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NATIONAL WILDLIFE REFUGE IMPROVEMENT

HEARING

BEFORE THE

SUBCOMMITTEE ON FISHERIES CONSERVATION, WILDLIFE AND OCEANS

OF THE

COMMITTEE ON RESOURCES HOUSE OF REPRESENTATIVES

ONE HUNDRED FIFTH CONGRESS

FIRST SESSION

ON

H.R. 511

A BILL TO AMEND THE NATIONAL WILDLIFE REFUGE SYSTEM ADMINISTRATION ACT OF 1996 TO IMPROVE THE MANAGEMENT OF THE NATIONAL WILDLIFE REFUGE SYSTEM, AND FOR OTHER PURPOSES

H.R. 512

A BILL TO PROHIBIT THE EXPENDITURE OF FUNDS FROM THE LAND AND WATER CONSERVATION FUND FOR THE CREATION OF NEW NATIONAL WILDLIFE REFUGES WITHOUT SPECIFIC AUTHORIZATION FROM CONGRESS PURSUANT TO A RECOMMENDATION FROM THE UNITED STATES FISH AND WILDLIFE SERVICE TO CREATE THE REFUGE

MARCH 6, 1997—WASHINGTON, DC

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NATIONAL WILDLIFE REFUGE SYSTEM IMPROVEMENT ACT OF 1997 AND THE NEW REFUGE AUTHORIZATION ACT OF 1997

THURSDAY, MARCH 6, 1997

HOUSE OF REPRESENTATIVES, SUBCOMMITTEE ON FISHERIES CONSERVATION, WILDLIFE AND OCEANS, COMMITTEE ON RESOURCES,

Washington, DC.

The Subcommittee met, pursuant to call, at 10:30 a.m., in room 1324, Longworth House Office Building, Hon. Jim Saxton (Chairman of the Subcommittee) presiding.

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

Mr. SAXTON. The Subcommittee on Fisheries Conservation, Wildlife and Oceans will come to order. The Subcommittee is meeting today to hear testimony on the National Wildlife Refuge System. Under committee rules, any oral opening statements at hearings are limited to the Chairman and the ranking member. This will allow us to hear from our witnesses sooner and help members keep their schedules. Therefore, if other members have statements, they can be included in the record.

We will be discussing two bills today, H.R. 511, The National Wildlife Refuge System Improvement Act of 1997, and H.R. 512, the National Wildlife Refuge Authorization Act of 1997.

The third district of New Jersey, which I represent, is the home of the Edwin B. Forsythe National Wildlife Refuge, named in honor of my predecessor in Congress. The people in my district are proud to safeguard this fragile land. Clearly, as long as the local environmental community and the local sportsmen are supportive of the refuge and its uses, it will remain an important and well-regarded part of the community. I am happy to lend my support to H.R. 511, because I believe it fosters good will toward the refuge, which is sometimes sorely needed.

The fundamental goal of H.R. 511 is to bring up to date the National Wildlife Refuge Administration Act of 1966. The author of the 1966 act, John Dingell of Michigan, is a cosponsor of H.R. 511 and will submit testimony on behalf of the legislation. H.R. 511 will establish a system-wide set of purposes for our refuge system. It makes wildlife-dependent recreation—fishing, hunting, wildlife observation and environmental education—purposes of the system. It also allows these existing historical wildlife-dependent uses to

continue on newly acquired lands unless those uses are determined to be incompatible. The term compatible use is defined. I joined in sponsoring this legislation because it makes much-needed improvements to the way our National Wildlife Refuge System is used and run.

H.R. 512 would prohibit Land and Water Conservation Fund monies to create a new refuge without Congressional authorization. The bill's sponsor, Don Young of Alaska, will explain H.R. 512 in his opening statement.

I look forward to hearing from our distinguished witnesses.

[Statement of Hon. Don Young and Hon. John Dingell follows:]

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

Mr. Chairman, I want to compliment you for scheduling this hearing on H.R. 511, the National Wildlife Refuge System Improvement Act, and H.R. 512, the New Wildlife Refuge Authorization Act.

H.R. 511 is an improved version of a measure the House of Representatives overwhelmingly adopted last year, and it would be the first comprehensive refuge reform legislation since the enactment of the National Wildlife Refuge Administration Act of 1966.

Our Refuge System is now comprised of 511 units located in all 50 States and five territories. It includes 94 million acres of Federal lands. A portion of the System has been purchased from proceeds of duck stamps, import duties on arms and ammunition, and refuge entrance fees.

These Federal lands provide essential habitat for thousands of species and they offer recreational opportunities for millions of Americans. It is important to remember that the vast majority of our refuge lands are not national parks, marine sanctuaries, or wilderness areas. They are multi-use lands.

While my legislation has sparked a lively debate on the future of our Refuge System, it is essential that the public understand that H.R. 511 is modest, pro-environment legislation.

The fundamental goals of this bill are:

First, to provide for the first time a nationwide set of six purposes for our Refuge System—to establish a nationwide network of lands to conserve and manage fish, wildlife, and plants; to conserve, manage, and restore fish and wildlife populations, plant communities, and refuge habitats; to conserve and manage migratory birds, anadromous fish, and marine mammals; to allow compatible wildlife-dependent recreation, which is defined as fishing, hunting, wildlife observation, and environmental education; and to fulfill international treaty obligations. These are equally weighted purposes and I am perplexed why anyone would object to the inclusion of compatible wildlife-dependent recreation.

Second, my bill defines the term "compatible use" by using the language the U.S. Fish and Wildlife Service incorporated within their operating regulations years ago. While a refuge manager will retain the power to determine what is a "compatible use", this statutory definition should provide the guidance needed to make the proper decision.

Third, wildlife-dependent recreation will be allowed to occur during the interim period after the land has been acquired, but before the implementation of a management plan, unless the refuge manager determines that those activities are incompatible. There are a growing number of Americans who are frustrated over the Service's refuge land acquisition process. These Americans strongly support our Refuge System, they have encouraged elected officials to set aside certain lands for inclusion in the System, and they have contributed through the purchase of certain items, like duck stamps, millions of dollars. Sadly, they have learned that, for no rational reason, their favorite fishing or bird watching spot has been placed off limits during open-ended periods of government study. My "open until closed" provision will restore the public's faith without undermining or delaying the completion of the necessary management studies.

Fourth, this legislation provides that fishing and hunting should be permitted unless a finding is made that these activities are inconsistent with public safety, the purposes of the specific unit, or are not based on sound fish and wildlife management.

Fifth, H.R. 511 incorporates the President's ten "directives" to the Secretary of the Interior on how the Refuge System should be managed in the future. These are contained in his Executive Order of March 25, 1996.

Finally, the proposal requires the formulation of conservation plans for each of the 511 refuges within 15 years of the date of enactment. We need to know what kind of archaeological, natural, and wildlife resources exist on these lands. This inventory has been a goal of the environmental community for many years.

With that brief overview, let me now tell you what H.R. 511 does not address. For instance it—

•does not permit or require hunting and fishing to occur on every wildlife refuge. These activities must be found "compatible" and must meet H.R. 511's three-part test;

•does not affect Federal, State, or local water rights. This bill does not limit the ability of the Federal Government to secure water for a refuge;

•does not facilitate nonwildlife-dependent uses such as grazing, farming, mining, or oil and gas development. As under current law, nonwildlife-dependent uses may continue to occur when they are found to be compatible. This bill does not mandate, enhance, or protect such uses;

•does not increase or decrease the size of any of the 511 refuge units;

•does not limit the Service's ability to regulate pesticides used by row farmers or anyone else in the Refuge System;

•does not permit the commercialization of our Refuge System. To repeat, this bill makes only compatible wildlife-dependent recreational uses a purpose of the System. They are clearly defined as fishing, hunting, wildlife observation, and environmental education; and

•does not limit the Fish and Wildlife Service's ability to acquire new refuge lands.

The National Wildlife Refuge System needs to have a statutory list of purposes, uniform guidelines to determine what activities are permissible, comprehensive conservation plans, and the enthusiastic support of the American people who finance this System with their hard-earned tax dollars.

These are the goals of the National Wildlife Refuge System Improvement Act of 1997. This bill is supported by many organizations, and it will ensure that our Nation's Refuge System is managed more effectively in the future. It is a sound piece of conservation legislation that reaffirms the legacy of President Theodore Roosevelt and the vision of the National Wildlife Refuge System Administration Act of 1966.

I want to thank you, Mr. Chairman, and our distinguished colleagues, John Dingell, John Tanner, and Duke Cunningham, for joining with me in sponsoring this vital legislation and for your collective leadership in this historic effort.

Finally, I am pleased that we are obtaining testimony on H.R. 512, the New Wildlife Refuge Authorization Act. Under the terms of this legislation, no funds can be expended from the Land and Water Conservation Fund (LWCF) to create a new refuge without prior Congressional authorization.

Currently, the U.S. Congress authorizes coastal barrier units, flood control projects, highways, national parks, scenic rivers, and weapon systems. In my judgment, it is now appropriate to require Congressional authorization in those limited circumstances when a new refuge is created with LWCF money. This bill will not affect any additions to the existing 511 refuge units nor those created with money from Migratory Bird Conservation Fund.

What it will do is to ensure that private property owners and their hard-earned tax dollars are fully protected in the future. After all, we are talking about the expenditure of millions of dollars. I want to compliment our colleague, Richard Pombo, for his tireless work and leadership on this issue.

Thank you, Mr. Chairman. I look forward to hearing from our distinguished witnesses. I also remain hopeful that Secretary Babbitt will soon respond to the offer John Dingell and I made to him on December 5, 1996, to discuss those provisions in H.R. 511 that may continue to cause concern within the Administration.

TESTIMONY OF THE HONORABLE JOHN D. DINGELL, A U.S. REPRESENTATIVE FROM MICHIGAN

Mr. Chairman, I appreciate having the opportunity to present testimony this morning on H.R. 511, the National Wildlife Refuge System Improvement Act of 1997. For the second straight Congress, I am honored to have the chance to work with my good friend and colleague, Chairman Young, who asked me to join him in offering a bill that will meet the next generation of needs in our growing, and in many cases troubled, refuge system. Unfortunately, I am unable to join Chairman Young this morning because I am accompanying President Clinton to Michigan for

his address to the Michigan State Legislature. It is my hope to have the chance to provide him with a few good words about our efforts.

In the past few days, I have had the chance to talk to Chairman Young about H.R. 511, and I know he is truly committed to passing a bill which not only makes common-sense improvements, but that President Clinton can sign into law without hesitation. Sensing that common ground is in reach, I also have talked to officials from the Administration to continue to seek their help in guidance in passing a bill in the House that will be acceptable to both the Senate and the President.

In the last Congress, I was a strong supporter and cosponsor of the National Wildlife Refuge Act (H.R. 1675), a bill which is the result of thorough consideration, debate and consultation between all parties with a sincere and strong interest in our National Wildlife Refuge System. While it passed the House, there remained several problems to resolve which probably prevented even the Senate from taking up the measure. H.R. 511 addresses nearly every concern that has been raised by the Administration and groups interested in the refuge system's future. Is it a perfect bill? No. But it is a good place to begin the discussions which can lead to enactment of needed reforms during this Congress.

Ihave been personally involved in a number of ways with most of our refuge system's units. I served as Chairman of the Subcommittee from 1965 to 1974, during with time I led efforts to pass the National Wildlife Refuge System Act of 1966. I have also served for 27 years as the Democratic representative of the House to the Migratory Bird Conservation Commission, where we have worked together to acquire over 600,000 acres of habitat for countless migratory birds and other wildlife.

Thirty-one years after passage of the Refuge Administration Act, I am proud to see the accomplishments made as a result of that bill. I am pleased that the System helps to recover threatened and endangered species; for contributing to the diversity of refuge areas; and for serving more traditional fish and wildlife-related purposes such as hunting, fishing and wildlife observation.

In fact, it is important to recognize the unique role that our nation's hunters and fishermen play in providing constant support for the expansion and maintenance of our Wildlife Refuge System. America's sportsmen and women provide this help not only with their votes, but also through the purchase of duck stamps—a substantial portion of the public dollars expended in support of the Refuge System. Last year, the President expressed his support of the sporting community by issuing Executive Order 12996, which recognizes sporting uses as a priority use of the System. Having hunted with the President, I know of his strong interest in our Refuge System and I am pleased that he took the initiative with his Executive Order almost one year ago. It is my hope that he, and others in his Administration, will recognize the merits of the legislation before us, which codifies much of that order and gives us the opportunity to update refuge law.

H.R. 511 provides some long-sought legislative improvements for the refuge system. For many years, environmentalists and sportsmen and women have called for an organic act which lays out clear purposes of the system and requires the completion of conservation management plans for each refuge. A number of studies by the General Accounting Office and the Fish and Wildlife Service have found many problems on our refuges. These problems range from overuse and toxic contamination to a lack of funding and proper management. H.R. 511 is the result of a thorough examination of these problems and an attempt to make improvements in the management of the System which will require better planning, compatible uses, and a clear list of purposes for the System.

When Chairman Young approached me about cosponsoring this legislation, I said yes so that Congress could give the Fish and Wildlife Service the tools it needs to do the proper job. There is no doubt that this bill has caused the Fish and Wildlife Service some reservations, and I am pleased that Secretary Babbitt has chosen to show his interest in the refuge system by appearing before this distinguished panel today. While some differences most certainly remain, I believe that the gaps in thought are not insurmountable, and that surely we can close those gaps if all parties truly want to improve the management of the refuge system.

The largest source of remaining concern is whether hunting and other wildlife dependent recreation should be elevated to a purpose of the System. This issue is very important to America's sportsmen and women. However, I believe there are many ways to assure that the first Clinton Administration's expansion of hunting opportunities can be preserved. Again, there are ways in which all interested parties can find a solution, perhaps similar to the approach put forward in the other body during in the 103rd Congress. That approach, introduced by Senator Graham, would create a two-tiered set of purposes for the refuge system. This perhaps is not the perfect solution, but to date, I have heard none better by any reasonable party. I

hope the Committee will be open to hearing suggestions for improvements before this bill once again comes before the full House.

Mr. Chairman, I would like to conclude by thanking Chairman Young for working so hard to address the legitimate concerns of mine and many others who, like me, have a strong affection for our natural resources and work hard to assure they are protected. That work is not done, and I look forward to having the chance to engage the Interior Department in some productive discussions that lead to final passage and enactment of H.R. 511. I further hope that the bill will see responsible consideration by the other body, so that we can give the President a bill he will gladly sign.

First and foremost, any refuge reform bill must protect each of our 511 refuges and improve their management in a manner consistent with the purposes for which we have created these refuges and the refuge system. H.R. 511 meets that test, and it provides other provisions which will ensure a continued commitment by the Fish and Wildlife Service to species preservation and compatible public access and use throughout our National Wildlife Refuge System.

Mr. SAXTON. The Chairman now would recognize the ranking member if one were here. I now introduce our first panel of witnesses, our colleague, John Tanner, who is one of the prime original sponsors of H.R. 511. Mr. Tanner, please proceed.

STATEMENT OF HON. JOHN TANNER, A U.S. REPRESENTATIVE FROM TENNESSEE

Mr. TANNER. Mr. Chairman, thank you very much. And I want to thank Chairman Young and Representative Dingell for their leadership on this issue, as well. Thank you for holding this hearing and allowing a fellow Tennessean, Mr. Gary Myers, who is on a later panel and who is the Director of the Tennessee Wildlife Resources Agency, to participate today as well.

Mr. Chairman, America's National Wildlife Refuge System includes 511 refuges and more than 92 million acres of land and water. Five of those refuges are not only in Tennessee, but can be found either in part or entirely in our congressional district of Tennessee. These refuges are a treasure trove for wildlife observation, environmental education, fishing, hunting and the restoration of threatened or endangered species. H.R. 511 enhances the ability of the refuge system to meet those needs and for the first time calls for detailed conservation plans to be developed for each refuge over the next 15 years, the time Fish and Wildlife Service officials say they need for such purposes.

Our bill also for the first time outlines six purposes for our refuge system, including the permission of wildlife-dependent activity such as hunting and fishing, and may I emphasize, only as long as those activities are compatible with public safety and sound fish and wildlife management practices on each particular refuge emphasis. Already hunting is permitted on 283 refuges and fishing on 274. This is in no way a threat to the future viability of the refuge system.

A vibrant system, on the other hand, is important to America's sportsmen and women, particularly since they have over the years put up roughly two-thirds of the funding used to purchase land for the refuge system through the purchase of Federal duck stamps, land and water conservation fund, user fees and so on.

We passed this bill in the Congress, in the House last year, with wide bipartisan majority. As a co-chairman of this year's 105th Congressional Sportsmen Caucus, we would like to see that happen again.

In no small part due to the leadership of yourself and Chairman Young, our refuge bill enjoys broad support among America's fish and wildlife managers and those in the sporting community, like Ducks Unlimited, the American Sportfishing Association and Waterfowl USA.

At this point I would like to ask that my full statement be included in the record. Thank you all once again for your attention to this matter.

[Statement of Hon. John Tanner follows:]

STATEMENT OF HON. JOHN TANNER, A U.S. REPRESENTATIVE FROM TENNESSEE

Ladies and gentlemen, members of the Committee, distinguished guests, I want to thank everyone for the time and interest you all have dedicated to the future of our National Wildlife Refuge System.

Thank you as well for allowing me the opportunity to express my support for the future well being of our National Wildlife Refuge System. Representatives Don Young of Alaska, John Dingell of Michigan, James Saxton of New Jersey and myself introduced H.R. 511, The National Wildlife Refuge System Improvement Act of 1997 because we believe this resource must be conserved for future generations of wildlife enthusiasts. The leadership of Chairmen Young and Saxton on this bill and other issues is to be applauded. What's more, I want to thank Gary Myers, the director of the Tennessee Wildlife Resources Agency, for taking the time to join me here today. Mr. Myers, like most of us, is an avid sportsmen concerned about the future of not only our refuge system but our natural resources in general.

Nearly 10 decades ago (1903), President Theodore Roosevelt, a well known sportsman, created America's National Wildlife Refuge System. It's been more than three decades since we last examined the way we manage and conserve the more than 92 million acres in 511 national wildlife refuges that make up our nation's refuge system.

America's sportsmen and women have a vested interest in the future and well-being of our refuge system since they have contributed roughly two-thirds of the funds used to acquire land in our refuge system through the purchase of Federal Duck Stamps, entrance fees, and other sportsmen's funds. As hunters, anglers, conservationists, ornithologists, wildlife enthusiasts, and citizens in general, we know the value of the refuge system as a natural resource and we will continue to play a leading role in the conservation, preservation, and management of that invaluable natural resource.

In Tennessee, we have five National Wildlife Refuges: The Hatchie National Wildlife Refuge, The Tennessee National Wildlife Refuge, Cross Creeks National Wildlife Refuge, The Reelfoot and Lake Isom National Wildlife Refuge, and The Chickasaw National Wildlife Refuge, which just received U.S. Migratory Bird Conservation Commission funds to acquire 437 additional acres. These wildlife refuges are in the heart of the Mississippi Flyway and are either in part or entirely in my congressional district.

