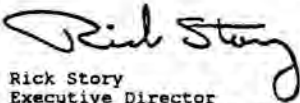
Page Three

operations budget by reallocating monies from other FWS or Interior Department programs. In any event, it is imperative that the March, 1994 budget guidance be rescinded and replaced with directives that accord fishing and hunting programs their traditional priority. Unless Congress acts, fishing and hunting programs on Refuge units will start to close on October 1, 1994.

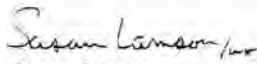
Another solution is to amend the out-of-court settlement to ensure that the administrative requirements are the same as those employed for the past years. A return to traditional procedure (that existed before the settlement) would reduce costs and help FWS continue traditional programs.

We urge you and your colleagues to provide funding to ensure the continuation of fishing and hunting programs on units of the Refuge system. America's anglers and hunters are asking that you step in to ensure that FWS acts to protect their traditional forms of wildlife-oriented outdoor recreation. On behalf of our members, we stand ready to assist you in any way that we can to protect our sporting heritage.

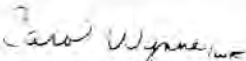
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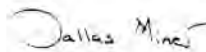
Rick Story
Executive Director
Wildlife Legislative Fund of America



Susan Lamson
Director, Federal Affairs
National Rifle Association



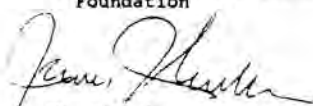
Carol Wynne
Executive Director
Fur Information Council of America



Dallas Miner
President
Congressional Sportsmen's
Foundation



Dick Lattimer
President/CEO
Archery Manufacturers
and Merchants Organization



James Hester
President
American Archery Council

The Honorable Robert C. Byrd
June 3, 1994

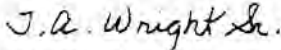
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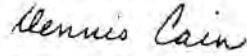
Robert E. DiGrazia
Past President
Foundation for North American
Wild Sheep



C. Truman Clem
President
Dallas Ecological
Foundation



T.A. Wright, Sr.
President
Fur Takers of America, Inc.



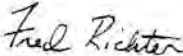
Dennis Cain
President
Houston Safari Club



Kenneth R. Watkins
President
International Bowhunting Organization



Steven E. Nelson
President
Mzuri Wildlife Foundation



Fred Richter
Past President
National Bowhunter Education
Foundation



Steve Green
Director of Marketing
National Trappers
Association, Inc.



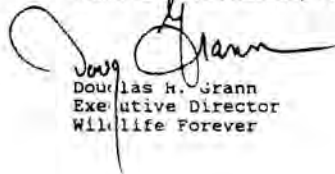
Rob Keck
Executive Vice President
National Wild Turkey Federation



Bill Miller
Executive Director
North American Hunting Club



Tim Reed
President
Professional Bowhunter Society



Douglas H. Grann
Executive Director
Wildlife Forever

The Honorable Robert C. Byrd
June 3, 1994

A handwritten signature in black ink, appearing to read "R. Douglas Yajko". The signature is stylized with a large, sweeping initial "R" and a long, horizontal stroke extending to the right.

R. Douglas Yajko, M.D.
President
Safari Club International

Page Five

A handwritten signature in black ink, appearing to read "David Watkins". The signature is stylized with a large, sweeping initial "D" and a long, horizontal stroke extending to the right.

David Watkins
President
Dallas Safari Club



STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
& ENVIRONMENTAL CONTROL
DIVISION OF FISH AND WILDLIFE
89 KINGS HIGHWAY
P.O. BOX 1401
DOVER, DELAWARE 19903

OFFICE OF THE
DIRECTOR

June 26, 1995

Harry Burroughs
Staff Director
House Subcommittee on Fisheries, Wildlife and Oceans
House Resources Committee
U.S. House of Representatives
805 O'Neill Building
300 New Jersey Avenue, S.E.
Washington, D.C. 20515

Dear Mr. Burroughs:

I'm writing regarding some concerns about the proposed "National Wildlife Refuge Improvement Act of 1995" (H.R. 1675 -- Representative Don Young et al.). It appears that this proposed bill is a revised version of H.R. 833 from last fall (Representative Sam Gibbons et al.), and is also similar to a bill that was being developed in the Senate by Senator Bob Graham et al. I wrote to R. Max Peterson, Executive Vice President of the International Association of Fish and Wildlife Agencies (IAFWA), on 3/10/95 regarding our concerns about Senator Graham's proposed bill (see attachment #1 for a copy of my letter), which also applied to old H.R. 833. Members of my staff also met with an aide of Senator Graham's on 1/25/95 to discuss our concerns.

