

Public Law 105-57
105th Congress

An Act

Oct. 9, 1997

[H.R. 1420]

To amend the National Wildlife Refuge System Administration Act of 1966 to improve the management of the National Wildlife Refuge System, and for other purposes.

National Wildlife
Refuge System
Improvement Act
of 1997.
16 USC 668dd
note.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; REFERENCES.

(a) **SHORT TITLE.**—This Act may be cited as the “National Wildlife Refuge System Improvement Act of 1997”.

(b) **REFERENCES.**—Whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or provision of the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd et seq.).

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SEC. 2. FINDINGS.

The Congress finds the following:

(1) The National Wildlife Refuge System is comprised of over 92,000,000 acres of Federal lands that have been incorporated within 509 individual units located in all 50 States and the territories of the United States.

(2) The System was created to conserve fish, wildlife, and plants and their habitats and this conservation mission has been facilitated by providing Americans opportunities to participate in compatible wildlife-dependent recreation, including fishing and hunting, on System lands and to better appreciate the value of and need for fish and wildlife conservation.

(3) The System serves a pivotal role in the conservation of migratory birds, anadromous and interjurisdictional fish, marine mammals, endangered and threatened species, and the habitats on which these species depend.

(4) The System assists in the fulfillment of important international treaty obligations of the United States with regard to fish, wildlife, and plants and their habitats.

(5) The System includes lands purchased not only through the use of tax dollars but also through the proceeds from sales of Duck Stamps and national wildlife refuge entrance fees. It is a System that is financially supported by those benefiting from and utilizing it.

(6) When managed in accordance with principles of sound fish and wildlife management and administration, fishing, hunting, wildlife observation, and environmental education in national wildlife refuges have been and are expected to continue to be generally compatible uses.

(7) On March 25, 1996, the President issued Executive Order 12996, which recognized "compatible wildlife-dependent recreational uses involving hunting, fishing, wildlife observation and photography, and environmental education and interpretation as priority public uses of the Refuge System".

(8) Executive Order 12996 is a positive step and serves as the foundation for the permanent statutory changes made by this Act.

SEC. 3. DEFINITIONS.

(a) IN GENERAL.—Section 5 (16 U.S.C. 668ee) is amended to read as follows:

"SEC. 5. DEFINITIONS.

"For purposes of this Act:

"(1) The term 'compatible use' means a wildlife-dependent recreational use or any other use of a refuge that, in the sound professional judgment of the Director, will not materially interfere with or detract from the fulfillment of the mission of the System or the purposes of the refuge.

"(2) The terms 'wildlife-dependent recreation' and 'wildlife-dependent recreational use' mean a use of a refuge involving hunting, fishing, wildlife observation and photography, or environmental education and interpretation.

"(3) The term 'sound professional judgment' means a finding, determination, or decision that is consistent with principles of sound fish and wildlife management and administration, available science and resources, and adherence to the requirements of this Act and other applicable laws.

"(4) The terms 'conserving', 'conservation', 'manage', 'managing', and 'management' mean to sustain and, where appropriate, restore and enhance, healthy populations of fish, wildlife, and plants utilizing, in accordance with applicable Federal and State laws, methods and procedures associated with modern scientific resource programs. Such methods and procedures include, consistent with the provisions of this Act, protection, research, census, law enforcement, habitat management, propagation, live trapping and transplantation, and regulated taking.

"(5) The term 'Coordination Area' means a wildlife management area that is made available to a State—

"(A) by cooperative agreement between the United States Fish and Wildlife Service and a State agency having control over wildlife resources pursuant to section 4 of the Fish and Wildlife Coordination Act (16 U.S.C. 664); or

"(B) by long-term leases or agreements pursuant to title III of the Bankhead-Jones Farm Tenant Act (50 Stat. 525; 7 U.S.C. 1010 et seq.).

"(6) The term 'Director' means the Director of the United States Fish and Wildlife Service or a designee of that Director.

"(7) The terms 'fish', 'wildlife', and 'fish and wildlife' mean any wild member of the animal kingdom whether alive or dead, and regardless of whether the member was bred, hatched, or born in captivity, including a part, product, egg, or offspring of the member.

