

105TH CONGRESS
1ST SESSION

S. 1059

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

IN THE SENATE OF THE UNITED STATES

JULY 23, 1997

Mr. CHAFEE (for himself, Mr. KEMPTHORNE, and Mr. GRAHAM) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

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

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; REFERENCES.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “National Wildlife Refuge System Improvement Act of
6 1997”.

7 (b) REFERENCES.—Whenever in this Act an amend-
8 ment or repeal is expressed in terms of an amendment
9 to, or repeal of, a section or other provision, the reference

1 shall be considered to be made to a section or provision
2 of the National Wildlife Refuge System Administration
3 Act of 1966 (16 U.S.C. 668dd et seq.).

4 **SEC. 2. FINDINGS.**

5 The Congress finds the following:

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

11 (2) The System was created to conserve fish,
12 wildlife, and plants and their habitats and this con-
13 servation mission has been facilitated by providing
14 Americans opportunities to participate in compatible
15 wildlife-dependent recreation, including fishing and
16 hunting, on System lands and to better appreciate
17 the value of and need for fish and wildlife conserva-
18 tion.

19 (3) The System serves a pivotal role in the con-
20 servation of migratory birds, anadromous and inter-
21 jurisdictional fish, marine mammals, endangered and
22 threatened species, and the habitats on which these
23 species depend.

24 (4) The System assists in the fulfillment of im-
25 portant international treaty obligations of the Unit-

1 ed States with regard to fish, wildlife, and plants
2 and their habitats.

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

9 (6) When managed in accordance with prin-
10 ciples of sound fish and wildlife management and
11 administration, fishing, hunting, wildlife observation,
12 and environmental education in national wildlife ref-
13 uges have been and are expected to continue to be
14 generally compatible uses.

15 (7) On March 25, 1996, the President issued
16 Executive Order 12996, which recognized “compat-
17 ible wildlife-dependent recreational uses involving
18 hunting, fishing, wildlife observation and photog-
19 raphy, and environmental education and interpreta-
20 tion as priority public uses of the Refuge System”.

21 (8) Executive Order 12996 is a positive step
22 and serves as the foundation for the permanent stat-
23 utory changes made by this Act.

1 **SEC. 3. DEFINITIONS.**

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

4 **“SEC. 5. DEFINITIONS.**

5 “For purposes of this Act:

6 “(1) The term ‘compatible use’ means a wild-
7 life-dependent recreational use or any other use of a
8 refuge that, in the sound professional judgment of
9 the Director, will not materially interfere with or de-
10 tract from the fulfillment of the mission of the Sys-
11 tem or the purposes of the refuge.

12 “(2) The terms ‘wildlife-dependent recreation’
13 and ‘wildlife-dependent recreational use’ mean a use
14 of a refuge involving hunting, fishing, wildlife obser-
15 vation and photography, or environmental education
16 and interpretation.

17 “(3) The term ‘sound professional judgment’
18 means a finding, determination, or decision that is
19 consistent with principles of sound fish and wildlife
20 management and administration, available science
21 and resources, and adherence to the requirements of
22 this Act and other applicable laws.

23 “(4) The terms ‘conserving’, ‘conservation’,
24 ‘manage’, ‘managing’, and ‘management’, mean to
25 sustain and, where appropriate, restore and enhance,
26 healthy populations of fish, wildlife, and plants uti-

1 lizing, in accordance with applicable Federal and
2 State laws, methods and procedures associated with
3 modern scientific resource programs. Such methods
4 and procedures include, consistent with the provi-
5 sions of this Act, protection, research, census, law
6 enforcement, habitat management, propagation, live
7 trapping and transplantation, and regulated taking.

8 “(5) The term ‘Coordination Area’ means a
9 wildlife management area that is made available to
10 a State—

11 “(A) by cooperative agreement between the
12 United States Fish and Wildlife Service and a
13 State agency having control over wildlife re-
14 sources pursuant to section 4 of the Fish and
15 Wildlife Coordination Act (16 U.S.C. 664); or

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

20 “(6) The term ‘Director’ means the Director of
21 the United States Fish and Wildlife Service or a
22 designee of that Director.

