

GAO REPORT ON “OPPORTUNITIES TO IMPROVE THE MANAGEMENT AND OVERSIGHT OF OIL AND GAS ACTIVITIES ON FEDERAL LANDS”

OVERSIGHT HEARING

BEFORE THE
SUBCOMMITTEE ON FISHERIES CONSERVATION,
WILDLIFE AND OCEANS
OF THE
COMMITTEE ON RESOURCES
U.S. HOUSE OF REPRESENTATIVES
ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

Thursday, October 30, 2003

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**OVERSIGHT HEARING ON THE RECENTLY
RELEASED GAO REPORT ENTITLED, "OP-
PORTUNITIES TO IMPROVE THE MANAGE-
MENT AND OVERSIGHT OF OIL AND GAS
ACTIVITIES ON FEDERAL LANDS"**

**Thursday, October 30, 2003
U.S. House of Representatives
Subcommittee on Fisheries Conservation, Wildlife and Oceans
Committee on Resources
Washington, D.C.**

The Subcommittee met, pursuant to notice, at 9:34 a.m., in Room 1324, Longworth House Office Building, Hon. Wayne Gilchrest [Chairman of the Subcommittee] presiding.

Present: Representatives Gilchrest, Tauzin, Neugebauer and Pallone.

Also Present: Representative Markey.

**OPENING STATEMENT OF HON. WAYNE T. GILCHREST, A
REPRESENTATIVE IN CONGRESS FROM THE STATE OF
MARYLAND**

Mr. GILCHREST. Good morning. The Subcommittee will come to order.

Today we will hear testimony on the General Accounting Office's report entitled, "Opportunities to Improve the Management and Oversight of Oil and Gas Activities on Federal Lands."

The report was written in response to a request submitted to GAO by myself and the gentleman from Massachusetts, Congressman Ed Markey. We made this inquiry because we felt there was a great deal of information lacking about oil and gas activities on National Wildlife Refuges. We wanted to know the extent of oil and gas activities, the legal authorities that permit them to occur, their environmental impacts on refuges, and we wanted an analysis of Fish and Wildlife Service resources being dedicated to this program.

The General Accounting Office has now largely answered these questions and their analysis, findings and recommendations are contained within their August 2003 report, which is both balanced and informative.

As a result of this report, we now know that there are 155 National Wildlife Refuges with current or past oil and gas

activities, and 34 with active oil and gas wells. The active wells produce only 1 percent of our Nation's oil production and less than one-half of 1 percent of our natural gas, but I have been concerned about the environmental impacts of this activity on refuges as well as the ongoing impacts of abandoned wells and other related infrastructure.

Our National Wildlife Refuge System can support a responsible mineral extraction program and I am interested to hear an expanded description of GAO's report and recommendations to improve the current program. I am also interested in hearing how the Department of Interior plans to respond to the GAO recommendations and our discussion about how Congress may be able to help.

Finally, in addition to our two witnesses, to maximize the value of this discussion, I wrote to each Member of the House who has an active oil and gas well in a refuge in their district to advise them of this hearing and to welcome their input.

We look forward to your testimony this morning because, from the GAO report, as I said earlier in my statement, it looks as if the oil and/or gas extraction is done responsibly, it can be done to ensure the ecological integrity and the purposes upon which the refuges were created.

We look forward to the testimony from GAO and Fish and Wildlife, and as a body, we would like to pursue a goal in which the most ideal practices and purposes of the refuge, practices of the oil and gas extraction and purposes of the refuges, can be blended and balanced.

[The prepared statement of Mr. Gilchrest follows:]

**Statement of The Honorable Wayne T. Gilchrest, Chairman,
Subcommittee on Fisheries Conservation, Wildlife and Oceans**

Good morning, today, the Subcommittee will hear testimony on the General Accounting Office's report entitled "Opportunities to Improve the Management and Oversight of Oil and Gas Activities on Federal Lands."

This report was written in response to a request submitted to GAO by myself and the gentleman from Massachusetts, Congressman Ed Markey. We made this inquiry because we felt there was a great deal of information lacking about oil and gas activities on national wildlife refuge lands. We wanted to know the extent of oil and gas activities, the legal authorities that permit them to occur, their environmental impacts on refuges, and we wanted an analysis of Fish and Wildlife Service resources being dedicated to this program.

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Our National Wildlife Refuge System can support a responsible mineral extraction program and I am interested to hear an expanded description of GAO's report and recommendations to improve the current program. I am also interested in hearing, how the Department of the Interior plans to respond to the GAO recommendations and our discussion about how Congress may be able to help.

Finally, in addition to our two witnesses, to maximize the value of this discussion, I wrote to each Member of the House who has an active oil and gas well in a refuge in their district to advise them of this hearing and to welcome their input.

I now recognize the Ranking Member, the gentleman from New Jersey, Congressman Frank Pallone.

Mr. GILCHREST. At this point I will recognize the Ranking Member, the gentleman from New Jersey, Mr. Pallone.

OPENING STATEMENT OF HON. FRANK PALLONE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Mr. PALLONE. Thank you, Mr. Chairman.

First let me say that I commend both you and our colleague from Massachusetts, Mr. Markey, for your leadership in requesting this report from the GAO.

To many people, including constituents in my district, the whole idea of oil and gas exploration in our National Wildlife Refuge System, our only national system of lands devoted exclusively for the protection of fish and wildlife, appears on its face to be a bizarre contradiction in terms. Certainly oil and gas development in the Arctic National Wildlife Refuge has been and remains a highly volatile issue within the conference concerning the pending energy bill.

That said, and despite my own personal reservations about oil and gas activities actually being compatible and benign activities to impose on refuges, I welcome the opportunity for the GAO to fully investigate the scope and effects of these activities in a broader context.

However, Mr. Chairman, after reading this report, I am left to ponder several questions. How can we even consider new development and production in ANWR when the characterization of environmental impacts of oil and gas activities across the refuge system remains so poorly understood and incomplete? How can we expect the Fish and Wildlife Service to provide adequate monitoring and oversight of these activities when their performance described by the GAO demonstrates a record of lax or indifferent enforcement?

In addition, I am extremely concerned to learn that the Fish and Wildlife Service has failed on numerous occasions to complete the necessary environmental reviews and inspections, leading to the acquisition of substantial liabilities and costs for the environmental cleanup when it acquires new parcels for the refuge system.

Mr. Chairman, any program suffering from a \$1.8 billion operations and maintenance budget backlog simply cannot afford the luxury of cleaning up someone else's mess. And this is just a short list, for there are a lot of other concerns. I look forward to hearing from our witnesses to learn more about the GAO's work and to hear arguments from the Fish and Wildlife Service in rebuttal.

The status quo as described by the GAO is unacceptable, and I think that's clear. I am confident, Mr. Chairman, that in working with you and Congressman Markey, we can develop a sensible body of recommendations for legislation to address these deficiencies and protect the environmental integrity of our National Wildlife Refuge. I look forward to those discussions.

Thanks again.

Mr. GILCHREST. I thank the gentleman from New Jersey. The gentleman from Louisiana, Mr. Tauzin.

STATEMENT OF HON. W.J. "BILLY" TAUZIN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF LOUISIANA

Mr. TAUZIN. Thank you, Mr. Chairman.

Obviously, because Louisiana is the site of many of the National Wildlife Reserves that are subject to exploration and development, we have a great interest in this report. Most importantly, Senator Breaux and I have had a great interest in this subject over the years.

What we have learned from this report, of course, is that production on Federal lands produces nearly 24 million barrels of oil and 88 million cubic feet of gas, valued at almost a billion dollars. I'm not surprised that some of my colleagues are surprised at that. They think, when we debate the ANWR, that suddenly that's a brand new idea that we can have production in environmentally sensitive areas and at the same time protect those areas from ill consequences of that activity.

The study, for example, does not support the notion that oil and gas, per se, production is harmful to the refuges. It finds, however, that inconsistent management of oil and gas activities can and obviously will cause problems unless we have consistent management of those activities.

I should point out, for example, to the Committee that in one National Wildlife Refuge in Louisiana, in north Louisiana, there are 1,120 wells operating, and that the majority of these developments do occur in wildlife refuges in our home State. As I have often pointed out on the Floor, my friend, we have literally balanced those questions of production for the Nation's good against preservation of the resources in those areas for many years. So I suspect you can and should learn a lot about our experiences in this area.

For example, in the year 2000, John Breaux and I concurred in language that was adopted in statute that provides that funds received from the Wildlife and Fisheries Service from responsible parties heretofore and hereafter, for site-specific damages in the national system, go right back into complete assessments, mitigation, restoration, and monitoring and site recovery of any damages. We have been on this problem a long time, but we're glad to have you on board with us.

The report, for example, also points out that Louisiana long ago prohibited using open pits to store production waste and brine in coastal areas. We prohibit discharging brine into drainages within our State. There are been massive little changes in Texas and Louisiana in the way in which these sites have been managed with new moneys provided, as I said, in the legislation to help manage those resources over the years.

It's interesting that many properties that are part of the National Wildlife System were acquired after oil and gas production activities have taken place. Those beautiful natural wildlife areas have been added to our system even after production occurred there, testifying to the fact that post-production sites are still considered extraordinarily valuable for the National Wildlife System.

Obviously, the report indicates that you can have impacts from any spills or any kind of damages that result from those spills in

refuges, and that we constantly must be aware of making sure resources, as we have in the year 2000, are available to quickly mitigate them, as they are when spills occur in your own State or backyard when there is any kind of damage to a pipeline system or to any activities in your home States regarding the use of those petroleum products in the businesses and homes of your State.

So the point the study makes is one we have made for a long time: that it is not incompatible to have oil and gas development in wildlife refuges. On the contrary, it's been going on for a long, long time.

Second, those of us who have had experience with it have learned over the years how literally to balance those concerns quite effectively and how to mitigate and provide for any unforeseen consequences of any of those activities, as they're likely to occur anywhere in this country.

Finally, that we in Texas and Louisiana are constantly updating our own laws and provisions to make sure those activities continue to be performed in a way that's compatible with the natural aesthetics and value of those wildlife resources.

I can also tell you that in Louisiana, as a member of the State legislature, we dedicated a great deal of the royalties received in our State from minerals produced from State lands and water bottoms, similarly protected as our National Wildlife Reserves, and have dedicated them to wildlife preservation and to protection and enhancement of those State lands and water bottoms that are subject to production.

So we have some experience here. I hope you learn from us. Out of that experience, I hope you will come to a different view about what might be possible in land way over in Alaska that represents less than one one-hundredth of 1 percent of the entire Alaskan National Wildlife Reserve that was set aside for production and development. But for some reason, none of you can come to the conclusion that we should proceed with it.

I thank you, Mr. Chairman, and yield back.

Mr. GILCHREST. Thank you, Mr. Tauzin.

Mr. Pallone.

Mr. PALLONE. Thank you, Mr. Chairman.

I just wanted to ask unanimous consent to submit for the record a statement by Defenders of Wildlife.

Mr. GILCHREST. Without objection.

[The Defenders of Wildlife statement submitted for the record follows:]

**Statement of the Defenders of Wildlife submitted for the record
by The Honorable Frank Pallone**

**OIL AND GAS DRILLING HARMING NATIONAL WILDLIFE REFUGES ACTION
NEEDED TO RESPOND TO LONG-STANDING PROBLEM**

A new report from the General Accounting Office confirms the findings of earlier federal reports that oil and gas activity has caused serious damage on many of the national wildlife refuges where it has occurred. According to the report ("National Wildlife Refuges: Opportunities to Improve the Management and Oversight of Oil and Gas Activities on Federal Lands") oil and gas activity has spilled hundreds of thousands of gallons of crude oil, caused mercury and PCB contamination, killed wildlife and thousands of fish, destroyed and fragmented thousands of acres of habitat, produced millions of gallons of brine, and caused long-term soil and water contamination on national wildlife refuges.

The GAO report is not the first study to conclude that oil and gas activity is causing damage to national wildlife refuges. Previous federally sponsored reports dating back two decades have identified problems associated with oil and gas activities in or near refuges (see attached list and selected findings). The new report makes it very clear that the Interior Department and U.S. Fish and Wildlife Service have failed to respond adequately to earlier reports or to adopt their recommendations for improving oversight and regulation of oil and gas activity on national wildlife refuges.

The vast majority of oil and gas activity that occurs on national wildlife refuges is related to extraction of private mineral rights that the federal government does not own and to which it cannot deny access. However, the GAO concludes that the Fish and Wildlife Service does have certain authority to regulate this use so as to protect refuge wildlife and habitats but is not making use of this authority. Unlike the National Park Service and U.S. Forest Service, Fish and Wildlife Service regulations do not require owners of mineral rights to obtain permits that contain protective conditions before engaging in oil and gas activities on the federal lands that it manages. Congress should take action to affirm the Fish and Wildlife Service's authority to require permits of oil and gas operators and conditions to protect fish and wildlife where private parties own and hold rights to develop oil and gas beneath refuge lands.

The GAO report provides a preview of the kinds of environmental damage that could be expected at the Arctic National Wildlife Refuge if Congress authorizes oil drilling in that pristine refuge in northeastern Alaska. Congress should take careful note of this report and continue to resist proposals to open the Arctic Refuge to drilling.

For more information, contact Jim Waltman at (202) 429-2674 or jim.waltman@twsw.org

Previous Reports Relating to Oil and Gas Activity at National Wildlife Refuges

Secondary Uses Occurring on National Wildlife Refuges, 1990

According to this report from the U.S. Fish and Wildlife Service, 63 percent of all refuge managers reported that at least one "harmful" activity occurred on the refuges they managed. The report identified 30 wildlife refuges at which the refuge manager indicated that oil/gas extraction "adversely affect[ed] the ability to conserve or manage in accordance with the refuge goals and objectives." Examples included Kern National Wildlife Refuge (California) where the activity caused "habitat destruction, wildlife disturbance, endangered species take threat." According to the report, oil and gas activity caused "surface and habitat impacts and disturbance to wildlife including whooping cranes" at Aransas NWR (Texas) and "tremendous vegetative loss, increases erosion, nesting losses during the nesting season" at Breton NWR (Louisiana).

Continuing Problems with Incompatible Uses Call for Bold Action, 1989

According to this study from the General Accounting Office, refuge managers reported that at least one harmful use was occurring on 59 percent of the refuges. The GAO highlighted gas production at D'Arbonne NWR (Louisiana) as one of 16 particularly harmful activities in the Refuge System. According to the report "Salt water contamination from gas production continues to erode the habitat's capability to support wildlife... Natural gas production has destroyed wildlife habitat through soil and water contamination by brine."

Contaminant Issues of Concern: National Wildlife Refuges, 1986

This report from the U.S. Fish and Wildlife Service identified 78 "contaminant issues of concern" on 85 refuges. The report determined that at the Kenai Refuge (Alaska), "oil and gas spills from various oil companies have been occurring for approximately 25 years. Also, numerous spills of substances used in oil field production and subsequently discharged into drill mud reserve pits may have affected local water supplies. These substances may represent sources of possible chronic and acute problems impacting fish and wildlife resources."

Fish and Wildlife Service Resource Problems, 1983

This report from the U.S. Fish and Wildlife Service identified 146 national wildlife refuges where oil spills and 97 refuges where oil and gas extraction were "currently causing or have the potential to cause significant damage to Fish and Wildlife Service managed natural resources or physical facilities." The findings were based on information submitted by refuge managers, wildlife biologists, and other refuge employees.

It is unfortunate that the GAO has again found significant problems associated with oil and gas activity on national wildlife refuges. This is a clear indication that the Fish and Wildlife Service has not taken adequate action to address what it has known for decades is a very real problem.

For more information, contact Jim Waltman at (202) 429-2674 or jim.waltman@tws.org

Mr. GILCHREST. I ask unanimous consent to submit a statement, an editorial from USA Today on the GAO report, October 30th, 2003.

[The USA Today articles follow:]

USA TODAY EDITORIAL ON GAO REPORT
SUBMITTED FOR THE RECORD, OCTOBER 30, 2003
21POSTED 10/8/2003 7:56 PM

Alaskan drilling debate ignores failures in lower 48

For years, environmentalists and the oil industry have waged a fierce battle over the impact of oil drilling in wildlife refuges. Environmentalists say it causes devastating damage; the industry says wildlife and drilling can thrive together.

Now a new report by the investigative arm of Congress shows that both sides are exaggerating the facts. The General Accounting Office's analysis of drilling in hundreds of refuges in the lower 48 states concludes that environmental damage can be avoided—at least when industry and the government are vigilant.

Yet too often the U.S. Fish and Wildlife Service, which is charged with protecting refuges, has fallen down on the job. Its failings are important to keep in mind as Congress wrangles over allowing drilling in the Arctic National Wildlife Refuge as part of an energy plan that also includes efforts to strengthen the nation's electricity grid.

The results documented by Congress' own investigators suggest a reasonable course for protecting the spectacular Alaskan mountains and sensitive tundra where caribou, wolves, bears and other species live. Once federal regulators demonstrate they can adequately protect sensitive refuges where drilling already is occurring, expanding oil exploration to the Arctic becomes an option worth considering.

As the Sept. 23 GAO report points out, the government's track record on that front is uneven. At Hopper Mountain Wildlife Refuge in California, for example, 15 active wells have caused only two oil spills in the past 30 years; each was cleaned up quickly with no detectable effects on wildlife. But at Anahuac Wildlife Refuge in Texas, 50 active wells have caused at least seven spills just since 1991, and one killed more than 180,000 fish.