"(8) The term 'person' means any individual, partnership, corporation, or association.

“(9) The term ‘plant’ means any member of the plant kingdom in a wild, unconfined state, including any plant community, seed, root, or other part of a plant.

“(10) The terms ‘purposes of the refuge’ and ‘purposes of each refuge’ mean the purposes specified in or derived from the law, proclamation, executive order, agreement, public land order, donation document, or administrative memorandum establishing, authorizing, or expanding a refuge, refuge unit, or refuge subunit.

“(11) The term ‘refuge’ means a designated area of land, water, or an interest in land or water within the System, but does not include Coordination Areas.

“(12) The term ‘Secretary’ means the Secretary of the Interior.

“(13) The terms ‘State’ and ‘United States’ mean the several States of the United States, Puerto Rico, American Samoa, the Virgin Islands, Guam, and the territories and possessions of the United States.

“(14) The term ‘System’ means the National Wildlife Refuge System designated under section 4(a)(1).

“(15) The terms ‘take’, ‘taking’, and ‘taken’ mean to pursue, hunt, shoot, capture, collect, or kill, or to attempt to pursue, hunt, shoot, capture, collect, or kill.”.

(b) CONFORMING AMENDMENT.—Section 4 (16 U.S.C. 668dd) is amended by striking “Secretary of the Interior” each place it appears and inserting “Secretary”.

SEC. 4. MISSION OF THE SYSTEM.

Section 4(a) (16 U.S.C. 668dd(a)) is amended—

(1) by redesignating paragraphs (2) and (3) as paragraphs (5) and (6), respectively;

(2) in clause (i) of paragraph (6) (as so redesignated), by striking “paragraph (2)” and inserting “paragraph (5)”; and

(3) by inserting after paragraph (1) the following new paragraph:

“(2) The mission of the System is to administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans.”.

SEC. 5. ADMINISTRATION OF THE SYSTEM.

(a) ADMINISTRATION GENERALLY.—Section 4(a) (16 U.S.C. 668dd(a)), as amended by section 4 of this Act, is further amended by inserting after new paragraph (2) the following new paragraphs:

“(3) With respect to the System, it is the policy of the United States that—

“(A) each refuge shall be managed to fulfill the mission of the System, as well as the specific purposes for which that refuge was established;

“(B) compatible wildlife-dependent recreation is a legitimate and appropriate general public use of the System, directly related to the mission of the System and the purposes of many refuges, and which generally fosters refuge management and through which the American public can develop an appreciation for fish and wildlife;

“(C) compatible wildlife-dependent recreational uses are the priority general public uses of the System and shall receive priority consideration in refuge planning and management; and

“(D) when the Secretary determines that a proposed wildlife-dependent recreational use is a compatible use within a refuge, that activity should be facilitated, subject to such restrictions or regulations as may be necessary, reasonable, and appropriate.

“(4) In administering the System, the Secretary shall—

“(A) provide for the conservation of fish, wildlife, and plants, and their habitats within the System;

“(B) ensure that the biological integrity, diversity, and environmental health of the System are maintained for the benefit of present and future generations of Americans;

“(C) plan and direct the continued growth of the System in a manner that is best designed to accomplish the mission of the System, to contribute to the conservation of the ecosystems of the United States, to complement efforts of States and other Federal agencies to conserve fish and wildlife and their habitats, and to increase support for the System and participation from conservation partners and the public;

“(D) ensure that the mission of the System described in paragraph (2) and the purposes of each refuge are carried out, except that if a conflict exists between the purposes of a refuge and the mission of the System, the conflict shall be resolved in a manner that first protects the purposes of the refuge, and, to the extent practicable, that also achieves the mission of the System;

“(E) ensure effective coordination, interaction, and cooperation with owners of land adjoining refuges and the fish and wildlife agency of the States in which the units of the System are located;

“(F) assist in the maintenance of adequate water quantity and water quality to fulfill the mission of the System and the purposes of each refuge;

“(G) acquire, under State law, water rights that are needed for refuge purposes;