23 “(7) The terms ‘fish’, ‘wildlife’, and ‘fish and
24 wildlife’ mean any wild member of the animal king-
25 dom whether alive or dead, and regardless of wheth-

1 er the member was bred, hatched, or born in cap-
2 tivity, including a part, product, egg, or offspring of
3 the member.

4 “(8) The term ‘person’ means any individual,
5 partnership, corporation, or association.

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

10 “(10) The terms ‘purposes of the refuge’ and
11 ‘purposes of each refuge’ mean the purposes speci-
12 fied in or derived from the law, proclamation, execu-
13 tive order, agreement, public land order, donation
14 document, or administrative memorandum establish-
15 ing, authorizing, or expanding a refuge, refuge unit,
16 or refuge subunit.

17 “(11) The term ‘refuge’ means a designated
18 area of land, water, or an interest in land or water
19 within the System, but does not include Coordina-
20 tion Areas.

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

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

1 and the territories and possessions of the United
2 States.

3 “(14) The term ‘System’ means the National
4 Wildlife Refuge System designated under section
5 4(a)(1).

6 “(15) The terms ‘take’, ‘taking’, and ‘taken’
7 mean to pursue, hunt, shoot, capture, collect, or kill,
8 or to attempt to pursue, hunt, shoot, capture, col-
9 lect, or kill.”.

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

13 **SEC. 4. MISSION OF THE SYSTEM.**

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

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

17 (2) in clause (i) of paragraph (6) (as so redesign-
18 ated), by striking “paragraph (2)” and inserting
19 “paragraph (5)”; and

20 (3) by inserting after paragraph (1) the follow-
21 ing new paragraph:

22 “(2) The mission of the System is to administer a
23 national network of lands and waters for the conservation,
24 management, and where appropriate, restoration of the
25 fish, wildlife, and plant resources and their habitats within

1 the United States for the benefit of present and future
2 generations of Americans.”.

3 **SEC. 5. ADMINISTRATION OF THE SYSTEM.**

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

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

10 “(A) each refuge shall be managed to fulfill the
11 mission of the System, as well as the specific pur-
12 poses for which that refuge was established;

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

20 “(C) compatible wildlife-dependent recreational
21 uses are the priority general public uses of the Sys-
22 tem and shall receive priority consideration in refuge
23 planning and management; and

24 “(D) when the Secretary determines that a pro-
25 posed wildlife-dependent recreational use is a com-

1 patible use within a refuge, that activity should be
2 facilitated, subject to such restrictions or regulations
3 as may be necessary, reasonable, and appropriate.

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

6 “(A) provide for the conservation of fish, wild-
7 life, and plants, and their habitats within the Sys-
8 tem;

9 “(B) ensure that the biological integrity, diver-
10 sity, and environmental health of the System are
11 maintained for the benefit of present and future
12 generations of Americans;

13 “(C) plan and direct the continued growth of
14 the System in a manner that is best designed to ac-
15 complish the mission of the System, to contribute to
16 the conservation of the ecosystems of the United
17 States, to complement efforts of States and other
18 Federal agencies to conserve fish and wildlife and
19 their habitats, and to increase support for the Sys-
20 tem and participation from conservation partners
21 and the public;

22 “(D) ensure that the mission of the System de-
23 scribed in paragraph (2) and the purposes of each
24 refuge are carried out, except that if a conflict exists
25 between the purposes of a refuge and the mission of

1 the System, the conflict shall be resolved in a man-
2 ner that first protects the purposes of the refuge,
3 and, to the extent practicable, that also achieves the
4 mission of the System;

5 “(E) ensure effective coordination, interaction,
6 and cooperation with owners of land adjoining ref-
7 uges and the fish and wildlife agency of the States
8 in which the units of the System are located;