So I don't have to look far to see the value of this resource to our people. Tennesseans can hunt and fish at every one of our refuges. In addition to attracting migratory waterfowl, all five refuges offer some of the finest turkey, deer, and small game hunting in the state. We have Bald Eagles nesting around Reelfoot Lake, which was created in 1811 and 1812 by two earthquakes. Down at the Hatchie National Wildlife Refuge, Marvin Nichols is pushing a program called Project Fish to promote fishing among disabled and elderly citizens that is spreading beyond West Tennessee. It is a program aimed at developing the kinds of access these anglers need to not only continue fishing, but possibly to begin participating for the first time in this American tradition. This is one stop on the Hatchie Refuge's environmental education tour. Marvin Nichols has marshalled the resources only possible through a public private partnership to promote Project Fish and make it work for our citizens.

Knowing all of that, it is my view that this bill is needed to focus on the future of our refuge system so that our children's children will be able to benefit from this resource much the same way we have benefitted. It is the first significant reform since the enactment of the National Wildlife Refuge Administration Act of 1966, which was written by our colleague Representative John Dingell of Michigan. Mr. Dingell, whose father was the driving force behind the Dingell-Johnson Wallop-Breaux sport fishing trust fund, knows the value of our natural resources and the

contributions America's sportsmen and women make to preserving and conserving that resource. His knowledge and experience is invaluable.

So when Messrs. Young, Dingell, and Saxton, introduced this bill two years ago, The Congressional Sportsmen's Caucus was an early proponent because of the focus for the first time on system-wide requirements for the development of conservation plans and the delineation of a consistent set of purposes for our refuge system. As a co-chairman of The Sportsmen's Caucus, I can say today the Caucus is again joining other organizations including the International Association of Fish and Wildlife Agencies, Ducks Unlimited, Quail Unlimited, Waterfowl U.S.A., the American Sportfishing Association, the Wildlife Legislative Fund of America, the North American Waterfowl Federation, Safari Club International, and many others, who support the legislation's goals. Indeed, the measure was approved in the House last year with broad bipartisan support by a vote of 287 to 138.

The Young-Dingell-Saxton-Tanner National Wildlife Refuge System Improvement Act of 1997 will bring some needed focus to ensuring a bright future for America's 511 refuges. I would add here that I believe President Clinton took a positive step with the executive order he issued this past spring. However, little certainty is ensured with an executive order that can be reversed over night. Therefore, the need for this legislative step continues to exist.

Right now, detailed conservation plans are not required on our nation's refuges. This bill requires refuge managers for the first time to develop detailed conservation plans for their refuges and gives them the time and flexibility to do this in ways that will most benefit each individual refuge.

H.R. 511 also for the first time sets a list of purposes for our refuge system. First, the refuge system must be managed as a national network of lands and waters designed to conserve and manage fish, wildlife, plants, and their habitats. Second, it must be a tool to restore and recover threatened or endangered species. Third, we must abide by our obligations under international treaties relative to the conservation of fish and wildlife. Fourth, our refuge system must be managed to protect and conserve migratory birds and waterfowl. Fifth, it must be used as a resource to protect marine mammals and interjurisdictional fish species. And finally, it should be managed to provide opportunities for compatible wildlife dependent activities including hunting, fishing, wildlife observation, and environmental education.

Today, hunting is already permitted on 283 national wildlife refuges, and fishing is permitted on 274 national wildlife refuges. This is all done considering public safety and sound fish and wildlife management practices, which America's 15 million hunters and 30 million anglers support.

We statutorily define compatible use using the same definition the U.S. Fish and Wildlife Service has relied upon for decades. H.R. 511 calls for hunting and fishing to be permitted on newly acquired refuges until and unless a finding is made that these activities are inconsistent with public safety, sound fish and wildlife management, or the overall purpose of the refuge. It also gives the Interior Secretary the authority to halt any recreational use at any time if it is found to be inconsistent with the management of the refuge.

The legislation codifies the President's Executive Order issued on March 25, 1996, regarding the National Wildlife Refuge System. And it requires the development of conservation plans for each of America's 511 wildlife refuges within 15 years, which is the time Fish and Wildlife Service managers have said they need to complete such an ambitious task.

Before I close I want to mention a few things that this bill does not do.

First, it does not permit hunting and fishing on every national wildlife refuge. These activities must be deemed compatible with the management of each individual refuge and sound fish and wildlife management practices. No one believes you should necessarily be allowed to hunt in the John Heinz National Wildlife Refuge that is inside Philadelphia's city limits.

Second, it does not effect local, state, or federal water rights and it does not limit the federal government Is ability to secure water for a refuge.

Third, it does not facilitate nonwildlife-denendent activities like grazing, mining, jet-skiing, or oil and gas development.

Fourth, it does not allow the use of unapproved pesticides or permit the commercialization of our treasured wildlife refuge system.

And finally, it does not prevent the U.S. Fish and Wildlife Service from acquiring new lands for the refuge system, nor does it increase or decrease the size of any existing refuge unit.

More than a year ago I asked Gary Myers and his staff at the Tennessee Wildlife Resources Agency, one of America's premiere fish and wildlife agencies, to review the refuge bill. When he wrote to me after the review, he told me, "It would be extremely beneficial for Congress to identify wildlife-dependent recreation, including

fishing and hunting, as an objective of the Refuge System. We feel this legislation will address important issues which will provide direction for the operation of our National Wildlife Refuge System."

I could not have said it better. We have the finest collection of natural resources within America's National Wildlife Refuge System. This bill will ensure the collection of lands and waterways continues to be the finest in the world.

Iwould urge my colleagues on the committee to favorably report this bill. What's more, I would urge my colleagues in The Sportsmen's Caucus specifically and the House generally to continue their support of the measure and I look forward to its passage in the House this year with the same broad bipartisan support it enjoyed last year.

Finally, Chairman Saxton, Chairman Young . . . your leadership on this issue cannot be overlooked or overemphasized in this process. The work that both of you as well as Mr. Dingell have done to preserve our refuge system for future generations is to be applauded not only because it is important to protect this resource, but also because it preserves the legacy of President Teddy Roosevelt who had the vision and saw the need for such a treasure in the first place.

I would be remiss if I did not also recognize the work of Harry Burroughs, the Wildlife, Fisheries and Oceans Subcommittee's staff director.

Thank you for allowing me to participate in today's hearing.

Mr. SAXTON. Thank you, Mr. Tanner. I don't believe any of the Members have questions at this point, unless I am wrong. We thank you very much for coming to support the bill, which several of us here have cosponsored.

Mr. TANNER. Thank you, Mr. Chairman. May I once again thank you for your time and attention to this matter. And I am glad to see your ranking member showed up.

Mr. SAXTON. He is a great American, too.

Mr. TANNER. He adds a lot to the dais, I know.

Mr. ABERCROMBIE. Thank you, Mr. Tanner. It is always a pleasure to see you. I am glad you could take out time from your very busy schedule, your more arduous duties, to come over here and spend a little time with some of us lesser mortals.

Mr. TANNER. Always a pleasure. Thank you.

Mr. SAXTON. We are going to move on, thank you very much. We are going to move now to our next panel. And of course if Secretary Babbitt would come forward. And when you are ready, Mr. Secretary, we will be more than happy to hear your testimony. I would just like to say, Mr. Secretary, a special welcome to you. I know how hard you work at your job, and I would just say that I know this is in some quarters a controversial bill. And it reminds me of four years ago when President Clinton was elected. The reporters all called and asked well, you served with President Reagan and President Bush, how do you suppose it will be serving with a Democrat in the White House. And I said well, it is my job to try to find areas where we can agree. So I hope that this is one of the areas where we can find enough provisions in common, so that we can have a meaningful wildlife refuge bill. So, sir, if I may turn to you at this point for your testimony.

Mr. ABERCROMBIE. Mr. Chairman, just before the Secretary begins, may I ask unanimous consent to enter into the record a statement by the ranking member, Mr. Miller, on H.R. 511 and H.R. 12?

Mr. SAXTON. Without objection.

Mr. ABERCROMBIE. Thank you very much.

[Statement of Hon. George Miller follows:]

STATEMENT OF HON. GEORGE MILLER, A U.S. REPRESENTATIVE FROM CALIFORNIA

Mr. Chairman, I am pleased that you have scheduled this hearing to discuss two bills affecting wildlife refuges. I would like to bring to your attention another bill that I believe will make an important contribution to the debate about the future of our wildlife refuges. As you may be aware, yesterday I introduced the Theodore Roosevelt Wildlife Legacy Act. Unlike H.R. 511, my bill clearly reaffirms President Roosevelt's original intent in establishing our first wildlife refuge in 1903—to conserve fish and wildlife for the enjoyment of present and future generations.

I oppose H.R. 511 because it would fundamentally alter the purpose and undermine the conservation mission of the National Wildlife Refuge System. In the last Congress, a vote against a very similar bill, H.R. 1675, was counted by the nonpartisan League of Conservation Voters as one of the key environmental votes of 1996.

H.R. 511 would undermine wildlife conservation on our refuges by elevating hunting, trapping, and other forms of recreation to a purpose of the System co-equal to conservation. But Members and the public should not be led to believe that this is a philosophical debate about whether hunting should be a purpose of the Refuge System, because H.R. 511 would also restrict the ability of the wildlife management professionals at the U.S. Fish and Wildlife Service properly to manage recreational activities. Hunting, if properly controlled, is an important tool in the kit of the wildlife manager. However, if not managed properly, it can rapidly deplete wildlife populations.

The Theodore Roosevelt Wildlife Legacy Act, on the other hand, reaffirms conservation as the purpose of the Refuge System and establishes an objective process for evaluating whether recreational activities are compatible with wildlife conservation. It recognizes wildlife dependent recreation, including wildlife observation, hunting, and fishing, as priority uses of the System, but ensures that they are subordinate to conservation goals.

While the National Wildlife Refuge System provides world class opportunities for hunting and other outdoor recreation, which I support, the approach taken in H.R. 511 is dead wrong. The overwhelming majority of visitors to our wildlife refuges come not to hunt or trap, but to observe and enjoy nature in other ways. Yet those who do wish to hunt and fish enjoy broad access to refuge lands; in fact, over half of all refuges (comprising more than 90% of the System's acreage) already permit these recreational uses.

To ensure that all Americans continue to get a fair return on their investment in the National Wildlife Refuge System, all activities on wildlife refuges must be held to the same standard. Anything less serves special interests at the expense of the greater public good. H.R. 511 is a solution in search of a problem, and that solution will undermine 94 years of fish and wildlife conservation.

In 1903, President Roosevelt had the foresight to set aside a place—a small place—where wildlife came first. We should maintain a place in our increasingly crowded world where there is room for people, but where wildlife comes first. That place is the National Wildlife Refuge System and we should keep it that way.

I look forward to hearing the testimony today from our distinguished witnesses.

STATEMENT OF BRUCE BABBITT, SECRETARY OF THE INTERIOR

Mr. BABBITT. Mr. Chairman, committee members, I appreciate the opportunity to appear before this Subcommittee to testify on H.R. 511 and H.R. 512. I would like to state at the outset in a spirit of frankness and candor that I am strongly opposed to both of these bills, and I would be compelled to recommend that the President veto either one or both if they are enacted in their present form. But let me also say that I have spoken in some length to Congressman Dingell yesterday morning, and I promised him that in his absence as he goes to Michigan with the President that I would explain my objections carefully to this committee and that I would do that in hopes that, as Chairman Saxton suggests, that perhaps we can eventually work out our differences and in fact produce legislation that would strengthen and improve our wildlife refuge system.

The National Wildlife Refuge System is the world's greatest system of lands dedicated to the conservation of fish and wildlife. It is a system uniquely American in its origins, founded on the notion that in a country as bountiful, diverse, and large as ours there ought to be special places that are set aside exclusively for the conservation of our common heritage of fish and wildlife and natural resources. These, of course, are the National Wildlife Refuges. Unlike other areas where wildlife is shunted aside by the relentless forces of the bulldozer, the chain saw, and the plow, the conservation of wild creatures, large and small, reigns supreme in wildlife refuges. In these refuges conservation needs of wildlife are paramount.

The central, over-arching purpose of this system is, and should be, the conservation of fish and wildlife and their habitat. If we do that job well, then there will be ample opportunity for compatible recreational uses which depend on diverse and abundant wildlife. Wildlife conservation, Mr. Chairman, is our purpose. It has been for 100 years. It was when Theodore Roosevelt established Pelican Island and it has been ever since. Compatible recreational uses are the benefits that flow from our success in carrying out the over-arching purpose of the system.

Now I emphasize this distinction, because this is where H.R. 511 and I part company. The bill scrambles the crucial distinction between purpose and use. It has been at the heart of the refuge philosophy ever since the days of Theodore Roosevelt. It does that by mixing hunting and fishing, wildlife observation, and environmental education as "purposes" rather than what they truly are, which is uses of the refuge system. Section 4(a)(3) of this bill effectively elevates recreational uses to mandatory parity with the traditional over-arching conservation purpose of the refuge system.

What are the implications of that? Well, let me explain. This bill, as I read it, would give the groups mentioned in Section 4(a)(3)—that is hunting, fishing, wildlife observation, and environmental education—it would give all of those groups a statutory right to sue each other for materially affecting the ability of any of those other users to use a refuge. In other words, under this bill a bird watcher now has a statutory right to go to court and to sue a duck hunter under Section 6, simply claiming that the hunter is materially interfering with the bird watcher's right, which is a protected purpose of the refuge under Section 3.

Similarly, under this bill the duck hunter now has the statutory right to sue, to go to court, to stop children from participating in any environmental education program that might in any way materially affect the rights conferred by this bill on the duck hunter. The duck hunter could sue bird watchers from observing migratory birds on the refuge. Hunters now have the right to sue fishermen. Fishermen now have a right to sue hunters. The combinations are nearly as endless as the lawyers looking for work.

Now I am quite certain, Mr. Chairman, that you and the members of this committee did not intend this result. And I don't think the drafters did either, but the fact is that it illustrates a fundamental defect of this bill by attempting to deprive refuge managers of sound discretion and to substitute a detailed system of statutory micro management. What it does is imports lawyers and

judges ever more deeply into the management of our national wildlife refuge system. Now I should also note that Section 6, which provides that—and I quote. "When managed in accordance with principles of sound fish and wildlife management," hunting, along with fishing, wildlife observation, and environmental education, in a refuge is "generally a compatible use."

Now when you take that phrase with the definition of management in Section 3, this section could amount to a statutory presumption that all wildlife refuges shall be open to hunting, including the John Heinz Wildlife Refuge in the city limits of Philadelphia, Pennsylvania, including the Balcones Refuge inside Austin, Texas, including Rancho San Diego National Wildlife Refuge in the city limits of the city of San Diego.

Now undoubtedly some will cast H.R. 511 as a litmus test of support for hunting and fishing, but let me say to you clearly this debate isn't about hunting or fishing on wildlife refuges. It is about two fundamental contrasting philosophies on how we are going to manage these wildlife refuges. And it is in that respect that I must remain true to the tradition of Theodore Roosevelt and the sportsmen and sportswomen who have helped to build this system.

Mr. Chairman, if you were to suggest to me that bird watching should be a statutory purpose of the National Wildlife Refuge System, I say no. Wildlife photography, I say no. Conservation education, I say no.

It is not because I am opposed to any of these uses. To the contrary, I enthusiastically support all of them, including hunting and fishing. But I believe that the statutory purpose of the refuge system is, and must remain, singular, the conservation of fish, wildlife and their habitat.

Now, incidentally, this is not a new debate. Back in 1968 under one of my predecessors a departmental committee on wildlife management, now known in the history books as the Leopold Committee, named after its Chairman, Starker Leopold, addressed this same issue. And I would like to just quote from their conclusion, because it rings true today as it did in 1968. And I quote. "We concur that recreation on the refuges should in all cases be secondary to the primary purpose of management for wildlife enhancement, and under no circumstances should general recreation be permitted to interfere with this primary dedication."

Now the advice of the Leopold Committee has been followed by the department ever since. And I would like to just point to the results of this management success, because as a result of that success wildlife-dependent recreation like hunting, bird watching and fishing is flourishing in our refuges. Among our 509 refuges, 285 allow hunting; 276 allow fishing. More refuge lands and waters are being opened to these uses each year.

Let me give you just one example. Last year, 1996, the list of refuges opened to recreational fishing grew by 12. New hunting programs were begun on nine refuges. That is just last year. Since I became Secretary of the Interior, 24 new refuge hunting programs have been initiated. Also in the past year the Fish and Wildlife Service has begun new refuge partnerships with groups as diverse as the National Audubon Society, the Safari Club International, the North American Photography Association. These agreements

will directly support management activities. They will increase volunteerism and, of course, promote compatible recreational use.

The Service has also embarked on an ambitious Friends Initiative in cooperation with the National Wildlife Refuge Association. These efforts will provide a framework for interested private citizens to become involved and to become active participants in refuge management.

Mr. Chairman, just a word about the President's 1998 budget. In our budget we have asked resources for the Service to develop comprehensive management plans for all of our refuges within the next eight years. This effort will obviously involve unprecedented numbers of Americans in the management of our refuge lands.

Mr. Chairman, we have also worked hard to eliminate unnecessary impediments to allowing compatible wildlife-dependent recreation within refuges. For example, we have addressed an issue which you raised and called to our attention in a prior hearing. I think it was last year. Previously when new areas were added to the refuge system they were often closed to public use for long periods of time while the Fish and Wildlife Service completed planning for the area.

Now Mollie Beattie made a commitment to you that we would address that, because we understood the dislocation caused by terminating recreational uses for this period of time only to bring them back up after a long, elaborate process created a lot of misunderstanding and really wasn't necessary. So we published a new policy requiring preacquisition consideration of existing recreational uses. And through this policy the Fish and Wildlife Service will make interim determinations of compatibility for ongoing recreational uses prior to the area being acquired for the refuge system. And that in turn will avoid the immediate closure of refuge areas upon acquisition and will inform the public prior to acquisition as to which wildlife-dependent recreational uses will be allowed to continue on newly acquired lands.

As in other areas of our work in the department, this amounts to a no-surprises policy. It makes good sense and, I think, ultimately generates good will and makes good neighbors.

I could talk about many other positive things that are happening within the refuge system, new and enhanced partnerships, a renewed commitment to strengthening the system's biological management, the continued elimination of incompatible uses and so on.

These things didn't just happen. On March 25, 1996, President Clinton signed Executive Order 12966 on Management and General Public Use of the National Wildlife Refuge System. This Executive Order, the first one ever issued regarding the management of the refuge system, establishes a clear and singular mission for the refuge system. And I quote, "to preserve a national network of lands and waters for the conservation and management of the fish, wildlife, and plant resources of the United States for the benefit of present and future generations." To carry out this mission and principles, the Executive Order has a detailed list of directives, which are in fact being implemented.