The newly proposed H.R. 1675 addresses several of our concerns that the previous proposed bills did not, especially regarding recognition of hunting and fishing activities on National Wildlife Refuges as essentially acceptable, compatible uses. However, a few other issues of concern have not yet been addressed in the new bill. The primary problem remains the need to strengthen recognition that the U.S. Fish and Wildlife Service's refuge management regulations, policies and plans must also substantively consider if refuge management activities, practices or restrictions are compatible with the well-being of people living in or visiting areas near refuge lands, in terms quality-of-life, public health, or economic issues. When problems are found to exist off-refuge as a result of on-refuge management, it's also important to recognize that conflict resolution must involve avoiding or remedying the off-refuge impacts to the extent practicable.

While there are many on-refuge management activities, practices or restrictions where detrimental off-refuge impacts might occur, the primary focus in Delaware regards mosquito control

Delaware's good nature depends on you!

problems (again, refer to attachment #1). As a State fish and wildlife management agency that also has statewide responsibilities for delivering satisfactory mosquito control (done in an environmentally-acceptable manner), we have to be attentive to this concern and the need for it to be recognized in H.R. 1675. Such recognition would be part of the bill's overall need for more attention to off-refuge issues.

The American Mosquito Control Association (AMCA) has recommended three amendments to H.R. 1675 that we endorse and would like to see incorporated into H.R. 1675 (see attachment #2). If the AMCA's recommendations were adopted by the House, it would help resolve our concerns. There's an opportunity in H.R. 1675 to resolve many problems regarding important refuge management compatibility issues that cut both ways across refuge boundaries. We shouldn't let pass a good opportunity to lessen management problems on- and off-refuge, to the overall benefit of both natural and human environments.

Would you please see that copies of this entire package be given to pertinent House of Representative members in timely fashion -- in particular, to Rep. Don Young (H.R. 1675's sponsor and Chairman of the House Resources Committee), Rep. Jim Saxton (Majority Chairman of the House Subcommittee on Fisheries, Wildlife and Oceans), and Rep. Gerry Studds (Minority Chairman of the House Subcommittee on Fisheries, Wildlife and Oceans). Thank you for this consideration.

Sincerely,



Andrew T. Manus
Director

pc: R. Max Peterson, Exec. V.P., IAFWA
Robert Graham, Exec. Dir., AMCA

Attachment #1 -- letter from ATM to RMP dated 3/10/95.
Attachment #2 -- recommendations dated 6/19/95 from the AMCA
for amendments to H.R. 1675.



STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
& ENVIRONMENTAL CONTROL
DIVISION OF FISH AND WILDLIFE
89 KINGS HIGHWAY
PO BOX 1401
DOVER, DELAWARE 19903

OFFICE OF THE
DIRECTOR

ATTACHMENT #1

March 10, 1995

R. Max Peterson
Executive Vice President
International Association of Fish and Wildlife Agencies
Hall of the States
444 North Capitol Street, N.W.
Suite 544
Washington, D.C. 20001

Dear Mr. Peterson:

Thank you for sharing your letter to Senator Bob Graham (Fla.) dated 1/13/95 regarding his pending reintroduction of legislation addressing management policies for National Wildlife Refuges. In general, we support efforts such as Senator Graham's that enable the U.S. Fish and Wildlife Service to better control or eliminate activities on refuges that are truly incompatible with good resource stewardship. However, we share concerns with the IAFWA that the desired curtailment of incompatible activities be achieved in a way that minimizes new bureaucratic processes, and does not lessen opportunities for compatible refuge activities such as hunting or fishing.

Another concern that we have, which has surfaced in Senator Graham's legislation and in separate administrative planning initiatives of the U.S. Fish and Wildlife Service, is a lack of emphasis for considering how refuge features or Service management actions might adversely affect nearby human residents and their off-refuge lands. In many locations, federal refuge creation was retrofitted into areas already extensively developed, or extensive development has occurred in surrounding areas since the refuges were created. Expansions of existing federal refuge lands have occurred in other locations, often resulting in new impacts to nearby residents because of changes in land-use or land management practices. Examples of off-refuge compatibility issues include overpopulations of deer, beaver or geese on refuges moving off-refuge, causing impacts such as traffic or aircraft accidents, property floodings, or damage to crops and ornamental vegetation; lack of control of weed or insect pests on refuges, which then causes economic, nuisance or health problems off-refuge; and

Delaware's good nature depends on you!