“(H) recognize compatible wildlife-dependent recreational uses as the priority general public uses of the System through which the American public can develop an appreciation for fish and wildlife;

“(I) ensure that opportunities are provided within the System for compatible wildlife-dependent recreational uses;

“(J) ensure that priority general public uses of the System receive enhanced consideration over other general public uses in planning and management within the System;

“(K) provide increased opportunities for families to experience compatible wildlife-dependent recreation, particularly opportunities for parents and their children to safely engage in traditional outdoor activities, such as fishing and hunting;

“(L) continue, consistent with existing laws and interagency agreements, authorized or permitted uses of units of the System by other Federal agencies, including those necessary to facilitate military preparedness;

“(M) ensure timely and effective cooperation and collaboration with Federal agencies and State fish and wildlife agencies during the course of acquiring and managing refuges; and

“(N) monitor the status and trends of fish, wildlife, and plants in each refuge.”

(b) POWERS.—Section 4(b) (16 U.S.C. 668dd(b)) is amended—

(1) in the matter preceding paragraph (1) by striking “authorized—” and inserting “authorized to take the following actions:”;

(2) in paragraph (1) by striking “to enter” and inserting “Enter”;

(3) in paragraph (2)—

(A) by striking “to accept” and inserting “Accept”; and

(B) by striking “, and” and inserting a period;

(4) in paragraph (3) by striking “to acquire” and inserting “Acquire”; and

(5) by adding at the end the following new paragraphs:

“(4) Subject to standards established by and the overall management oversight of the Director, and consistent with standards established by this Act, to enter into cooperative agreements with State fish and wildlife agencies for the management of programs on a refuge.

“(5) Issue regulations to carry out this Act.”

Regulations.

SEC. 6. COMPATIBILITY STANDARDS AND PROCEDURES.

Section 4(d) (16 U.S.C. 668dd(d)) is amended by adding at the end the following new paragraphs:

“(3)(A)(i) Except as provided in clause (iv), the Secretary shall not initiate or permit a new use of a refuge or expand, renew, or extend an existing use of a refuge, unless the Secretary has determined that the use is a compatible use and that the use is not inconsistent with public safety. The Secretary may make the determinations referred to in this paragraph for a refuge concurrently with development of a conservation plan under subsection (e).

“(ii) On lands added to the System after March 25, 1996, the Secretary shall identify, prior to acquisition, withdrawal, transfer, reclassification, or donation of any such lands, existing compatible wildlife-dependent recreational uses that the Secretary determines shall be permitted to continue on an interim basis pending completion of the comprehensive conservation plan for the refuge.

“(iii) Wildlife-dependent recreational uses may be authorized on a refuge when they are compatible and not inconsistent with public safety. Except for consideration of consistency with State laws and regulations as provided for in subsection (m), no other determinations or findings are required to be made by the refuge official under this Act or the Refuge Recreation Act for wildlife-dependent recreation to occur.

“(iv) Compatibility determinations in existence on the date of enactment of the National Wildlife Refuge System Improvement Act of 1997 shall remain in effect until and unless modified.

“(B) Not later than 24 months after the date of the enactment of the National Wildlife Refuge System Improvement Act of 1997, the Secretary shall issue final regulations establishing the process for determining under subparagraph (A) whether a use of a refuge is a compatible use. These regulations shall—

“(i) designate the refuge official responsible for making initial compatibility determinations;

“(ii) require an estimate of the timeframe, location, manner, and purpose of each use;

Regulations.

“(iii) identify the effects of each use on refuge resources and purposes of each refuge;

“(iv) require that compatibility determinations be made in writing;

“(v) provide for the expedited consideration of uses that will likely have no detrimental effect on the fulfillment of the purposes of a refuge or the mission of the System;

“(vi) provide for the elimination or modification of any use as expeditiously as practicable after a determination is made that the use is not a compatible use;

“(vii) require, after an opportunity for public comment, reevaluation of each existing use, other than those uses specified in clause (viii), if conditions under which the use is permitted change significantly or if there is significant new information regarding the effects of the use, but not less frequently than once every 10 years, to ensure that the use remains a compatible use, except that, in the case of any use authorized for a period longer than 10 years (such as an electric utility right-of-way), the reevaluation required by this clause shall examine compliance with the terms and conditions of the authorization, not examine the authorization itself;