Now one of these directives particularly relevant to our deliberations today is in the area of public use, where the Executive Order identifies four specific classes of wildlife-dependent uses as priority

public uses for the refuge system. They are hunting, fishing, wildlife observation and photography, and environmental education and interpretation. Where compatible and in the public interest, refuge managers are instructed to provide increased opportunities for these uses and to enhance the attention they receive in refuge management and planning. Now let me, if I may, briefly compare this conceptual approach in President Clinton's Executive Order with the approach taken in H.R. 511.

The Executive Order maintains the crucial distinction between wildlife conservation as refuge purpose and compatible wildlife recreation as priority public use. It articulates a singular and clear mission for the system, conservation. But it recognizes that the use of our refuge lands and waters, to the extent that such use is proper and allowable, shall be reserved first to those recreational activities which depend and thrive on abundant populations of fish and wildlife. The obligation of the refuge manager is thus made clear; wildlife conservation is foremost. Where recreational activity is appropriate, let compatible wildlife-dependent recreation, including hunting and fishing, come first.

My earlier comments illustrate how this concept is in fact working on the ground level. And I am submitting with this testimony a report summarizing progress over the first year of the Executive Order's implementation.

[Statement of Bruce Babbitt may be found at end of hearing.]

Mr. SAXTON. Mr. Secretary, I wonder if we could ask Mr. Young if he could ask his questions. He has another obligation at 11. I wonder if we could ask you to summarize the rest of your testimony in a minute or so.

Mr. BABBITT. Mr. Chairman, I would be happy to yield to Mr. Young right here. Thank you.

Mr. SAXTON. Thank you, Mr. Secretary.

Mr. YOUNG. Thank you.

Mr. SAXTON. Let me—before Mr. Young begins, let me ask unanimous consent that Mr. Pombo be permitted and welcomed to the Subcommittee this morning and that he be permitted to ask questions.

Mr. Young, would you like to——

Mr. YOUNG. Thank you, Mr. Chairman. And I am going to have Mr. Pombo ask some of my questions. I have to go over to the Budget Committee and justify our existence and pay the salaries of our staff. Without doing that, I am sure, something would really occur. That is the reason I have to go.

Mr. Secretary, unfortunately, I had hoped that you would have come in support of this legislation or had some suggestions. I understand your reasoning. One of the things, though, that bothers me, is on what authority do you think the special interests could sue one another or the U.S. Government under this bill? You cite that quite heavily. Is there any case law or precedent that has occurred? And if so, would you suggest legislation or language that would prevent special interests from getting into a dog fight over the refuge lands.

Mr. BABBITT. Well, Mr. Chairman, the problem, as I explained, is that the groups accorded priority use, hunters, fishermen, wildlife observation, whatever that language is, are all accorded a pre-

ferred right, but then if you go to Section 6, those rights are asserted only to the extent that they do not materially interfere with the right of another preferred class whose use is defined as a purpose of the refuge system.

Mr. YOUNG. OK, now you——

Mr. BABBITT. That means they can all sue each other.

Mr. YOUNG. I am about out of time. What I am suggesting, though, why—and I think we can. I think the committee would agree we can avoid those lawsuits.

Mr. BABBITT. Well——

Mr. YOUNG. We can write it in there so they can't sue, because the purpose of this bill—frankly, this would never have come up if it hadn't been for a few refuges that the refuge manager decided on his own, without justification, that hunting and fishing was not to be allowed. And my purpose in this legislation is—and I have told you this before, is to maintain the strength and the vigor of the refuge system. You will not support it with bird watchers. You will not support it with those that believe hunting and fishing is not compatible, because we created those refuges. That is where Mr. Dingell and I agree. We created them.

And we have got to somehow put in legislation, not at your discretion, not at your management discretion, that the priority use—unless there is another reason, that hunting and fishing is the action of the refuge. Now you can shut it down right here on page 13. The Secretary shall permit fishing and hunting on refuges if the Secretary determines that the activities are consistent with the principle of sound fish and wildlife management, are compatible with, consistent with, the purpose of the system under the subsection which excludes those areas such as San Diego and downtown New York. You have that authority, but the priority reason for this legislation is basically like your Executive Order. But that is at your discretion.

Now why couldn't we write into this legislation that there can't be lawsuits?

Mr. BABBITT. Mr. Chairman, with all due respect, the lawyers that drafted this bill have made a fundamental mistake. They want a statute which sets out statutory micro management of the refuges. There is no way that you can prevent that from degenerating into litigation. And we are going to have judges sort of——

Mr. YOUNG. All due respect——

Mr. BABBITT. [continuing]—running these refuges.

Mr. YOUNG. All due respect, we can write this legislation if you will help us, advise us, because that is primarily your reason for objecting to it, so lawsuits cannot take place and still recognize the value of the refuge. I mean, I—when I look what happened in Oklahoma, it was a classic example of that. That is a ridiculous situation when that was supported by the people there and then by arbitrary decision the Fish and Wildlife Service manager said no. We finally removed that manager, by the way. Mollie Beattie helped achieve that. But I am saying that is an incorrect position to take and we are trying to avoid that in the future.

Mr. BABBITT. Mr. Chairman, if I may, two thoughts. First of all, look at the numbers of refuges that have been opened. Secondly, I sat in several Congressmen's offices with Mollie Beattie dealing

with that refuge issue. Now with all due respect, that is an appropriate way to deal with a refuge dispute. If a Congressman representing a district says I believe a wildlife manager is abusing his discretion, that Congressman ought to call the Secretary of the Interior and the Director of the Fish and Wildlife Service over to his office, and keelhaul them until one side or the other prevails. That is what this process is about in this town.

Mr. YOUNG. Well, see, we disagree on that. Our refuges were set up by acts of Congress with the support of the fishing and hunting groups, you know, and I keep hearing people refer to Teddy Roosevelt. I have got a picture of Teddy Roosevelt standing over one of your endangered rhinos now. And his statement was in civilized and cultivated countries wild animals only continue to exist with all that will be preserved by the sportsmen.

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

Mr. BABBITT. I agree with you.

Mr. YOUNG. I am tired of hearing Teddy Roosevelt being cast as the white knight in shining armor, as if he never participated in the actual harvesting or management of fish and wildlife. And I don't think it should be at the discretion of some individual that is a government appointee or a professional who says I don't like hunting and fishing and he can shut it down. In the meantime we have got a year delay.

We have got a picture of the founder of the Audubon Society, John James Audubon, down in the White House. We have got him standing there with a nice flintlock rifle across his arm, because he was a hunter.

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

Mr. YOUNG. But for some reason we are getting this attitude in hunting—you say you support it. Maybe you do. I am not sure. But I am a little bit convinced that some of your professional people don't think—I have had people on this committee say that we ought to save all the fish and wildlife on these refuges because the refuges are for fish and wildlife, period. They weren't created for that. They were created for fish and wildlife, but with the support and the involvement of man. And that is all we are trying to do in this legislation.

And we will pass it. You may recommend a veto, but it will pass, I think, by about 300 votes. And we will see what happens as far as a veto.

I don't have much more time, Mr. Chairman. I will ask Mr. Pombo, if he would, to ask my remaining questions because he has some time. And I will give you the rest of my time, Mr. Pombo.

Mr. SAXTON. The gentleman from California.

Mr. ABERCROMBIE. Mr. Chairman, I will yield time to Mr. Pombo to finish whatever questions Mr. Young needed to have asked.

Mr. POMBO. Well, I thank you. I thank you, the ranking member, for yielding. Mr. Young had a number of questions, Mr. Secretary, that he wanted answers to.

In September of '94 when you appeared before the Congressional Sportsmen's Caucus, and in response to questions from Representatives Billy Tauzin and Bart Stupak, you stated that wildlife refuge units ought to be open for hunting and fishing in the absence of a good reason to close them. H.R. 511 includes exactly that kind

of presumption. Do you still support building that kind of presumption into the law?

Mr. BABBITT. Not in the language of this bill.

Mr. POMBO. How would you do it?

Mr. BABBITT. In language which begins with the President's Executive Order of last year.

Mr. POMBO. That begins with that. How would you complete that?

Mr. BABBITT. Well, let us look at it. Let me see if I can find it.

The President's Executive Order makes the distinction that I talked about in my testimony. And beneath the definition of the purpose of the refuge it has guiding principles and directions. Now, let us look through those. First is public use. It provides important opportunities for hunting and fishing. Now let us go to directives, because that is the third tier. Under directives, A, it says recognize compatible wildlife-dependent activities, including hunting and fishing; B, provide expanded opportunities for these priority public uses; C, ensure that such public priority uses, including hunting, receive enhanced attention in planning and managing.

Mr. POMBO. Just to make that clear, all of the directives that you are stating that were in the Executive Order are included in the bill.

Mr. BABBITT. Well, then I support those if they are included in this form. I supported them when they were put in the President's Executive Order. Matter of fact, I even had a hand in writing them, therefore I support them.

Mr. POMBO. The dispute or the part that you don't like, then, is over the purposes section of the bill, then. And it is not over the directives. It is not over the bulk of the bill. It is over the purposes section of the bill.

Mr. BABBITT. Mr. Pombo, when I spoke with Congressman Dingell yesterday, he said to me can we find common ground. And what I said to him I say to you. I said, Mr. Congressman, I believe that we ought to try, but I have two fundamental objections to this bill. One is, as I have explained, this business of departing from wildlife conservation as the central purpose of wildlife refuges. The President's order makes that distinction, and I think it is important. The second one is this, conferring legal rights on all the priority users to file lawsuits and let the courts determine who has which priority over other users whenever there is a conflict. I think that is really wrong headed.

Mr. POMBO. In the bill, the primary purpose of the fish and wildlife system, it states the overall mission of the system is to conserve and manage fish, wildlife, and plants and their habitats within the system for the benefit of present and future generations of the people of the United States. And then there are six purposes which follow that which I believe is where you object to that, but it does say that the overall mission—I think you would agree with that part of it.

Mr. BABBITT. Well, in fact some of that language is taken directly from the President's Executive Order.

Mr. POMBO. Correct.

Mr. BABBITT. The problem is that this thing is an omelet. It scrambles very badly. And the reason it does that is because when

people go to court, Mr. Congressman, over this bill, everybody is going to move right past the mission statement. Mission statement is really sort of like a statement of legislative intent that you always put in front of bills. Judges never pay any attention to that. They go to the hard language. And the hard language is what you call purposes. And you mix—you know, you throw everything but the kitchen sink into your purpose section. And by doing that, you are giving them coequal priority as an initial presumption.

Mr. POMBO. Are you in favor of limiting the citizen suits? Are you concerned about citizen suits in other areas under your jurisdiction as you are in this jurisdiction?

Mr. BABBITT. No, the citizen suits are a legitimate part of this democracy, and, of course, you know, citizens should have access to the courts. All I am saying is I find it ironic that you are drafting a bill which is going to omit litigation by conferring statutory entitlements on duck hunters, hunters, wildlife observation, bird watchers, and photographers to sue each other because they are going to have a specific bill which says I am entitled to my use as a purpose of the refuge and anybody who materially interferes with my use is going to be subject to judicial injunction. That is what the bill says.

Mr. POMBO. Mr. Secretary, I think you are—and I am not an attorney, but I think you are reading a lot more into that provision than is actually there. I think that there are specific things within a number of pieces of legislation which have resulted in citizen suits occurring. And I think that in this particular instance you are reading a little bit more into that part. I would like to move on, if we can.

In the bill, it provides that the refuge unit should be open to fishing and hunting unless these traditional activities are inconsistent with the purpose of the specific refuge unit, inconsistent with sound principles of fish and wildlife management or inconsistent with public safety. Are these the kind of good reasons to close a refuge unit that you referred to in your caucus presentation? Can you support at least this section of H.R. 511?

Mr. BABBITT. Well, frankly, Mr. Congressman, that section is all scrambled up, too, because it says inconsistent with the purpose. Then you have got to go back and read the six purposes. They are all poured into that segment, so, you know, it circles. The snake swallows its tail in that section.

Now, the problem with the sound management is you have got to look at the definition of management in Section 3. And when you add it all up, it sort of circles right back to a statement that there is a presumption that hunting and fishing is to be allowed. And I don't think that is an appropriate way to manage a wildlife refuge, to set forth that kind of presumption.

Mr. POMBO. In this particular section they are talking about the purpose of the individual wildlife refuge, and that is what they are referring to there. When you establish—according to the provisions in this bill, when you establish a wildlife refuge and the management of that, it is at the Secretary's discretion. As the Chairman read to you from the bill earlier, the Secretary still has broad discretion in establishing what is a compatible use within each indi-

vidual unit. And what this is referring to is the individual management of that particular refuge.

Mr. BABBITT. Mr. Pombo, there are two problems. One is that there is going to be litigation over the extent to which my discretion in an individual refuge is limited by the purposes which are set out at such length in that section. Secondly there is in Section 6 a presumption that hunting would be allowed. Now, will that lead to hunting in the John Heinz Refuge inside the city limits of Philadelphia? Well, maybe not, but I guarantee you there will be a lawsuit and a judge will finally be ruling on that, and I don't think that is a good way to run this system.

Mr. POMBO. I don't believe that that would be a compatible use with that refuge, and I don't foresee any Secretary of the Interior ever finding that a compatible use, and I don't see any judge ever determining that that is a compatible use with that particular refuge, just as the other refuges that you mentioned that are within city limits or within urban or suburban areas. No one would ever find that that was a compatible use, so that is kind of just something that has been put out there as a scare tactic, and it really has very little to do with the management of our wildlife refuges.

Mr. BABBITT. Mr. Pombo, I respectfully, completely disagree.

Mr. POMBO. You believe that a Secretary of the Interior would find that hunting within those refuges would be a compatible use of that refuge?

Mr. BABBITT. Well, this Secretary will not. What James Watt or his successors will determine, I think, is open to a considerable amount of discussion.

Mr. POMBO. Did he propose using that as hunting within that wildlife refuge when he was Secretary of the Interior?

Mr. BABBITT. I have no idea.

Mr. POMBO. I think that is way out of line in terms of what we are talking about today.

Another question that Mr. Young had was that America's anglers and hunters have been our nation's best supporters of the refuge system, contributing millions of dollars to land acquisition and operations of the refuges. Through this bill, we are seeking to recognize this contribution, provide the compatible wildlife-dependent recreation as a purpose of the refuge system, and protect these environmentally benign traditional activities from those who would protest that. Why are you opposed to affording the sporting community this recognition and legal protection?

Mr. BABBITT. I agree with the first sentence of Mr. Young's question. Hunters and fishermen have been the single strongest constituency of the National Wildlife Refuge System for 100 years. Now the reason I disagree with the second part is I don't see how you are helping hunters and fishermen by conferring on bird watchers a statutory entitlement to go to court to restrain hunting and fishing whenever it materially interferes with the rights of bird watchers.

Mr. POMBO. I think——

Mr. BABBITT. I don't think that is helping hunters at all.

Mr. POMBO. [continuing]—we have an honest disagreement. I think that there—that the authors of the bill have a disagreement over that part of it. And it seems that your opposition to this bill

is centered around that part. Maybe they can work with the attorneys to figure out a way to change your opposition.

H.R. 511 outlines six purposes for the refuge system, conservation of fish and wildlife and related habitat; number two, to restore where appropriate fish and wildlife and related habitats; number three, to conserve migratory birds and fisheries; number four, to conserve and restore endangered species; number five, to fulfill conservation treaty obligations; and number six, to provide opportunities for compatible wildlife-dependent recreation. Are endangered species found within the 511 refuge units?

Mr. BABBITT. Yes.

Mr. POMBO. Are migratory birds found on all 511 units?

Mr. BABBITT. No.

Mr. POMBO. Do all 511 units have a direct relationship to our treaty obligations?

Mr. BABBITT. Well, it depends upon—look, there are a lot of treaties. To the extent that migratory birds are found on all 511, I said no because you had said all. And, you know, migratory birds are found on most wildlife refuges, but whether they are found on all 511, I respectfully defer to knowledgeable people. Now to the extent that they are, obviously there are treaty obligations.

Mr. POMBO. Are fisheries an important part of all refuge units?

Mr. BABBITT. No.

Mr. POMBO. If these——

Mr. BABBITT. That is a lot of refuge units——

Mr. POMBO. Yes.

Mr. BABBITT. [continuing]—that don't have enough water on them to support a fish.

Mr. POMBO. If these purposes are not applicable to all refuge units, should they be specified purposes in this or in any refuge bill?

Mr. BABBITT. Well, let me just say that the public priority uses that are spelled out in the bill, uses, I think are absolutely appropriate. I agree with them.

Mr. ABERCROMBIE. Mr. Chairman, Mr. Pombo, with the vote on, the yielding of my time, do you suppose that we could perhaps have some of the other members ask some of these questions and we move on?

Mr. SAXTON. Well, let me interrupt for just—Richard, how many more questions do you have? One more question?

Mr. POMBO. Yes.

Mr. SAXTON. Mr. Secretary, what is your time like, your requirement of time?

Mr. BABBITT. Mr. Chairman, I am here at your disposal. I will be prepared to stay until sunset and beyond.

Mr. SAXTON. Well, I hope we don't do that. Mr. Pombo, do you want to conclude your questioning, then, prior to the time we go to vote?

Mr. POMBO. Sure.

Mr. SAXTON. OK, thank you.

Mr. POMBO. I have a final question here, Mr. Secretary, from the Chairman. Are you aware of these provisions in the bill, one, that nothing in this act shall affect any water right in existence on the date of the enactment of the act, and two, quantity on refuge units,

nothing in this act shall affect any Federal or State law in existence on the date of enactment of this act regarding water quality or quantity?

Mr. BABBITT. Yes.

Mr. POMBO. Isn't it misleading to contend that H.R. 511 would strip refuges of water rights?

Mr. BABBITT. I would be happy to answer that in writing, Mr. Pombo. I do not believe that the language entirely disposes of this issue. I read the language. I recognize the intent of the draft. I am not certain that it achieves that affect. And I would like to explain that in writing, if I may.

Mr. POMBO. All right, thank you, Mr. Chairman.

[The following was received:]

REFUGE WATER RIGHTS

I did raise a concern regarding the Committee Report for the predecessor bill in the last Congress, H.R. 1675. In my letters to Chairman Young on that bill as reported, and as brought to the House Floor, I stated that Committee Report language could be interpreted as diminishing or eliminating refuge water rights.

Subsequent to that, Chairman Young and Congressman Dingell held an extension colloquy during House consideration of the bill (April 24 *Congressional Record,* Page H3773) stating that this was not the intend and that the bill should not be so interpreted.

That colloquy effectively resolved the issue insofar as H.R. 1675 was concerned. Since there has been no Committee Report on H.R. 511, the issue has not arisen, and I would strongly hope that in light of last year's Young-Dingell colloquy, it will not do so in the future.