R. Max Peterson
March 10, 1995

impacts of on-refuge hydromodifications that then alter off-refuge soil drainage characteristics, adversely affecting crop plantings or septic systems. In all cases, refuge planning processes and federal management policies must recognize that there might be refuge features or Service management actions that could be incompatible with nearby residents and their off-refuge lands, particularly regarding public health and safety problems, quality-of-life issues, or economic impacts.

Much emphasis in the Senator's pending legislation, and in Service planning proposals, seems to focus on making compatibility determinations about on-refuge activities in relation to protecting or enhancing fish and wildlife resources, which is of course a very desirable and critically important emphasis. However, there should also be a requirement for the Service to recognize in its policies and plans the need to determine compatibilities of refuge features or Service management actions as they affect surrounding residents and lands.

A specific example of this recommended dual emphasis when making compatibility determinations is provided in Delaware relative to saltmarsh mosquito control. Saltmarsh mosquitoes can be produced in Delaware's two National Wildlife Refuges in prolific numbers. Saltmarsh mosquitoes routinely fly considerable distances off-refuge, causing problems for human quality-of-life, public health, and local economies. The needs and methods to control saltmarsh mosquitoes are often contentious issues for National Wildlife Refuges (and National Seashores) near populated areas along the Atlantic and Gulf coasts. State-based, county or local mosquito control programs have to be able to control these pests on-refuge, using water management techniques or modern insecticides in an environmentally-compatible manner that minimizes non-target impacts while achieving cost effective, satisfactory control. Waiting to control saltmarsh mosquitoes until after they've left the refuges is environmentally irresponsible, eliminating non-chemical source reduction options and always requiring much more insecticide use than with on-refuge treatments (while also costing more money to treat). Additionally, having potentially disease-carrying mosquitoes on-wing in populated areas before taking control actions is much more dangerous to public health.

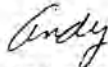
The responsibility for mosquito control in Delaware falls to the Delaware Division of Fish and Wildlife, a State-mandated task in our diverse range of duties and activities. Our ability to achieve efficacious control depends heavily upon the Service's fully recognizing their responsibility in helping to solve the problem, and in the Service's accommodating in their management policies and plans practicable control options and actions compatible for on-refuge use. Two members of my staff, Chester

R. Max Peterson
March 10, 1995

Stachecki and Dr. William Meredith, met in Washington, D.C. on 1/25/95 with Valerie Wagner of Senator Graham's staff to discuss such concerns, prompted by the Division seeing a need for the Senator's legislation to also address off-refuge compatibility problems that stem from refuge features or Service management actions. We hope that the Senator will take the opportunity in his legislation to try to improve federal policies for this important aspect of refuge management. Most of the mosquito control issues in Delaware's two federal refuges have been successfully handled to date because of good communications and relationships between Division and Service administrators and professional staffs. However, without a strengthening in federal policy of the need for Service accountability and responsiveness in addressing off-refuge impacts originating from the refuges, these interactions will always be temporary and somewhat fragile, dependent upon personalities-of-the-moment and ad hoc agreements.

We welcome Senator Graham's proposed legislation and other similar efforts to better the management of our National Wildlife Refuges -- these are initiatives worth championing when they promote balanced considerations of the multiple needs and uses of natural resources and human environments. If you wish to share this correspondence with Senator Graham, please feel free to do so.

Sincerely,



Andrew T. Manus
Director

pc: Chester J. Stachecki
William H. Meredith
H. Lloyd Alexander

ATTACHMENT # 2

AMERICAN MOSQUITO CONTROL ASSOCIATION
Early-Warning Legislative & Regulatory Network Update

Date: June 19, 1995

To: All Network Volunteers

From: Wade Gates/Martha Craddock

LANGUAGE CHANGES RECOMMENDED FOR HR 1675

Initially introduced during last year's session as HR 833, HR 1675 will amend the National Wildlife Refuge System Administration. However, the bill does not consider public health interests, thereby making it more difficult, if not impossible, to perform mosquito control on the national wildlife refuges throughout the U.S. Following are recommended language changes that would ensure public health interests are considered:

- 1.) Amend Section 4, Administration of the System, by adding (F) which would read
(F) consider the impacts of refuge and system operations on the health and well being of humans who use the refuges and system, or who live nearby, and take reasonable steps to reduce these impacts.
- 2.) Amend Section 5, Compatibility Standards and Procedures, by adding at the end of (3) (B), (XI) which would read:
(XI) Provide for steps to be taken to reduce any unintended or inadvertent risks to the public health associated with the management of refuges.
- 3.) Amend Section 5, Compatibility Standards and Procedures, by adding at the end of (4) (E) which would read:
(E) Any steps taken to reduce any unintended or inadvertent risks to the public health associated with the management of refuges.