Among the federal shortcomings cited by the congressional report:

- The Fish and Wildlife Service didn't even know how many oil and gas wells are operating on its refuges. GAO investigators found one-fourth of the nation's more than 500 refuges have a history of oil and gas activity, in some cases dating back to the 1920s. Wells on refuges are pumping nearly 24 million barrels of oil annually, more than 1 % of the nation's total production.
- The Fish and Wildlife Service does not keep records on oil spills and other damage, and has never assessed the cumulative effects of oil and gas operations on refuges.
- Fish and Wildlife refuge managers often lack the knowledge, resources, training and commitment to regulate oil-drilling operations effectively.

The Fish and Wildlife Service says it lacks legal authority in some cases to act against oil companies that were given rights to extract mineral resources from lands long before wildlife refuges were established.

The Service also says it is moving to do a better job of collecting data and equipping its staff to deal with oil and gas operations.

One successful approach worth the service's attention is taking place in Louisiana, where two refuges are strictly monitored. Oil and gas operators pay fees to finance the costs of monitoring compliance. The system could be applied elsewhere, though new laws would be required in many cases.

Before the federal government takes any steps to open the pristine Arctic refuge to drilling, it can show it is capable of protecting the wildlife already in its charge.

Sidebar:

Nature and drilling coexist

National wildlife refuges with the most active oil wells:

Upper Quachita, Louisiana: 908
 Delta, Louisiana: 178
 Kenai, Alaska: 121
 Hageman, Texas: 98
 McFaddin, Texas: 76
 Low Rio Grande Valley, Texas: 65
 St. Catherine Creek, Mississippi: 64
 D'Arbonne, Louisiana: 51
 Quivira, Kansas: 51
 Anahuac, Texas: 50
 Hopper Mountain, California: 15
 Seal Beach, California: 15
 Aransas, Texas: 14
 Ohio River Island, West Virginia: 11
 Source: Congress' General Accounting Office

USA TODAY
 POSTED 10/8/2003 8:00 PM
Agency values refuges
 BY STEVEN WILLIAMS

The National Wildlife Refuge System is one of America's great treasures. Its 542 refuges provide homes for wildlife, solitude and unfettered natural beauty for visitors in an increasingly crowded and busy world.

President Bush has made a firm commitment to ensure their future health. His proposed \$402 million budget for the refuge system represents a 25% increase since 2002 and more than double the 1997 budget.

As Congress' General Accounting Office notes in its report, however, about one-quarter of refuges have oil and gas operations on them, some dating back more than 70 years. In most cases, the U.S. Fish and Wildlife Service owns the surface land but not the subsurface mineral rights. Under the law, owners of these rights have the right of access to them. Refuge managers work with these owners to minimize the adverse impacts of these activities, but we still face challenges. We welcome the recommendations provided by the GAO in its report.

We are committed to collecting better data on the impacts of oil and gas activities on refuges. We also will issue guidance and more training opportunities for refuge staff on the management of oil and gas activities.

In the few places where the service has authority to issue permits, we will look for ways to strengthen that authority consistent with state and federal laws. At the same time, we are addressing other threats to our refuges, including the damage caused by growing numbers of invasive species.

Some have tried to use the GAO report to argue against oil exploration on a small part of Alaska's Arctic National Wildlife Refuge. However, the comparison is not valid because the federal government owns the mineral rights at the Arctic refuge. When it set aside a portion of the refuge, Congress explicitly reserved for itself how and under what conditions oil exploration might occur there. Any exploration would be subject to far stricter environmental safeguards than allowed by law on most refuges with oil and gas activities.

Americans cherish our wildlife and wild places. We are working to ensure that the National Wildlife Refuge System continues to be healthy and whole.

Steven Williams is director of the U.S. Fish and Wildlife Service.

Mr. GILCHREST. This morning we have Mr. Barry Hill, Director, Natural Resources and Environment, from GAO. Welcome, sir.

We have Mr. David Smith, Deputy Assistant Secretary for Fish and Wildlife and Parks, Department of the Interior. Welcome, Mr. Smith. And Mr. Smith is accompanied by Mr. William Hartwig, Chief of National Wildlife Refuge System of the U.S. Fish and Wildlife Service.

Thank you for coming this morning, gentlemen. We look forward to your testimony.

Mr. Hill, you may begin.

STATEMENT OF BARRY T. HILL, DIRECTOR, NATURAL RESOURCES AND ENVIRONMENT, GENERAL ACCOUNTING OFFICE; ACCOMPANIED BY PAUL AUSSENDORF, ANALYST IN CHARGE OF THE GAO REPORT

Mr. HILL. Thank you, Mr. Chairman, and members of the Subcommittee. Before I begin, allow me to introduce my colleague. With me today is Paul Aussendorf, who is the analyst in charge of the work that we will be presenting today. If I may, I would like to briefly summarize my prepared statement and submit the full text of my statement for the record.

Mr. GILCHREST. Without objection.

Mr. HILL. We are pleased to be here today to discuss our recent report on oil and gas activities on National Wildlife Refuges. The National Wildlife Refuge System is unique. It's 95 million acres are the only Federal lands managed primarily for the benefit of wildlife, providing habitat for native plants and animals, including endangered and threatened species.

While the Federal Government owns almost all of the surface lands of the System, in many cases it does not own the subsurface mineral rights. Subject to some restriction, owners of the subsurface mineral rights have the legal authority to explore for mineral resources such as oil and gas, and if such resources are found, to extract them.

The testimony we will be presenting today summarizes our recent report to you in which we determined the nature and full extent of oil and gas activities in the National Wildlife Refuge System, identified environmental effects of oil and gas activities on refuge resources, and assessed the Fish and Wildlife Service's management and oversight of these activities.

In summary, about one-quarter, or 155 of the 575 refuges in the United States, have past or present oil and gas activity, some dating to at least the 1920s. Activities on these refuges range from exploration to drilling and production to pipelines transiting refuge lands. One-hundred and five refuges contain over 4,400 oil and gas wells, and 2,600 of these are inactive wells, and 1,806 are active.

The active wells are located at 36 refuges and produce oil and gas valued at \$880 million during the last 12-month reporting period. That is roughly 1 percent of domestic production. In addition, oil and gas exploration has occurred at 44 refuges since 1994, and one or more active pipelines are present in at least 107 refuges.

Regarding the overall environmental effects of oil and gas activities on refuge resources, we found that the Fish and Wildlife Service has only limited information and has not conducted any assessments of the cumulative environmental effects. Available studies, anecdotal information and our observation show that the environmental effects of oil and gas activities and the associated construction, operation and maintenance of the infrastructure on wildlife and habitat, vary in severity, duration and visibility. The environmental effects range from infrequent small oil spills and minimal debris from abandoned infrastructure to large and chronic spills and large-scale industrial development. Specifically, the 16 refuges we visited during our study reported oil, gas or brine spills, but the frequency and effects of the spills varied widely.

Over the years, new environmental laws and industry practice and technology have reduced but not eliminated some of the most detrimental effects of oil and gas activities. In addition, oil and gas operators have taken steps, in some cases voluntarily, to reverse damages resulting from oil and gas activities. But operators have not consistently taken such steps and the adequacy of these steps is not known.

Finally, the management and oversight of oil and gas activities on refuges varies widely. Among the 16 refuges we visited, some identify oil and gas activities and the risks they pose to refuge resources, issue permits that direct operators to minimize the effect of their activities on the refuge, monitor oil and gas activities with trained personnel, and charge mitigation fees or pursue legal remedies if damage occurs. Other refuges have fewer or none of these controls in place.

We identified two primary reasons for this variation. First, refuge managers are unclear about when they have legal authority to require operators to obtain permits with conditions to protect refuge resources. This uncertainty exists because the Service's authority varies, depending upon when ownership of the mineral rights was separated from ownership of the surface property, which can be difficult to determine. In addition, the Department of the Interior has not determined its permitting authority in all cases.

Second, refuge managers lack sufficient guidance, resources and training to properly manage and oversee oil and gas activities. Only three refuges have staff dedicated to monitor these activities, and some staff cited lack of time or lack of training as limiting their management and oversight capabilities.

In our report, we made several recommendations to improve the framework for managing and overseeing oil and gas activities on National Wildlife Refuges. However, the Department of Interior generally disagreed or did not comment on our recommendations.

Mr. Chairman, this concludes my prepared statement. We would be happy to respond to any questions you may have.

[The prepared statement of Mr. Hill follows:]

Statement of Barry T. Hill, Director, Natural Resources and Environment,
U.S. General Accounting Office

October 30, 2003

GAO
Accountability Integrity Reliability
Highlights

Highlights of GAO-04-192T, testimony before the Subcommittee on Fisheries Conservation, Wildlife, and Oceans, Committee on Resources, House of Representatives

NATIONAL WILDLIFE REFUGES

Improvement Needed in the Management and Oversight of Oil and Gas Activities on Federal Lands

Why GAO Did This Study

The 95-million acres in the National Wildlife Refuge System are the only federal lands primarily devoted to the conservation and management of fish, wildlife, and plant resources. While the federal government owns the surface lands in the system, in many cases private parties own the subsurface mineral rights and have the legal authority to explore for and extract oil and gas. This testimony is based on an August 2003 report (GAO-03-517) in which GAO determined the extent of oil and gas activity on refuges, identified the environmental effects, and assessed the Fish and Wildlife Service's management and oversight of those activities.

What GAO Recommends

GAO's August 2003 report made recommendations to improve management and oversight of oil and gas activities, including having the Department of the Interior seek from Congress any necessary additional authority to ensure consistent and reasonable management of all oil and gas activities on refuges. In commenting on the report, the department generally did not address our recommendations, but did raise procedural concerns about GAO's recommendation that it seek additional authority from Congress. Given these concerns, GAO also raised this matter to Congress for its consideration.

www.gao.gov/cgi-bin/getrpt?GAO-04-192T.

To view the full product, including the scope and methodology, click on the link above. For more information, contact Barry T. Hill at (202) 512-3841 or hillbt@gao.gov.

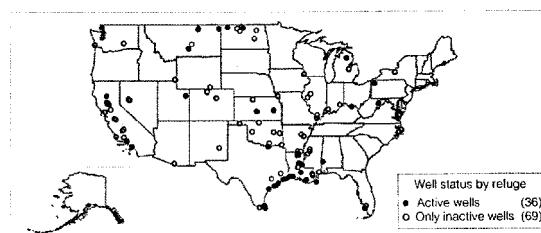
What GAO Found

About one-quarter (155 of 575) of all refuges have past or present oil and gas activities, some dating to at least the 1920s. Activities range from exploration to drilling and production to pipelines transiting refuge lands. One hundred five refuges contain a total of 4,406 oil and gas wells—2,600 inactive wells and 1,806 active wells. The 1,806 wells, located at 36 refuges, many around the Gulf Coast (see figure), produced oil and gas valued at \$880 million during the last 12-month reporting period, roughly 1 percent of domestic production. Thirty-five refuges contain only pipelines.

The Fish and Wildlife Service has not assessed the cumulative environmental effects of oil and gas activities on refuges. Available studies, anecdotal information, and GAO's observations show that the environmental effects of oil and gas activities vary from negligible, such as effects from buried pipelines, to substantial, such as effects from large oil spills or from large-scale infrastructure. These effects also vary from the temporary to the longer term. Some of the most detrimental effects of oil and gas activities have been reduced through environmental laws and improved practices and technology. Moreover, oil and gas operators have taken steps, in some cases voluntarily, to reverse damages resulting from oil and gas activities.

Federal management and oversight of oil and gas activities varies widely among refuges—some refuges take extensive measures, while others exercise little control or enforcement. GAO found that this variation occurs because of differences in authority to oversee private mineral rights and because refuge managers lack enough guidance, resources, and training to properly manage and oversee oil and gas activities. Greater attention to oil and gas activities by the Fish and Wildlife Service would increase its understanding of associated environmental effects and contribute to more consistent use of practices and technologies that protect refuge resources.

National Wildlife Refuges with Oil and Gas Wells



Source: Premier Data Services (data) and GAO (analysis).

United States General Accounting Office

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to discuss our recent report on oil and gas activities on national wildlife refuges, which we prepared at your request.¹ The National Wildlife Refuge System is unique in that the 95 million acres of land in the system are the only federal lands managed primarily for the benefit of wildlife, providing

¹U.S. General Accounting Office, National Wildlife Refuges: Opportunities to Improve the Management and Oversight of Oil and Gas Activities on Federal Lands, GAO-03-517 (Washington, D.C.: Aug. 28, 2003).

habitat for native plants and animals, including endangered or threatened species, as well as important way points for migrating species, such as ducks, cranes, and eagles. While the federal government owns almost all of the surface lands in the system, it does not, in many cases, own the subsurface mineral rights. Subject to some restriction, owners of subsurface mineral rights have the legal authority to explore for mineral resources such as oil and gas and, if such resources are found, to extract them. As you know, in our recent report, we (1) determined the nature and full extent of oil and gas activities in the National Wildlife Refuge System, (2) identified environmental effects of oil and gas activities on refuge resources, and (3) assessed the Fish and Wildlife Service's management and oversight of these activities.

To obtain a more complete understanding of the extent of past and present oil and gas activities within current wildlife refuge boundaries, we used National Geographic information databases to determine how many documented oil and gas wells and transit pipelines were located within or immediately proximate to refuge boundaries. We also used Fish and Wildlife Service records to identify other evidence of oil and gas activities. Premier Data Services, a firm with extensive experience in computer-based geographic information systems and oil and gas leasing, aided our data acquisition and analysis.

In summary, we found the following:

- About one-quarter (155 of 575) of all refuges have past or present oil and gas activity, some dating to at least the 1920s. Activities range from exploration to drilling and production to pipelines transiting refuge lands. One hundred five refuges contain a total of 4,406 oil and gas wells—2,600 inactive wells and 1,806 active wells. The 1,806 wells, located at 36 refuges, produced oil and gas valued at \$880 million during the last 12-month reporting period, roughly 1 percent of domestic production. In addition, oil and gas exploration has occurred at 44 refuges since 1994, and 1 or more active pipelines are present in at least 107 refuges, 35 of which do not have any other oil and gas activity.
- The Fish and Wildlife Service has not conducted any assessments of the cumulative environmental effects of oil and gas activities on refuge resources. Available studies, anecdotal information, and our observations show that the environmental effects of oil and gas activities and the associated construction, operation, and maintenance of the infrastructure on wildlife and habitat vary in severity, duration, and visibility. For example, the environmental effects range from infrequent small oil spills and minimal debris from abandoned infrastructure to large and chronic spills and large-scale industrial development. Some damage, such as habitat loss from infrastructure development, may last indefinitely, while other damage, such as wildlife disturbance from exploration, is of shorter duration. While certain types of damages are readily visible, others, such as changes in hydrology or habitat conditions, are more difficult to quantify or to link solely to oil and gas activities. Over the years, new environmental laws and industry practice and technology have reduced, but not eliminated, some of the most detrimental effects of oil and gas activities. In addition, oil and gas operators have taken steps, in some cases voluntarily, to reverse damages resulting from oil and gas activities, but operators have not consistently taken such steps, and the adequacy of these steps is not known. The Fish and Wildlife Service does not have a complete and accurate record of spills and other damage resulting from refuge-based oil and gas activities, has conducted few studies to quantify the extent of damage, and therefore does not know its full extent or the steps needed to reverse it.
- Federal management and oversight of oil and gas activities varies widely among refuges. Some refuges identify oil and gas activities and the risks they pose to refuge resources, issue permits that direct operators to minimize the effect of their activities on the refuge, monitor oil and gas activities with trained personnel, and charge mitigation fees or pursue legal remedies if damage occurs. Other refuges have fewer or none of these controls in place. We identified two primary reasons for this variation. First, the Fish and Wildlife Service's legal authority to require operators to obtain permits with conditions to protect refuge resources varies considerably, depending upon the nature of the mineral rights. Second, refuge managers lack sufficient guidance, resources, and training to properly manage and oversee oil and gas activities.

Background

Over the years, we and others have examined the effects on the refuge system of secondary activities,² such as recreation, military activities, and oil and gas

²U.S. General Accounting Office, National Wildlife Refuges: Continuing Problems with Incompatible Uses Calls for Bold Action, GAO/RCED-89-196 (Washington, D.C.: Sept. 8, 1989).

activities—which include oil and gas exploration, drilling and production, and transport. Exploring for oil and gas involves seismic mapping of the subsurface topography. Seismic mapping requires surface disturbance, often involving small dynamite charges placed in a series of holes, typically in patterned grids. Oil and gas drilling and production often requires constructing, operating, and maintaining industrial infrastructure, including a network of access roads and canals, local pipelines to connect well sites to production facilities and to dispose of drilling wastes, and gravel pads to house the drilling and other equipment. In addition, production may require storage tanks, separating facilities, and gas compressors. Finally, transporting oil and gas to production facilities or to users generally requires transit pipelines.