9 “(F) assist in the maintenance of adequate
10 water quantity and water quality to fulfill the mis-
11 sion of the System and the purposes of each refuge;

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

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

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

21 “(J) ensure that priority general public uses of
22 the System receive enhanced consideration over
23 other general public uses in planning and manage-
24 ment within the System;

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

6 “(L) continue, consistent with existing laws and
7 interagency agreements, authorized or permitted
8 uses of units of the System by other Federal agen-
9 cies, including those necessary to facilitate military
10 preparedness;

11 “(M) ensure timely and effective cooperation
12 and collaboration with Federal agencies and State
13 fish and wildlife agencies during the course of ac-
14 quiring and managing refuges; and

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

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

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

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

24 (3) in paragraph (2)—

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

3 (B) by striking “, and” and inserting a pe-
4 riod;

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

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

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

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

16 **SEC. 6. COMPATIBILITY STANDARDS AND PROCEDURES.**

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

19 “(3)(A)(i) Except as provided in clause (iv), the Sec-
20 retary shall not initiate or permit a new use of a refuge
21 or expand, renew, or extend an existing use of a refuge,
22 unless the Secretary has determined that the use is a com-
23 patible use and that the use is not inconsistent with public
24 safety. The Secretary may make the determinations re-

ferred 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

1 subparagraph (A) whether a use of a refuge is a compat-
2 ible use. These regulations shall—

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

5 “(ii) require an estimate of the timeframe, loca-
6 tion, manner, and purpose of each use;

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

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

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

15 “(vi) provide for the elimination or modification
16 of any use as expeditiously as practicable after a de-
17 termination is made that the use is not a compatible
18 use;

19 “(vii) require, after an opportunity for public
20 comment, reevaluation of each existing use, other
21 than those uses specified in clause (viii), if condi-
22 tions under which the use is permitted change sig-
23 nificantly or if there is significant new information
24 regarding the effects of the use, but not less fre-

1 quently than once every 10 years, to ensure that the
2 use remains a compatible use;

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

12 “(ix) provide an opportunity for public review
13 and comment on each evaluation of a use, unless an
14 opportunity for public review and comment on the
15 evaluation of the use has already been provided dur-
16 ing the development or revision of a conservation
17 plan for the refuge under subsection (e) or has oth-
18 erwise been provided during routine, periodic deter-
19 minations of compatibility for wildlife-dependent rec-
20 reational uses.

21 “(4) The provisions of this Act relating to determina-
22 tions of the compatibility of a use shall not apply to—

23 “(A) overflights above a refuge; and

24 “(B) activities authorized, funded, or conducted
25 by a Federal agency (other than the United States

1 Fish and Wildlife Service) which has primary juris-
 2 diction over a refuge or a portion of a refuge, if the
 3 management of those activities is in accordance with
 4 a memorandum of understanding between the Sec-
 5 retary or the Director and the head of the Federal
 6 agency with primary jurisdiction over the refuge gov-
 7 erning the use of the refuge.”.

8 **SEC. 7. REFUGE CONSERVATION PLANNING PROGRAM.**

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

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

13 (2) by inserting after subsection (d) the follow-
 14 ing new subsection:

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

20 “(i) propose a comprehensive conservation plan
 21 for each refuge or related complex of refuges (re-
 22 ferred to in this subsection as a ‘planning unit’) in
 23 the System;

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

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

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

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

17 “(C) The Secretary shall manage each refuge or plan-
18 ning unit under plans in effect on the date of enactment
19 of the National Wildlife Refuge System Improvement Act
20 of 1997, to the extent such plans are consistent with this
21 Act, until such plans are revised or superseded by new
22 comprehensive conservation plans issued under this sub-
23 section.

24 “(D) Uses or activities consistent with this Act may
25 occur on any refuge or planning unit before existing plans

1 are revised or new comprehensive conservation plans are
2 issued under this subsection.