From the Executive Director

Please contact Harry Burroughs, Natural Resources Committee at 202/226-0200 and voice your support for the language changes to HR 1675. Please reference the language changes in any phone calls or correspondence. If you need additional information, call Martha Craddock at 214/969-1800.



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Dr. Charles F. Wurster
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1101 Fourteenth Street, NW
Suite 1400
Washington, DC 20005
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Printed on Recycled Paper

June 23, 1995

The Honorable James Saxton
Chairman
Subcommittee on Fisheries,
Wildlife and Oceans
Committee on Resources
805 O'Neill House Office Building
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Saxton:

I am writing to request that this statement be included in the record of the May 25, 1995 hearing by your subcommittee on H.R. 1675, the National Wildlife Refuge Improvement Act.

Defenders of Wildlife is a national conservation organization with over 100,000 members. Defenders has long been a leading advocate of strengthening the management of the National Wildlife Refuge System. In 1992, for example, we released a report by the Commission on New Directions for the National Wildlife Refuge System entitled Putting Wildlife First. This report contained the recommendations of a distinguished panel of wildlife scientists, conservation historians, state natural resource managers, legal scholars and academics who conducted an eighteen-month review of the Refuge System. This report, along with earlier reports by the General Accounting Office and the U.S. Fish and Wildlife Service, emphasized the need to strengthen existing refuge law. Since 1990, Defenders of Wildlife and other conservation organizations have been urging Congress to enact the National Wildlife Refuge System Management and Policy Act, a bill sponsored during the past two Congresses by Senator Bob Graham and Representative Sam Gibbons (S. 823 and H.R. 833, 103rd Cong., 1st Sess.). We enthusiastically supported the version of S. 823 that was reported last August from the Senate Committee on Environment and Public Works (S. Rep. No. 103-324, 103rd Cong., 2d Sess. (1994)).

While S. 823 would have significantly improved the National Wildlife Refuge System's ability to help conserve this nation's fish, wildlife and plants, the same cannot be said of H.R. 1675. Defenders believes that, despite its significant flaws, current law better serves the interests of wildlife conservation in the National Wildlife Refuge System than the changes proposed in H.R. 1675.

Defenders agrees with many of the specific points made in the statements of the National Wildlife Refuge Association and The Wilderness Society and will not repeat them here. Instead, we wish to highlight four fundamental flaws contained in the bill. These flaws are: 1) establishment of system purposes that fail to give clear priority to wildlife conservation, including the Refuge System's role in conserving the nation's biological diversity; 2) creation in statute of a compatibility standard that would actually weaken FWS's ability to regulate potentially harmful secondary uses of refuges; 3) diminishment of the federal government's ability to manage its own lands, and 4) failure to adequately systematize and unify the current network of federal refuges.

System Purposes

As emphasized by the Commission on New Directions for the National Wildlife Refuge System, the need for a clear and comprehensive statutory statement of the mission and goals of the Refuge System is one of the most important reasons for new legislation. Political pressures and changing administrative philosophies have long contributed to weak and inconsistent administration of the Refuge System. These forces have helped prevent the Refuge System from living up to its potential in national efforts to conserve fish, wildlife and plants. Unfortunately, the system purposes contained in H.R. 1675 would severely undermine the Refuge System's wildlife conservation mission by making recreation a co-equal purpose. While uses of refuges such as various types of recreational activities and environmental education can and should play an important role in the system, such uses should not be made purposes of the system. Moreover, in marked contrast to S. 823, H.R. 1675 fails to even acknowledge the vital role of Refuge System in the conservation of our nation's biological diversity.

The National Wildlife Refuge System can and must play a significant role in this nation's efforts to conserve biological diversity. The Commission on New Directions recognized this fact in Putting Wildlife First by calling for the enactment of new legislation which, while recognizing other important refuge purposes, urged that the "maintenance and restoration of the "biological diversity of endemic species" be established as the "overarching goal" of the refuge system. Defenders believes that the purposes of the Refuge System must include biodiversity conservation and are pleased to note that the Fish and Wildlife Service raised this same concern in its testimony.

Providing the Refuge System with a mandate to manage for biodiversity was an important element of S. 823. The version of S. 823 reported last August by the Senate Environment and Public Works Committee stated that one of the purposes of the Refuge System was:

to conserve, manage, and where appropriate restore fish and wildlife populations, plant communities, and refuge habitats

so as to provide in perpetuity for the diversity of native fish, wildlife, and plants and the ecological processes that sustain them.

According to the Committee report,

Although the USFWS, other federal agencies, and State fish and wildlife agencies have large and effective programs to conserve endangered species and certain game species, there are no federal programs designed to conserve the full diversity of native species. In the last several years, however, the loss of biological diversity has been recognized as one of the most important environmental issues facing the United States and the entire world.