Department of the Interior regulations generally prohibit the leasing of federal minerals underlying refuges.³ In addition, under the National Wildlife Refuge System Administration Act of 1966, as amended, the Fish and Wildlife Service (FWS) is responsible for regulating all activities on refuges. The Act requires FWS to determine the compatibility of activities with the purposes of the particular refuge and the mission of the refuge system and not allow those activities deemed incompatible.⁴ FWS does not apply the compatibility requirement to the exercise of private mineral rights on refuges. However, the activities of private mineral owners on refuges are subject to a variety of other legal restrictions under federal law.⁵ For example, the Endangered Species Act of 1973 prohibits the “take” of any endangered or threatened species and provides for penalties for violations of the act;⁶ the Migratory Bird Treaty Act prohibits killing, hunting, possessing, or selling migratory birds, except in accordance with a permit;⁷ and the Clean Water Act prohibits discharging oil and other harmful substances into waters of the United States and imposes liability for removal costs and damages resulting from a discharge.⁸ Also, FWS regulations require that oil and gas activities be performed in a way that minimizes the risk of damage to the land and wildlife and disturbance to the operation of the refuge. The regulations also require that land affected be reclaimed after operations have ceased.⁹

One Quarter of Refuges Have Past or Present Oil and Gas Activities

At least one-quarter, or 155, of the 575 refuges (538 refuges and 37 wetland management districts) that constitute the National Wildlife Refuge System have past or present oil and gas activities—exploration, drilling and production, transit pipelines, or some combination of these (see table 1).¹⁰ Since 1994, FWS records show that 44 refuges have had some type of oil and gas exploration activities—geologic study, survey, or seismic mapping. We also identified at least 107 refuges with transit pipelines. These pipelines are almost exclusively buried, vary in size, and carry a variety of products, including crude oil, refined petroleum products, and high-pressure natural gas. Transit pipelines may also have associated storage facilities and pumping stations, but data are not available to identify how many of these are on refuges.

³Department of the Interior regulations allow leasing of federal minerals underlying refuges in the state of Alaska and in cases where federal minerals are being drained by operations on property adjacent to the refuge.

⁴16 U.S.C. §§ 668dd(a), (d).

⁵State laws also may affect the conduct of oil and gas activities.

⁶16 U.S.C. §§ 1538, 1540. The term “take” means to harass, harm, pursue, hunt, shoot, wound, kills, trap, capture, or collect. 16 U.S.C. § 1532(19).

⁷16 U.S.C. § 703.

⁸33 U.S.C. § 1321(b).

⁹50 C.F.R. § 29.32.

¹⁰This analysis does not include coordination areas, which are managed by states, or conservation easements, which are not owned by FWS.

Table 1: Number of Refuges with Oil and Gas Activities, by FWS Region

FWS region	Number of refuges, by category			Unduplicated counts, by category group	
	Exploration (survey and seismic work) ^a	Drilling and production (active and inactive oil and gas wells) ^b	Active pipelines (transiting refuge lands) ^c	Exploration and/or drilling and production	Exploration, drilling and production, and/or pipelines
1 (Pacific)	5	20	9	22	24
2 (Southwest)	10	22	24	22	29
3 (Great Lakes-Big Rivers)	1	10	14	10	19
4 (Southeast)	14	28	37	34	45
5 (Northeast)	1	4	6	4	6
6 (Mountain – Prairie)	9	20	15	24	27
7 (Alaska)	4	1	2	4	5
Total	44	105	107	120	155

Sources: FWS, Premier Data Services, and Office of Pipeline Safety.

^aBased on GAO's analysis of refuge reported data to FWS's Refuge Management Information System, 1994-2001.

^bBased on GAO's analysis of Premier Data Services' nationwide well database, January 2003.

^cBased on GAO's analysis of the National Pipeline Mapping System and Refuge Management Information System data, 1994-2001.

Over 4,400 oil and gas wells are located within 105 refuges. Although refuges with oil and gas wells are present in every FWS region, they are more heavily concentrated near the Gulf Coast of the United States. About 4 out of 10 wells (41 percent) located on refuges were known to be actively producing oil or gas or disposing of produced water during the most recent 12-month reporting period, as of January 2003. Of the 105 refuges with oil and gas wells, 36 refuges have actively producing wells. The remaining 2,600 wells did not produce oil, gas, or water during the last 12 months; many of these were plugged and abandoned or were dry holes.¹¹ During the most recent 12-month reporting period, the 1,806 active wells produced 23.7 million barrels of oil and 88,171 million cubic feet of natural gas, about 1.1 and 0.4 percent of total domestic oil and gas production, respectively. Based on 2001 average prices, refuge-based production had an estimated total commercial value of \$880 million.

Substantial oil and gas activities also occur outside but near refuge boundaries. An additional 4,795 wells and 84 transit pipelines reside within one-half mile of refuge boundaries. The 4,795 wells bound 123 refuges, 33 of which do not have any resident oil and gas wells. The 84 pipelines border 42 different refuges. While FWS does not own the land outside refuge boundaries, lands surrounding refuges may be designated for future acquisition.

Overall Effects of Oil and Gas Activities Are Unknown, but Those Activities Have Diminished Some Refuge System Resources

The overall environmental effects of oil and gas activities on refuge resources are unknown because FWS has conducted few cumulative assessments and has no comprehensive data. Available studies, anecdotal information, and our observations show that some refuge resources have been diminished to varying degrees by spills of oil, gas, and brine¹² and through the construction, operation, and maintenance of the infrastructure necessary to extract oil and gas. The damage varies widely in severity, duration, and visibility, ranging from infrequent small oil spills and industrial debris with no known effect on wildlife, to large and chronic spills causing wildlife deaths and long-term soil and water contamination. Some damage, such as habitat loss because of infrastructure development and soil and water contamina-

¹¹ Wells that are plugged and abandoned are permanently sealed by cementing the well bore. Improperly plugged wells can intrude on fresh water supplies or cause fires and seepage.

¹² Brine is water mixed with salts, other minerals, and oil.

tion, may last indefinitely while other damage, such as wildlife disturbance during seismic mapping, is of shorter duration. Also, while certain types of damage are readily visible, others, such as groundwater contamination, changes in hydrology, and reduced habitat quality from infrastructure development are difficult to observe, quantify, and associate directly with oil and gas activities. Finally, oil and gas activities on refuges may hinder public access to parts of the refuge or FWS's ability to manage or improve refuge habitat, such as by conducting prescribed burns or creating seasonal wetlands.

The 16 refuges we visited reported oil, gas, or brine spills, although the frequency and effects of the spills varied widely. Oil and gas spills can injure or kill wildlife by destroying the insulating capacity of feathers and fur, depleting oxygen available in water, or exposing wildlife to toxic substances. Brine spills can be lethal to young waterfowl, damage birds' feathers, kill vegetation, and decrease nutrients in water. Even small spills may contaminate soil and sediments if they occur frequently. For instance, a study of Atchafalaya and Delta National Wildlife Refuges in Louisiana found that oil contamination present near oil and gas facilities is lethal to most species of wildlife, even though refuge staff were not aware of any large spills.¹³

Constructing, operating, and maintaining the infrastructure necessary to produce oil and gas can harm wildlife by reducing the quantity and quality of habitat. Infrastructure development can reduce the quality of habitat through fragmentation, which occurs when a network of roads, canals, and other infrastructure is constructed in previously undeveloped areas of a refuge. Fragmentation increases disturbances from human activities, provides pathways for predators, and helps spread nonnative plant species. For example, officials at Anahuac and McFaddin National Wildlife Refuges in Texas said that disturbances from oil and gas activities are likely significant and expressed concern that bird nesting may be disrupted. However, no studies have been conducted at these refuges to determine the effect of these disturbances. Infrastructure networks can also damage refuge habitat by changing the hydrology of the refuge ecosystem, particularly in coastal areas. In addition, industrial activities associated with extracting oil and gas have been found to contaminate wildlife refuges with toxic substances such as mercury and polychlorinated biphenyls (PCBs). Mercury and PCBs were used in equipment such as compressors, transformers, and well production meters, although generally they are no longer used.

New environmental laws and industry practice and technology have reduced, but not eliminated, some of the most detrimental effects of oil and gas activities. For example, Louisiana now generally prohibits using open pits to store production wastes and brine in coastal areas and discharging brine into drainages or state waters. Also, improvements in technology may allow operators to avoid placing wells in sensitive areas such as wetlands. However, oil and gas infrastructure continues to diminish the availability of refuge habitat for wildlife, and spills of oil, gas, and brine that damage fish and wildlife continue to occur. In addition, several refuge managers reported that operators do not always comply with legal requirements or follow best industry practices, such as constructing earthen barriers around tanks to contain spills, covering tanks to protect wildlife, and removing pits that temporarily store fluids used during well maintenance.

Oil and gas operators have taken steps, in some cases voluntarily, to reverse damages resulting from oil and gas activities, but operators have not consistently taken such steps, and the adequacy of these steps is not known. For example, an operator at McFaddin National Wildlife Refuge removed a road and a well pad that had been constructed to access a new well site and restored the marsh damaged by construction after the well was no longer needed. In contrast, in some cases, officials do not know if remediation following spills is sufficient to protect refuge resources, particularly for smaller oil spills or spills into wetlands.

FWS does not have a complete and accurate record of spills and other damage resulting from refuge-based oil and gas activities, has conducted few studies to quantify the extent of damage, and therefore does not know its full extent or the steps needed to reverse it. The lack of information on the effects of oil and gas activities on refuge wildlife hinders FWS's ability to identify and obtain appropriate mitigation measures and to require responsible parties to address damages from past activities. Lack of sufficient information has also hindered FWS's efforts to identify all locations with past oil and gas activities and to require responsible parties to address damages. FWS does not know the number or location of all abandoned wells and other oil and gas infrastructure or the threat of contamination they

¹³North Carolina State University, Department of Environmental and Molecular Toxicology, Chemical Contamination at National Wildlife Refuges in the Lower Mississippi River Ecosystem, February 2001, for the U.S. Department of the Interior.

pose and, therefore, its ability to require responsible parties to address damages is limited. However, in cases where FWS has performed studies, the information has proved valuable. For example, FWS funded a study at some refuges in Oklahoma and Texas to inventory locations containing oil and gas infrastructure, to determine if they were closed legally, and to document their present condition. FWS intends to use this information to identify cleanup options with state and federal regulators. If this effort is successful, FWS may conduct similar studies on other refuges.

FWS Management and Oversight of Oil and Gas Activities Varies Widely

FWS's management and oversight of oil and gas activities varies widely among refuges. Management control standards for federal agencies require federal agencies to identify risks to their assets, provide guidance to mitigate these risks, and monitor compliance.¹⁴ For FWS, effectively managing oil and gas activities on refuges would entail, at a minimum, identifying the extent of oil and gas activities and their attendant risks, developing procedures to minimize damages by issuing permits with conditions to protect refuge resources, and monitoring the activities with trained staff to ensure compliance and accountability. However, the 16 refuges we visited varied widely in the extent to which these management practices occur. Some refuges identify oil and gas activities and the risks they pose to refuge resources, issue permits that direct operators to minimize the effect of their activities on the refuge, monitor oil and gas activities with trained personnel, and charge mitigation fees or pursue legal remedies if damage occurs. For example, two refuges in Louisiana collect mitigation fees from oil and gas operators that are then used to pay for monitoring operator compliance with permits and state and federal laws. In contrast, other refuges do not issue permits or collect fees, are not aware of the extent of oil and gas activities or the attendant risks to refuge resources, and provide little management and oversight.

Management and oversight of oil and gas activities varies for two primary reasons. First, FWS's legal authority to require oil and gas operators to obtain access permits with conditions to protect refuge resources varies considerably depending upon the nature of the mineral rights. For reserved mineral rights—cases where the property owner retained the mineral rights when selling the land to the federal government—FWS can require permits only if the property deed subjects the rights to such requirements. For outstanding mineral rights—cases where the mineral rights were separated from the surface lands before the government acquired the property—FWS has not formally determined its position regarding its authority to require access permits. However, we believe, based on statutory language and court decisions, that FWS has the authority to require owners of outstanding mineral rights to obtain permits. Second, refuge managers lack sufficient guidance, resources, and training to properly monitor oil and gas operators. Current FWS guidance regarding the management of oil and gas activities where there are private mineral rights is unclear, according to refuge staff. Refuge staff said they also lack sufficient resources to oversee oil and gas activities, which are substantial at some refuges. Only three refuges in the system have staff dedicated full-time to monitoring these activities, and some refuge staff cite a lack of time as a reason for limited oversight. Staff also cite a lack of training as limiting their capability to oversee oil and gas operators; FWS has offered only one oil- and gas-related workshop in the last 10 years.

On a related management issue, FWS has not always thoroughly assessed property for possible contamination from oil and gas activities prior to its acquisition, even though FWS guidance requires an assessment of all possible contamination. For example, FWS acquired one property that is contaminated from oil and gas activities because staff did not adequately assess the subsurface property before acquiring it. After acquiring the property, FWS found that large amounts of soil were contaminated with oil. FWS has thus far spent \$15,000, and a local conservation group spent another \$43,000, to address the contamination. We found that the guidance and oversight provided to FWS regional and refuge personnel were not adequate to ensure that the requirements were being met.

Conclusions

The National Wildlife Refuge System is a national asset established principally for the conservation of wildlife and habitat. While federally owned mineral rights underlying refuge lands are generally not available for oil and gas exploration and production, that prohibition does not extend to the many private parties that own mineral rights underlying refuge lands. The scale of these activities on refuges is

¹⁴U.S. General Accounting Office, Standards for Internal Control in the Federal Government, GAO/AIMD-00-2131 (Washington, D.C.: Nov. 1999).

such that some refuge resources have been diminished, although the extent is unknown without additional study.

Some refuges have adopted practices—for example, developing data on the nature and extent of activities and their effects on the refuge, overseeing oil and gas operators, and training refuge staff to better carry out their management and oversight responsibilities—that limit the impact of these activities on refuge resources. If these practices were implemented throughout the agency, they could provide better assurance that environmental effects from oil and gas activities are minimized. In particular, in some cases, refuges have issued permits that establish operating conditions for oil and gas activities, giving the refuges greater control over these activities and protecting refuge resources before damage occurs. However, FWS does not have a policy requiring owners of outstanding mineral rights to obtain a permit, although we believe FWS has this authority, and FWS can require owners of reserved mineral rights to obtain a permit if the property deed subjects the rights to such requirements. Confirming or expanding FWS's authority to require reasonable permit conditions and oversee oil and gas activities, including cases where mineral rights have been reserved and the property deed does not already subject the rights to permit requirements, would strengthen and provide greater consistency in FWS's management and oversight. Such a step could be done without infringing on the rights of private mineral owners. Finally, FWS's land acquisition guidance is unclear and oversight is inadequate, thereby exposing the federal government to unexpected cleanup costs for properties acquired without adequately assessing contamination from oil and gas activities.

In our report, we made several recommendations to improve the framework for managing and overseeing oil and gas activities on national wildlife refuges, including (1) collecting and maintaining better data on oil and gas activities and their environmental effects, and ensuring that staff resources, funding, and training are sufficient and (2) determining FWS's existing authority over outstanding mineral rights. We also recommended that the Secretary of the Interior, in coordination with appropriate Administration officials, seek from Congress any necessary additional authority over outstanding mineral rights, and over reserved mineral rights, to ensure that a consistent and reasonable set of regulatory and management controls are in place for all oil and gas activities occurring on national wildlife refuges.

The Department of the Interior's response to our recommendations was mixed. The department was silent on our recommendations that it should collect and maintain better data on oil and gas activities and their effects and that it should ensure that staff are adequately trained to oversee oil and gas activities. Also, while the department was silent on whether it should review FWS's authority to regulate outstanding mineral rights, it raised procedural concerns about our recommendation that it seek any necessary additional authority from Congress to regulate private mineral rights. We continue to believe that our recommendation is warranted. In light of the department's opposition, we suggested that the Congress consider expanding the FWS's authority to enable it to consistently regulate the surface activities of private mineral owners on refuges.

Thank you Mr. Chairman and Members of the Subcommittee. That concludes my prepared statement. I would be pleased to respond to any questions that you may have.

Contacts and Acknowledgments

For further information on this testimony, please contact Barry T. Hill at (202) 512-3841. Individuals making key contributions to this testimony included Paul Aussendorf, Robert Crystal, Jonathan Dent, Doreen Feldman, and Bill Swick.

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[Mr. Hill's response to questions submitted for the record follows:]

GAO Response to Questions for the Record

Questions submitted by Representative Frank Pallone

1. The GAO reported that the Fish and Wildlife Service does not know about all of the wells and other oil and gas activities that occur on its refuges. This is a surprising revelation.

a. How complete is your account of the extent of the oil and gas activities on refuges, and how did you develop your information? How is this data useful?

Information we developed on the extent of oil and gas activities is more complete than anything reported to date because it relies on comprehensive databases of well and pipeline locations, whereas previous attempts had relied upon resident Fish and Wildlife Service (FWS) staff to self-report the presence but not extent of activity. To determine the number of wells residing on FWS lands, we contracted with Premier Data Services. Premier maintains a national well database based on state oil and gas commission permit data, which includes geographic location information. Premier plotted well locations against digital maps of refuges to determine how many resided within and near refuges. In addition to obtaining information on the location of oil and gas wells, we also obtained information on the status, type, and amount of production of oil, gas, and water (brine) from each well. We eliminated from the database permitted wells that were not drilled, while wells with any production in the most recent reporting period we categorized as active; all other wells we categorized as inactive. To identify pipelines transiting refuge lands, we relied on the National Pipeline Mapping System (NPMS), which is maintained by the Office of Pipeline Safety in the Department of Transportation and on FWS's Refuge Management Information System (RMIS). We overlaid the NPMS data on the 138 refuges for which we had digital refuge boundary data because they also had wells inside or just outside their boundaries. Additional refuges may contain transit pipelines, but FWS did not have digital boundary data available to use in identifying those pipelines. NPMS is based on data reported to the Office of Pipeline Safety by pipeline owners. NPMS includes 99 percent of the nation's hazardous liquids (including oil and other petroleum products) pipelines and 61 percent of natural gas pipelines in the United States.