3 “(E) Upon completion of a comprehensive conserva-
4 tion plan under this subsection for a refuge or planning
5 unit, the Secretary shall manage the refuge or planning
6 unit in a manner consistent with the plan and shall revise
7 the plan at any time if the Secretary determines that con-
8 ditions that affect the refuge or planning unit have
9 changed significantly.

10 “(2) In developing each comprehensive conservation
11 plan under this subsection for a planning unit, the Sec-
12 retary, acting through the Director, shall identify and de-
13 scribe—

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

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

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

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

24 “(E) significant problems that may adversely
25 affect the populations and habitats of fish, wildlife,

1 and plants within the planning unit and the actions
2 necessary to correct or mitigate such problems; and

3 “(F) opportunities for compatible wildlife-de-
4 pendent recreational uses.

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

10 “(A) consult with adjoining Federal, State,
11 local, and private landowners and affected State con-
12 servations agencies; and

13 “(B) coordinate the development of the con-
14 servations plan or revision with relevant State con-
15 servations plans for fish and wildlife and their habi-
16 tats.

17 “(4)(A) In accordance with subparagraph (B), the
18 Secretary shall develop and implement a process to ensure
19 an opportunity for active public involvement in the prepa-
20 ration and revision of comprehensive conservation plans
21 under this subsection. At a minimum, the Secretary shall
22 require that publication of any final plan shall include a
23 summary of the comments made by States, owners of ad-
24 jacent or potentially affected land, local governments, and

1 any other affected persons, and a statement of the disposi-
 2 tion of concerns expressed in those comments.

3 “(B) Prior to the adoption of each comprehensive
 4 conservation plan under this subsection, the Secretary
 5 shall issue public notice of the draft proposed plan, make
 6 copies of the plan available at the affected field and re-
 7 gional offices of the United States Fish and Wildlife Serv-
 8 ice, and provide opportunity for public comment.”.

9 **SEC. 8. EMERGENCY POWER; STATE AUTHORITY; WATER**
 10 **RIGHTS; COORDINATION.**

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

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

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

23 “(m) Nothing in this Act shall be construed as affect-
 24 ing the authority, jurisdiction, or responsibility of the sev-
 25 eral States to manage, control, or regulate fish and resi-

1 dent wildlife under State law or regulations in any area
 2 within the System. Regulations permitting hunting or fish-
 3 ing of fish and resident wildlife within the System shall
 4 be, to the extent practicable, consistent with State fish and
 5 wildlife laws, regulations, and management plans.

6 “(n)(1) Nothing in this Act shall—

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

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

12 “(C) affect any Federal or State law in exist-
 13 ence on the date of the enactment of the National
 14 Wildlife Refuge System Improvement Act of 1997
 15 regarding water quality or water quantity.

16 “(2) Nothing in this Act shall diminish or affect the
 17 ability to join the United States in the adjudication of
 18 rights to the use of water pursuant to the McCarran Act
 19 (43 U.S.C. 666).

20 “(o) Coordination with State fish and wildlife agency
 21 personnel or with personnel of other affected State agen-
 22 cies pursuant to this Act shall not be subject to the Fed-
 23 eral Advisory Committee Act (5 U.S.C. App.).”.

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

1 **SEC. 9. STATUTORY CONSTRUCTION WITH RESPECT TO**
2 **ALASKA.**

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

5 (1) the provisions for subsistence uses in Alaska
6 set forth in the Alaska National Interest Lands Con-
7 servation Act (Public Law 96–487), including those
8 in titles III and VIII of that Act;

9 (2) the provisions of section 102 of the Alaska
10 National Interest Lands Conservation Act, the juris-
11 diction over subsistence uses in Alaska, or any asser-
12 tion of subsistence uses in Alaska in the Federal
13 courts; and

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

17 (b) CONFLICTS OF LAWS.—If any conflict arises be-
18 tween any provision of this Act and any provision of the
19 Alaska National Interest Lands Conservation Act, then
20 the provision in the Alaska National Interest Lands Con-
21 servation Act shall prevail.

○