Mr. SAXTON. Mr. Secretary and Mr. Pombo, it seems to me that there has been an expression on Mr. Young's part and on the Secretary's part and certainly on my part and, I think, Mr. Pombo's part that we would like to look at some of these issues to see if in fact there is common ground. We have got a bill which we can pass. The Secretary, I think, is serious about the veto. And it seems to me that perhaps outside of the forum of this hearing we could get together and talk about some of these issues and see if, in fact, it is possible to find common ground. And I don't know whether you are coming back after the vote, but if we could just proceed along keeping in mind that in the next several weeks that would be a step that I would like to see taken. Thank you.

And we are going to go and vote on the journal, and I understand there is a five-minute vote after the journal vote, so we will probably be 20 or 25 minutes getting back here.

[Recess.]

Mr. SAXTON. Hopefully that will be our last interruption of the day, as that was, I believe, the last recorded vote. We are going to proceed with questioning for Secretary Babbitt. And I would like at this point to call on Mr. Farr, a gentleman from California.

STATEMENT OF HON. SAM FARR, A U.S. REPRESENTATIVE FROM CALIFRNIA

Mr. FARR. Well, thank you very much, Mr. Chairman. I am pleased that we were able to have a little bit of a break, because I couldn't believe what I was hearing or reading as I sat here this morning. You know, we should pull ourselves away from the bill in front of us and just think about it, in America we have wildlife refuges. If you ask anybody in the country what that means, they'll

probably say it is the same thing that the dictionary defines a refuge as, which is a place providing protection or shelter; a haven. You know, until I got elected to Congress I never knew that you could hunt on a wildlife refuge. I don't think most Americans know that. And I think they would be appalled to find out that you can. And if indeed that is the purpose, then we ought to strike the name refuge, because people do believe it is a place to provide protection and shelter.

As I read the bill, what struck me is that this bill really does elevate a special interest to give it a legal standing, and I would argue that it is perhaps an even stronger legal standing than the other purposes for which refuges were created, which is essentially, you know, to enhance wildlife opportunities. I have got into this issue on the water issues in the Central Valley, which Mr. Pombo knows a lot about, because I have been trying to protect the wetlands in the Central Valley. And it is interesting that the Oregon and Washington and Canadian legislators and the Mexican legislators are very much interested in protecting that area, because it is their game as well as ours that lands on those refuges.

What I also am surprised to have this Congress not realize is that if you read some of the books of what is happening in America—Megatrends is a good example—what they will tell you is that the biggest increase in outdoor recreation is what they call watchable wildlife. There are more people watching wildlife than are watching national sports, a remarkable figure.

Mr. SAXTON. That is because they are watching C-Span.

Mr. FARR. So to take this legislation, and as I read it—I am not a lawyer either, Mr. Pombo, but as I read it, it states that one of the purposes, the new purpose of the system, is to provide opportunities for compatible uses of refuges consisting of fish—I am reading on page 7, line 10, of fish and wildlife-dependent recreation, including fishing and hunting. This overrides what the 1966 legislation intended to do, which was to manage it for conservation and wildlife. And then when you get into other parts of the bill, you essentially see that on page 13 and line 3, that the Secretary shall permit fishing and hunting on the refuge if the Secretary determines that the activities are consistent with the principles of sound fish, wildlife, and management and are compatible and consistent. And then it goes on on page 16, line 7, to say that these are generally compatible uses.

So essentially you have defined it in different parts of the bill that there shall be fishing and hunting on these refuges. And the question I have, is whether the refuge system really is broke and needs fixing. And I would argue that it ain't broke, that these use decisions are best left to discretionary methods to determine what is appropriate. I think it has worked well. Yes, there have been lawsuits, but there have been lawsuits in every field, and as the Secretary said, I don't think you are going to be able to avoid that in this society. But to now put into law the way this bill is drafted that these activities are almost mandatory, I think, is the wrong step and certainly leads to the bill being a very special interest, very special purpose bill. And I think that is inappropriate, Mr. Chairman.

Mr. SAXTON. Thank you. Mr. Secretary, I don't know that I have any further questions at this time. I would just comment for the record that I—I will turn to you in just a moment if I may, Mr. Pombo. I share a concern that other members, and I think that you have, as well, that we are able—that we continue to be able to maintain public support for the refuge program and the refuge system. As you know, each year at appropriations time I run to the appropriators to try to get money to expand the system in my district, Forsythe Refuge. And I do that because I understand the biological need for the refuge system. In my case it has some pretty specific purposes and needs for migratory waterfowl and for other purposes which I think are very, very valid.

At the same time, I recognize the growing resistance in some quarters because of the perception of undue restrictions from time to time when the refuge manager—and I might say not the current one—manages to raise the hackles of a significant part of the population surrounding the refuge. And I think that is what concerns the members who cosponsored this bill have. And I know that you share those concerns, as well, although you may have a different approach to dealing with them.

So I guess I would just reiterate my request for consideration in a different forum where maybe we can get together and chat about common goals and different approaches to get there. And perhaps we can find a common path that we can follow to accomplish what we all want to accomplish.

Mr. BABBITT. Mr. Chairman, I accept that offer, because I believe that it should be possible to work toward a mutually acceptable solution. And to the extent that that is an offer to join together and try to explore those possibilities, I eagerly accept that.

Mr. SAXTON. Thank you. I appreciate that very much, and I will look forward to those conversations. I think Mr. Pombo would like to——

Mr. POMBO. Mr. Chairman, I just was asked to ask one follow-up question. And it deals with the Kenai National Wildlife Refuge in Alaska that has in its creation a provision in the statement of purpose to provide in a manner compatible with these purposes opportunities for fish and wildlife-oriented recreation. So in that instance it has a similar purpose to what is included in this bill. And I was wondering if the Secretary is aware of any wildlife-dependent recreation interests that have sued under that provision that has been in effect for 17 years.

Mr. BABBITT. Mr. Pombo, I am not familiar with that situation. I would be happy to answer in writing.

Mr. POMBO. Thank you.

[The following was received:]

CO-EQUAL PURPOSES OF REFUGES

The current situation at Kenai is not the same as would exist if H.R. 511 were enacted in its current form. Rather than having recreation as a co-equal purpose, it is subordinated to all of the conservation purposes of the refuge, and to environmental education. Section 303(4)(B) of the Alaska National Interest and Conservation Act (ANILCA) sets forth two conservation purposes for the refuge and then provides:

"(iv) to provide in a manner consistent with subparagraph (I) and (ii), opportunities for scientific research, interpretation, environmental education, and land management training; and

"(v) to provide, in a manner compatible with these purposes, opportunities for fish and wildlife-oriented recreation."

Secondly, current refuge system regulations require that we determine recreational uses are "practicable", and that we make a public interest determination when allowing hunting and fishing on a refuge. Clearly, having two competing uses at the same time and place is not "practicable", so when we decide to give hunting a priority over wildlife observation at specific times and places on Kenai, we have both practicability and a public interest determination behind our decision. This leaves little if any basis for litigation.

In contrast, H.R. 511 makes all fish- and wildlife-related recreational uses equal purposes of the System, and specifically provides that "no other determinations" are to be made relating to hunting and fishing. This equality of uses, reinforced by prohibitions on taking other factors into account in making decisions, is what led to my conclusion that the users would be able to sue over other preferred uses interfering with their use.

Of course, it is important to note that I was speaking figuratively when referring to groups of users suing one another. H.R. 511 would enable the competing users to sue me for allowing the other user to interfere with their use, not to literally sue each other. The end result of course would be the same; one group of users taking legal action to thwart another group, with our managers caught in the middle, and in the courthouse rather than in the field.

Mr. SAXTON. Mr. Secretary, thank you for being with us this morning, and we look forward to working with you in the near future.

Mr. BABBITT. Mr. Chairman and committee members, thank you.

Mr. SAXTON. I would now like to introduce our third panel. First is William Horn, Director of National and International Affairs and Washington Counsel of Wildlife Legislative Fund of America; Mr. Max Peterson, the Executive Vice President of the International Association of Fish and Wildlife Agencies; Ms. Susan Lamson, Director of Conservation, Wildlife, and Natural Resources Division of the National Rifle Association; and Mr. Gary Myers, the Director of the Tennessee Wildlife Resources Agency.

Welcome to all of you. We are very pleased to have you here, some of you for—I guess I should just say some of you again. And we look forward to hearing your testimony. And we will begin with Mr. Horn. And incidentally, because of constraints on our time, we will be adhering rather strictly to the five-minute rule, and those little lights in front of you will give you the appropriate indications. So when the red light comes on, if you would please conclude your remarks and at least summarize them.

Thank you very much. And, Mr. Horn, please proceed.

STATEMENT OF WILLIAM HORN, DIRECTOR OF NATIONAL AND INTERNATIONAL AFFAIRS, WILDLIFE LEGISLATIVE FUND OF AMERICA

Mr. HORN. Mr. Chairman, thank you. I am appearing today on behalf of the Wildlife Legislative Fund of America and the 1.5 million hunters, anglers, and conservationists it represents. We greatly appreciate the opportunity to appear today and present testimony to you in strong support of H.R. 511.

H.R. 511 would rectify a situation and provide finally an organic act for the National Wildlife Refuge System as well as clearly spell out its mission and purposes to carry it into the 21st Century. This bill is a carefully refined measure that reflects continuing efforts begun in 1994 that have involved the bipartisan leadership of the Congressional Sportsmen's Caucus, this committee, the State fish and wildlife agencies, and work by dozens of sporting conservation

organizations. And that careful work persuaded the House to pass essentially the same bill by a lopsided bipartisan two to one majority on April 24 of 1996.

This year's measure reflects further refinement. I would like to tell you that the WLFA supports the changes in H.R. 511 and is convinced that issues regarding land acquisition authorization, military overflights, and the consequences of government shutdowns ought to be dealt with in separate measures.

The debate on this bill really boils down to one provision, and that is Section 4(d), which states that one of the six purposes of the refuge system is to "provide opportunities for compatible uses of refuges consisting of fish and wildlife-dependent recreation, including fishing, hunting, wildlife observation, and environmental education." I urge the committee to read this provision carefully. It does not mandate fishing and hunting on all refuges. It does require that fishing and hunting and wildlife-dependent recreation activities be compatible. It does not commercialize the refuge system, nor does it eliminate or override the fundamental wildlife conservation mission of the system.

And why is it important to have the law spell out that compatible fishing and hunting be made a purpose of the system? From our perspective it is very simple. The sporting community needs a statutory shield from the animal rights extremists who have made it their mission to terminate all fishing and hunting on the refuge's public lands. The Fish and Wildlife Service over the past years has had to fight off lawsuits from the animal rights organizations seeking to end all hunting on refuge lands.

And in virtually every Congress, bills have been introduced to end these traditional activities on the public lands. As Congressman Farr noted previously, there are many Americans who have been misled by the name refuge and believe that these lands are somehow sanctuaries that are off limits to these traditional activities. Making these activities merely a priority use gives America's anglers and hunters short shrift. They should be entitled to a simple statutory declaration that provides compatible fishing and hunting as one of the purposes of the system. No Federal judge or no Department of the Interior is going to be able to ignore or explain away such a straightforward, plain-spoken declaration recognizing these practices.

Now the behavior of many of the bill's critics also demonstrates the need for a clear declaration along these lines. H.R. 511 and its predecessor bill last year have been the subject of an incredible campaign of distortion, disinformation, and misinformation. Critics have speciously alleged that the bill eliminates the conservation mission. Section 4 does precisely the opposite. They have argued that the bill mandates hunting and fishing everywhere. Section 8 does the opposite. They have argued that the bill commercializes the refuge system or drenches the system in pesticides or allows grazing and oil and gas and jet ski use everywhere. My review of the bill indicates that those sections must be written in invisible ink, because they are not present in the bill.

Today we discover a couple of new fictions have been added. The Administration, after three years, now discovers that setting forth specific purposes will allow refuge users to sue each other. I should

point out and follow up, I think, on Mr. Pombo's question, that some existing refuges, like the Kenai unit in Alaska, have wildlife recreation as a statutory purpose. And that has been a statutory purpose of that one unit for 17 years. Similarly, the Service's, Fish and Wildlife Service's, present manual sets forth the "materially interfere" compatibility standard, and that has been on the books for well over a decade.

Notwithstanding the fact that you have got language on the books right now that is essentially similar to what is in the bill, there have been no lawsuits that I am aware of, as a keen observer of this program, for at least the last 16 years. I fail to see how this bill is going to create any opportunities for new lawsuits. I am simply convinced that this is just the newest example of the Administration concocting creative and tortured readings of this bill to invent new excuses to oppose the legislation.

We appreciate the leadership you, Mr. Chairman, and the Subcommittee have played on this legislation, and we look forward to working with you to quickly enact H.R. 511. Thank you.

[Statement of William Horn may be found at end of hearing.]

Mr. SAXTON. Thank you very much. I appreciate your comments. Mr. Peterson.

STATEMENT OF R. MAX PETERSON, EXECUTIVE VICE PRESIDENT, INTERNATIONAL ASSOCIATION OF FISH AND WILDLIFE AGENCIES

Mr. PETERSON. Thank you, Mr. Chairman. I am Max Peterson, representing the International Association of Fish and Wildlife Agencies. As you know, Mr. Chairman, all 50 State fish and wildlife agencies are members of the association. And we are particularly pleased this morning to have the President of our association, Mr. Duane Shroufe, with us here. He has been working with us the last several days. And also another member of our association, Mr. Gary Myers, the Fish and Wildlife Director in Tennessee, who will testify separately.

Mr. Chairman, you have my written statement. If you accept it for the record, I will try to brief it to save you some time.

Mr. SAXTON. We would appreciate that.

Mr. PETERSON. We are here today to basically support H.R. 511. In doing so, I would like to thank you and Chairman Young and Congressman Dingell for your continuing efforts in working with us to improve the bill for the benefits of our fish and wildlife resources, our system, and our citizens.

We appreciate the fact that H.R. 511 as written out does not contain specific refuge management direction, which we were concerned about in a previous version. We are also pleased that you incorporated much of President Clinton's Executive Order into the bill. In fact, Mr. Chairman, I was listening to the dialog earlier today, and much of what the President said in the Executive Order—you know, he cleverly avoided the use of the word purpose in the Executive Order. And he just—he set forth guiding principles. Those guiding principles are the same ones that are in this bill.

And if—as you know, Mr. Chairman, going back and reading Mr. Dingell's testimony of 1994, who was the author of the bill in the

60's, he pointed out very clearly that they intended at that time to distinguish between general recreation of a refuge, which was the rage at that time with new use of public lands, from wildlife-dependent recreation, which he considered had always been a purpose of the refuge. And he was the floor manager of the bill that passed at time. So we find—it is interesting we find that historical part. So I would like to suggest that we provide to you the 1994 statement of Congressman Dingell, which contains the historical sketch on those original bills, because some of the rhetoric you hear today simply does not reflect the reality of the history of the refuge system.

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

Mr. PETERSON. In order that we not be misunderstood, Mr. Chairman, let me emphasize that the State fish and wildlife agencies recognize full well what Mr. Farr just said, that one of the most—the most rapidly increasing use of the out of doors is to watch for wildlife. That is one of the reasons this bill has wildlife observation among its uses, along with conservation education. I don't really believe our vision differs substantially from Secretary Babbitt and most others who want to see a constructive organic act for the refuge system. Our differences, I believe, are how to outline that vision in the statute which will provide useful guidelines and processes.

I would point out that anybody can sue anybody now any day of the week on the refuge system and have, in fact, done so in recent years. So the idea that anybody can sue each other is not a new idea.

As stated in both the Executive Order and in your bill, we have always believed that the mission of the National Wildlife Refuge System was, as stated in this bill and the Executive Order, to conserve fish and wildlife and their habitats for the use and enjoyment of our citizens. As far as I know, everyone can stand on that common ground, the States, the Fish and Wildlife Service, anglers, birders, hunters, nature photographers and so on.

It is convenient to quote Starker Leopold at times, but he said in his report on the National Wildlife Refuge, the National Wildlife Refuges should stand as monuments to the science and practice of wildlife management. We fully concur.

We believe also that fish and wildlife dependent uses, such as environmental education, fishing, hunting, birding and nature photography should be given statutory recognition as priority uses of the National Wildlife Refuge where appropriate and when these uses are compatible with sound principles of fish and wildlife management and consistent with the purposes for the individual—for which the individual refuge was established. The idea that somehow this would force hunting in downtown Philadelphia is ludicrous, to tell you the truth. There is nothing in this bill that would do that.

We also believe that any National Wildlife Refuge bill should direct the Secretary to provide these opportunities where appropriate and compatible.

Finally, Mr. Chairman, I believe we need a little time out, maybe, for people to sit down and draw back from this bill a little bit and look at the Executive Order and see if there is a more com-

mon ground than maybe what has come forth. And we are willing to do that and engage in that good-faith effort to see if there is a bill we all can agree on that does—is faithful to the history of the wildlife refuge system and does provide something that the American people will continue to find useful and support and that sportsmen and women and bird watchers and everyone else can agree on.

Thank you, Mr. Chairman.

[Statement of Max Peterson may be found at end of hearing.]

Mr. SAXTON. Thank you, Mr. Peterson. Mrs. Lamson.

STATEMENT OF SUSAN LAMSON, DIRECTOR, CONSERVATION, WILDLIFE AND NATURAL RESOURCES, INSTITUTE FOR LEGISLATIVE ACTION, NATIONAL RIFLE ASSOCIATION OF AMERICA

Mrs. LAMSON. Thank you, Mr. Chairman. The National Rifle Association appreciates the invitation to testify today on a subject that likewise is of vital importance of our membership, and that is the future management of the National Wildlife Refuge System. We wholeheartedly support H.R. 511, and we applaud the efforts of the author and the bill's primary cosponsors in addressing issues that were raised about H.R. 511's predecessor.

I would like today to focus my remarks on Section 4 and state that NRA unequivocally supports the addition of purpose D. Making wildlife-dependent uses a statutory purpose recognizes that people are a critical element to the present and future support of the refuge system. This belief is borne out in the findings of the bill, which recognize that the American people have a right to enjoy the benefits derived from the investment they make through their tax dollars, Federal duck stamp purchases and entrance fees. It is also expressed by the Fish and Wildlife Service, which recognized in the opening pages of its booklet on the refuge system, entitled Promises for a New Century, that wildlife refuges are gifts to ourselves and to generations unborn, simple gifts whose treasures are unwrapped every time someone lifts binoculars to the flash of feathered color, every time a child overturns a rock, and every time a hunter sets out the decoys or an angler casts the water.

But elevating wildlife-dependent uses to a purpose of the system does not mandate that these types of uses occur on all refuges. Neither does H.R. 511 mandate that the Fish and Wildlife Service ensure that the other five listed purposes of the system be applied on all refuges. This point is reinforced in the requirements for preparing refuge plans, whereby the purposes of the system applicable to a particular refuge must be identified and described. Furthermore, purpose D does not speak to wildlife-dependent uses, but to compatible wildlife-dependent uses. Making wildlife-dependent uses a purpose of the system does not make them coequal to conservation or the other purposes because of the compatibility review test that that one purpose has to go through.