Our data has been provided to FWS in its entirety and will be useful to national and refuge level efforts to manage and oversee oil and gas activities, including identifying risks to refuge resources and seeking reclamation where damage has occurred.

2. In your report, the GAO discussed the wells and pipelines that occur outside of refuge boundaries. However, I am not sure what the purpose was to include a reference to facilities that the Fish and Wildlife Service has no direct authority to regulate.

a. Since the Fish and Wildlife Service does not have authority over these activities, why did you think it was important to report them?

We identified and reported on the number of wells and pipelines within 1/2 mile of refuge boundaries for two reasons. First, FWS needs to be aware of oil and gas activities immediately surrounding its refuges, as contamination can migrate onto refuges and affect refuge resources. Second, lands immediately surrounding refuges are often targeted for future acquisition. Knowledge of oil and gas activities on these lands is important to refuge planning and lands acquisition.

3. You assessed the environmental effects of oil and gas activities and the Fish and Wildlife Service's management and oversight of oil and gas activities, in part, by visiting a select subset of refuges.

a. How and why did you select the refuges you visited?

We selected for physical inspection at least one refuge in each of FWS's seven regions. In making these selections, we attempted to choose a cross section of refuges considering the type and scale of oil and gas activities, range of environmental effects, and extent and type of management and oversight. In total, we visited 16 refuges containing 1,510 active and 2,695 total oil and gas wells, about 84 percent and 61 percent, respectively, of all oil and gas wells we identified on refuges. At each refuge visited, we asked the refuge manager to describe the effects of oil and gas activities on the refuge, obtained any available studies of these effects, and visited locations of oil and gas activity selected by the refuge manager to represent a range of effects.

b. In your opinion, is this sample representative of the problems throughout the refuge system as a whole?

For the one-quarter of refuges with oil and gas activities, we believe it is representative. In addition to the 16 refuges we visited, we contacted other refuges by phone that reported similar issues.

4. According to the GAO report, the environmental effects of oil and gas activities have been reduced due to the passage of new laws, improvements in industry practices, and voluntary and ordered actions taken to restore habitat damage that has occurred.

a. From your observations have these steps been successful in protecting refuge resources or are they simply a triage approach to the problem?

We do not know to what extent each of these changes has contributed to reducing the effects of oil and gas activities on refuges. In large part this is because FWS does not have baseline information on refuges' conditions prior to these changes in laws and practices. We did, however, encounter evidence that changes in environmental laws, changes in industry practice, and operator actions to reduce environmental effects resulted in improvements at refuges that we visited. These measures are by their very nature variable and not consistent across all refuges.

b. In this regard, how are protections for refuge resources undercut by State or local laws or regulations that are more permissive of oil and gas activities?

Any state or local laws that might be more permissive than federal law of oil and gas activities and that actually conflicted with federal requirements likely would be deemed to be legally "preempted" by the federal requirements. Federal law preempts state law when, among other things, state law conflicts with federal law to the extent that it is impossible to comply with both state and federal law, or when the state law is an obstacle to accomplishing the full purposes or objectives of the federal law. *Silkwood v. Kerr-McGee Corp.*, 464 U.S. 238, 248 (1984) (citations omitted). Federal law generally does not preempt more stringent state or local laws, however (assuming they do not conflict with the federal requirements); such laws would apply in addition to the federal rules. For example, certain states require permits for wells drilled by private mineral owners, and some states set plugging and abandonment requirements for these private wells. Because FWS staff provide the primary means of oversight over oil and gas activities on refuge lands, it is vital that they be aware of state and local laws and coordinate with state and local authorities to ensure appropriate protection of the refuge resources.

5. In your report, you state that in some cases oil and gas operators have taken steps to reclaim sites once oil and gas activities are complete and facilities shut down.

a. From your observations, how effective are those actions in terms of restoring environmental quality and ensuring public safety on refuges?

In cases where reclamation has occurred, refuge managers are generally satisfied with the results, although they did cite examples where some infrastructure was not removed. Based on the few reclamation efforts that we observed, for example, at McFaddin National Wildlife Refuge, the sites were restored to an extent that they

were visually similar to surrounding areas, but it is unknown if contamination lingers in these locations.

b. When do operators take those actions? Are there standard procedural triggers that compel reclamation?

Reclamation may be triggered by federal regulations, state laws, and FWS permits. 50 CFR 29.32 requires operators to reclaim refuge lands after their use. However, federal regulations are not specific as to when this will occur. Owners or operators may sell their leases to a new operator rather than undertake the expense of reclaiming a site. Further, operators can claim that an idled site will be reopened in the future. State regulators are responsible for ensuring that idled sites are properly abandoned and reclaimed if not producing but enforcement is often lacking. Reclamation is also governed by state laws, which vary. For instance, Texas does not require operators to remove all buried flowlines or access roads. Finally, where FWS has authority to require operators to acquire permits, the permits may require operators to take certain steps to reclaim the site. For instance, an FWS permit required an operator at McFaddin National Wildlife Refuge to reclaim any unproductive sites within 90 days. The operator removed a road and a well pad that they constructed to access a new well site and restored the marsh damaged by construction.

c. Why is reclamation of abandoned oil and gas facilities and sites not consistently applied across the Refuge System?

Abandoned oil and gas facilities are not consistently reclaimed for a variety of reasons—for example, a lack of oversight and enforcement, potential for future use of the site, refuge staff that may be uncertain of requirements, responsible parties that can no longer be identified or held liable, and a lack of funds for state orphan well plug and abandonment programs.

6. In the GAO report, you describe a wide range of management practices and oversight of oil and gas activities at National Wildlife Refuges between regions and between specific refuges within regions. This haphazard pattern of management seems to demand some consistency.

a. From your observations, what are the main differences between a well-managed refuge and a poorly managed refuge?

Well-managed refuges have identified the nature and extent of oil and gas activities on the refuge and have assessed the risks these activities pose to refuge resources—at a minimum they have completed a Contaminant Assessment Process study. Well-managed refuges have also adopted risk-reduction procedures, such as issuing access permits with conditions to protect refuge resources, securing financial assurance that reclamation will occur, and overseeing oil and gas operations with trained and dedicated staff that are familiar with federal and state environmental laws. Poorly managed refuges have followed few, if any, of these practices.

b. Would improved management and oversight of oil and gas activities reduce the negative effects on refuge resources caused by these activities?

Undoubtedly, improved management and oversight would help reduce (but not eliminate) the negative impacts of oil and gas activities. If the practices employed by well-managed refuges cited in 6.a. were implemented throughout the agency, they could provide better assurance that environmental effects from oil and gas activities are minimized. In particular, if all refuges issued permits establishing operating conditions for oil and gas activities, refuges would have greater control over these activities and better protect refuge resources before damage occurs.

c. Because of the disparity among regions and between sites in how they regulate oil and gas activities, do you believe that it requires much closer coordination from the Department of the Interior?

The National Wildlife Refuge System varies from other public lands managed by other Interior agencies, because they are the only lands set aside specifically for conservation and management of fish, wildlife, and plant resources, and need to be managed accordingly. Developing greater consistency of management and oversight of oil and gas activities within the FWS will require more active leadership from FWS's headquarters in setting policy and clarifying its authority to issue permits. The FWS needs the support of the Department in seeking additional authority to oversee and manage these activities.

7. You also identified uncertainties about the Fish and Wildlife Service's authority to require oil and gas operators to obtain a permit that would specify actions needed to protect refuge resources.

a. Why is Fish and Wildlife Service's authority to require permits unclear?

As explained in more detail in Appendix III of our report, current legislation does not explicitly state that FWS may require owners of private mineral rights to obtain permits before conducting oil and gas activities. Rather, FWS's permit authority (which does not currently apply to all types of mineral rights) flows from its more general authority over wildlife refuges. FWS can require private owners of "reserved" mineral rights—which are created when the property owner retains the mineral rights at the time the surface property is transferred to the federal government—to obtain a permit before exercising those rights only if the deed transferring surface ownership to the government contains language that subjects these rights to permitting requirements. This limited authority over reserved rights is based largely on a section of the Migratory Bird Conservation Act that makes these rights subject to government regulation if the deed includes specific requirements, such as permitting requirements, or states that the rights are subject to regulations prescribed by the Department "from time to time." 16 U.S.C. §715e.

By contrast, we believe FWS can require all private owners of "outstanding" mineral rights—which are created when the mineral rights are separated from the surface lands prior to the transfer of the surface property to the government (and are thus owned by a third party)—to obtain a permit before exercising those rights. Although current law does not explicitly state that FWS may require such permits, language in the National Wildlife Refuge System Act, which governs FWS's administration of wildlife refuges, is very similar to language in laws governing the national parks and the national forests that has been held to authorize the National Park Service and the United States Forest Service to require owners of private mineral rights on federal lands to obtain permits before exercising those rights. See *Dunn McCampbell Royalty Interest, Inc. v. National Park Service*, 964 F. Supp. 1125 (S.D. Tex. 1995), *aff'd* on other grounds, 112 F.3d 1283 (5th Cir. 1997); *Duncan Energy Co. v. United States Forest Service*, 50 F.3d 584 (8th Cir. 1995). By analogy, we believe FWS could issue regulations under its existing statutory authority requiring private oil and gas operators to obtain permits with appropriate conditions for exploration and development of outstanding rights.

b. Would requiring such permits reduce the environmental effects on refuges and improve the Service's ability to manage and oversee oil and gas activities?

If FWS could require permits for oil and gas activities at every refuge it would undoubtedly reduce the environmental effects caused by those activities. Permitting would allow FWS to add reasonable conditions to protect refuge resources—for example, requiring that oil and gas operations avoid sensitive areas or seasons of the year or operate their facility in a particular manner. The permit would also provide FWS with a legal basis to conduct oversight activities and take enforcement action if the operator was not complying with the permit's conditions.

Questions submitted by Representative Edward Markey

1. According to GAO report, "there are 2,600 inactive wells on refuges, including an unknown number that have been abandoned, but not plugged, and some sites also have unused tanks, flowlines, and debris that should be removed (p. 29)." It also notes that the Anahuac National Wildlife Refuge alone has an estimated cost of cleanup is [sic] \$1.1 million. Can the GAO estimate what the cleanup liability from oil and gas activities on refuges is and how much of that the taxpayers might have to cover?

We cannot estimate the total cost of reclamation or how much may have to be funded by taxpayers because there is no refuge system inventory of oil and gas infrastructure, the status of this infrastructure, or the parties responsible for reclamation. Our accounting of oil and gas wells is a necessary first step, but FWS will need to undertake a system-wide inventory of all oil and gas infrastructure, such as storage tanks, pipelines, and well pads, and whether that equipment is still in use before any estimates of reclamation costs can be made. The FWS will then need to identify responsible parties, where possible, and whether these parties are capable of underwriting the cost of reclamation. FWS's Region 2 has begun such a study, visually inspecting and inventorying oil and gas infrastructure on refuges in that region. At the time of our audit, the region was awaiting additional funds to complete this study.

2. The GAO report concludes that nearly \$900 million worth of oil and gas was produced from national wildlife refuges in the last 12-month period for which there is data. In contrast, the GAO report concludes that the Fish and Wildlife Service lacks adequate funds to oversee oil and gas activities on refuges. For example, very few refuges have staff assigned specifically to oversee oil and gas activities, not all refuges have completed Contaminant Assessment Process studies, some refuges are tarnished with

contaminated soils and waters with no funds for remediation, and a number of refuges are littered with rusty old oil and gas infrastructure with no means of removing the structures.

If the Fish and Wildlife Service required special use permits for access to outstanding mineral rights, as the GAO suggests it has authority to do, it could in theory charge a fee for such permits. Even one-half of one percent fee imposed on the value of oil and gas produced from refuges would raise more than \$4 million a year, which could go a long way towards improving Fish and Wildlife Service's ability to address the problems associated with oil and gas on refuges. Are there impediments to assessing such fee?

There are limitations on FWS's current statutory authority to impose permit fees and to use any fees it receives for administration of an oil and gas activity permit program. Title V of the Independent Offices Appropriations Act, known as the IOAA or the "User Charge Statute," 31 U.S.C. §9701, authorizes agencies to charge a fee for a service or thing of value provided by the agency to an identifiable beneficiary. Under the IOAA, if FWS were to establish a permit requirement, it could charge permittees an appropriate fee for its administration and oversight costs for oil and gas permits. However, fees imposed under the authority of the IOAA may not exceed an agency's cost of rendering the service, and thus FWS could not impose a fee based on the value of oil and gas produced from refuges. Moreover, absent specific legislation, fees collected under the authority of the IOAA must be deposited in the Treasury as miscellaneous receipts. Because FWS currently has no such specific authority, it would not be able to retain fees collected under the IOAA. Office of Management and Budget Circular No. A-25 sets out guidance for the executive branch's implementation of the IOAA.

3. Is there a legal mechanism for the FWS to be compensated for the loss of habitat while operations are ongoing? For example, if an oil well consumes 10 acres in its pad, road, and pipelines, can the FWS receive some type of rental payment for the loss of use of that surface property? This would be in addition to any guarantees provided to remove and clean up infrastructure while operations are completed.

There is currently no clear basis in federal law for FWS to be compensated, in the nature of a rental payment, for the loss of use of habitat (as opposed to obtaining damages for certain injuries to the surface lands) for the period while an owner of private mineral rights conducts oil and gas operations. Some state laws may provide a basis for such compensation, however. With respect to federal law, FWS's regulations require only that private mineral owners minimize interference with the operation of the refuge and keep "[p]hysical occupancy" of the area in which exploration, development, and production operations are conducted "to the minimum space compatible with the conduct of efficient mineral operations." 50 C.F.R. §29.32. An operator who fails to comply with these requirements is subject to a fine and or imprisonment, depending on the nature of the operator's actions. 16 U.S.C. §668dd(f).

The same FWS regulation—which also requires oil and gas operators, "to the greatest extent practicable, ... to conduct their operations "in such a manner as to prevent damage, erosion, pollution, or contamination to the lands, waters, facilities and vegetation of the area" provides that the regulation should not be applied in a way that "contravene[s] or nullif[ies]" the rights of owners of mineral rights. This clause reflects the general common law principle, discussed in Appendix III of our report, that private mineral rights owners have the right to use the surface lands in a manner that is reasonably necessary to explore and extract the underlying minerals, and that the remedy for the overlying landowner—here the United States—in the event of contamination or other injury for activities beyond those "reasonably necessary" would be a suit for monetary damages. See, e.g., *Slaaten v. Cliff's Drilling Co.*, 748 F.2d 1275, 1277 (8th Cir. 1984); *United Geophysical Corp. v. Culver*, 394 F.2d 393 (5th Cir. 1964); *Flying Diamond Corp. v. Rust*, 551 P.2d 509, 511 (Utah 1976); *Guffey v. Stoud*, 16 S.W.2d 527 (Tex. Comm. App. 1929).¹

¹ It is unclear what, if any, impact the court's November 18, 2003, decision in *Mineral Policy Center v. Norton*, No. 01-00073 (HHK), D.D.C., might have on this FWS regulation. The Mineral Policy Center court found that issuance of permits to mining operations that degrade or damage public lands violates the Federal Land Policy and Management Act (FLPMA), which in turn "vests the Secretary of the Interior with the authority and indeed the obligation to disapprove of an otherwise permissible mining operation because the operation, though necessary for mining, would unduly harm or degrade the public land." However, the court upheld regulations issued under FLPMA in 2001, finding that the regulations were not "manifestly contrary" to FLPMA.

By comparison, some states have enacted statutes that may provide a basis for compensation for lost use of land due to oil and gas operations. For example, North Dakota requires the mineral developer to compensate the surface owner (which, in the case of a national wildlife refuge, is the United States) for the "lost use of surface access." N.D. Cent. Code §38-11.1-04. Thus, the federal government might have a basis for recovering for the loss of use of habitat caused by private oil and gas operations on a national wildlife refuge located in North Dakota.

4. What are the existing or potential legal opportunities to impose tax or fee on oil and gas operations on refuges with private minerals to defray the costs of oversight and management of these activities?

With respect to fees, as explained in response to question #2, if FWS establishes a permit program for oil and gas activity on refuges, the IOAA would authorize FWS to impose a fee on operators to cover the costs of administering and overseeing the program. If Congress enacted legislation specifically allowing FWS to use these fees to defray its costs, FWS could do so; otherwise, FWS would have to deposit the fees into the Treasury as miscellaneous receipts. With respect to taxes, there is no current statutory authority allowing taxation of oil and gas activities on refuges. Congress would have to enact such legislation and designate the appropriation account to which those taxes should be credited.

Mr. GILCHREST. Thank you very much, Mr. Hill.
Mr. Smith.

STATEMENT OF DAVID P. SMITH, DEPUTY ASSISTANT SECRETARY FOR FISH, WILDLIFE AND PARKS, DEPARTMENT OF THE INTERIOR; ACCOMPANIED BY WILLIAM HARTWIG, CHIEF OF NATIONAL WILDLIFE REFUGE SYSTEM, U.S. FISH AND WILDLIFE SERVICE

Mr. SMITH. Thank you, Mr. Chairman.

Mr. Chairman and members of the Subcommittee, I am David P. Smith, Deputy Assistant Secretary for Fish, Wildlife and Parks. I am joined today by Mr. William Hartwig, who is Assistant Director and Chief for Refuges in the Fish and Wildlife Service.

Thank you for this opportunity to provide the Department of Interior's views on the GAO report on oil and gas activities on units of the National Wildlife Refuge System.

We take the recommendations contained in the report seriously. However, they need to be viewed in the context of the overall situation with respect to oil and gas activities in the Refuge System.

