

ACCESS TO NAVASSA AND DESECHEO NATIONAL
WILDLIFE REFUGES

DECEMBER 6, 2005.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. POMBO, from the Committee on Resources,
submitted the following

R E P O R T

[To accompany H.R. 1183]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the bill (H.R. 1183) to require the Secretary of the Interior to provide public access to Navassa National Wildlife Refuge and Desecheo National Wildlife Refuge, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

The purpose of H.R. 1183 is to require the Secretary of the Interior to provide public access to Navassa National Wildlife Refuge and Desecheo National Wildlife Refuge.

BACKGROUND AND NEED FOR LEGISLATION

The National Wildlife Refuge System is comprised of federal lands that have been acquired or reserved for the conservation of fish and wildlife. The System is administered by the U.S. Fish and Wildlife Service of the Department of the Interior. Totaling about 97 million acres, the system provides habitat for hundreds of fish and wildlife species within 545 refuges. It has been estimated that 39 million visitors travel to at least one refuge each year to enjoy the experience.

Within the System, 88 units located throughout the United States are closed to the public because of the presence of endangered species, unexploded ordinance, the storage of nuclear waste and access safety concerns. However, individuals who wish to visit

these refuges may apply for a Special Use Permit (SUP) from the Fish and Wildlife Service. According to the Service's Refuge Manual a specialized use is defined as, "Any refuge service, facility, privilege, or produce of the soil provided at refuge expense and not usually available to the general public through authorizations in Title 50 [of the Code of Federal Regulations] or other published regulations. Such use requires specific authorization from the refuge manager."

The National Wildlife Refuge System has long provided opportunities for public outdoor recreation. In recognition of the demand for recreational opportunities, Congress enacted the Refuge Recreation Act of 1962. This law clearly stated that the System should be available for public recreation as incidental or secondary uses provided that the activities are "compatible with, and will not prevent accomplishment of, the primary purposes for which the . . . areas were acquired or established." The Recreation Act also stated that public recreation shall be permitted "to the extent that it is practicable and not inconsistent with previously authorized Federal operations," and directed the Secretary of the Interior "to cooperate with public and private agencies, organizations and individuals . . . and . . . accept and use . . . donations of funds and real and personal property" in furtherance of public recreation. The Secretary was authorized to issue permits and establish reasonable fees and charges for public use of refuges to implement this policy. Encouragement of public recreation on refuges was not without reasonable limits. Discretion was given to the Secretary of the Interior to curtail public recreation only after determinations that the recreational use would not interfere with the primary purpose of the refuge and that adequate resources were not available for "the development, operation and maintenance of . . . recreation."

Congress consolidated and clarified management authority for the Refuge System in 1966 when it passed the National Wildlife Refuge Administration Act (Public Law 89-669). Under this law, the Secretary of the Interior was also authorized to permit "secondary" uses or activities provided that these activities were compatible with the purpose for which the refuge was established. Secondary activities included traditional recreational uses such as hunting and bird watching, as well as other decidedly non-recreational uses including farming, grazing, mineral extraction and oil exploration.

The National Wildlife Refuge Improvement Act of 1997 reinforced the importance of recreation in the National Wildlife Refuge System. As defined under the 1997 Act, wildlife-dependent recreation includes hunting, fishing, wildlife observation and photography, and environmental education and interpretation. The law further stated that these uses are to be given priority consideration over other uses for comprehensive conservation planning and determinations of compatibility. This law did not, however, expressly prohibit other uses of refuges, recreational or otherwise. In fact, the plain language of the statute authorized the Secretary to "permit the use of any area within the System for any purpose, including but not limited to hunting, fishing, public recreation and accommodations, and access whenever he determines that such uses are compatible with the major purposes for which such areas were established." In addition, the law unequivocally preserved pre-exist-

ing authority requiring public access for recreation in stating that “Nothing in this section shall be construed to amend, repeal, or otherwise modify the provision of the [Recreation Act] which authorizes the Secretary to administer the areas within the System for public recreation.”