In the definition section of the bill it clearly states that uses, wildlife-dependent and all other uses, must be compatible with the purposes of a refuge or the overall purposes and mission of the system. It also anchors the determination of compatibility upon the rock of sound resource management and scientific information. Ad-

ditionally, in Section 5, instructions to the Secretary, the word compatible is tied to each and every statutory instruction relating to the recognition of priority public general uses, expansion of these opportunities and identification and provision for such uses on refuge lands.

I believe the burden of proof falls to the opponents of purpose D to show how that purpose could materially interfere with or detract from the Fish and Wildlife Service's ability to fulfill the purposes of a given refuge or the overall mission and other purposes of the system.

Now another reason why NRA strongly supports the inclusion of wildlife-dependent uses as a purpose, and this was just mentioned, is to ensure that the system is shielded from lawsuits such as the one filed by the Humane Society of the United States in 1984 to shut down the system to hunting and trapping. There are several examples of numerous statements that HSUS made at the time. For example, "of all the inappropriate activities now taking place on wildlife refuges, surely sport hunting and trapping represent the most blatant betrayal of the refuge system. Hunters wish to deliberately destroy wildlife and defeat the whole purpose for which the system was established. HSUS will do everything in its power to end this travesty."

The NRA is concerned that unless wildlife-dependent uses are made a statutory purpose, the hunting community and the Fish and Wildlife Service can expect future litigation over the definition of refuge in the context of the system's mission and purposes. In response to the HSUS lawsuit, refuge managers compiled over 2000 pages of administrative record and 5000 pages of discovery material. The NRA believes that refuge managers ought not to be made conservators of paper but rather conservators of wildlife.

The bill before you today will minimize such a diversion of refuge resources. This legislation presents the opportunity for the Congress to ensure that compatible wildlife-dependent uses such as hunting are expressly allowed.

NRA fully supports the compatibility review process. We believe it provides for a conscientious review without exhausting fiscal and administrative resources to manage the system. And it is especially important inasmuch as the operation and maintenance backlog of the system need not be exacerbated by unnecessary and burdensome standards and procedures.

In summary, we appreciate the opportunity to be here and look forward to assisting you in the process of making this organic legislation a reality. Thank you.

[Statement of Susan Lamson may be found at end of hearing.]

Mr. SAXTON. Thank you very, very much, Mrs. Lamson. Mr. Myers, you may proceed.

STATEMENT OF GARY T. MYERS, EXECUTIVE DIRECTOR, TENNESSEE WILDLIFE RESOURCES AGENCY

Mr. MYERS. Mr. Chairman and members of the Subcommittee, thank you for the opportunity to comment on H.R. 511. I head the Tennessee Wildlife Resource Agency, which is the State agency responsible for the management of fish and wildlife in Tennessee. I want to make you aware of a movement in the conservation com-

munity which I believe will become a significant force driving the future expansion of the Federal Refuge System, and I want to make you aware of the importance of H.R. 511 to the success of that movement.

As you probably know, in 1986 the Canadian Minister of Environment and the U.S. Secretary of Interior signed the North American Waterfowl Management Plan. The plan, developed with heavy State and provincial involvement, established acreage targets for priority waterfowl habitat areas in the United States and Canada over a 15-year period from '86 to the year 2000 and estimated that $1.5 billion would be required to accomplish these objectives. Since then, about one billion has been spent. In the United States, over a million acres have been protected, 420,000 acres restored, and over 1.5 million acres enhanced for waterfowl. I don't have the numbers, but I am aware that a good many acres were added to the Federal Refuge System as national waterfowl habitat needs were addressed.

In 1990, Federal, State, and private interests joined together to likewise address the needs of neotropical birds through Partners in Flight. This group is following in the footsteps of the North American Waterfowl Management Plan in their development of a North American plan for neotropical birds. A large body of experts will eventually reach a consensus on the habitat needs of neotropical birds across our nation. Already those experts are folding songbird habitat work into the Lower Mississippi Valley waterfowl joint venture.

A common goal for songbirds and waterfowl is the reforestation of thousands of acres of bottom land hardwoods. Thus, an important component of one plan is also part of another, creating additional support for action. Bottom land hardwood reforestation also benefits other game species, which leads toward possible partnerships with the National Wild Turkey Federation, Audubon, Ducks Unlimited, and others to leverage State and Federal dollars.

These types of activities are occurring to some extent now. Shorebird experts are also developing a national plan and efforts are underway to bring fish into the equation. It is likely that flooded bottom land hardwoods serve as rich nursery areas for fish from the Mississippi River, and it is no secret that ducks also thrive in flooded bottom land hardwoods. These are the same forests that songbirds, turkey, deer, squirrel, some threatened and endangered species frequent, providing additional opportunity for support and funding.

Over time, strengthened migratory bird partnerships will facilitate the development of an International Migratory Bird Management Plan that will become a major force driving the expansion of the Federal Refuge System. Partnerships developed through that plan and others will evolve into biodiversity initiative, and ultimately impact ecosystems, and that impacts wildlife populations, plant communities and more. This evolution opens new doors for funding, partnerships and leveraging, but may create the possibility that we lose sight of the original purpose of each refuge.

H.R. 511 ensures that this does not happen. Many of us old-fashioned, single-species managers would be uncomfortable without this assurance.

Likewise, some hunters are convinced that hunting will one day be phased out on Federal lands designated primarily to meet the needs of migratory songbirds. And I suspect that some bird watchers are fearful that they may eventually be excluded from some Federal refuges that meet the habitat needs of game species. H.R. 511 provides assurances to both groups to the extent practical, paving the way for an evolution of partnerships never before thought possible.

The fair treatment guaranteed by H.R. 511 of hunters and nonhunters is crucial if we are to realize the partnerships essential to the formation of a national network of lands and waters designed to conserve and manage fish, wildlife, plants, and their habitats across America.

H.R. 511 does more than ensure the integrity of the existing refuge system and provide a level playing field for hunters and nonhunters. It establishes purposes which clearly posture the refuge system to play a major role as the nation and industry address habitat needs of a host of species, including interjurisdictional fisheries and all migratory birds, as they work to recover endangered or threatened species, fulfill treaty obligations, and provide for recreation and environmental education.

The Tennessee Wildlife Resource Agency strongly supports passage of H.R. 511. Thank you, Mr. Chairman.

[Statement of Gary Myers may be found at end of hearing.]

Mr. SAXTON. Thank you very, very much. Thank all of you very much for what I consider to be very articulate and worthwhile testimony.

Mr. Pombo, would you like to lead off the questioning of this panel?

Mr. POMBO. Thank you, Mr. Chairman. Mr. Peterson, I found your testimony very interesting. I was wondering on the other bill that we are having the hearing on, H.R. 512, what your feelings are on that in terms of requiring Congressional approval for new wildlife refuges.

Mr. PETERSON. I think now, as you probably remember, before you can acquire land in a State using the duck stamp money it requires the approval of the governor of the State. So it seems to me like that is an appropriate type of thing. I wonder if Congress wants to be involved in every little refuge. I think—I cannot think of a single case that a Member of Congress has not supported the idea of establishing a refuge, so it seems to me fairly superfluous. But we haven't really taken a firm position on that bill. We would be glad to talk to you more about it.

Mr. POMBO. All right, thank you. Mr. Horn, in your statement you talked about some of the other refuges that have similar purposes to what is included in this bill. And I know that you are very familiar with a number of those. In your experience and in the history, especially with the one in Alaska, have they had any problems with the way that that language was worded 17 years ago?

Mr. HORN. No, sir. Matter of fact, that is one reason, I think, that the threat of litigation arising from this bill is absolutely de minimis. We have had similar language on the books for all these years in Alaska. Recently when Congress passed an Arkansas Land Exchange Bill that acquired major land holdings along the Cache

and the White Rivers, there was language included to maintain existing hunting opportunities and recognize them as important in that newly established refuge unit. And the only lawsuits that have arisen challenging uses of the refuge have been brought either by, as Ms. Lamson pointed out, by the Humane Society to try to shut down all hunting activities on all refuges or some of the other lawsuits brought by Audubon Society and company against the Service seeking to shut down a number of non-hunting type matters.

The whole notion of litigation among the user groups is really just—it hasn't occurred. It hasn't occurred under the language that is on the books, and I think it is exceedingly unlikely to occur under the language that is in H.R. 511.

Mr. POMBO. You said non-hunting type recreational activities. What were you referring to?

Mr. HORN. Well, the—a group of environmental plaintiffs brought lawsuit to close down some boating activities, picnicking activities on a couple of refuges. Essentially that suit was broadly aimed at a lot of what were called secondary uses of the refuge system, and they pressed to have the agency go through and try to eliminate a lot of those secondary uses. I know that this Administration complied by executing an out-of-court settlement to that effect.

Mr. POMBO. But when you talk about Mr. Farr's watchable wildlife and what Mr. Peterson testified to about how people really want access to these wildlife refuges so that they can see the wildlife out there, wouldn't that—eliminating the secondary activities as you call them, wouldn't that be detrimental to being able to get in and see the wildlife?

Mr. HORN. There has been a considerable debate over, you know, how do you appropriately manage the units. In some cases recreation for watchable wildlife has resulted in the construction of roads so you can take a tour through an area and the construction of visitor's centers and such. I know that there are some interests out there that believe any type of those human intrusions into a refuge are totally inappropriate and that we shouldn't be building facilities or picnic grounds and we shouldn't be facilitating that type of public recreation use.

That is one of the reasons, I think, that we all believe that making these wildlife-dependent recreation uses—and that language was very carefully selected. It doesn't just say hunting and fishing. It says wildlife-dependent recreation because we wanted to ensure that other users who relate to wildlife, the bird watchers, the observers, get a similar level of protection.

Mr. POMBO. So I know that the bulk of this hearing is centered around the hunting and fishing part of the bill, but the other provisions that were listed as purposes of the wildlife refuge, there has been a threat to the continued activity on those, as well.

Mr. HORN. That is correct.

Mr. POMBO. Well, I don't have any further questions at this time, Mr. Chairman. Thank you.

Mr. SAXTON. Thank you, Mr. Pombo. Mr. Farr.

Mr. FARR. Mr. Chairman, I am going to have to apologize because I have to go after this, but I just want to make an observation. And I think that in all due respect we have got to tell the full

story here. And that is that when you do elevate hunting and fishing as one of the purposes for the refuge system and then you include wildlife-dependent recreation, including wildlife observation and environmental education, which is the Section D that you all have alluded to, it is very important. However when you go on to the real meat of how the Secretary shall interpret these uses, you drop out the wildlife observation and environmental education.

You indicate that the Secretary shall permit fishing and hunting and you don't include the others, and you say "that they are compatible with the purposes of the system," not the refuge, not the refuge, but the whole system, which you have already defined is for the purposes of hunting and fishing. And then you go on to say on page 13 no other determinations or findings are required to be made for fishing and hunting.

So essentially, although you incorporate these others in your general purposes, when it comes down to the fact finding of what should be done, you elevate hunting and fishing to a more superior purpose. And I contend that I don't know what is broken that needs fixing. I didn't know we hunted on any refuges and I understand we hunt on more than half of them. And I guess what the panel is saying is that is not enough.

Mr. PETERSON. No, I think you are misinterpreting what we are saying. In the first place, I wouldn't quarrel at all by adding wildlife observation in some of those places. I think that is a good idea to add those. There is no intention of any of us to elevate hunting and fishing over other kinds of wildlife-dependent recreation. And again, I would commend you to read Congressman Dingell's history of the wildlife refuge system.

Mr. FARR. Well, I am familiar with that. I also read his statement that he gave on the Floor, which was different 30 years later, if you want to put that into the record. It is contrary to what he said in committee, so——

Mr. PETERSON. Well, anyway——

Mr. FARR. Mr. Dingell has also changed his opinion from the very beginning.

Mr. PETERSON. Let me just say on a here and now basis—and maybe the trap, Congressman Farr, is the whole way we have traditionally talked about the purposes of the refuge. I think we recognize a hierarchy of purposes, if I can use that word, recognize that the fundamental purpose of the refuge system is to conserve the refuge for fish and wildlife. I mean, that is sort of number one. Like, if you have a house, a fundamental purpose is to take care of the house. Once you take care of the house, you might like to have some people sleeping in it, though, and you might like to have some people using it. So in the hierarchy thing we see that fish and wildlife-dependent recreation ought to be a priority use just as the Executive Order says. Now whether you call it a priority use or priority purpose, I am not quite sure how that differs.

Mr. FARR. But with 285 refuges you are able to fish and hunt on, why—what is the problem?

Mr. PETERSON. Well, for example, take—there are brand new refuges in both Arkansas and West Virginia right now. OK, under current provisions the minute those are set aside they are closed to public use. There isn't any reason for it. It is just our policy. We

close them to public use. Only in Arkansas where Senator Bumpers put a specific provision in there that said it will remain open to these traditional uses during the planning period is that area open. So unless there is a—unless public use is recognized as a purpose of the system, they end up being closed and they may never be open to any kind of public use, at least within six or ten years. That has been a problem in a lot of places, because until the planning is done they are closed to public use. Now why should the public put money into a refuge system and then have it closed the day that it is made a refuge if there isn't any reason to?

Mr. FARR. Well, it makes very good sense to me. For example, when we don't know how we are going to eventually use something when we use other land in our local communities, we put moratoriums on development of that land until we figure out how we are going to use it.

Mr. PETERSON. No question we would—this bill the way it is written now says if the Secretary wants to discontinue any of those uses he can do it, but it doesn't require him to discontinue it until he does a plan.

Mr. FARR. Well, that makes sense. A plan is done in an open, public manner—every park in America and every park in our State and local governments, they have to have a plan. You develop a plan for those uses. And it seems to me, that is the process that ought to determine whether or not these other uses are appropriate.

Mr. PETERSON. And we agree——

Mr. FARR. Not mandating it in law that you have to.

Mr. PETERSON. We didn't do that, Congressman Farr.

Mr. FARR. Yes, you did.

Mr. PETERSON. We did——

Mr. FARR. You may not have intended to do it, but that is the way the bill is worded.

Mr. PETERSON. We would respectfully disagree that it mandates that. It says it permits it to continue till the—unless the Secretary determines——

Mr. FARR. No, it says the Secretary shall permit. Shall is mandatory, not permissive.

Mr. PETERSON. Well, read the rest of the phrases, though. Providing it is compatible with the principles of sound wildlife management and is compatible with public safety.

Mr. FARR. But on the mandatory process you don't include that other language that you wanted in your Section D, which was the language on wildlife observation and environmental education. You drop that in the rest of these mandates—and you indicate that no other determinations or findings except the determination of consistency with State laws and regulations are required to be made for fishing or hunting.

Mr. PETERSON. You have to read the entire section there. You are reading——

Mr. FARR. Well, I am reading it. I do know how to read the law.

Mr. PETERSON. We would be glad to sit down and go over that with you, but there is no forcing of wildlife-dependent recreation on a refuge without it being compatible with the principles of sound wildlife management and public safety.

Mr. FARR. Well, it appears that if you—you know, that you——

Mr. PETERSON. It is a bill——

Mr. FARR. Why don't you include all the wildlife observation and environmental education as well in that?

Mr. PETERSON. I think that is a good suggestion. I think we could reasonably do that.

Mr. FARR. But again, you know, I have got to run, but my concern is: I don't think it is so broken that it needs fixing, that you have got to go into law and then make this law so strong that you are going to make it mandatory that fishing and hunting have to be a use. I mean, if over half of the refuges that are created in America are allowing these activities, and it is up to the discretion of the plan that is devised, and that plan includes input from the people that are most participatory in the refuge area, the local people, it is a bottoms-up plan. That process can determine whether these issues are compatible.

That seems to me a much more democratic process than telling the country that whomever the Secretary of Interior is that he must or she must allow fishing and hunting. And that is the way I read the law that you have drafted. Now that is maybe not the way you intended it, but I think that is the way it can easily be interpreted.

Mr. PETERSON. We would be glad to work with you to be sure that that is not the interpretation. That is not our intention.

Mr. FARR. OK, thank you very much.

Mr. SAXTON. Thank you, gentlemen. Let me just make two points, one on this provision that Mr. Farr was just talking about. And actually I don't know whether it was one of your ideas or my idea, but I came back from home with a concern that had to do with open till closed provision, because I was actively pursuing the expansion of the Forsythe Refuge and all of a sudden I found—I went to a dedication one day of an island that we secured which we thought was environmentally sensitive and I went back the next day and Fish and Wildlife had erected a sign to keep out. I said I don't think that was what I intended. And so we wrote this language, and whether it is perfect or not I don't know, but it is intended to provide for traditional uses of the land until a comprehensive management plan has been adopted so that people won't feel that we are arbitrarily closing the land to all uses, all historic uses.

Now to the Secretary's credit, I am told this morning that a new process has already been put in place, which modifies the old process somewhat to outline continuing permitted uses on an immediate basis. And I think that is progress. Now I have not seen it work yet. I do not know any more than what I just repeated from what I was told earlier by the Secretary and his people, but that is progress. And I for one appreciate the fact that we don't have the old policy anymore and we have a new one that seems to make more sense. Now I don't know whether that satisfies the whole situation, but at least we are moving in the direction of the bill. And I thank the Secretary for that.

Let me make one other point. Wildlife refuges are not designed to be wilderness areas or sanctuaries where no human activity can occur, either by the letter of the current law or through practice

that has been established over the years. Wildlife refuges are intended to be highly managed environments designed to enhance the production of specific species, control other non-target species through hunting, trapping, and often this requires the requirement for managers of these refuges to be actively involved for the purposes, again, of specific species.

Would you agree that that is a fair characterization of the current refuge system, and do hunting and other uses that we are talking about fit within that definition that I just gave?

Mr. HORN. Mr. Chairman, I would say yes. And I think that the other point worth making here is that you point out that what the Secretary announced this morning in terms of new lands is a policy. The Executive Order is a policy. What we are talking about in this bill is enshrining policy, which is subject to change, into statute so that it is in place once and for all.

And the reason we need a statute is that in terms of all the hunting examples that continue and now exist on the units, we are looking for the statutory shield from the next animal rights lawsuit so it doesn't end up with one judge closing down 92 million acres of public land. So I think that many of the policies are in pretty good shape right now, but there ought to be codification of those policies into statute to provide long-term assurances to the American public that uses and invests in the refuges.

Mr. PETERSON. Mr. Chairman, I would agree with that. And on the Secretary's policy statement about opening some land, you know, I think the only problem we have seen with that is that is on an acquisition by acquisition basis. And sometimes those acquisitions are as small as 40 acres. It is pretty hard when you are acquiring 40 acres in a major refuge to make a judgment about what the future use of that 40 acres is going to be. We would rather see it be done on the basis of a plan for the refuge system—the refuge—the specific refuge.