We are in the process of developing a formal response to the report, and we will provide this Subcommittee with a copy as soon as it is finalized.

With the exception of refuge lands in Alaska, where the Federal Government owns most of the subsurface mineral rights, the U.S. Fish and Wildlife Service frequently owns only the surface rights to lands within the National Wildlife Refuge System. Where private interests own the mineral rights on those lands, it is their right by law to have access to those minerals.

Historically, the reason for this division of ownership of the surface estate and mineral estate is that, at the time of purchase, the mineral estates are often either not for sale or prohibitively expensive. In these cases, the surface estates were purchased independently from the mineral rights.

This same approach has been used by several major private conservation groups in an effort to purchase required through donation valuable habitat that otherwise would be prohibitively expensive or not for sale at all.

This is not a new topic for Congress, the Department, or the Fish and Wildlife Service. There were at least five hearings over potentially incompatible uses on refuge lands in the 101st and 102nd Congresses held by the former Committee on Merchant Marine and Fisheries, the Committee on Government Reform, and the Senate Committee on Environment and Public Works. There was also a GAO report and a detailed evaluation of all uses of the Refuge System was conducted at that time by the Fish and Wildlife Service and provided to these committees.

The nature and extent of oil and gas activities on refuges were presented during these hearings and addressed in the evaluation, along with a wide variety of other uses. At no point during this process did the leadership of the Service or any of the committees indicate oil and gas activities on refuges was a significant problem.

In addition, neither President Clinton's Executive Order on management of refuges, nor the National Wildlife Refuge System Improvement Act of 1997, negotiated by the former Secretary of the Interior and Members of Congress, contain any provisions which address directly oil and gas activities on National Wildlife Refuges.

Departmental regulations adopted in the 1980s prohibit developing federally owned mineral resources, including oil and gas, on National Wildlife Refuges outside of Alaska, except in the case to prevent drainage. Oil and gas development in National Wildlife Refuges today occurs under two scenarios: either as a result of private ownership of mineral rights, in which case our ability to regulate oil and gas development may be limited, or in order to protect against drainage of Federal oil and gas resources from activities on adjacent lands, in which case oil and gas activity occurs under Federal lease and permit requirements, including conditions to ensure habitat protection.

Similarly, with respect to pipelines, they are either present and in place at the time the Service acquires the land, or they are constructed under permit from the Service following a compatibility determination and under the terms and conditions the Service deems appropriate for protection of refuge resources.

In neither case, the Service was aware of the presence of retained oil and gas rights, or the pipeline at the time it acquired the property and determined the potential benefits of including the area and the natural resources therein within a National Wildlife Refuge outweighed whatever impacts might result from the presence of that mineral right or pipeline.

The report offers several recommendations, which you have already heard from GAO. I would like to add the following observations.

Many of these lands have had oil and gas activities for decades, in some cases dating back more than 70 years. This is not a new issue. Instead, it is one that has been with us for many years. We are not saying there are no problems. However, we believe the Service is generally doing a good job in manning this longstanding and complex issue.

We must all recognize that oil and gas exploration is only one of the management issues we must address as we assess operational needs across the entire Refuge System. President Bush has requested substantial increases in funding each year.

At the same time, we are addressing other very real threats to our refuges. For example, the damage caused by invasive species affects refuges from Alaska to the Caribbean, with over 80 percent of refuges reporting problems with invasives. This is a problem that Chairman Gilchrest is very familiar with and has been a great partner to us on.

Although the Service to date has taken management actions in an attempt to control nutria in black water and other places, as well as other invasive species on over 300 separate refuges, we need to do more. We believe we are able, under our existing authorities, to effectively manage and oversee oil and gas development activities on our National Wildlife Refuges. We will continue to work to address all the challenges that our managers and refuge resources face.

Mr. Chairman, this concludes my statement. I am happy to answer any questions that you or other members of the Subcommittee may have, and I would ask that my official statement be made part of the official record.

Thank you.

Mr. GILCHREST. Without objection.

[The prepared statement of Mr. Smith follows:]

Statement of David P. Smith, Deputy Assistant Secretary for Fish and Wildlife and Parks, U.S. Department of the Interior

Mr. Chairman and Members of the Subcommittee, I am David P. Smith, Deputy Assistant Secretary for Fish and Wildlife and Parks. Thank you for the opportunity to provide the Department of the Interior's (Department) views on the General Accounting Office's Final Report (Report) on the management and oversight of oil and gas activities on units of the National Wildlife Refuge System (GAO-03-517). A copy of the Report was provided to the Department on September 23, 2003.

The Administration takes the recommendations contained in the Report seriously. My plan today is to provide you with some brief background material and offer some initial responses to the Report's recommendations. In this regard, I should point out that, pursuant to 31 U.S.C. 720 and Departmental policy, we are in the process of developing a formal response to the Report which should provide a more detailed look at how we plan to address GAO's recommendations. We will gladly provide the Subcommittee with a copy of that response as soon as it is available.

Oil and Gas Activities and the National Wildlife Refuge System

With the exception of refuge lands in Alaska, where the federal government owns most of the sub-surface mineral rights, in many cases, the U.S. Fish and Wildlife Service (Service) owns only the surface rights to lands within the National Wildlife Refuge System (NWRS). Where private interests own the sub-surface or mineral rights on these lands, it is their right by law to access those minerals. The Administration respects those rights in making management decisions and we have found that most of the owners of these sub-surface rights work cooperatively with the refuges.

Generally, the reason for this division of the surface and mineral estates is that often the mineral rights are either not for sale or are prohibitively expensive at the time the surface rights are purchased. In these cases, the surface rights are purchased independently from the mineral rights. This same approach has been used by several major private conservation groups, in part so they, too, can more easily acquire lands that are deserving of protection.

Department regulations require "to the greatest extent practicable," that "all exploration, development and production operations" be conducted in such a manner as to "prevent damage, erosion, pollution, or contamination to the lands, waters, facilities, and vegetation of the area." Further, "so far as practicable, such operations must also be conducted without interference with the operation of the refuge or disturbance to the wildlife thereon." (50 C.F.R. Part 29.32.)

According to the GAO Report, 155 of the 575 units administered by the Service have current or past oil and gas activities. The GAO found that, as of December 2002, there were 1,806 active wells on 36 refuges, with most of those wells

concentrated on just 5 refuges, and mostly in the State of Louisiana. Sixty-nine refuges contain an additional 2,600 inactive wells. The Report also notes that at least one active pipeline is present over 107 units.

The Report cites information from the most recent 12-month reporting period showing that the active wells are responsible for producing 23.7 million barrels of oil and 88.2 million cubic feet of natural gas, about 1.1 and 0.4 percent of the Nation's domestic oil and gas production, respectively. In 2001 prices, refuge-based production had an estimated commercial value of \$880 million.

While this GAO Report has generated some interest, oil and gas activity on national wildlife refuges is not a new topic for Congress, the Department, or the Service.

During the 101st and 102nd Congresses, several hearings over existing and possibly incompatible uses of the refuge system were held in the former Committee on Merchant Marine and Fisheries, the Committee on Government Reform, and the Senate Committee on Environment and Public Works. This was accompanied by a GAO Report, and a detailed evaluation of all uses of the Refuge System was conducted by the Service and provided to the Committees. The nature and extent of oil and gas activities on refuges were reported during those hearings and addressed in the evaluation, along with a wide variety of other uses. At no point during this process did prior Administrations or any of the Committees indicate this was a significant problem.

In addition, there were no proposals or amendments offered about oil and gas activity within the refuge system while the organic statute for the NW RS was being debated in the 104th and 105th Congress, and neither the 1996 Executive Order No. 12996, relating to the management of refuges, nor the National Wildlife Refuge System Improvement Act of 1997, P. L. 105-57, which significantly amended the basic NWRS authority, have any provisions on the issue.

This is most likely because Departmental regulations, found at 43 C.F.R. 3101.5-1 and adopted in the 1980s, prohibit developing federal mineral resources, including oil and gas, on national wildlife refuges outside of Alaska, except to prevent drainage. Development in Alaska is controlled by the Alaska National Interest Lands Conservation Act (ANILCA).

Oil and gas development at national wildlife refuges today occurs under two scenarios. It is either as the result of private mineral rights retained prior to or at the time the Service acquired the land, in which case our ability to regulate the oil and gas development may be limited, or it occurs as the result of drainage of adjacent federal oil and gas resources, in which case the development occurs under federal lease and permit requirements, including conditions to ensure habitat protection. In those cases where private rights are retained, we must allow these owners to access their mineral rights, because otherwise we must purchase them at fair market value. Neither prior Administrations nor Congress has proposed to spend the money necessary to acquire these outstanding mineral rights.

A similar situation occurs with respect to pipelines; which were either present at the time the Service acquired the land or they were constructed under permit from the Service following a compatibility determination and with the terms and conditions the Service determined was appropriate.

In the case of prior rights or pipelines, the Service was aware of the presence of the retained oil and gas rights or of the pipeline at the time it acquired the property, and determined that the potential benefits of including the area with a National Wildlife Refuge outweighed whatever impacts might result from the presence of that right pipeline. Similarly, previous Administrations have testified that the problems associated with oil and gas activities on refuges are generally not significant enough to warrant the central collection of additional information related to this issue.

GAO Findings and Recommendations

Generally, the GAO found that the Service had not assessed the cumulative environmental impacts of oil and gas activities on refuges, and that, due to differences in authority and lack of guidance, resources, and training, the Service's management and oversight of oil and gas activities varies from unit to unit.

The Report offers several recommendations, including that the Secretary direct the Service to:

- Collect and maintain better data on the nature and extent of oil and gas activities and the effects of these activities on refuge resources;
- Determine the level of staffing necessary to oversee oil and gas operators and seek adequate funding to meet those needs;
- Ensure adequate staff training; and

- Provide staff guidance and oversight of the Service's land acquisition process to ensure the identification of problems and potential clean up costs prior to acquisition.

The Report also recommends that the Secretary direct the Service to work with the Office of the Solicitor to determine the Service's existing authority to issue permits and set reasonable conditions regarding outstanding mineral rights and report to Congress on the results of that determination. Finally, the Report recommends that the Administration seek any necessary additional legislative authority over those rights, and over reserved mineral rights, so that it can apply a "consistent and reasonable set" of controls over these activities on refuge lands.

The Department's Initial Response

As stated above, we are currently in the process of developing our comprehensive formal comments to the recommendations contained in the GAO Report, and will provide the Subcommittee with a copy of that document as soon as it is available. For purposes of this hearing, however, I offer the following observations.

It is important to note that many of these particular refuge lands have had oil and gas activities for decades, in some cases dating back more than 70 years. GAO recognized this in its report. This is not the manifestation of a new problem; instead, it is an issue that has challenged us for many years. This is not to say that there are no problems in the present. In general, however, we believe we are doing well in our management of this longstanding and complex issue.

We are already taking steps to respond to the GAO's recommendations. For example, the Service is developing a handbook to address the management of oil and gas activities on refuge lands. Once completed, we expect to provide training on these issues in regions where oil and gas activities take place in refuges.

We are also committed to collecting better data on the impacts of oil and gas activities on refuges. Furthermore, in instances where the Service has the authority to permit this activity, we will find ways to strengthen the application of that authority consistent with both state and federal law. Where the Service does not have that authority, we will explore options with applicable state and federal regulators. Finally, we will continue to work with owners of mineral rights underlying our refuges in our ongoing efforts to build partnerships and minimize the adverse impacts of these activities on fish and wildlife resources.

However, we must acknowledge that oil and gas exploration is only one NWRS management issue that we, as resource managers, must consider as we continue to address operations needs across the entire system. The President has requested substantial increases in funding in recent years to address priority operational needs on our refuges. At the same time, we are addressing other very real threats to our refuges. For example, the damage caused by invasive species affects refuges from the State of Alaska to the Caribbean Sea. Invasive species have caused significant declines of protected species and degraded millions of acres of refuge lands, waters, and wetlands. The Service has taken management actions to control invasive species on over 300 separate refuges.

Finally, we do not believe that additional legislative authority to address the management of oil and gas activities on refuges is necessary. Oil and gas development technology has improved greatly over the past few decades. A substantial number of the problems identified in the Report were caused by techniques that are no longer used by industry, and impacts to the land often occurred before the land was purchased and designated as a refuge. We believe that we are able, under our existing authorities, to effectively manage and oversee oil and gas development activities on our national wildlife refuges.

Conclusion

We take seriously the recommendations contained in the Report, and will continue to work to address all of the challenges that our managers and our refuge resources face.

Mr. Chairman, this concludes my statement. I am happy to answer any questions that you or other Members of the Subcommittee might have.

[Mr. Smith's response to questions submitted for the record follows:]

**Response to questions submitted for the record
by the U.S. Department of the Interior**

Response to questions from The Honorable Frank Pallone

Pursuant to 31 USC 720, and Departmental Policy, the Department of the Interior is in the process of developing a formal response to GAO's report which should provide a more detailed look at how it plans to address GAO's recommendations. We will gladly provide all Members of the Subcommittee with a copy of that response as soon as it is available.

1. In its report, the GAO recommended that the Department of the Interior determine the Fish and Wildlife Service's existing authority to issue permits regarding outstanding mineral rights. The Department declined GAO's request to determine its authority on this issue and did not respond to this recommendation in its comments on the report.

- a. Do you agree with GAO that the Department should determine its existing authority on this issue?
- b. Would not defining this authority be useful in improving the Service's management and oversight of oil and gas activities on refuges?

Response: It is the Department's position that the Service currently has adequate authority and practices regarding the issuance of permits for exploration and development of outstanding mineral rights. Where not restricted by deed, the Service will continue to work with owners of mineral rights to allow development of private oil and gas resources, in a manner consistent with refuge purposes. Clarification of existing authority will be provided to Service land managers through training and development of a handbook on refuge oil and gas management. Moreover, as noted in the Department's statement for this hearing, where we do not have authority, we plan to explore options with applicable state and Federal regulators.

2. The GAO further recommended that the Fish and Wildlife Service seek from the Congress any necessary additional authority to ensure that a consistent and reasonable set of regulatory and management controls are in place for all oil and gas activities occurring on national wildlife refuges.

Again, the Service did not respond to the substance of GAO's recommendation in its written response.

- a. Has the Service determined what additional authority it may need to protect the public's surface interest?

Response: The Administration is not seeking nor contemplating additional authorities. Most of the oil and gas issues facing the Service today are predominantly historic, having been incurred prior to the current level of technological advancement in exploration and development practices by the industry.

3. The GAO reported that the Fish and Wildlife Service does not have either a clear idea of the extent of oil and gas activities occurring on national wildlife refuges or the environmental effects of those activities.

DOI also did not respond to GAO's recommendation that the Service should maintain better data on oil and gas activities on refuges and their effects on refuges' resources.

- a. Why does not the Service have a better understanding of the extent and effects of oil and gas activities on refuges?
- b. Do you think that the collection of this data is warranted in order to protect the public resources entrusted to the Service's care and stewardship?

Response: Because of the limited extent of oil and gas activities on refuges, and a desire to put our resources where they will have the greatest beneficial impact, this has not been the highest priority for the bureau. However, the Service is committed to determining whether collecting better data on the impacts of oil and gas activities on refuges is warranted based on its competing priorities, and if so, what type of data would be justified.

4. It is my understanding that the GAO has made the database of oil and gas activities it developed during its study available to the Fish and Wildlife Service.

- a. How does the Service plan to utilize, maintain, and update this database?
- b. How does the Service intend to disseminate this information to the refuge managers and program specialists in the field?

Response: The Service will assemble a team to identify the specific types of oil and gas related information that the Service should gather and to develop the associated data gathering protocols and data management systems. Certainly, a review of the GAO database will be useful in collecting this data. The team will establish

a framework to ensure that such systems are developed, function properly and are populated with valid information. The team will also develop a plan to ensure that these data are available to refuge managers and other personnel involved with oil and gas development on refuges.

5. The GAO report describes a range of environmental effects resulting from oil and gas activities on national wildlife refuges. Reported impacts include damages such as oil spills, habitat subsidence or fragmentation, and groundwater contamination.

- a. In your view, are these effects primarily the result of limitations on the scope of the Service's authority to prevent damage to refuge resources?
- b. Or, are these impacts attributed more to insufficient management and oversight by the Service?

Response: Most of the situations described in the GAO report are largely due to past activities. Many of the particular refuge lands cited in the report have had oil and gas activities for decades, and in some cases, dating back more than 70 years. The GAO recognized this in its report. This is not the manifestation of a new problem; instead, it is an issue that has challenged the Service for many years based on historical uses of refuge lands and outdated technology. This is not to say that there are no problems in the present; however, in general the Service is doing well in the management of this longstanding and complex issue, given the Service's limited resources and competing priorities.

6. In its report, the GAO recommended that the Department of the Interior determine what level of staffing is necessary to adequately oversee oil and gas activities.

In its comments, the Department questioned whether hiring additional staff was the most cost-effective solution to this issue.

- a. Is the Department taking any steps to determine its staffing needs to address this deficiency?
- b. What other options might the Department pursue in lieu of hiring additional Federal personnel?

Response: An expected outcome of assembling a Service team to assess data collection and management on refuges (see response to Q. 4) is a clearer picture of the staffing needs required for overseeing refuge oil and gas activities. In addition, the Service is developing a handbook and training to address the management of oil and gas activities on refuge lands, which should make the field managers more proficient. We are also looking at the possibility of seeking authority to use damage fees System-wide to hire contract staff to monitor refuge oil and gas operations and ensure mitigation actions. In addition, in lieu of additional staff, increased training and more accessible data and information may be options the Department pursues.