Desecheo and Navassa are small uninhabited islands in the western Caribbean Sea. They are managed as refuges within the Caribbean Island National Wildlife Refuge complex. Desecheo lies approximately 14 miles west of Puerto Rico. It was used as a target for aerial bombardment from 1940 to 1952 and as a survival training area for the U.S. Air Force from 1950 to 1960. It was transferred to the Department of the Interior and established as refuge in 1972. For nearly two decades, Desecheo was open to the public despite the fact that the Department of Defense had issued a preliminary risk assessment in 1991 confirming specific locations of unexploded ordnance on the island. In 1998, the Fish and Wildlife Service closed Desecheo to all public access and stipulated that the decision was made because of unexploded ordnance and threats to public safety because of trespassing illegal aliens and drug smugglers. There are only a few wildlife resource values on the island, including three endemic species of lizards, an endangered cactus species and an occasional nesting hawksbill turtle.

Navassa is located about 35 miles west of Haiti in the Jamaican Channel. Once the site of a guano mining operation and maintained by the federal government for lighthouse purposes, it was designated a refuge by Secretarial Order 3210 in December 1999. A 1998 scientific expedition described the island as a unique preserve of Caribbean biodiversity. The Secretarial Order creating the refuge stated that the Service would continue “to administer this area under the National Wildlife Refuge System Administration Act . . . , the general regulations governing the . . . Refuge System . . . and in accordance with all applicable laws, policies and rules.” Despite this directive, the island has been closed to the public since its establishment except for government employees and certain scientists from private conservation organizations. The U.S. Fish and Wildlife Service considers this closure necessary to protect the pristine condition of the island and the safety of visitors who must navigate dangerous cliffs to gain access to Navassa.

The Fish and Wildlife Service closures of Desecheo and Navassa islands apply not only to general public use but also to proposals for use via special use permits (SUP). These closures, based jointly on faulty compatibility determinations, concerns for public safety, and claims of insufficient budgetary resources to facilitate use, demonstrate that the Service has failed to exercise sound professional judgment in evaluating SUP applications. These closures appear arbitrary and non-compliant with underlying law, pre-existing public use, and SUP policies at other remote refuges.

In the case of Desecheo, the Fish and Wildlife Service has justified its closure based on purported threats to public safety due to unexploded ordnance and illegal trespassers. However, as noted earlier, SUPs to visit Desecheo were issued regularly up until 1998, when suddenly, the Service reversed course and closed the island, even though the locations of unexploded ordnance were well documented by a preliminary risk assessment. An additional 2002 U.S. Army Corps of Engineers Defense Environmental Restoration Pro-

gram report corroborated the preliminary assessment and concluded that the unexploded ordinance on Desecheo did not constitute a catastrophic or critical risk. The Committee also finds the perceived threat posed by visitors running afoul of drug traffickers or smugglers to be unfounded, since there is no where in the administrative record any recorded incidents to legitimize this concern.

In the case of Navassa, the absence of a pier or convenient site to land people and equipment at the island has lead the Service to conclude that access is simply too great a liability, a conclusion reached despite the fact that Service personnel, personnel from private non-profit organizations, and local fishermen have routinely and safely landed on the island for years.

Finally, there is a glaring inconsistency between the public closures imposed at the Navassa Island and Desecheo Refuges and access allowed at other island refuges in the Pacific Remote Islands National Wildlife Refuge complex. It is indisputable that both islands are valuable ecologically or that they are remote and difficult to access. However, three island refuges located in the Pacific (Baker, Howland and Jarvis) are no less ecologically sensitive. They are, however, far more remote from their headquarters in Honolulu than either Caribbean island is from their headquarters. Despite ranging 1,300 to 1,600 miles from Hawaii, these islands are publicly accessible via SUPs. The latest SUP was issued for Baker Island in 2002.