That is an interim decision, by the way, that one that he has mentioned. It is an interim decision which can be changed the next day without any protocol at all. So it is a pretty slender reed, as Mr. Horn said. There is nothing in the statute that recognizes that. It is purely a policy. So we need to put something more than that into the statute.

Mr. SAXTON. Thank you very much. Mr. Abercrombie.

Mr. ABERCROMBIE. With regard to the argument made just in the last points, surely you don't think that by enacting a statute that is going to limit the judiciary from entering if someone decides that they think that the statute as written is inadequate? I mean, part of the whole discussion that has been held here today is that this language may not accomplish what you want, so I am not sure that that is going to ensure anything.

What bothers me in this discussion is there is an implication that hunting and fishing is somehow clinging—I think the word was a slender reed with respect to the policy, but that hunting and fishing activities—seen as a legitimate activity in the refuge system—is scarcely able to sustain itself now. Now my information is is that in over half of the refuges which comprise 90 percent of the system's acreage, hunting and fishing are now part and parcel of the activity that goes on. So I am not entirely sure as to what the

necessity of legislative activity is at this point, because once you have that underway, I think that it is not an accurate reflection of the political world as it exists to think that suddenly hunting and fishing would be eliminated at the whim of somebody.

Mr. PETERSON. Congressman Abercrombie, let me back up a little bit and say that the Constitution of the United States places in the U.S. Congress the responsibility for determining the guidelines for management of public lands. Now the Congress has really not ever passed an organic act for the fish and wildlife refuge system. And the real question here is should Congress say how they want that system to be managed, or should it simply rely on different Secretaries of the Interior and different Presidents through Executive Orders and other policy to determine that, because the Constitution says it is your responsibility as Congress to do that for the public lands.

Mr. ABERCROMBIE. Well, I am quite content to do that, but do—is it your understanding—is my information correct that well over half of all the refuge parcels now, designated refuge now, have hunting and fishing as a part of the recognized activities and that in terms of the actual acreage the hunting and fishing is now permitted on 90-plus percent of all the acreage now designated refuge?

Mr. PETERSON. I don't know about the percentage. I think the number is correct, but let me——

Mr. ABERCROMBIE. OK.

Mr. PETERSON. Let me again point out that——

Mr. ABERCROMBIE. I understand what your point is, because I know the Chairman needs to move on. I am merely saying that I think the Chairman's suggestion that this language be looked at so that you avoid further litigation—now I know that some of the members said that the Secretary was reading too much into it. That is precisely what you don't want to do.

I am not going to argue with you that maybe the Congress should set the legislative boundaries in an organic act sense, but if we do it then we should make sure that whatever language we write will minimize the litigation and minimize the possible confrontations between nature photographers and bird watching and hunting and fishing and hiking and simple observation, and as well within the context of conservation. I am sure you would all agree with that, could we not?

Mr. PETERSON. Yes, but I don't know of a single lawsuit between those groups so far——

Mr. ABERCROMBIE. Not yet.

Mr. PETERSON. [continuing]—on the refuge.

Mr. ABERCROMBIE. The Secretary's point, I think, was is that if we pass the legislation in its present written form, perhaps that might occur. And I think the Chairman's suggestion was is that maybe we could take a look at the language to see whether or not compatible uses that are respectful to the conservation mandate could be written in a way that could achieve a broader consensus.

Mr. PETERSON. We would be glad to work with that.

Mr. ABERCROMBIE. Thank you very much, Mr. Chairman.

Mr. POMBO. Thank you. I don't believe that there is any further questions of this panel. I just want to thank you all very much for

your testimony and for your patience in sticking around for the rest of the hearing. Thank you very much.

I would like to call up the fourth panel. The Honorable Bernie Richter, Assemblyman, State of California; Mr. John Baranek, President, Herzog Company; Mr. Jeff Craven, Cloverdale, Oregon; Mr. Dan Beard, Vice President, National Audubon Society; and Mr. Roger Schlickeisen, President, Defenders of Wildlife.

OK, I am told that Mr. Robert Dewey is going to testify in his place.

Thank you very much. I would like to start with Assemblyman Richter.

STATEMENT OF BERNIE RICHTER, ASSEMBLYMAN, STATE OF CALIFORNIA

Mr. RICHTER. Thank you very much, Mr. Chairman and members of the committee. I represent the Third Assembly District, which is extreme Northeast California, from the Oregon border to Highway 80 and from the Sacramento Valley to the Nevada border. And it is a pleasure to be here because I have some pertinent information that relates directly to this bill, and I hope that it is useful to you in making a decision as to how you will act in this matter.

Mr. Chairman and members, I want to tell you about three people and how their lives relate to the bill that is before you. 75-year-old Flair Royal was a much respected, retired schoolteacher who taught for 20 years at Far West Elementary School at Beale Air Force Base before retiring in 1988. She was viewed as an outstanding teacher and highly respected in the community. She positively affected the lives of many young children.

Bill Nogagawa was a loyal 86-year-old former employee of Numous Incorporated. He has faithfully worked for the company, his former employer, until he retired 20 years ago.

Marian Anderson was a 55-year-old wife of Reclamation District 784 manager Gene Anderson. She was a mother of nine children and was a friend of all who knew her.

There is indeed a strange and eerie connection between Gene Anderson's job and his pleas to government agencies as it relates to the story of the tragedy that I am going to describe to you here today.

If they could, all three of these people would be here today to testify at this hearing and to speak with unflinching support for the position I am taking here today. Unfortunately, they cannot be here because they are dead. I believe and the residents of Yuba County, California, who I represent in the California State Legislature, believe that these three people were killed by the negligence and irresponsible action of several Federal agencies, in particular the Federal Fish and Wildlife Service.

But let me start from the beginning of the story. As you ponder the bill that is before you, I urge you to note that the new opportunities to create wildlife refuges will require careful evaluation to be sure that the very act of placing or creating these refuges does not in itself create a new or enhanced danger to human health and safety, much less the wildlife refuge itself. In my home State of California, the placement of wildlife refuges has exacerbated and interfered with the systematic maintenance of levees which are re-

quired to provide and protect the integrity of the very levees which protect the wildlife refuges from destruction in the first place.

Levees are essentially piles of dirt, sand and rock, and must be maintained so that certain natural elements don't destabilize the levee walls. It is critical that repairs of levees be conducted in a consistent and timely manner. However, many levee maintenance and repair issues are held hostage to the Endangered Species Act. Levees are in essence dams anywhere from 10 to 40 feet in height. It is as if we would allow great dams to be undermined by natural elements and take belated or no action to repair such dams and risk the dam failure in behalf of protecting certain plants and animals that happen to live in the dam wall.

Maintenance of levee requires the removal of overgrown vegetation. Vegetation must be removed because its roots provide pathways for water and also provides opportunity to snag passing debris, causing a tangle of driftwood, plants and manmade trash. These obstructions impede the flow of water down in between the levees, and it is particularly critical during high water times when restrictive flows put enormous pressure on the levee walls, which are more likely to be weakened by plant roots and rodent animals.

The control of vegetation in our levee system on the Feather River is restricted by the elderberry bush habitat for endangered elderberry beetle. For example, due to the harm and harass provisions of the Endangered Species Act, nothing can be done to control the vegetation which may impact the beetle or its habitat. By the way, no one, neither native or imported entomologists, have ever seen any of these beetles on this portion of the Feather River in question. In our case, the Reclamation District 784 determined that repair work was needed on 30 miles of levees. No new levees were planned, only maintenance to restore original levees to their original condition.

By the time the project was implemented—and this was—this took years, years from the 1986 flood in which we had a horrendous flood and a large loss of life in this area—by the time the project was implemented, the Army Corps of Engineers identified 43 clumps of elderberry bushes that would be disturbed during the restoration process. The Corps determined, because of requirements of the Fish and Wildlife Service, before any levee work could start it was necessary to create an 80-acre mitigation preserve or site. $1.9 million was to be spent on this site, which was located on the river side of the Feather River levee. Further discussion by Federal resource agencies, including the Fish and Wildlife Service, added a large 17-foot deep pond to the mitigation project for the wetlands habitat adjacent to the levee wall.

To make matters worse, the Corps committed to its mitigation project without consulting the agency charged with the maintenance of the levees, mainly District 784. Minutes from the RD 784 board meetings confirm that the Corps of Engineers was not familiar with the details of the local topography. The minutes further show questions raised by board Chairman Rex Archer that the Reclamation District 784 had not been told about the 17-foot deep pond and that the Reclamation District 784 objected to the construction of the pond so close to the levee. The minutes show that the Corps said, "we will look into the problem." And the Corps re-

assured the board, "it (the pond) would create no problem," besides, it would be "very expensive to fill the hole back up again."

In further discussions in the same meeting, the minutes show that Reclamation District Manager of 784, Gene Anderson, the husband of Marian Anderson who was drowned as a direct result of the levee failure, expressed concern that, "the hole dug" by the Corps and required as part of the mitigation effort intercepted the original river channel which ran under the levee, which allows water to come up on the land side as boils. Finally, the minutes show that board attorney Steve Jones suggested the district should follow up with a letter voicing concern, giving a history of that section of the levee and stating that the Reclamation District 784 thinks a grievous error was made.

Please let the record show that the minutes indicate that at the time the pond was dug in the middle of the summer, with the water at its lowest level in the river, seepage was noted on the land side of the levee after the pond was dug.

My point, the disastrous levee failure in January of this year that claimed the lives of three of my constituents and injured many others, that flooded 500 homes and 9000 acres of prime farmland, displaced 35,000 people and flooded the employers in one of California's poorest counties, and simultaneously destroyed the $1.9 million mitigation project and major amounts of wildlife and additional habitat occurred at the lower end of the mitigation-site.

As to the mitigation project, all of the seedlings, all of the shrubs and all of the beetles that have never been seen or whatever other habitat that existed are gone.

I would like to add a footnote to this story which proves the adage that truth can be stranger than fiction. Keep in mind that the requirements that caused this disaster was not forced upon local people by some foreign occupying army. It was in fact the Government of the United States that instituted this plan and carried it to its conclusion.

At both the Federal and State level statutes have been enacted, and you have enacted them and we in California have enacted them, the essence of which is to say to private owners and private managers be a manager, go to jail. Among other things, statutes say that any person who knowingly places another person in imminent danger of death or serious bodily injury is guilty of a public offense and shall upon conviction be punished by fine or imprisonment.

I would hope that you would be willing to apply to the government bureaucrat managers the same standard you apply to private industry managers. In this particular case in point local people asked, in fact begged, Federal agency bureaucrat managers not to go forward with this project because it would cause a disaster, which it in fact did. Being forewarned and having no knowledge of local conditions, these government officials from afar, having run amuck and far from being under the control of the U.S. Congress, inflicted themselves on our community and caused the disaster that I have described to you.

The law authorizing this agency, the law before us today, is a law that you should enact. Among other things, it seems too that you should also amend that law to provide that the people and the

managers at the Federal level who caused this to happen after being forewarned are held personally responsible. This is a sad story. This was an avoidable tragedy, but in your hands is the opportunity not to allow it to ever happen again.

[Statement of Bernie Richter may be found at end of hearing.]

Mr. POMBO. Thank you. Mr. Baranek.

STATEMENT OF JOHN BARANEK, PRESIDENT, HERZOG COMPANY

Mr. BARANEK. Thank you, Mr. Chairman, for the opportunity to testify today. My name is John Baranek. I am President and General Manager of the Herzog Company, a family farming corporation located in Courtland, California. I am a third generation steward of the land. My grandfather bought the land in the Courtland area in the 1890's and the land we presently farm in 1902. Our farm is comprised of 600 acres of premium wine grapes and 230 acres of levees, slough, and riparian habitat.

As required by the House Rule 11, clause 2(g), my resume is attached which outlines my professional background in viticulture. Neither my corporation nor I personally are recipients of any Federal grants.

The United States Fish and Wildlife Service, a bad neighbor. The Service began its involvement in Stone Lakes by creating an interagency policy group. This was made up of nine government agents and excluded landowners. It immediately proceeded to misrepresent to the public the true magnitude of its plans.

Stone Lakes area property owners felt comfortable with the original 5000 acre refuge proposal in North Stone Lakes. Most of it was already under a combined ownership of the State of California and the County of Sacramento. To our surprise, at a meeting of the county board of supervisors in 1991 we were introduced to a 74,000 acre study area as a proposed refuge. The supervisors then instructed U.S. Fish and Wildlife Service to add two directors from local reclamation districts to the group. They were added, but the group never had another meeting.

General public opposition forced the U.S. Fish and Wildlife Service to an EIS. The result was a reduction from the 74,000 acre proposal to a 9000 acre core area, with an additional 9000 acres in cooperative management. However, the current proposed boundary is still well in excess of the 5000 acre plan that was originally presented. We are also still waiting for a refuge management plan, which was supposed to be due or completed somewhere around 1994.

The Sacramento County Board of Supervisors has supported the local residents and landowners throughout the ordeal. For the past several years, and recently as February 24, 1997, the supervisors have refused to sign a memorandum of understanding allowing the county land to join the refuge, primarily because of lack of a management plan.

State and Federal officials representing Stone Lakes have also supported our efforts to get a straight answer from the willful misleading U.S. Fish and Wildlife Service bureaucrats in Sacramento and Portland. The Portland office, in its report to employees in February of 1993, acknowledged that its greatest problem was add-

ing land without adequate staffing or funding to handle these new acquisitions, and yet this power-hungry bureaucracy continues to expand its reach.

Environmental concerns with the refuge. The location of the refuge, surrounded by levees that have flooded five times in 20 years, is a crime. This bath tub effect acts like a large animal trap. Most species drown or are displaced to become feed for predators, or become road kill on the surrounding highways and roads. It does not make sense to intensify population of animals only to destroy them by man's good intentions.

The Stone Lakes area is a major floodway for South Sacramento. In wet years, most of the refuge area floods. Major flooding has occurred in 1982, 1983, 1986, 1995 and most recently in January of 1997. Pictured in the accompanying exhibits in the back is a map. I have a better copy here if you can't see the Xerox copy. This is the 1986 flood which covers the entire refuge area. The refuge manager, Tom Harvey, admits major problems in achieving goals of the refuge. He stated in March of 1995, "a huge body of scientific literature exists that proves that water level differences, even as small as a few centimeters, have a great effect on wetlands and riparian communities, especially on species establishment."

Regional sanitation district drainage and non-treated surface runoff from the Sacramento urban population flows through the Stone Lakes Refuge. Part of the water is then pumped into the Sacramento River at Freeport. The California State Water Control Board has identified the entire Beach Lake area, which is part of the North Stone Lakes, and adjacent Sacramento River from the towns of Freeport to Hood a candidate for toxic hot spots. These toxins may create health problems for migratory waterfowl and in an extreme case this could result in deformity of wildlife as happened in Kesterson Refuge near Los Banos, California.

Most recently, the Service has considered new ways of managing the refuge. They have asked the county for a suspension of grazing prohibitions on the county owned land. They are considering controlled burns and livestock grazing, among other options. Actually, these are not new ideas. It is what local residents have been doing for over 100 years, to the benefit of wildlife abundant in the area.

We need H.R. 512, which requires concurrence from both the Service and Congress in order to create a refuge. This will eliminate the kind of bureaucratic land grabbing over the objections of area residents that is occurring at Stone Lakes.

In conclusion, Mr. Chairman, I have a bumper sticker that proposes what is best for people and wildlife in the Stone Lakes area. It says save the Delta from the Fish and Wildlife Service.

[Statement of John Baranek may be found at end of hearing.]

Mr. POMBO. Thank you. Mr. Craven.

STATEMENT OF JEFF CRAVEN, CLOVERDALE, OREGON

Mr. CRAVEN. Thank you, Mr. Chairman, for the opportunity to testify today. My name is Jeff Craven. I am a fourth generation dairy farmer from Cloverdale, Oregon. Our farm has been in the family for 111 years.

As a result of our farming practice, our pastures have become an important habitat for many species of geese, ducks and other wild-

life. The habitat is protected by zoning laws, till and removal laws and the Clean Water Act. In June 1990, landowners were notified that the refuge was being proposed in the Nestucca Bay area. The Nestucca Bay Refuge included 4800 acres, nearly all of the farmland in the Lower Nestucca drainage.

We discovered that the one dairy farm had been purchased by the Nature Conservancy at the request of the U.S. Fish and Wildlife Service. We became very concerned about the impact of the proposed refuge on the local economy and on the dairy industry. Would our farm values be affected? What were the threats to wildlife? How would the short-grass goose habitat be maintained without the dairy farms?

Within three months, the U.S. Fish and Wildlife Service had completed their draft environmental assessments for the proposed refuge. We could not accept the Fish and Wildlife Service's conclusion that Federal ownership and control was the best way to protect the habitat we were providing. We took the opportunity to comment on the draft environmental assessment, thinking we would be listened to.

By December 1990, the final environmental assessment was complete. Our concerns were not addressed. No changes had been made to reflect public comment. The finding of no significant impact was due to become final after a 30-day comment period. We were totally frustrated. A last resort we hired legal counsel. With the help of local, State and Federal officials, we were able to put the project on hold, except for the purchase of the Nature Conservancy property that the Fish and Wildlife Service was committed to.

We negotiated an agreement with the U.S. Fish and Wildlife Service to develop a cooperative resource management program to protect the goose habitat. The United States Fish and Wildlife Service recognizes the importance of the dairy industry in meeting the objective. We now have a memorandum of understanding between the United States Fish and Wildlife Service and local landowners that meet the objectives of providing habitat but still keeping lands in private ownership. The Service has revised the environmental assessments so that the preferred alternative is for the wildlife habitat to remain in private ownership. The acreage of the refuge area was also significantly reduced to more clearly identify important habitats.

It has been five years since we signed the memorandum of understanding with the United States Fish and Wildlife Service. Our dairy farms have continued to provide the important habitat to wintering Canadian goose populations. There has been no habitat loss, nor has there been any threat to the habitat identified. Despite a few promises to operate the refuge property as a dairy, it has been out of production for five years. The Service now relies on the remaining area farmers to maintain the short-grass habitat that the geese need. Fish and Wildlife Service has struggled to establish a management plan and gain funding to provide habitat.

Mr. Chairman, I believe H.R. 512 will help prevent some of the mistakes that happened in our situation from being made. We were lucky. We were able to come to a reasonable solution, but at a cost that was high both financially and emotionally. With the Congres-

sional oversight provided by H.R. 512, I believe that creative solutions are more likely to be found. There are better ways to protect wildlife than converting private land to public, and Congress and the American people need more opportunities to explore that. Thank you.

[Statement of Jeff Craven may be found at end of hearing.]

Mr. POMBO. Thank you, Mr. Craven. Mr. Dan Beard.