7. On a related note, the GAO reported that the Fish and Wildlife Service is developing draft internal guidance to educate refuge staff regarding the Service's authority to require oil and gas operators to obtain permits.

It is my understanding, however, that this guidance had not been approved by the political leadership within the Department.

- a. What is the status of this guidance?

Response: The Service plans to have a draft of the handbook prepared by April 2004. We anticipate extensive review of the handbook within the Department, with expected completion of the final handbook in December 2004.

8. It is my understanding that the Department of the Interior agreed with GAO that the Fish and Wildlife Service should improve its acquisition policy and guidance to prevent the Federal government from acquiring contaminated property and assuming associated cleanup costs.

The GAO also reported that numerous wells and pipelines are located adjacent to refuge property, in some cases on property designated for future acquisition by FWS.

- a. What steps does the Department plan on taking to address this issue and what is the time line for those actions?

Response: There has been clear policy issued by both the Department (Real Property Pre-acquisition Environmental Site Assessment, DM Part 602, Chapter 2) and the Service (Pre-acquisition Environmental Site Assessments, 341 FW 3). It is the Service's policy to "minimize the potential liability" and "identify potential hazardous substance-related threats to fish and wildlife and their habitats and other environmental problems prior to real property acquisition" (341 FW 3.3). The training course "Land Environmental Site Assessment-Level I Procedures" emphasizes that identifying potential hazardous substance-related threats includes an evaluation of potential watershed, airshed, and subsurface contaminants that might affect natural resources. Although the existing policies are sound, they can be further

improved. Therefore, the Service will review and, where necessary, revise its Environmental Site Assessment policy. Due to the extensive internal and external reviews that are required for policies, we anticipate that the final revision will be completed early in 2005. In the interim, the Service will issue a Director's Order reaffirming the importance of conducting thorough Environmental Site Assessments for all sites, including properties with oil and gas activities.

9. The recent GAO Report is not the first study to conclude that oil and gas activity is causing damage to National Wildlife Refuges. Previous reports dating back two decades from the GAO, the Fish and Wildlife Service, Department of the Interior, and various federally appointed "blue ribbon" committees also found problems associated with oil and gas activities in or near refuges.

Yet, it appears from reviewing the recent GAO report that the Fish and Wildlife Service still has not taken this problem seriously. There is still confusion about the extent of the agency's authority to regulate oil and gas activity on refuges. There is still inadequate oversight of these activities. There remains great inconsistency between refuges in the response to spills and other problems. No national policy on collecting fees from operators to cover potential damages. Too little training of agency personnel to handle issues associated with oil and gas on refuges.

GAO states, "The overall environmental effects of oil and gas activities on refuges' resources are unknown because FWS has conducted few cumulative assessments and has no comprehensive data."

a. Where has the Interior Department been for the last 20 years?

b. Why has the Department not taken this problem seriously and acted on earlier recommendations?

Response: We take seriously the recommendations contained in the GAO report, and will continue to work to address all of the challenges that our managers and our refuge resources face. However, oil and gas exploration is a management issue that only a comparatively small number of refuge managers must consider when compared to all of the operational needs across the entire National Wildlife Refuge System. The President has requested substantial increases in funding in recent years to address priority operational needs on our refuges. At the same time, we are addressing other very real threats across the entire Refuge System. For example, the damage caused by invasive species affects refuges from the State of Alaska to the Caribbean Sea. Invasive species have caused significant declines of protected species and degraded millions of acres of refuge lands, waters, and wetlands. Invasives are but one example. The Service must balance numerous threats to the refuge system beyond just oil and gas activities with the resources available to the agency.

10. The GAO states that both the National Park Service and the U.S. Forest Service have adopted regulations that require mineral rights owners to obtain permits before engaging in oil and gas activities on federal lands they manage, but surprisingly, that the Fish and Wildlife Service does not. GAO concludes Fish and Wildlife Service has ample legal authority to do so but has chosen not to act.

a. Why has not the agency moved to adopt such regulations?

b. Will the agency in the near future look to initiate a rulemaking process to develop such regulations?

Response: In instances where the Service has the authority to permit oil and gas activity, the Service will continue to find ways to strengthen the application of that authority consistent with both state and federal law. Where the Service does not have that authority, options will be explored and coordinated with applicable state and federal regulators. Finally, the Service will continue to work with owners of private mineral rights underlying refuges to enhance ongoing efforts to build partnerships and minimize the adverse impacts of these activities on fish and wildlife resources.

11. Can you please detail for me how many enforcement actions the Interior Department has taken against oil and gas activities that have harmed fish, wildlife, and habitats on National Wildlife Refuges?

a. How many of these actions have resulted in financial settlements, and of these settlements, what has been the total award to the Federal Government?

b. By what procedures has the Fish and Wildlife Service retained and spent these recovered funds?

c. How many acres of refuge habitat have been restored through these actions?

Response: This information is unavailable at this time as the Service does not maintain a central repository for such data. This is a data field expected to be built as the database on refuge oil and gas activities is developed (see response to question number 4). In addition, the information referenced in our response to question number 4 will be included in the Department's formal response to the GAO report.

12. The GAO pointed out that in the past, when the Fish and Wildlife Service purchased new refuge lands it often did so without purchasing the subsurface minerals, and in those cases, it often did not insist on restrictions on surface activities related to accessing these minerals.

a. Does Fish and Wildlife Service continue to purchase new refuge lands without subsurface ownership?

b. If so, in these cases does the agency insist on restrictions on surface operations as part of the deed? If not, why not?

Response: The Service does, at times, acquire new refuge lands without subsurface ownership. Various factors can contribute to such an acquisition. For example, the subsurface rights may not be available, or the cost of the subsurface rights might be prohibitive. Where applicable, the Service does include reasonable restrictions on surface operations in the deed; however, in the case of currently outstanding mineral rights, the Service lacks the authority to impose deed restrictions.

13. If the Administration is so convinced that oil and gas drilling can be done in an environmentally friendly way on national wildlife refuges, why does it insist on essentially exempting these activities from the compatibility test required under the National Wildlife Refuge System Administration Act?

Response: We do not exempt activities from the compatibility requirement. The compatibility test of the National Wildlife Refuge System Administration Act is a legal standard for determining whether an activity under the control of the Service may be allowed within a National Wildlife Refuge.

Generally speaking, the purposes of individual refuges, as well as the System, are wildlife conservation. Oil and gas activities are generally not compatible with those purposes, which is why the Administration has not sought to open refuges generally to leasing of Federal oil and gas resources as it seeks to increase domestic production. As noted in my testimony, current oil and gas activities on National Wildlife Refuges are either cases where Federal resources were leased prior to the compatibility standard being enacted, private retained rights to which the compatibility standard is not applicable, or cases where Federal resources are being drained from adjacent private lands in which case development occurs under federal lease and permit requirements and regulations, including conditions to ensure habitat protection, if there is no other way to protect the Federal economic interest in those assets.

The situation at the Arctic National Wildlife Refuge is different, however. There the Alaska National Interest Lands Conservation Act (ANILCA) required analysis and recommendations from the Department of the Interior on whether a small portion of the refuge should be opened to oil and gas leasing. This was action taken by Congress in 1980. Congress also reserved to itself the right to decide whether the leasing would occur.

If Congress were to decide to open that portion of the refuge to oil and gas activities, there would be no need for a compatibility determination. Such a decision would be made in legislation signed into law.

I would also point out that if the Administration's proposal for leasing at the Arctic National Wildlife Refuge were enacted, it would have the most stringent environmental standards ever applied to oil and gas activities. It is these environmental standards that would protect the Refuge's fish and wildlife resources for the duration of whatever activities were to occur.

Response to questions from The Honorable Edward Markey

Pursuant to 31 USC 720, and Departmental Policy, the Department of the Interior is in the process of developing a formal response to GAO's report which should provide a more detailed look at how it plans to address GAO's recommendations. We will gladly provide all Members of the Subcommittee with a copy of that response as soon as it is available.

1. According to GAO report, the Fish and Wildlife Service has only spent \$380 thousand from 1991 to 2002 on cleanup of 14 sites, with a further \$100 thousand planned for 2003 to clean up 3 sites (p. 29). On the same page, it also notes that the Anahuac National Wildlife Refuge alone has an estimated cost of cleanup of \$1.1 million, which is currently deferred until Fiscal Year 2009. This suggests that there is a significant need for financial resources to support clean up activities.

How many of the 4,000 wells on refuges have known owners or responsible parties? What federal and state guarantees are in place to ensure proper clean up, both funding mechanisms, like bonding, and reclamation standards?

The estimated clean up cost at Anahuac Refuge is very troubling. What are the details of that site? Why isn't the polluter paying? How many more sites are estimated to cost over a million dollars to clean up?

Response: The Service does not maintain a central repository for information on all the owners and responsible parties for oil and gas wells on refuges. This data field will be built as part of a national database of refuge oil and gas activities that is being developed. However, due to many wells being drilled prior to establishment of some of our refuges, multiple ownership changes, bankruptcies, or abandonments, clarifying ownership and identifying responsible parties often proves difficult. Enforcement for clean up and restoration is often through existing Federal authorities, including the Clean Water Act, the Oil Pollution Act, and the Resource Conservation and Recovery Act, as well as through State law and regulatory compliance. Where feasible, the Office of the Solicitor seeks payment for cleanup from a responsible party. However, where there is no identifiable responsible party, the Service must assume the cost of cleanup, which is why funding for those activities is limited.

This is the case at Anahuac National Wildlife Refuge (NWR) where old oil and gas production facilities and wells were in place prior to refuge establishment. The wells and operators at Anahuac NWR have changed hands from major production companies to many individual small operators who are incapable of completing the necessary restoration. When many of the oil fields were established there was little Federal regulatory authority in effect. Current State law allows facilities to remain in place until the entire field is no longer in production. The refuge is working with each operator to restore individual sites as production shuts down. However, due to the importance of the area to wintering waterfowl, benefits could be accrued to wildlife on a larger scale should a more immediate and widespread clean up effort take place that restored the functions of whole wetland ecosystems.

2. The Department of Interior had a panel review financial assurances of mineral extraction on public lands. Apparently, their report is now with Secretary Norton. What have they concluded about bonding for oil and gas activities on wildlife refuges? When will Congress be able to review their final report?

Response: The Department is in the process of reviewing financial assurances of mineral extraction on public lands. The focus is primarily on Department lands with federally-owned mineral rights, and will have limited reference to bonding for oil and gas activities on wildlife refuges.

3. The GAO states that both the National Park Service and the U.S. Forest Service have adopted regulations that require mineral rights owners to obtain permits before engaging in oil and gas activities on federal lands they manage, but that the Fish and Wildlife Service does not. GAO concludes Fish and Wildlife Service has ample legal authority to do so but has not. Why hasn't the agency moved to adopt such regulations? Will it in the future?

Response: In instances where the Service has the authority, the Service will continue to find ways to strengthen the application of that authority consistent with both state and federal law. Where the Service does not have that authority, options will be explored and coordinated with applicable state and federal regulators. Finally, the Service will continue to work with owners of private mineral rights underlying refuges to enhance ongoing efforts to build partnerships and minimize the adverse impacts of these activities on fish and wildlife resources.

4. How many enforcement actions has the Interior Department taken against oil and gas activities that have harmed fish, wildlife, and habitats on national wildlife refuges?

Response: This information is unavailable at this time as the Service does not maintain a central repository for such data. This is a data field expected to be created as the database on refuge oil and gas activities is developed in the future. The Service will assemble a team to identify the specific types of oil and gas related information that the Service should gather and to develop the associated data gathering protocols and data management systems. The team will establish a framework to ensure that such systems are developed, function properly and are populated with valid information.

5. GAO pointed out that in the past, when Fish and Wildlife Service purchased new refuge lands it often did so without purchasing the subsurface minerals and in those cases, it often did not insist on restrictions on surface activities related to accessing these minerals. Does Fish and Wildlife

Service continue to purchase new refuge lands without subsurface ownership? If so, in these cases does the agency insist on restrictions on surface operations as part of the deed? If not, why not?

Response: The Service does, at times, acquire new refuge lands without subsurface ownership. Various factors can contribute to make such an acquisition. For example, the subsurface rights may not be available, or the cost of the subsurface rights might be prohibitive. Where applicable, the Service does include reasonable restrictions on surface operations in the deed; however, in the case of currently outstanding mineral rights, the Service lacks the authority to impose deed restrictions.

6. If the Administration is convinced that oil and gas drilling can be done in an environmentally friendly way on national wildlife refuges, why does it insist on exempting the activity from the compatibility test of the National Wildlife Refuge System Administration Act?

Response: We do not exempt activities from the compatibility requirement. The compatibility test of the National Wildlife Refuge System Administration Act is a legal standard for determining whether an activity under the control of the Service may be allowed within a National Wildlife Refuge.

Generally speaking, the purposes of individual refuges, as well as the System, are wildlife conservation. Oil and gas activities are generally not compatible with those purposes, which is why the Administration has not sought to open refuges generally to leasing of Federal oil and gas resources as it seeks to increase domestic production. As noted in my testimony, current oil and gas activities on National Wildlife Refuges are either cases where Federal resources were leased prior to the compatibility standard being enacted, private retained rights to which the compatibility standard is not applicable, or cases where Federal resources are being drained from adjacent private lands in which case development occurs under federal lease and permit requirements and regulations, including conditions to ensure habitat protection, if there is no other way to protect the Federal economic interest in those assets.

The situation at the Arctic National Wildlife Refuge is different, however. There the Alaska National Interest Lands Conservation Act (ANILCA) required analysis and recommendations from the Department of the Interior on whether a small portion of the refuge should be opened to oil and gas leasing. This was action taken by Congress in 1980. Congress also reserved to itself the right to decide whether the leasing would occur.

If Congress were to decide to open that portion of the refuge to oil and gas activities, there would be no need for a compatibility determination. Such a decision would be made in legislation signed into law.

I would also point out that if the Administration's proposal for leasing at the Arctic National Wildlife Refuge were enacted, it would have the most stringent environmental standards ever applied to oil and gas activities. It is these environmental standards that would protect the Refuge's fish and wildlife resources for the duration of whatever activities were to occur.

7. Under the National Wildlife Refuge System Improvement Act, each national wildlife refuge must periodically prepare a Comprehensive Conservation Plan. Among other things, the Act requires each plan to "identify and describe significant problems that may adversely affect the populations and habitats of fish, wildlife, and plants and the actions necessary to correct or mitigate the problems."

- a. Does Fish and Wildlife Service guidance on planning require that spills, habitat removal, and other impacts from oil and gas activity be identified in refuge plans?
- b. Does Fish and Wildlife Service planning guidance suggest actions to correct or mitigate such problems, such as requiring permits with stipulations or acquisition of mineral rights?
- c. Have any Comprehensive Conservation Plans been completed for refuges with oil and gas activity?
- d. If so, have they identified oil and gas as problems and identified actions to correct or mitigate the problems?
- e. Have any refuges identified purchase of mineral rights as an action to correct or mitigate the problem?

Response: In conducting refuge Comprehensive Conservation Plans (CCPs), all refuge uses are identified and evaluated. Management authorities are delineated in areas of mineral ownership, easements, joint management agreements, overlay refuges and other cross jurisdictional responsibilities. To date, 22 of the 150 refuges cited by the GAO as having oil and gas activity have completed their CCP. A CCP for a refuge, however, does not usually designate specific mitigative measures for oil and gas activities since corrective measures are usually tailored to individual

disturbance actions. Guidance for managing oil and gas activities is found in the Service manual chapters: Minerals and Mining (612 FW 1); and, Oil and Gas (612 FW 2). Further clarification of existing authority will be provided to Service land managers through training and development of a handbook on refuge oil and gas management during the next year.

The acquisition of minerals has been identified at some refuges for long-term surface protection on or adjacent to the refuge. Proposed mineral rights acquisition may or may not be part of the CCP process.

8. Figure 5 of the GAO report “shows an ongoing clean up of a relatively small oil spill that occurred at Delta NWR in 2002.” Can the Fish and Wildlife Service provide the following information about this specific spill and cleanup effort:

The type and amount of the spill,

The spill response time (Did response start within 1 hour, 1 day or one week?),

The duration of the spill, and

What type of FWS oversight was provided to ensure proper clean up?

Response: The crude oil spill at Delta NWR was estimated to be less than 40 gallons. The response time was immediate, as the spill occurred when production was started again after shutdown of the field during two hurricane events in Fall 2002. Workers were present when a new pump motor malfunctioned, spilling crude oil within the ring levee at the storage facility. The clean-up required several weeks to skim and mop up the oil from the accumulated flood waters within the ring levee. The refuge had staff on-site to assess and monitor clean-up actions.

Mr. GILCHREST. I also ask unanimous consent that Mr. Markey may sit on the dais for the rest of this hearing. Hearing no objection, so ordered.

Welcome, Ed. The Irishman from Massachusetts.

First of all, I want to thank you all for coming here to testify, in what we would like to begin to gather from this hearing and future discussions that we have.

Is there any authority that Fish and Wildlife needs that it does not have now to specifically deal with the full range of oil and gas and mineral extraction activities on Federal refuges, whether it's an enhanced legislative statute that deals with reserved rights, that deals with outstanding rights, that deals with similarities that the Park Service or the Forest Service has with oil and gas extraction that the Fish and Wildlife Service doesn't have the authority to do, that you can do in a regulatory way, or you may need to have some legislation?