“(viii) require, after an opportunity for public comment, reevaluation of each compatible wildlife-dependent recreational use when conditions under which the use is permitted change significantly or if there is significant new information regarding the effects of the use, but not less frequently than in conjunction with each preparation or revision of a conservation plan under subsection (e) or at least every 15 years, whichever is earlier; and

“(ix) provide an opportunity for public review and comment on each evaluation of a use, unless an opportunity for public review and comment on the evaluation of the use has already been provided during the development or revision of a conservation plan for the refuge under subsection (e) or has otherwise been provided during routine, periodic determinations of compatibility for wildlife-dependent recreational uses.

“(4) The provisions of this Act relating to determinations of the compatibility of a use shall not apply to—

“(A) overflights above a refuge; and

“(B) activities authorized, funded, or conducted by a Federal agency (other than the United States Fish and Wildlife Service) which has primary jurisdiction over a refuge or a portion of a refuge, if the management of those activities is in accordance with a memorandum of understanding between the Secretary or the Director and the head of the Federal agency with primary jurisdiction over the refuge governing the use of the refuge.”.

Public
information.

SEC. 7. REFUGE CONSERVATION PLANNING PROGRAM.

(a) IN GENERAL.—Section 4 (16 U.S.C. 668dd) is amended—

(1) by redesignating subsections (e) through (i) as subsections (f) through (j), respectively; and

(2) by inserting after subsection (d) the following new subsection:

“(e)(1)(A) Except with respect to refuge lands in Alaska (which shall be governed by the refuge planning provisions of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 et seq.)), the Secretary shall—

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publication.

“(i) propose a comprehensive conservation plan for each refuge or related complex of refuges (referred to in this subsection as a ‘planning unit’) in the System;

“(ii) publish a notice of opportunity for public comment in the Federal Register on each proposed conservation plan;

“(iii) issue a final conservation plan for each planning unit consistent with the provisions of this Act and, to the extent practicable, consistent with fish and wildlife conservation plans of the State in which the refuge is located; and

“(iv) not less frequently than 15 years after the date of issuance of a conservation plan under clause (iii) and every 15 years thereafter, revise the conservation plan as may be necessary.

“(B) The Secretary shall prepare a comprehensive conservation plan under this subsection for each refuge within 15 years after the date of enactment of the National Wildlife Refuge System Improvement Act of 1997.

“(C) The Secretary shall manage each refuge or planning unit under plans in effect on the date of enactment of the National Wildlife Refuge System Improvement Act of 1997, to the extent such plans are consistent with this Act, until such plans are revised or superseded by new comprehensive conservation plans issued under this subsection.

“(D) Uses or activities consistent with this Act may occur on any refuge or planning unit before existing plans are revised or new comprehensive conservation plans are issued under this subsection.

“(E) Upon completion of a comprehensive conservation plan under this subsection for a refuge or planning unit, the Secretary shall manage the refuge or planning unit in a manner consistent with the plan and shall revise the plan at any time if the Secretary determines that conditions that affect the refuge or planning unit have changed significantly.

“(2) In developing each comprehensive conservation plan under this subsection for a planning unit, the Secretary, acting through the Director, shall identify and describe—

“(A) the purposes of each refuge comprising the planning unit;

“(B) the distribution, migration patterns, and abundance of fish, wildlife, and plant populations and related habitats within the planning unit;

“(C) the archaeological and cultural values of the planning unit;

“(D) such areas within the planning unit that are suitable for use as administrative sites or visitor facilities;

“(E) significant problems that may adversely affect the populations and habitats of fish, wildlife, and plants within the planning unit and the actions necessary to correct or mitigate such problems; and

“(F) opportunities for compatible wildlife-dependent recreational uses.