STATEMENT OF DANIEL BEARD, VICE PRESIDENT, NATIONAL AUDUBON SOCIETY

Mr. BEARD. Thank you, Mr. Chairman. I really appreciate the opportunity to be here today on behalf of the 550,000 members of the National Audubon Society, who are located in 520 chapters throughout the United States, Canada and Central America.

The National Audubon Society has been involved with the National Wildlife Refuge System since its inception. In fact, after the establishment of the first refuges, the Audubon Society paid for the managers of those refuges, two of whom were killed in the line of duty.

In the last year, our board of directors has approved the establishment of a national campaign to provide assistance to the National Wildlife Refuge System. We have created a National Wildlife Refuge Campaign. We have hired a campaign director, and we are systematically undertaking a wide assortment of activities to try to involve our members in assisting refuge managers to preserve and protect the resources that they manage.

I think it is important as we look at this legislation to remember that the National Wildlife Refuge System, as Secretary Babbitt pointed out, is very unique. It is the only one of its kind in the world. And this refuge system does have international importance. We should only make changes in the system of laws and policies which provide a foundation for the system with great care. I think everybody who you have heard testimony from today would agree that there is a need for a permanent policy foundation for the system, that something is lacking, but the question is what should that policy foundation be and what should it say.

There has been a consistent thread over the last 94 years dealing with the National Wildlife Refuge System. That consistent thread has been that wildlife comes first in national wildlife refuges. This is why each refuge was established in the first place. That is why the system was established. And there is substantial Congressional direction to that effect going back as far as 1934 with the Duck Stamp Act, 1962 with the Refuge Recreation Act, 1966 with the Refuge System Administration Act.

In our view, H.R. 511 would deviate from 94 years of policy direction. And the question is why. In our view, no compelling case has been made that there is a need to change the policy direction that we have been pursuing nearly 100 years. I think it is very important for us to remember why we established the system in the first place. Each area is unique. Each refuge is unique. It protects unique resources and unique values. And in each case we are protecting wildlife, either birds or other wildlife for a special reason. And that reason has either been determined to be important by the

director of the Fish and Wildlife Service, the Secretary or the Congress itself.

The challenge I think we all face is how do we manage these lands. And the most difficult challenge we have is how do we manage the people and the associated uses. In our view, we must protect wildlife first and foremost, which is the reason that we set these lands aside. Protection of wildlife ought to be the highest priority for the use of these lands. This has been the policy to date.

Secondly, we believe there are a second tier of uses which are fundamentally important. These are wildlife-dependent uses such as hunting, fishing, and wildlife observation. They ought to have a priority over all other uses which are not consistent with wildlife. These are sort of general recreational uses that oftentimes conflict with wildlife and wildlife-dependent uses of those refuges.

I would point out, Mr. Chairman, that I think we are much closer on consensus legislation than a lot of the discussion has left the impression with today. Should we have a bill? I think people agree that we do need a bill to provide a solid foundation. And we all agree that there ought to be a foundation. How should we implement this legislation? I think we all agree on how to do that, through a public planning process that involves the refuge managers and citizens.

The only question we have left is what place should wildlife have in this debate. We were not far off at the end of the 103rd Congress. We reached compromise on a bill, but unfortunately we ran out of time to get it enacted. We think we can reach agreement again. And I would urge that we take the opportunity suggested by Mr. Peterson and others to take the next month or so to try to sit down and see if it is possible to resolve the differences among the various groups which are here and have testified today on this legislation.

Thank you, Mr. Chairman, for the opportunity to be with you.

[Statement of Daniel Beard may be found at end of hearing.]

Mr. POMBO. Thank you. Mr. Dewey.

STATEMENT OF ROBERT DEWEY, DIRECTOR, HABITAT CONSERVATION DIVISION, DEFENDERS OF WILDLIFE

Mr. DEWEY. Yes, thank you, Mr. Chairman. I am Robert Dewey. I am Director of the Habitat Conservation Division at Defenders of Wildlife. First of all, I just want to thank you for the opportunity to substitute for Roger Schlickeisen, the president of our group. He had a previous speaking engagement, and I am sorry he wasn't able to stay. The hearing has run long. I will try and be brief.

First I would like to thank the committee for its interest in the future of the National Wildlife Refuge System. Defenders has long believed that additional statutory direction could provide the system with greater unity of purpose, future direction, and the expanded authorities needed to strengthen its ability to conserve fish, wildlife, and plants. H.R. 511 attempts to tackle many of these complex issues.

But make no mistake about it, Mr. Chairman, we believe that legislation to accomplish the over-arching goal of H.R. 511, expanding recreational activities, would fundamentally weaken the refuge

system. We strongly oppose enactment of H.R. 511 and the closely related bill, H.R. 512.

Defenders believes H.R. 511 contains numerous provisions which collectively would cause a dramatic and historic shift in the refuge system. This shift would be away from wildlife conservation and toward increased public use. The bill would take the refuge system away from the conservation ethic that has been its cornerstone ever since its founding by Theodore Roosevelt 94 years ago.

With 4500 secondary uses now permitted on national wildlife refuges, Defenders also questions the need for the bill. Providing recreational activities, in particular, is already an extremely high priority. Hunting, for example, now occurs on over half the national wildlife refuges. Just last year President Clinton further amplified the emphasis on recreational activities in an executive order.

Recreational activities should have an important role in the refuge system. They should not, however, be elevated to such a priority that they are placed in direct competition with wildlife conservation for management priority and funding. When this happens, resource and recreational enthusiasts both lose.

H.R. 511 damages the refuge system in four principal respects. First, the bill undermines Fish and Wildlife Service's ability to effectively regulate certain secondary uses. It would essentially establish a separate and weaker compatibility standard for some types of recreational activities. This would occur through the subtle interaction of various provisions relating to definitions, system purposes and compatibility standards. The net effect of these provisions is to give certain uses special and preferential treatment. Defenders believes that all uses, including ones that are wildlife dependent, should be held to the same effective regulatory standard.

The second fundamental concern relates to the fact that the bill makes certain recreational activities coequal with wildlife conservation as purposes of the system. While various types of recreational activities and environmental education should play an important role in the refuge system, they should not be afforded equal status with the system's wildlife conservation purposes.

Another one of Defenders greatest concerns relates to the impact this legislation would likely have on Fish and Wildlife Service's already insufficient budget. This bill is likely to force the Fish and Wildlife Service to devote increased agency resources and staff to recreational uses, which would ultimately come at the expense of wildlife conservation programs.

A fourth concern relates to the future management emphasis of the wildlife refuge system. The bill focuses the system on providing more recreational activities while ignoring increasingly important management challenges relating to biological diversity. The absence of diversity languages in the purposes section of H.R. 511 is likely to discourage the Fish and Wildlife Service from ever making biological diversity an important management consideration.

As the Nation approaches the 21st Century, this is simply unacceptable for the only network of Federal lands established to conserve fish and wildlife.

Let me now just briefly turn to H.R. 512. This bill would erect a substantial new roadblock to the acquisition of habitat by requiring a separate Congressional authorization in addition to the al-

ready-required appropriation law, before any land and water conservation funds can be used for the establishment of a new refuge. Even under the existing acquisition process, landowners are routinely told by the Fish and Wildlife Service that they must wait at least one and a half to two years for Congress to appropriate funds. Requiring Congress to enact an additional law could effectively stymie the protection of biologically important and imperiled wildlife habitat.

In closing, Defenders has long recognized the need for greater statutory authority for the refuge system. Although we believe that the system would be better served by current law than the changes proposed in H.R. 511, we also think the system could benefit from enactment of a bill along the lines of the Theodore Roosevelt Wildlife Legacy Act [H.R. 952]. This bill was introduced just yesterday by Representative George Miller. It establishes management objectives vital to the functioning of the National Wildlife Refuge System in the 21st Century, and does so without threatening the integrity of the system. The Roosevelt Act provides a constructive approach. We urge the committee to consider it as an alternative to H.R. 511.

This concludes my remarks. I would be glad to answer any questions that the committee might have.

[Statement of Rodger Schlickeisen may be found at end of hearing.]

Mr. POMBO. Well, thank you very much. Mr. Dewey, in your testimony, when I read it yesterday, you state that—in reference to H.R. 512, that it would require additional legislation, which it would. It would require a Congressional authorization before a wildlife refuge can be started. But you state in here that the already-required appropriation law—the way that the system has operated, yes, there is the requirement that an appropriation be drafted, but there is no requirement that that occur before the refuge is put on the map. And they can establish the refuge and then come in and lobby Congress for money to buy the property. And that is one of the problems.

And I don't know if you paid attention to some of the testimony from some of your fellow panelists, but that was one of the problems that we faced, is that the refuge will be established, it will be put on the map, and then they will come in and ask for money to purchase the private property that is included in that.

And the idea behind H.R. 512 is that some of these problems can be avoided if there is Congressional oversight before someone comes in and asks for an appropriation to purchase land. And that is the purpose behind that. And I just wanted to clarify that, because in reading your testimony I don't think it was exactly clear as to actually how this works.

Do you or did you support the President's Executive Order that has been referred to so many times today?

Mr. DEWEY. The President's Executive Order provides emphasis on recreational activities in the Wildlife Refuge System. In general, I would say there are many elements of the Executive Order that we do support. The concept that several people have alluded to about the hierarchy of uses with respect to prioritizing certain wildlife-dependent uses over non-wildlife-dependent uses is a use-

ful model and was probably one of the cornerstones of the Executive Order.

The other fundamental principle in the Executive Order was this important distinction between purposes of the system and uses of the system. In fact, this a critical distinction that was reflected very strongly in the bill I mentioned earlier, the Theodore Roosevelt Wildlife Protection Act. That bill was introduced yesterday by Mr. Miller and establishes priority public uses. And this is a bill that we strongly support. So to that extent, I think Defenders is enthusiastic about the President's Executive Order.

There are certain aspects of the Executive Order that are of concern to us and I would find particularly troublesome if they were codified in the context of statutory language. Certain language suggests that additional resources in the management of the system should go toward recreation. It is one thing to state that in an Executive Order and another to do so in a statute. The Executive Order also makes clear that this priority is in the context of existing laws, which include a provision in the 1962 Refuge Recreation Act that requires that funding be available before uses are allowed. Codification of the Executive Order without clarification of that point would be a mistake.

Mr. POMBO. Let me ask you specifically, does your organization support hunting and fishing within the system, within the Wildlife Refuge System?

Mr. DEWEY. We look at hunting and fishing on a case-by-case basis. We are not an organization that opposes hunting per se or supports it per se. I think that inference that you might draw from that is in the context of the refuge system we are interested in activities that are compatible with the purposes for which a refuge was established. The Fish and Wildlife Service has determined in many cases that hunting and fishing are compatible with those purposes, and I think we accept that.

Mr. POMBO. Mr. Beard, along the same testimony, does your organization support the Executive Order of the President and the purposes that were outlined in that Executive Order?

Mr. BEARD. Yes, we supported the Executive Order at the time that it was issued. Yes.

Mr. POMBO. Do you support hunting and fishing within the refuge system?

Mr. BEARD. Yes, where it is appropriate. That determination has to be made by the relevant official, which could be the Congress, the Secretary or the Director of the Fish and Wildlife Service, but yes, we support hunting.

Mr. POMBO. Thank you. Mr. Richter, Assemblyman Richter, in your testimony you talked about the creation of a refuge habitat area along the river within your district. Is it your opinion that if proper oversight had been given to that particular situation before it was created that it would have been created in the place it was or in the manner that it was?

Mr. RICHTER. It is my view that if the Federal officials had the knowledge that local people had, and had they been willing to listen to local people, and even after they had constructed it, as I mentioned to you, the record clearly shows that water was leaking out on the land side of the levee when there was no—when the lev-

ees didn't have any water, really, between them, when it was in the summertime. Had they been willing to accept that information and evaluate it and weigh it so that it would affect the decision that even had already been made, they would have reversed themselves.

I might tell you that there was a multitude of evidence. Basically what you have in this whole area is silt that is anywhere from 30 to 40 feet deep that has come down with the gold mining that took place in the middle of the 19th Century. It has raised the elevation of the valley and those areas by that much. That silt acts like a kind of a seal over the old river bed, which winds around and under this. Mappings clearly show where the old river bed was. In this particular case, the objection to the preserve and the pond that I referred to indicated that the old river bed ran right under the levee near or adjacent or right on where the pond was being built.

We had testimony after the 1986 disaster, which many people died in and it was a much greater disaster in the residential area of Linda and Solano, of the area that I represent. We had a civil court trial in 1992 in which Mr. Mayhan, an engineer, laid out maps showing exactly where these underground—the old river beds were. And he predicted in that civil trial that the next break in the levee would take place almost exactly where it took place. And that was without the pond being dug.

So my answer to you is that what we had were people come from the outside, decide to do a project, no control, for whatever good reasons they had—and I certainly don't question their motives here, but I am questioning their judgment and their knowledge of what was going on. Disregard local people, don't take any advice, go ahead with the project, not even notify the agency that was charged with the maintenance of the levee, and create something that turned into a huge disaster costing tens of millions of dollars and people's lives.

Yes, they did disregard the information that was available, went ahead with the project, and local people were helpless to do anything about it.

Mr. POMBO. Thank you. Mr. Baranek, in your statement dealing with the Stone Lakes Wildlife Refuge, we had testimony earlier today or a comment from one of the members that the wildlife are a bottom-up plan, that they are requested by local people, that the management plan for the area is designed with the input of local people. In your experience with the Stone Lakes Wildlife Refuge, was that the case?

Mr. BARANEK. Well, in Stone Lakes—the Stone Lakes area has a long history of Federal involvement. At one time the Corps of Engineers wanted to make a retardation base out of it and so forth. Well, there is a lot of complicated things that led up to everything that is there, but to make it very simple a group of developers, local government and various—I don't know, you would call it a consortium or allies of wildlife and so forth—put together a unit and invited Fish and Wildlife Service to come in the area, excluding the landowners that were basically involved. And like I mentioned, we were misled, thinking it was this area in North Stone Lakes, and they had far-reaching effects. So what happened is we had no local input as far as the landowners put into the whole

planning process. And so we ended up with something that really shouldn't be a refuge at the level that they have designed it for.

Mr. POMBO. Is that area in any danger of urbanization?

Mr. BARANEK. The South Stone Lakes area absolutely never was in that position. North Stone Lakes, there was some developers that owned property that originally wanted to develop that property, but they realized because it was a floodplain they couldn't develop it and they wanted to get some monetary returns out of it. So it ended up being a good mitigation bank and ended up being paid fairly handily and walked away from the project and got what they wanted. And I think it is a good area for an interpretive center for the inner city. I think for a small-type refuge that we can invite the public out and show them what is going on, I think it has very good effects. But this whole full-blown refuge is just going to be a big animal trap.

Mr. POMBO. You say a small refuge, urban-type refuge. You are talking about 5000 acres in the Sacramento area.

Mr. BARANEK. Yes, but that is already under public ownership. And there is the State of California, the regional sanitation district and the State of California and CAL Trans. CAL Trans has the mitigation bank in there. And it probably is a good area for a small-type refuge. But to expand it beyond that point, the rural area through cooperative agreements and so forth and working with the wildlife can do an awful lot of things without any land purchases at all. And the boundary, what it does is encumbers all this property to where it limits it as to what its future is.

Mr. POMBO. If H.R. 512 had been law, say, five years ago, how would it have changed the outcome with the South Stone Lakes area?

Mr. BARANEK. Well, I personally feel that if the law—and we had an impartial oversight, we would have a 5000 acre refuge today. It would have never expanded beyond that point. All these problems would have been brought forward and they would have seen the waste of taxpayer's money down the road in establishing wildlife habitat that probably never is going to achieve what goals—and here we have no management plan and we still don't know what they want to do and how it is going to impact everybody. All we can visually see is what is really going on.

Mr. POMBO. The property owners never opposed the North Stone Lakes area?

Mr. BARANEK. No, there was no opposition. And this is why when you hear all of the environmental people in the area saying there was overwhelming support for the refuge, the 6000 comments, because all of us did comment that we supported North Stone Lakes. And so there was no opposition from the farming and landowner community. We supported it. In fact, it was going to do something with that county ground that was just lying there doing nothing.

It was originally going to be a county park and other things and the county has no money and so they thought they would bring the Federal Government in that would bring extra money into the area that would do something with that. And we all support that, so we are not against the refuge system per se, but we are against the agency that is out of control, that will not listen to local landowners and constituents to design a better refuge and spend tax-

payers dollars better. And what it ends up doing is committing you to funds for things that probably shouldn't be there.

I would invite your whole committee to come out and really take a look at it.

Mr. POMBO. Maybe we can talk them into it.

Mr. ABERCROMBIE. You have got to talk them into giving us the money first to come out. So if somebody complains in somebody else's constituency, why, you will be there to defend us, right?

Mr. BARANEK. We will be there to defend you.

Mr. ABERCROMBIE. Thank you.

Mr. BARANEK. No, but I think it is important that we have that impartial review process. And that is why I do support this bill.

Mr. ABERCROMBIE. Does that include the committee coming out to Hawaii?

Mr. POMBO. I don't think we are going to touch that one.

Mr. Craven, do you believe that the public participation process used by Fish and Wildlife Service was fair and open in your experience?

Mr. CRAVEN. Not at all. Our experience was Fish and Wildlife Service had already cooked the deal with Nature Conservancy to make this a wildlife refuge. They had gone ahead and made verbal commitments for reimbursement to the Nature Conservancy if they would purchase the property and therefore become the willing seller. I guess a good way of putting it is the train had already left the station by the time we heard about it. Fish and Wildlife Service had no intentions of moderating their plans or making any other changes, deviation from their plan through the whole process. The only thing that brought them around to even working with us was the threat of losing funding through the appropriations committee. And that is what brought them back to the table. Otherwise they would have steamrolled us.

Mr. POMBO. When this refuge was put on the map or when you were made aware of it, had there been an appropriation?

Mr. CRAVEN. No. No, there hadn't.

Mr. POMBO. So this was created without Congressional consent?

Mr. CRAVEN. That is right, and created by Portland Region Fish and Wildlife Service almost taking on a life of their own, I guess.

Mr. POMBO. So in your—what you are telling me is that they had the ability to go out and create a refuge and then after that happened, then they would come in and request funding in order to buy what they already created?

Mr. CRAVEN. Right, in essence. It is not quite—they didn't actually create the refuge. They created the concept, but they already had the—the Nature Conservancy had bought the land that they wanted to give them the justification of having a willing seller. They kept telling us well, they had a willing seller, that is why they had the—you know, they could go ahead and justify the refuge.

Mr. POMBO. I don't remember. Did Fish and Wildlife Service eventually buy that?

Mr. CRAVEN. Yes, they did.

Mr. POMBO. They did buy it from——

Mr. CRAVEN. Yes, they did. That was one real strong stipulation they had when we made any settlements with them, was that that

had to be—they had to reimburse Nature Conservancy because Nature Conservancy had gone out on a limb on their behalf.