Statutory direction to manage the Refuge System for an expanded wildlife conservation mission was also contained in other provisions in S. 823. For example, Section 5 of S. 823 required the Secretary of the Interior to:

plan, propose, and direct the expansion of the System in the manner that is best designed to accomplish the purposes of the System and the purposes of each refuge and to contribute to the conservation of the ecosystems of the United States.

Further, repeated references in S. 823 to native species would have assured that appropriate management emphasis was placed on those species in greatest need of conservation. Something that could be accomplished, it should be noted, without precluding consideration of non-native species such as pheasants.

The system purposes contained in S. 823 struck a careful balance between FWS's obligation to manage for traditional so-called "trust" species and the recognition of the Refuge System's need to help conserve the diversity of this nation's fish, wildlife and plants. H.R. 1675 lacks this crucial balance.

Compatibility Standard

H.R. 1675 would undermine the FWS's ability to effectively control potentially harmful secondary uses. S. 823 would have strengthened FWS's ability to regulate uses by statutorily defining a compatible use as one "that will not have a detrimental effect on the fulfillment of the primary purposes of the refuge or the purposes of the System." This standard would have replaced the existing weak, administratively-established test of prohibiting activities that materially interfere with refuge purposes. H.R. 1675 would make it even more difficult to prohibit harmful activities than is now the case under the existing administrative definition of compatibility by allowing activities that do not have a

"materially detrimental effect" on the purposes of a refuge or the System. Establishing a weak compatibility standard invites the renewed proliferation of the very sort of widespread secondary use problems that have been identified in various government reports issued over several decades.

Through several interrelated provisions, H.R. 1675 would improperly establish an almost unassailable presumption in favor of allowing "fish and wildlife-dependent recreation." By elevating these recreational activities to a system propose in Section 3 and weakening the existing compatibility standard in Section 5, the bill creates a very strong presumption in favor of allowing hunting and fishing. Additionally, another provision in Section 5 of the bill requires that the Secretary of the Interior, in promulgating new regulations governing compatibility, to:

provide that when managed in accordance with principles of sound fish and wildlife management, fishing and hunting in a refuge are generally compatible with the conservation of fish and wildlife and plants and their habitats and have not materially detrimental effect on the fulfillment of the purposes of the refuge and the purposes of the System.

Recreational uses should be subject to the same standard as other uses potentially harmful to the conservation purposes of the refuges.

Federal-State Relationship

H.R. 1675 is also fundamentally flawed because it would likely diminish the federal government's ability to manage its own lands. Under Section 4, the Secretary of the Interior would be authorized to "enter into cooperative agreements with State fish and wildlife agencies, pursuant to standards established by the Director, for the management of all or parts of a unit or units within the System consistent with this Act (emphasis added)." The FWS has a long history of effective cooperation and coordination with the states. At the same time, federal refuges are wildlife habitats of national significance. Most were established to protect federal trust species, such as migratory birds, waterfowl, endangered species and marine mammals. In the case of species that migrate across state boundaries, the federal government is the entity most effectively able to execute coordinated management strategies and assure that the interests of the greater public are carried out. Moreover, many states simply do not devote resources and attention sufficient to adequately address the national interest in the conservation of endangered and threatened species as well as the diversity of fish, wildlife and plants found within their borders. To be clear, we are not suggesting that the FWS assume management responsibility for all species. Rather, the FWS can and should play an important and unique role in accomplishing national conservation objectives. This role should be conducted in concert with other state, local, federal and

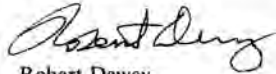
private partners. The FWS can continue to most effectively represent this national interest by maintaining sole management authority over Refuge System lands.

Making Refuges into a System

Unlike S. 823, H.R. 1675 fails to recognize the critical need to unify the National Wildlife Refuge System through the requirement of a System plan. System-wide planning is critical to managing an integrated network of wildlife habitats. The only comprehensive plan governing the entire refuge system was prepared nearly 20 years ago. Moreover, the refuge system stands alone among the major federal land management agencies with regard to planning. The National Park Service, U.S. Forest Service, and the Bureau of Land Management all conduct comprehensive planning of their lands pursuant to the organic legislation governing those agencies.

In summary, Defenders of Wildlife believes H.R. 1675 would weaken, not strengthen, management of the National Wildlife Refuge System and would encourage more potentially harmful commercial and recreational activities on federal refuges. In view of these concerns, we must respectfully oppose enactment of this legislation.

Sincerely,



Robert Dewey
Director,
Habitat Conservation Division



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