A small number of amateur radio operators have sought to obtain SUPs from the Fish and Wildlife Service for access to these islands. The first applications were filed on November 26, 2002. In these documents, the applicants sought permission to operate amateur radio equipment on the islands for a five day period, and they stipulated to a number of conditions including that they would "avoid all wildlife and sea-life on or near the island." Their applications were denied and their appeals of these decisions have been rejected. Since that time, they have met with the Fish and Wildlife Service and have agreed to assume all financial costs (including any reimbursement to the Fish and Wildlife Service), to waive liability for any injuries that may occur during their visit and to comply with all reasonable stipulations required by the Service.

H.R. 1183 is designed to codify a SUP in this case by requiring the Service to provide recreational access to Navassa and Desecheo with certain limitations. These restrictions are: the Fish and Wildlife Service may limit access to Desecheo and Navassa to specific time periods; the Service shall give priority consideration to permit applications that do not negatively impact opportunities for wild-life-dependent recreation; and the Service may establish specific conditions for the permit that are necessary to protect fish and wildlife resources or public health and safety.

COMMITTEE ACTION

H.R. 1183 was introduced on March 9, 2005, by Representative Nick J. Rahall II (D-WV). The bill was referred to the Committee on Resources, and within the Committee to the Subcommittee on Fisheries and Oceans. On October 19, 2005, the Full Resources Committee met to consider H.R. 1183. The Subcommittee on Fisheries and Oceans was discharged from further consideration by

unanimous consent. No amendments were offered and the bill was ordered favorably reported to the House of Representatives by unanimous consent.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Resources' oversight findings and recommendations are reflected in the body of this report.

CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8 of the Constitution of the United States grants Congress the authority to enact this bill.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974.

2. Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, credit authority, or an increase or decrease in revenues or tax expenditures. According to the Congressional Budget Office, enactment of this bill could increase offsetting receipts and direct spending by less than \$500,000 a year.

3. General Performance Goals and Objectives. This bill does not authorize funding and therefore, clause 3(c)(4) of rule XIII of the Rules of the House of Representatives does not apply.

4. Congressional Budget Office Cost Estimate. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

H.R. 1183—A bill to require the Secretary of the Interior to provide public access to Navassa National Wildlife Refuge and Desecheo National Wildlife Refuge

H.R. 1183 would direct the U.S. Fish and Wildlife Service (USFWS) to allow public use of the Navassa National Wildlife Refuge and the Desecheo National Wildlife Refuge, both of which are located on islands in the Caribbean Sea. Under the legislation, the agency would provide access to the two refuges under permits that would contain provisions to protect local fish and wildlife and public health and safety.

Assuming appropriation of the necessary amounts, CBO estimates that the federal government would incur one-time costs of about \$10 million over the next two years to provide safe access to Navassa and Desecheo islands. About \$8 million of this amount would be used by the Department of Defense to inspect Desecheo

(which was once used for military training) and remove any unexploded ordnance. (This expenditure would probably occur even in the absence of legislation, depending on future appropriation action, but not for several years.) The remaining funds would be used to construct minimal access and other visitor facilities on the two islands.

We expect that, once the islands have been deemed safe and accessible, the USFWS would use existing authority to impose recreation or special-use fees and spend the proceeds to issue permits and escort visitors to the islands. We estimate that these activities would increase offsetting receipts and resulting direct spending by less than \$500,000 a year. Enacting H.R. 1183 would not affect other direct spending or revenues. This estimate is based on information provided by the USFWS and the Army Corps of Engineers.

Finally, allowing more people to visit the Desecheo refuge (which might contain unexploded ordnance even after Corps inspections) could increase the government's liability under the Federal Tort Claims Act, but CBO has no basis for predicting the likelihood that future visitors to the islands would be injured.

H.R. 1183 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Deborah Reis. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW

If enacted, this bill would make no changes in existing law.