“(3) In preparing each comprehensive conservation plan under this subsection, and any revision to such a plan, the Secretary, acting through the Director, shall, to the maximum extent practicable and consistent with this Act—

“(A) consult with adjoining Federal, State, local, and private landowners and affected State conservation agencies; and

“(B) coordinate the development of the conservation plan or revision with relevant State conservation plans for fish and wildlife and their habitats.

“(4)(A) In accordance with subparagraph (B), the Secretary shall develop and implement a process to ensure an opportunity for active public involvement in the preparation and revision of comprehensive conservation plans under this subsection. At a minimum, the Secretary shall require that publication of any final plan shall include a summary of the comments made by States, owners of adjacent or potentially affected land, local governments, and any other affected persons, and a statement of the disposition of concerns expressed in those comments.

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information.

“(B) Prior to the adoption of each comprehensive conservation plan under this subsection, the Secretary shall issue public notice of the draft proposed plan, make copies of the plan available at the affected field and regional offices of the United States Fish and Wildlife Service, and provide opportunity for public comment.”.

Public
information.

SEC. 8. EMERGENCY POWER; STATE AUTHORITY; WATER RIGHTS; COORDINATION.

(a) IN GENERAL.—Section 4 (16 U.S.C. 668dd) is further amended by adding at the end the following new subsections:

“(k) Notwithstanding any other provision of this Act, the Secretary may temporarily suspend, allow, or initiate any activity in a refuge in the System if the Secretary determines it is necessary to protect the health and safety of the public or any fish or wildlife population.

“(l) Nothing in this Act shall be construed to authorize the Secretary to control or regulate hunting or fishing of fish and resident wildlife on lands or waters that are not within the System.

“(m) Nothing in this Act shall be construed as affecting the authority, jurisdiction, or responsibility of the several States to manage, control, or regulate fish and resident wildlife under State law or regulations in any area within the System. Regulations permitting hunting or fishing of fish and resident wildlife within the System shall be, to the extent practicable, consistent with State fish and wildlife laws, regulations, and management plans.

“(n)(1) Nothing in this Act shall—

“(A) create a reserved water right, express or implied, in the United States for any purpose;

“(B) affect any water right in existence on the date of enactment of the National Wildlife Refuge System Improvement Act of 1997; or

“(C) affect any Federal or State law in existence on the date of the enactment of the National Wildlife Refuge System Improvement Act of 1997 regarding water quality or water quantity.

“(2) Nothing in this Act shall diminish or affect the ability to join the United States in the adjudication of rights to the use of water pursuant to the McCarran Act (43 U.S.C. 666).

“(o) Coordination with State fish and wildlife agency personnel or with personnel of other affected State agencies pursuant to this Act shall not be subject to the Federal Advisory Committee Act (5 U.S.C. App.).”.

(b) CONFORMING AMENDMENT.—Section 4(c) (16 U.S.C. 668dd(c)) is amended by striking the last sentence.

16 USC 668dd
note.

SEC. 9. STATUTORY CONSTRUCTION WITH RESPECT TO ALASKA.

(a) **IN GENERAL.**—Nothing in this Act is intended to affect—

(1) the provisions for subsistence uses in Alaska set forth in the Alaska National Interest Lands Conservation Act (Public Law 96-487), including those in titles III and VIII of that Act;

(2) the provisions of section 102 of the Alaska National Interest Lands Conservation Act, the jurisdiction over subsistence uses in Alaska, or any assertion of subsistence uses in Alaska in the Federal courts; and

(3) the manner in which section 810 of the Alaska National Interest Lands Conservation Act is implemented in national wildlife refuges in Alaska.

(b) **CONFLICTS OF LAWS.**—If any conflict arises between any provision of this Act and any provision of the Alaska National Interest Lands Conservation Act, then the provision in the Alaska National Interest Lands Conservation Act shall prevail.

Approved October 9, 1997.

LEGISLATIVE HISTORY—H.R. 1420:

HOUSE REPORTS: No. 105-106 (Comm. on Resources).

CONGRESSIONAL RECORD, Vol. 143 (1997):

June 3, considered and passed House.

Sept. 10, considered and passed Senate, amended.

Sept. 23, House concurred in Senate amendments.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 33 (1997):

Oct. 9, Presidential statement.