When we reviewed the GAO report, there were places around the country that seemed to do extraordinarily well with managing oil and gas activities. And when we looked at why they did it so well, it was because they paid attention to it. There were staff on the Refuge System that knew about these kinds of things, and they worked well with those companies that were mining on those refuges. But in areas where there was limited staff or no staff, there seemed to be very little understanding as to what activities were actually going on.

So that's the crux of this hearing. We want to make sure that on every refuge there is a staff person, whether dedicated to that particular operation, or as part of his role, he will understand where all of the oil and activities are and what the permitting procedures are, and how they interact with all the other Federal regulations, not the least of which is the Clean Water Act.

But this one short paragraph I would just like to read and then ask Mr. Smith to respond. This is from the GAO report, page 32:

"The refuges we examined varied in the extent to which they identified risks, adopted procedures to minimize those risks, and monitored oil and gas activities. First, some refuge staff did not have complete information on the extent of oil and gas activities occurring on their refuges. For example, at Deep Fork National Wildlife Refuge—Deep Fork is in Oklahoma—refuge staff estimated that there were 600 or more abandoned wells but knew the location of very few of these wells. Further, as noted earlier, only 67 of the 155 refuges with oil and gas activities and 10 of the 16 refuges we visited had completed the Containment Assessment Program, or CAP studies, identifying the possible sources and types of contamination on the refuges."

"In contrast, the Kenai National Wildlife Refuge staff had detailed information on oil and gas wells and activities on the refuge, had completed an exhaustive CAP study, and was completing an Environmental Impact Statement on the effects of oil and gas activities."

If you could respond to that rather significant difference in Fish and Wildlife's understanding of the activities, comparing Alaska to Oklahoma, and what we can do as a Congress to assist you in the process to ensure that there is good management on all our refuges.

Mr. Smith.

Mr. SMITH. A few observations, Mr. Chairman.

At this time, we are not contemplating, nor are we seeking, any additional regulatory authority. I think the GAO audit and report offer some good insights and suggestions. I think it makes the observation that many of these issues that our refuge managers face are largely historic and a lot of them were either existing when the refuge lands were purchased, or date back as many as 70 years into the past.

One of the things that we're working on—I think the last time the Fish and Wildlife Service held a meeting, or a workshop, on the issue of oil and gas on refuges was as far back as 1991, during President Bush 41's tenure. What—

Mr. GILCHREST. Would you say, however, that there are some areas where Fish and Wildlife works well to understand the containment problems, and in other areas they are lacking—Is it because Fish and Wildlife is lacking in sufficient funds, lacking in a training program, lacking in staff to deal with these issues?

Because when I read through this report, it was basically replete with certain places doing an extraordinarily good job—whether it was Pennsylvania or some places in Louisiana, or Texas, or California, or Alaska—but there were other areas—Some refuges in some States do really well, and some refuges in the same States don't do very well at all.

Mr. SMITH. I think that's a good point. I think the men and women of the Refuge System, the managers, on-the-ground people, I am particular proud of them. I think they do more with less funds and less resources than just about any other land management agency. I think that is pride in the system and pride in our personnel.

One of the things we are developing is some guidance and a workbook that can be provided to our refuge managers to help

them with technical assistance in addressing oil and gas refuges. One of the things we can do better is, where there is unevenness from refuge to refuge, in both dealing with and working with oil and gas operators on refuges, I think we can build in some consistency.

There are refuge managers out there who have more experience, who are more sophisticated, who are used to drilling—used to working voluntarily with oil and gas operators sometimes, and sometimes, if they have reserved mineral rights, working under a permit structure.

There are some refuge managers who are newer to the issue, who could benefit—who will, I think, benefit from a more comprehensive approach through the draft guidance document we are working on internally, and also through some of the training programs we are in the process of designing with the help of the National Conservation Training Center.

Mr. GILCHREST. I asked Ambassador Bremmer yesterday what was the time frame for U.S. soldiers to rotate back to the States and be replaced by Iraqi soldiers. He basically gave me a time frame.

So is there some type of time frame you have for this training program to be completed so that all refuges, where there is oil and gas activity, the staff will have an environmental and a legal understanding of what their responsibilities are?

Mr. SMITH. I'm going to turn to Mr. Hartwig here to help me out with the exact timing, since he and his staff been working most diligently on this.

Mr. HARTWIG. Mr. Chairman, I believe we can do such a training program, at least get the design done and have it ready for implementing, as well as the start of a booklet to be able to guide activities for new refuge managers, within about a 6-month time period.

Mr. GILCHREST. I see. Thank you.

We will probably have another round or two. My time is up, so I will yield now to Mr. Tauzin.

Mr. TAUZIN. Go ahead.

Mr. GILCHREST. Mr. Markey.

Mr. MARKEY. Thank you.

Mr. Hill, you have recommended that Congress ensure that the Fish and Wildlife Service has legal authority to issue permits to consistently regulate and oversee oil and gas operations on wildlife refuges. My impression is that refuge managers, one, are understaffed, two, are confused about their authority, and three, do not feel it is their job to regulate oil and gas activities.

If these three assumptions are correct, is it a matter of simply clarifying authority, or must we place a higher priority on the amount of resources allocated to this purpose?

Mr. HILL. I think it's a little bit of everything that you mentioned. Right now, there are varying interpretations and understandings of just what the authorities are out at the Refuge System. It's clear in terms of the reserve rights, that if the deed specifies the Fish and Wildlife Service has some authority to issue permits, that they can do that. If the deed is not specified, they do not have authority to do that.

With regard to the outstanding permits, the Department has not taken a position on that. I think there is a lot of confusion out at the refuges as to whether they have authority to exercise permitting on outstanding rights or not.

Getting beyond that, there is inconsistency in the way this whole thing is being implemented, in terms of there are not a lot of resources, not a lot of expertise, there has not been a lot of training. It is an awesome task to go through and identify the extent of activities that are on these refuges.

To just let you know where the Department is right now, about 2 years ago we asked Fish and Wildlife to identify how many refuges had oil and gas operations. They were only able to come up with 77 of the refuges. That's less than half of what we are reporting now. So they really are behind the 8-ball on this, in terms of identifying the types of activities that are going on out there. Once they have identified these activities, then they have got to go through those deeds and determine whether or not there is reserve rights, outstanding rights, whether the deeds contain some type of language that would allow them to permit. So it's going to be a big job, and it will take some concerted effort and some priority on their part and resources to do it.

Mr. MARKEY. Well, that's a blistering, scalding assessment actually.

According to the GAO report, the staff at the Sabine National Wildlife Refuge drafted, in conjunction with headquarters staff, more detailed national guidance on managing and overseeing oil and gas activities. But the Fish and Wildlife Service has not approved this draft guidance.

Mr. SMITH, why has this guidance not been approved?

Mr. SMITH. I'm not sure. Who did you say drafted this?

Mr. MARKEY. The GAO. It's inside this report, the Sabine National Wildlife Refuge.

Mr. SMITH. I'm a little confused, as far as which draft—

Mr. MARKEY. On page 38 of the report, if you could turn to that. The staff at the refuge drafted, in conjunction with headquarters staff, more detailed national guidance on managing and overseeing oil and gas activities, but Fish and Wildlife has not approved this draft guidance.

Mr. SMITH. OK. Now I'm square.

Chris Pease, who is the refuge manager at Sabine, actually has been brought into the headquarters in D.C. He has been working with us and he is one of the players who is actually working on developing a national policy guidance and national reference manual for refuge managers. So I have no doubt that a lot of this guidance that was developed during his tenure at Sabine will be incorporated into a lot of the policy guidance manuals that will be provided to refuge managers, as well as the training.

Mr. MARKEY. When will that be completed? When will the national guidance on management and oversight of oil and gas activities in wildlife refuges be—

Mr. SMITH. We plan to have a draft ready to go within 6 months.

Mr. MARKEY. Six months. How long have you been working on it?

Mr. SMITH. Well, we have been working on this for several months already. We have some of those draft ideas put together. But we need to get those ideas surfaced within the different regions and States that we're working with. We certainly want to have those ideas run past the folks in the industry that we work with hand in hand as well, to make sure we understand their activities and they understand our responsibilities, and we come up with a good understanding of both.

Mr. MARKEY. Mr. Smith, you don't believe that Fish and Wildlife needs more authority to apply any new guidance to all refuges with oil and gas activities?

Mr. SMITH. At this time, I don't think we need any more, and we're not seeking any additional regulatory authority from Congress. I think, right now, with regulatory authority, we have, by virtue of reserve oil and gas rights, combined with the commitment of our folks to work closely with industry, on a voluntary basis. I think right now we have the resources that we need to try to move forward.

Mr. MARKEY. Thank you, Mr. Chairman.

Mr. GILCHREST. Thank you, Mr. Markey.

Mr. Tauzin.

Mr. TAUZIN. Thank you, Mr. Chairman.

Let me say to my friend from Massachusetts, I know he has an enormous interest in how well we do in oil and gas production in Louisiana because his State consumes 65 times the energy it produces, according to the latest EIA statistics, while in Louisiana we produce twice as much as we consume. A great deal of our resources from these National Wildlife Reserves end up in his State, to the benefit of his consumers.

I might add, by the way, that while Louisiana doesn't exact a tax, because we are not permitted to from Federal lands, the State of Massachusetts also enjoys enormous tax resources from those natural gas and oil products that flow into Massachusetts. I know he has a great interest in making sure we continue that process, but to do it right.

Mr. MARKEY. Can I say, Mr. Chairman, that—

Mr. TAUZIN. I would be happy to yield to my friend.

Mr. MARKEY. Thank you.

Massachusetts produces 65 times the computers that Louisiana does, but yet, we feel that you have a role as the Chairman over telecommunications to have an opinion on how the computer and telecommunications—

Mr. TAUZIN. I thank my friend. I report to him that we're 49th in consumer use, and Massachusetts is not 49th in energy use, I'll tell you that.

Let me also point out, as I pointed out before you got here, Mr. Markey, that in the year 2000 Senator Breaux and I, representing many of these refuges in our State, actually provided the money to not only manage Sabine and other resources better, but actually to make sure that money was provided to cover any mitigation of any potential spills or damages. That hasn't been done elsewhere in this country.

I might also point out that the entire debate in the 104th and 105th Congress, when the organic statute was passed for the

National Wildlife Refuge System, not a single amendment was offered by anyone, on this panel or otherwise, dealing with oil and gas activities. In fact, you received a lot of comments on this report, did you not? Any one of you.

Mr. HILL. We did receive comments from the Department of Interior, yes, we did.

Mr. TAUZIN. You did get commenters before you issued this report. I'm reading a lot of statements of a lot of different commenters, right?

Mr. HILL. Our normal process would be to exist with people at the refuges, the local officials that we have interviewed, and—

Mr. TAUZIN. I'm looking at an Interior document on the compatibility. That kind of a process did require the solicitation of comments, did it not?

Mr. SMITH. Correct. That was a public notice and comment process in the development of the compatibility—

Mr. TAUZIN. And you get a lot of comments on those, don't you?

Mr. SMITH. We got a huge number of comments.

Mr. TAUZIN. A huge numbers of comments. I'm going to quote from that report. On page 62462. Three commenters—three—suggested that the definition of "activities", economic activities, not include oil and gas leasing. Three, out of all this huge volume of comments you got. To call this some sort of a blistering assessment of how awful things are is a little strong, Mr. Markey.

Let me also point out—I think you made the case, but I'm not sure it's well understood in common-law States. But in Louisiana, where most of this activity occurs—I think it's a little different in Texas, but in Louisiana there is a separate regime for surface rights and oil and gas rights, is that not correct?

Mr. SMITH. That is absolutely correct.

Mr. TAUZIN. In fact, the ownership of the underground rights, the oil and gas mineral rights, when exercised, can continue—as long as exercised, can continue for as long as there is activity and production in Louisiana law, is that not correct?

Mr. SMITH. That's my understanding, at least—

Mr. TAUZIN. No matter what you might want to do in the management of the rules, you might want to prescribe in your agency, there are legal rights to the owners of those resources that you simply can't trample, is that correct?

Mr. SMITH. That's correct.

Mr. TAUZIN. So really, the question of whether or not your agents in these reserves would like to regulate those activities, very often their ability to lease or control the leasing and exploration from the standpoint of permitting is simply governed by State law dealing with the oil and gas and mineral rights owned by the previous owner before surface title was passed to the U.S. Government, is that correct?

Mr. SMITH. That's correct, in the case of nonreserve oil and gas, absolutely.

Mr. TAUZIN. Right. What you can do, however, is to organize and manage those activities. That's what you were talking about, working with the industries who do produce these resources for the owners of them, to manage them in a way that you obviously

prevent any damage or activities that would harm the surface environments of those reserves, is that correct?

Mr. SMITH. That's correct.

Mr. TAUZIN. Now, I want to point out and ask you a question. In 1991, during the previous first Bush Administration, there was training and workshops on managing private oil and gas operations in refuges, is that correct, in 1991?

Mr. SMITH. That's correct.

Mr. TAUZIN. And now, under this Bush Administration, you're actually developing a handbook, classroom training for managers on this subject, and you are moving forward with new national guidelines to your managers, is that correct?

Mr. SMITH. That is correct.

Mr. TAUZIN. Was anything done during the 8 years intervening, the Clinton years?

Mr. SMITH. Not to my knowledge. We will—

Mr. TAUZIN. I don't think so, either. So here's the record. The record is that during the first Bush Administration good attention was paid to this, and during this Administration, you're paying a lot more attention to it.

In the last several years, those of us who represent the great State of Louisiana, that produces these resources from our lands and water bottoms for the benefit of people who live in other great States of our Nation, we saw to it that legislation was adopted to help provide the money to do this. But nowhere else in the record is there any effort, in the statutes that were adopted to create the management systems for our wildlife refuges, nowhere else has there been an effort, by anyone else, to amend the statutes or to restrict or to give you guidance in this area.

On the contrary, on the contrary, those of us who live in the State where most of this is occurring, who have been paying the most attention to it, in Texas and Louisiana where most of it occurs—and I have to throw in Alaska—have been the most active in making sure that our States have policies that protect the land and the water and the resources on those refuges.

Do you know why? Because it's our land. It's our homes. It happens there is Federal land located in our States. They are the land and water bottoms that are so precious to us in Louisiana. That's why, Mr. Markey. We have cared very carefully about it, while others have not.

So while I appreciate all the new interest and concern that you and others share in it—and I hope you will join us in helping to maintain those reserves—I hope in the process, as I said before you got here, I hope in the learning curve process you come to learn, as we have, that you can compatibly engineer plans and processes that allow the compatible uses of these lands for these purposes, under the legal rights of the owners of these resources, and at the same time produce valuable resources for our country and protect the natural wildlife systems in which these activities occur, in such a way that 1 day you might even agree that it could occur in that little tiny, less than on one-hundredth of a percent of the Alaskan National Wildlife Reserve that was dedicated to these multiple uses.

I thank you, Mr. Chairman.

Mr. GILCHREST. Thank you, Mr. Tauzin.

Mr. Smith, you said that within 6 months there will be a handbook, a guidebook, some guidance to refuge managers, to be able to deal with I'm assuming the full range of oil and gas activity on their refuge, so there will be a clear understanding of end guidance as to what their authority is as far as managing those refuges that have either ongoing oil and gas activities or where there were oil and gas activities and where to locate the wells. So that's about a 6-month time frame, the guidance.

I'm assuming that if we hold a hearing, or when we hold a hearing in April, that we will sit here and have a copy of the guidance book before us.

Now, the reason I'm asking and the reason we're holding this hearing is because, if we look at certain places around the country, as has already been stated, whether it's in Sabine, Louisiana, or Kenai, Alaska, or other places, the management of those facilities is done extremely well because of the individual that is there, and that individual's interest in where all of either the abandoned wells are located, where all the oil infrastructure is located, where all the spills may have occurred, and where State law and Federal law helps to clean up those spills, and it's done exceedingly well.

But apparently, in the GAO report there is other places where it's not done very well at all, where the abandoned oil wells are not known. They're not known if they're on the refuge, not known if they were on the refuge, where they're located, the infrastructure is not known, the abandoned oil tanks are not known. So some places do very well and some places do very poorly.

This is the crux, the ability to balance the refuge as far as the integrity of the ecosystem is concerned with mineral extraction. Some places do it well, some places don't do it so well.

Mr. TAUZIN. Would my friend yield?

Mr. GILCHREST. Mr. Tauzin.

Mr. TAUZIN. Just a quick comment. It's interesting. We want to know everything we can about those abandoned wells, but some of you are opposed to any kind of national inventory of what is available in this country in the Energy bill. But if you would yield to me for a second, I would like to ask a technical question.

Mr. GILCHREST. Sure.

Mr. TAUZIN. Mr. Hill, the GAO report on page 14 states that 24.5 trillion cubic feet were produced domestically onshore in 2001—

Mr. GILCHREST. What page was that on?

Mr. TAUZIN. On page 14. And then you use that figure to calculate that only four-tenths of 1 percent of gas comes from Wildlife Refuges. But, in fact, according to the EIA, we consume only 23 TCF domestically, with about 15 percent of that coming from Canada and about 5 TCF coming from the offshore.

My understanding is that that's a technical error in the report. If it is, if you disagree with it, might we have a discussion on that at some point and make sure the report is accurate in this record? It seems to conflict with the EIA numbers is what I'm saying.

Mr. AUSSENDORF. The figure in this report is based on 2001, and it was from an Energy Information Agency document. I can send you that document.

Mr. TAUZIN. I wish you would, because our information is to the contrary. We have different figures. If you're correct, fine. But if you're not, obviously we would like to correct that. Thank you, sir.

Mr. GILCHREST. The other part, Mr. Smith, and maybe Mr. Hill can make a recommendation and Mr. Smith can state whether this would be in some type of guidance book or whether or not it actually needs to be dealt with. That is the apparent confusion between reserved rights and outstanding rights and what the role of Fish and Wildlife is in those two areas.

Do you need some clarification for the difference in reserved and outstanding rights? Do you feel it is already clear at this point so no further work needs to be done on it?

Mr. SMITH. At this time, I think we actually have a very clear concept of reserved and our rights under reserved. I think it's always been the general feel and the general opinion of the Department that, with regard to oil and gas rights owned by third parties, which are not reserved, we really don't have any, under the law, any regulatory authority over those.

As to State law, most States recognize mineral estates as dominate estates and, as such, they have a property right of access and development.

Mr. GILCHREST. So you don't have a clear understanding of your authority over outstanding rights?

Mr. SMITH. I think the general opinion of the Department has always been, legally, we don't have the authority to regulate those activities by Federal permit.

Mr. GILCHREST. So you have a clear understanding of outstanding rights right now?

Mr. SMITH. I think we have a fairly clear understanding, yes.

Mr. GILCHREST. Would you agree with that, Mr. Hill?

Mr. HILL. No, I wouldn't. In fact, during the course of the audit, we specifically asked the Interior's Solicitors Office for an opinion on this. The response we got was that the Solicitors Office had not made an opinion on this, nor did they plan to make an opinion on this. So we think this is something that really needs to be clarified.

Furthermore, our assessment of that authority shows that, based on authorities given to the Park Service and the Forest Service under very similar circumstances, we believe they do have such authority.

Mr. GILCHREST. So you're saying the Fish and Wildlife Service, right now, has the same authority that the Park Service has for outstanding rights?

Mr. HILL. That is our interpretation. But here again, we would encourage the Department of Interior to render an opinion on this.

Mr. GILCHREST. What is the authority?

Mr. HILL. The authority would allow them to do permitting authority over outstanding mineral right holders.

Mr. GILCHREST. Mr. Smith, right now you feel you have no authority?

Mr. SMITH. That has generally been, for years and years and years, the interpretation of the Department of Interior.

Mr. GILCHREST. Is that's the opinion of the Department of Interior, Mr. Hill, you're saying the Solicitor said he didn't want to render an opinion?

Mr. HILL. We have not seen a formal opinion from the Solicitor's Office. I would encourage the witness, if they have such an opinion, to produce it. Because during the course of our audit, they did not produce such a document.

Mr. GILCHREST. Is there such a document, Mr. Smith?

Mr. SMITH. To my knowledge, there has never been a formal Solicitor's opinion requested because of the general approach and general opinion of the Department. We have always felt like, absent that—at least over the past few years, we have felt, absent such direct regulatory authority, we have the ability to work with States, under State law and under State rules and regulations, and to work with oil and gas producers and mineral rights owners on a voluntary, cooperative basis to get the same results.

Mr. GILCHREST. So you don't see the need to have the same authority that the Park Service has?

Mr. SMITH. At this time, we don't see the need. In fact, I think we would run afoul of some of the purposes of the National Wildlife Refuge protecting habitat because of chilling effects on the ability to secure high quality habitat by people who are unwilling to either sell their property or by making it prohibitively expensive to secure some of that surface habitat.

Mr. GILCHREST. We will probably ask this question in April again, to see where we are, as we review some more of the information ourselves. But that will be one of the questions we will ask, along with the guidance book on this process.

I will yield again to the gentleman from Massachusetts, Mr. Markey.

Mr. MARKEY. Mr. Smith, I am interested in how generous the Administration is being in the case of buying out the mineral rights on three refuges in Florida for \$120 million.

What other refuges might be eligible for this method of freeing the Fish and Wildlife Service of having to manage oil and gas permits that are incompatible with refuges?

Mr. SMITH. I'm not aware of us buying out any oil and gas rights on any refuges in Florida. The Administration has moved to purchase mineral rights underlying Big Cypress National Preserve, which is a unit of the National Park Service in Florida.

Mr. MARKEY. On May 29th, 2002, the Bush Administration announced that the National Park Service would buy privately held mineral rights on three Florida wildlife refuges: the Florida Panther National Wildlife Refuge, Ten Thousand Islands National Wildlife Refuge, and Big Cypress National Preserve.

You're not familiar with them?

Mr. SMITH. I am familiar with that. What that is is the National Park Service buying out one family's interest, the Collier family's interest underlying mineral rights in the Big Cypress National Preserve, which is a unit of the Park Service, as well as neighboring two, actually neighboring wildlife refuges.

Mr. MARKEY. How many other refuge areas in the country might be eligible for this?

Mr. SMITH. I think we would have to look at that on a case-by-case basis. I think, in order to buy out all of the mineral interest in all the areas in the Refuge System, would cost billions and billions of dollars. One of the things that—

Mr. MARKEY. No, I know that. I'm just saying there is a precedent set here. Have you looked at any other place?

Mr. SMITH. One of the goals in that acquisition was part of the Administration's commitment to the Florida Everglades restoration project.

Mr. MARKEY. Right. And have you looked at any other place in the country?

Mr. SMITH. We are willing to look at those on a case-by-case basis, working closely with Congress—

Mr. MARKEY. Is it just a Florida-specific program? Is it Everglades-specific, or are there other refuges that you might look at that could benefit from the same—In other words, what is so special about Florida? There's 49 other States. Why just Florida for such a program?

Mr. SMITH. Congress made a commitment under the comprehensive Everglades restoration program to—

Mr. MARKEY. No, I know that. But we have made a commitment to many other places in America as well. I'm just wondering why Florida is singled out and the other 49 States are not?

Mr. SMITH. There was a need, under the Administration's commitment, to Everglades restoration at the time, to purchase those oil and gas rights as part of the whole Everglades restoration plan.

We certainly are not foreclosing ourselves to buying out any other oil and gas rights in any other part of the country. Working closely with Congress on priorities, I don't think, absent working closely with Congress and the Appropriations Committee, are able to run around the country with a blank check, per se, and—

Mr. MARKEY. I'm not looking for a blank check. I'm just trying to figure out what the policy is.

You're arguing here that the Administration policy basically was that it would be necessary to make this \$120 million expenditure in order to protect the Everglades. So the conclusion that I think is obvious to reach is that there is some danger as a result in having drilling near a refuge.

So, my question is, what is so special about the Everglades that you would spend \$120 million in order to protect it against an activity which you don't believe is benign, you believe this is dangerous activity, and as a result, \$120 million is expended.

Why wouldn't it be dangerous in other areas as well? Why is it dangerous to the Everglades but not dangerous in 49 other States?

Mr. SMITH. We had a unique situation in the Everglades, where Congress has committed a lot of money to the Everglades restoration.

We also had another very important element there, which was willing sellers who were interested and approached us in selling out their mineral rights, which in a lot of other places we don't have that necessary part of the puzzle. Those pieces of the puzzle came together, and at the time it made a whole lot of sense.

In other areas, we would be more than happy to work with Congress and the appropriators on areas that are important, where there is restoration programs or other programs going on, where there are also willing sellers, to explore those, where there are reasonable opportunities for a reasonable price to—

Mr. MARKEY. I understand that.

I guess the point is that, if you offered me \$120 million, then I'm a willing seller. You offer me \$20 million, I'm not a willing seller. In Florida, the Bush Administration went as high as it took in order to get this job done, in order to protect the Everglades.

My argument would be that there are many other States that have areas that are just as important as the Everglades to those States, and to our Nation's heritage. And yet, there is this huge exception that you've carved out for this one area.

But again, you see, you have made the point. You have made the point as to this activity, that this drilling activity is not benign. Otherwise, you wouldn't have spent \$120 million. You wouldn't have spent it.

The precedent has been set in Florida. Either it was based upon an actual assessment that the activity is not benign, or it was based upon the short-term political needs of the President's brother, which the President says is absolutely not true. I think he's an honest man on this issue. So that's the case.

Then why shouldn't we be looking at all the other areas in the country in the same way, and why don't you have an inventory of all of those places that reflect the same kind of metric that you established in the Everglades?

Mr. SMITH. A couple of points. One, I think the resource that was at issue, front and center, in the Big Cypress acquisition was one of park resources. The refuge portions of that I think were really incidental to that sale.

Two, under Federal law, we are required to pay fair market value for any property rights that we purchase from even willing sellers. So we are unable to entice sellers into becoming willing sellers by overpaying it, so to speak.

Mr. MARKEY. I understand that, although you know that there are many people who are questioning whether or not you may have overpaid for this in the 2002 election cycle.

Again, I guess the point that is made so clearly by the Everglades incident is that this property that is a refuge is, in fact, something that this Administration, at least in Florida, believes is something that should be protected.

Mr. GILCHREST. We have three votes coming up, so that means we probably won't come back.

Mr. MARKEY. We will not.

Mr. GILCHREST. Seven minutes now, which means we'll be gone for half an hour. If you have a number of questions, Mr. Markey and want to return—

Mr. MARKEY. Can I have just one final question?

Mr. GILCHREST. I guess you have 60 seconds.

Mr. MARKEY. OK, 60 seconds.

Should we be trying to raise the level of management and oversight on all refuges to the level that Mr. Tauzin mentioned, the practices that Mr. Tauzin mentioned in his opening statement?

Mr. SMITH. One of the things that the States of Louisiana and Texas and their delegations did for us a few years ago is allowed, as part of Appropriations Committee language, allowed for remediation money collected as a result of refuge damage to stay on those refuges and go back toward the remediation of those damages, as opposed to going into the general treasury. That has helped a lot.

One of the things we're trying to do is take a look at what our successes have been, and where we have good managers out there and good programs, and incorporate them into training materials and a guidebook for managers and policy guidance for managers.

I think the GAO report is something we have taken very seriously. It has been a help to us and in their recommendations. I think we have the tools out there, and I think we're prepared and committed toward addressing this challenge as we face—

Mr. MARKEY. Let me just go to Mr. Hill quickly because my time is running out.

Mr. Hill, did your staff find that the practices Mr. Tauzin mentioned in his opening statement to be the exception of the rule on the refuges that you visited?

Mr. HILL. I would say it was inconsistent. It varied from refuge to refuge. It really depended upon the attention that the refuge managers were paying to the issue.

Let me caveat all this by saying there are very few staff at these refuges. In a lot of instances, there is only two or three people in charge of managing tens of thousands of acres. These people are dealing with lots of issues, and we really commend the people that are running these refuges. They are working hard and they're very dedicated. They are experts in their field.

It's just an overwhelming task, what they have to do, and if you look at it from that standpoint, yes, there is a lack of resources here. More resources, more attention, more guidance, more training, a lot of things are needed if you're going to address this issue.

Mr. MARKEY. It sounds like what he was talking about was the exception, not the rule.

Mr. Chairman, I thank you so much for having this hearing. I thank our witnesses.

Could I make a motion that the members on our side be allowed to submit follow-up questions to the witnesses?

Mr. GILCHREST. Without objection.

Mr. MARKEY. Thank you.

Mr. GILCHREST. Mr. Markey, we will have a hearing in April to follow up on some of the recommendations. One of the other things we'll be looking for in that second hearing is to see if we can resolve the differences between, for example, the CAP study in Kenai National Wildlife Refuge that listed over 330 known oil spills and provided the ability to resolve that contamination, and the difference we've been talking about all the way through here in the Deep Fork National Wildlife Refuge. The CAP study said there was no problem with the 360 wells and some of the spills, even though their own comprehensive conservation study recommended that they do deal with those oil spills.

We know all you guys are all working hard. We appreciate the GAO report. It gives us a great deal of insight. We appreciate the work that you are doing, Mr. Smith, and we look forward to seeing you in April. Thank you very much.

The hearing is adjourned.

[Whereupon, at 10:42 a.m., the Subcommittee adjourned.]

[A statement submitted for the record by Jim Waltman, Director of Refuges and Wildlife, The Wilderness Society, follows:]

**Statement of Jim Waltman, Director of Refuges and Wildlife,
The Wilderness Society**

The General Accounting Office's recent report ("National Wildlife Refuges: Opportunities to Improve the Management and Oversight of Oil and Gas Activities on Federal Lands") confirms the findings of earlier federal reports that oil and gas activity has caused serious damage on many of the national wildlife refuges where it has occurred. According to the report, oil and gas activity on national wildlife refuges has spilled hundreds of thousands of gallons of crude oil, caused mercury and PCB contamination, killed wildlife and thousands of fish, destroyed and fragmented thousands of acres of habitat, produced millions of gallons of brine, and caused long-term soil and water contamination.

The GAO also confirmed earlier reports that found that the U.S. Fish and Wildlife Service is generally unaware of the extent of oil and gas activity on national wildlife refuges and portrayed the agency as poorly informed of the damages oil and gas activity has caused on refuges. According to the report, "The Fish and Wildlife Service has not conducted any assessments of the cumulative environmental effects of oil and gas activities on refuge resources."

In addition, the report concluded that the agency is unable to consistently regulate oil and gas activities within the National Wildlife Refuge System. According to the report, "refuge managers lack sufficient guidance, resources, and training to properly monitor oil and gas operators."

The GAO concludes that the Fish and Wildlife Service must improve management of oil and gas activities on refuges by collecting better data; improving training, oversight and land acquisition practices; and strengthening permitting authority through Congressional action.

The GAO report is not the first study to conclude that oil and gas activity is causing damage to national wildlife refuges or that the Fish and Wildlife Service lacks comprehensive information on the location and effects of oil and gas activities in the National Wildlife Refuge System. Previous federally sponsored reports dating back two decades have identified problems associated with oil and gas activities in or near refuges.

Examples of previous reports include:

Secondary Uses Occurring on National Wildlife Refuges, 1990

According to this report from the U.S. Fish and Wildlife Service, 63 percent of all refuge managers reported that at least one "harmful" activity occurred on the refuges they managed. The report identified 30 wildlife refuges at which the refuge manager indicated that oil/gas extraction "adversely affect[ed] the ability to conserve or manage in accordance with the refuge goals and objectives." Examples included Kern National Wildlife Refuge (California) where the activity caused "habitat destruction, wildlife disturbance, endangered species take threat." According to the report, oil and gas activity caused "surface and habitat impacts and disturbance to wildlife including whooping cranes" at Aransas NWR (Texas) and "tremendous vegetative loss, increases erosion, nesting losses during the nesting season" at Breton NWR (Louisiana).

Continuing Problems with Incompatible Uses Call for Bold Action, 1989

According to this study from the General Accounting Office, refuge managers reported that at least one harmful use was occurring on 59 percent of the refuges. The GAO highlighted gas production at D'Arbonne NWR (Louisiana) as one of 16 particularly harmful activities in the Refuge System. According to the report "Salt water contamination from gas production continues to erode the habitat's capability to support wildlife.... Natural gas production has destroyed wildlife habitat through soil and water contamination by brine."

Contaminant Issues of Concern: National Wildlife Refuges, 1986

This report from the U.S. Fish and Wildlife Service identified 78 "contaminant issues of concern" on 85 refuges. The report determined that at the Kenai Refuge (Alaska), "oil and gas spills from various oil companies have been occurring for approximately 25 years. Also, numerous spills of substances used in oil field production and subsequently discharged into drill mud reserve pits may have affected local water supplies. These substances may represent sources of possible chronic and acute problems impacting fish and wildlife resources."

Economic Uses of the National Wildlife Refuge System Unlikely to Increase Significantly, 1984.

In this General Accounting Office report, "GAO found that Fish and Wildlife Service 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." The GAO found that "oil operations have sometimes caused serious damage to refuges" and that "the most frequent type of damage reported was habitat disturbance." "At Delta NWR in Louisiana, for example, the refuge is experiencing significant marsh loss and intrusion of salt water into fresh water ponds. Canals from oil industry operations have contributed to this deterioration."

Fish and Wildlife Service Resource Problems, 1983

This report from the U.S. Fish and Wildlife Service identified 146 national wildlife refuges where oil spills and 97 refuges where oil and gas extraction were "currently causing, or have the potential to cause, significant damage to Fish and Wildlife Service-managed natural resources or physical facilities." The findings were based on information submitted by refuge managers, wildlife biologists, and other refuge employees.

The new report makes it very clear that the Interior Department and U.S. Fish and Wildlife Service have failed to respond adequately to address what they have known for decades to be a very real problem. It is unfortunate that the GAO has again found significant problems associated with oil and gas activity on national wildlife refuges.

The vast majority of oil and gas activity that occurs on national wildlife refuges is related to extraction of private mineral rights that the federal government does not own and to which it cannot deny access. However, in its recent report the GAO concluded that the Fish and Wildlife Service does have certain authority to regulate this use so as to protect refuge wildlife and habitats but is not making use of this authority. Unlike the National Park Service and U.S. Forest Service, Fish and Wildlife Service regulations do not require owners of mineral rights to obtain permits that contain protective conditions before engaging in oil and gas activities on the federal lands that it manages. Congress should take action to affirm the Fish and Wildlife Service's authority to require permits of oil and gas operators—and conditions to protect fish and wildlife—where private parties own and hold rights to develop oil and gas beneath refuge lands.

Finally, the GAO report provides a preview of the kinds of environmental damage that could be expected at the Arctic National Wildlife Refuge if Congress authorizes oil drilling in that pristine refuge in northeastern Alaska. Congress should take careful note of this report and continue to resist proposals to open the Arctic Refuge to drilling.