Mr. POMBO. Did they actually tell you that?

Mr. CRAVEN. Yes, we have documentation of that, of them admitting that, yes.

Mr. POMBO. Can you provide that to the committee?

Mr. CRAVEN. Yes, I could. I don't have it today, but I can get that sent to you, absolutely.

Mr. POMBO. Please provide that for the committee. I think that that is a serious issue that we have dealt with in the past, and if you do have documentation on that, please provide it for the record.

You say in your testimony that you entered into an MOU with Fish and Wildlife Service to manage it as a wildlife area or to benefit the wildlife in the area. I take from that that the farmers in the area didn't oppose wildlife or weren't in some way trying to get rid of the wildlife that was in the area?

Mr. CRAVEN. Absolutely not. The wildlife are there because of us, and we have always taken it in stride. In fact, hunters had—where the endangered species was had already—the only reason the endangered species was there, they shut off hunting 30 years ago and let the species continue to survive there. It is a very small, 120 head of geese that winter there. That is the only thing that we are concerned about. And it was through private farming activities that preserved those geese to begin with.

Mr. POMBO. Well, thank you very much.Mr. Abercrombie.

Mr. ABERCROMBIE. Thank you very much, Mr. Chairman. Assemblyman Richter, you tell a very compelling story, but I am not precisely sure how 511 and 512 relate to that, particularly in the light of the Army Corps of Engineer activity. I wonder if you have some suggestions with respect to the language of the bill that would address the question that you raise, or maybe you didn't raise it exactly but what is implicit in your testimony that the refuge—I don't quite get the connection between the refuge act itself and rules, regulations or procedures which may have been either inadequate or perhaps even civilly liable.

Mr. RICHTER. OK, the refuge was—the lead agency in all of this was the Corps, however in putting together the so-called refuge and the mitigation they were—in regards to the elderberry preserve and the marshland that was created, they were doing what Fish and Wildlife Service people wanted them to do. And in that case, although they were the lead agency responsible for it, they were doing—they were complying with the requirements of that agency.

As I sat here listening to all of this discussion, I was thinking that in my judgment there ought to be, whether in this statute, there ought to be a categorical exemption from the Fish and Wildlife Service, or any other agency that is involved in so-called species preservation, from having jurisdictions on dams and levees, on the walls of dams and levees. They ought to be just categorically exempt from doing that.

I mean, it would be—you know, Oroville Dam, which is one of the largest earth-fill dams in the world, which is in my district, is a—has sides where things could grow. Hopefully, you know, the statutes do not have people trying to grow things on the side of

that dam or allowing animals or natural elements to burrow into the dam so as to ultimately undermine it, but——

Mr. ABERCROMBIE. I understand.

Mr. RICHTER. [continuing]—and I am sure it wouldn't, but levees are—what people don't understand, and I have a statute to require standards for levees, not the same as dams, but standards. We don't have any standards for levees in California. I don't know that we have any standards anywhere in the United States for the standards for the construction of levees. And my position is that a levee is a dam and its foremost and primary function is to protect the urban areas that these levees are around from being inundated and flooded. It is not appropriate that somebody is trying to grow bushes or trees—and that is another thing I didn't even mention, trees on the sides of these levees and then when the water rises the trees wash out and a huge hole is created in the levee as the tree creates this—with all of the roots and everything going downstream.

But the fact is that the relationship that I am saying is that it was Fish and Wildlife Service that came up with the refuge, if you will, and the pond. That was their solution to the problem of the beetle.

Mr. ABERCROMBIE. I understand that. The reason that I was speaking to you first is because you understand the legislative responsibilities that accrue to any legislative body. They are all similar. They may be of different context, but the process is the same, because you were quite adamant about the idea, and I think this reflects also what Mr. Baranek and Mr. Craven were referring to, is whether or not you can get local input, perspective, experience, history, all of which can and should bear a direct relationship to what kind of decision is made.

Mr. RICHTER. That is correct.

Mr. ABERCROMBIE. But precisely for that reason, I think you would find some of us a bit reluctant to insert a Congressional decision. We all represent different constituencies. While I quite welcome the idea of coming out to visit where you are, Mr. Baranek, I would be very hesitant to vote on something here anymore than I would be—not that I have any doubt as to the integrity and the purposefulness and good will and intentions of any member here, but if it comes to, say, a whale sanctuary in Hawaii, it would be very—I would find it difficult to ask others to say well, just trust me on this and vote. So I am not quite sure where we would be going with the legislation to answer the very real problem that—other than the standard.

That was a good suggestion you made about perhaps where levees and dams are concerned we need to consider legislation as to how that issue should be addressed, but I am interested in what we could do institutionally here, legislatively here, to be of assistance in these circumstances rather than becoming a kind of court of last vote.

Mr. RICHTER. Well, I guess——

Mr. ABERCROMBIE. Court of first vote, even.

Mr. RICHTER. Let me put it this way, and we do have similar functions. And this is—you have raised some very good questions that you would be asked to vote on something you don't have

knowledge of and so on, but I would much rather deal with you and have my Congressman, whether it be a Democrat or a Republican representing my district, who understood that he is not going to be a representative if he doesn't understand some of these things that are going on in the district. Believe me, no matter what party he is from, I would rather have that Congressman talking to you about what the problems are with this particular refuge than for me to try to deal with some—I hate to say this—some bureaucrat manager who is not beholden to the voters of the district and does not have any connection to the voters of the district. And that is a much preferable system to appealing it to people that don't listen. I mean, the story here of these people attempting to get these guys to listen is incredible. It is really—it is almost like fiction. You couldn't have written it. They did everything to get them to recognize the mistake they were making. They never did recognize it. They never did acknowledge it. If it were in your hands, a committee or whatever, yes, you don't know but the guy who represents this district knows and he is going to talk to you. And he is going to say listen, there are problems here. Maybe you would make the wrong decision.

Mr. ABERCROMBIE. Would it be fair to say that also to avoid the idea of pork barrelling, which we are accused of all the time in that context, I suppose you don't escape it either.

Mr. RICHTER. Well, I have been in the minority a lot of the time, so we didn't get any of the pork, but I——

Mr. ABERCROMBIE. Well, see, that is what I am saying. I don't really consider that. I consider it a public investment. But, you know, we could be subject to that. In other words, there could be local considerations. You could have—and presumably we at least have the aim that the government agency is trying to act for the common good and in the public interest. So there is a necessary tension there between local knowledge and desires and the public interest and how to work that together. That is what we want to get the legislation to aim at.

If we could do that, perhaps with Congressional authorization as is suggested in the legislation here, with some provisions that insure that we just don't simply end up with a local special interest being accommodated at the expense of the common good, even including in the local area, right, because politics is politics whether it is at the village or the levee and dam level or whether it is at the White House and the various national committees. The political process is still the same. So that—we need to work that tension out in a way that accomplishes this.

Mr. RICHTER. The bureaucracy, I think, under this legislation, or certainly under the way it is now, is well represented.

Mr. ABERCROMBIE. OK.

Mr. RICHTER. And I don't think that we have to worry about the bureaucracy not being heard and not making their points. They do it quite well.

Mr. ABERCROMBIE. OK, in that context, then. Thank you very much, Mr. Assemblyman. I appreciate your candor and your insight.

In that context, Mr. Beard—and I must say, Mr. Chairman, for purposes of the record Mr. Beard and I are old friends and that he

very ably served the people of this country when he worked here in United States Congress.

And also you, Mr. Dewey, taking into account the testimony and for conversation sake let us accept the premises of the two gentlemen to your left and what Mister—what Assemblyman Richter was positing. How do we have the public interest—which again for conversation sake I will say that you represent here at this table and grant you your good intentions and good will. How is the public interest, then, to be—in the context of these bills, how is the public interest to be represented simultaneously taking into account, properly taking into account local knowledge, history, respective, et cetera?

Mr. BEARD. Is the question for me?

Mr. ABERCROMBIE. Yes, for both of you. How is this to be accomplished? Or if this bill doesn't accomplish that, can you suggest how these bills—how could that be accomplished? Although I know that Mr. Dewey, I believe, said that he with just a preliminary reading is probably supportive of the Wildlife Legacy Act that Mr. Miller introduced.

Mr. BEARD. Well, in my view both H.R. 511 and Mr. Miller's bill, really address that particular issue in essentially the same way. The Congress lays out the rules on how the system ought to be managed and how various uses ought to be treated, and then there is a public process, public planning process, which is undertaken for each refuge.

Mr. ABERCROMBIE. So would you agree——

Mr. BEARD. And so there is a debate at that time——

Mr. ABERCROMBIE. OK.

Mr. BEARD. [continuing]—on how you manage——

Mr. ABERCROMBIE. Would you agree, then, Mr. Dewey, that as it stands now, then, perhaps, there is not sufficient Congressional legislation direction as to how this should take place and it is left too much in the—within the purview, say, of Fish and Wildlife Service or whoever it might be to act or not act lacking that direction, Congressional direction and law?

Mr. DEWEY. You had alluded to the legislation I indicated support for, the Roosevelt Act. That bill has provisions regarding Congressional direction for planning on national wildlife refuges. I think that would be a useful thing, statutory direction to have. I think——

Mr. ABERCROMBIE. Do you think it would address the concerns raised by the other three gentlemen at the table?

Mr. DEWEY. I don't know in a particular, in a specific context.

Mr. ABERCROMBIE. No, I am not asking that, but I am saying is it your understanding the intention of the bill is to try to address not the specific concerns but generically what has obviously caused great consternation to Mr. Baranek and Mr. Craven and obviously Assemblyman Richter's constituents.

Mr. DEWEY. One of the fundamental goals of the Roosevelt Act is to ensure adequate public participation in decisionmaking by the Fish and Wildlife Service affecting refuges. It does so through provisions relating to the planning process that applies to individual refuges.

Mr. ABERCROMBIE. It would be Congressionally mandated?

Mr. DEWEY. Right.

Mr. ABERCROMBIE. Is that your—you haven't read the bill, Mr. Beard, yet?

Mr. BEARD. Yes.

Mr. ABERCROMBIE. You have? Is that your understanding also?

Mr. BEARD. Yes.

Mr. ABERCROMBIE. Congressionally mandated?

Mr. BEARD. Yes.

Mr. ABERCROMBIE. OK, that is all I have, Mr. Chairman. Thank you very much. I appreciate this panel and the composition of it. I think it enlightens the committee.

Mr. POMBO. Well, thank you, Mr. Abercrombie. I just had one follow-up question for Mr. Baranek and Mr. Craven. You both stated that you dealt with the Portland Office of Fish and Wildlife Service. Do either of you happen to know the name of the person that you dealt with?

Mr. CRAVEN. Yes.

Mr. POMBO. Excuse me?

Mr. CRAVEN. John Dobul. He is Assistant Regional Director, I believe, or was at that time.

Mr. POMBO. Mr. Baranek, do you happen to know?

Mr. BARANEK. Yes, it was John Dobul who we dealt with. And Peter Jerome, the lead person locally, said John Dobul is still in that position. He is the Assistant Regional Manager.

Mr. POMBO. He is still there?

Mr. BARANEK. He still is there.

Mr. POMBO. OK, thank you very much. And I would like to thank the panel very much for your testimony and especially for your patience in sticking around all day with this. I really do appreciate that. Thank you. The hearing is adjourned.

[Whereupon, at 2:00 p.m., the Subcommittee was adjourned; and the following was submitted for the record:]

STATEMENT OF WILLIAM HORN, WILDLIFE LEGISLATIVE FUND OF AMERICA

Mr. Chairman:

My name is William Horn and I am appearing on behalf of the Wildlife Legislative Fund of America (WLFA) and the 1.5 million hunters, anglers, and conservationists it represents. We greatly appreciate the opportunity to appear today and present testimony in strong support of H.R. 511.

The National Wildlife Refuge System represents 92 million acres of public land dedicated to wildlife conservation. With units in all 50 states, the System conserves a vast array of habitats and associated fish and wildlife. These public lands also provide irreplaceable recreational opportunities to hunt, fish, bird watch, and interact with North America's wildlife.

H.R. 511 would provide an organic act for the Refuge system and clearly spell out its mission and purposes to carry it into the 21st Century. It is a carefully refined measure that reflects the 1994 efforts of Senators Max Baucus (D-MT) and Bob Graham (D-FL), the bi-partisan leadership of the House Congressional Sportsmen's Caucus in the 104th Congress, contributions by the state fish and wildlife agencies via the International Association for Fish and Wildlife Agencies, and work by dozens of sporting conservation organizations. That careful work persuaded the House to pass essentially the same bill by a lopsided bi-partisan two-to-one majority on April 24, 1996.

This year's measure reflects further refinement. The WLFA supports the changes in H.R. 511 and is convinced that issues regarding land acquisition authorization, military overflights, and the consequences of government shutdowns should be dealt with in separate measures.

It is also apparent that, with one exception, there is wide-spread support for the bill's provisions. There seems to be little argument about the provisions specifying

wildlife conservation as the system mission, defining the compatibility process, establishing Refuge unit planning requirements, recognizing state primacy over fishing and hunting regulation, expressly preserving Refuge water rights, and requiring that management decisions be based on scientific data and principles.

The debate focuses instead on one provision—Section 4(d)—which states that one of the six purposes of the Refuge system is "to provide opportunities for compatible uses of refuges, consisting of fish and wildlife dependent recreation, including fishing, hunting, wildlife observation, and environmental education."

Read this provision carefully. It does not mandate fishing and hunting on all Refuge units. It does require that fishing and hunting be compatible uses. It does not "commercialize" the Refuge system nor does it eliminate the wildlife conservation mission of the System. Note too that this is one of six specified purposes; the other five are (1) habitat conservation, (2) conservation of migratory birds, (3) conservation and restoration of endangered species, (4) conservation of anadromous fish, and (5) fulfillment of international treaty obligations.

Why is it important to have compatible fishing and hunting made a purpose of the system? Very simple—the sporting community needs a statutory shield from the animal rights fanatics who have made it their mission to terminate all fishing and hunting on the public's Refuge lands. The Fish and Wildlife Service has had to fight off lawsuits seeking to end hunting. And in virtually every Congress, bills are introduced to end these activities on Refuge lands. Making these activities merely a "priority use" gives America anglers and hunters short shrift. They should be entitled to a simple statutory declaration that providing compatible fishing and hunting is one of the purposes of the Refuge system. No federal judge, or no Secretary of the Interior, is going to be able to ignore or explain away such a straightforward plain spoken declaration recognizing that hunting and fishing have a place on Refuge lands.

The behavior of the bill's critics—most notably the major environmental interests—also demonstrate the need for a clear and plain declaration in support of hunting and fishing. H.R. 511 and H.R. 1675 have been the subject of an incredible campaign of distortion, disinformation, and misinformation. These critics have speciously alleged that the bill eliminates the conservation mission of the system (section 4 does precisely the opposite), mandates hunting and fishing everywhere (section 8 does the opposite), "commercializes" the Refuge system (section 4(a)(3) sets forth six "conservation" purposes) "drenches" the System in pesticide use, and allows grazing, oil and gas activity, and jet ski use everywhere (these sections must be written in invisible ink). H.R. 511 is an important wildlife conservation measure which will ensure that our Refuge system is managed effectively into the next century. And making compatible wildlife-dependent recreation a purpose of the System ensures that Congressional support for these traditional activities will not be misconstrued.

We appreciate the leadership this Subcommittee has played on this legislation and we look forward to working with you to quickly enact H.R. 511.

STATEMENT OF RODGER SCHLICKEISEN, PRESIDENT, DEFENDERS OF WILDLIFE

Mr. Chairman, I am Rodger Schlickeisen, President of Defenders of Wildlife. I appreciate your invitation to testify today on behalf of Defenders' nearly 200,000 members and supporters.

First, I would like to thank the Committee for its interest in the future of the National Wildlife Refuge System. Defenders of Wildlife has long believed that additional statutory direction could provide the System with greater unity of purpose, future direction and the expanded authorities needed to strengthen its ability to conserve fish, wildlife and plants. H.R. 511 attempts to tackle many of these complex issues. In particular, we support efforts in H.R. 511 to formalize the "compatibility process" used to regulate secondary uses of refuges and the recognition of the System's role in contributing to the conservation of the nation's ecosystems in its continued growth.

But make no mistake about it, Mr. Chairman, Defenders of Wildlife believes that legislation to accomplish the overarching goal of H.R. 511—expanding recreational activities in the National Wildlife Refuge System—is not necessary and would fundamentally weaken the Refuge System. We strongly oppose enactment of H.R. 511 and the closely related bill H.R. 512.

Defenders of Wildlife is a national conservation organization with a long history of involvement with issues relating to the management of the National Wildlife Refuge System. In the 1970's, we published a report with recommendations for improving the management of the Refuge System and later served on a special Department

of the Interior sponsored task force that developed *Final Recommendations on the Management of the National Wildlife Refuge System*, another report containing recommendations for major changes in refuge administration. Since then, Defenders has been involved in a wide range of administrative, legislative and judicial activities concerning the management of individual units of the Refuge System and the System as a whole.

In 1992, we released a report by the Commission on New Directions for the National Wildlife Refuge System entitled *Putting Wildlife First*. That report contained recommendations of an independent, blue ribbon, panel of wildlife scientists, conservation historians, state natural resource managers, legal scholars and academics who conducted an eighteen-month review of the Refuge System. The Commission reviewed the history of the Refuge System and current management issues. Its report makes recommendations regarding the present management and future direction of the System. We believe that H.R. 511 and H.R. 512 are fundamentally inconsistent with both the history of the Refuge System and the important future conservation challenges identified by this distinguished and independent commission.

Legislation to Accomplish the Principal Goal of H.R. 511 is Not Necessary and Would Be Damaging to the National Wildlife Refuge System

Over 4,500 secondary uses are now permitted in the National Wildlife Refuge System. (A list of uses permitted by the U.S. Fish and Wildlife Service (FWS) as of 1995 is included as Exhibit I.) Providing recreational activities, in particular, is already an extremely high priority for the Refuge System. As of Fiscal Year 1995, more than 95 percent of the 92 million acres in the Refuge System were open to hunting. Hunting now occurs on over half of the 509 national wildlife refuges. Just last year President Clinton further amplified the current emphasis on recreational activities. Executive Order 12996 directs the Interior Secretary to "provide expanded opportunities" for "priority public uses "including "hunting, fishing, wildlife observation and photography, and environmental education and interpretation." Recreational activities should have an important role in the Refuge System. They should not, however, be elevated to such a priority that they are placed in direct competition with wildlife conservation for management priority and funding. When this happens the resource and recreational enthusiasts both lose.

H.R. 511 contains various provisions which collectively would cause a dramatic and historic shift in the Refuge System away from wildlife conservation and toward increased public use. The bill would take the Refuge System away from the conservation focus that has guided the System since its establishment by Teddy Roosevelt ninety-four years ago. Wildlife refuges are fundamentally different from other federal land systems, such as national parks and forests. Wildlife conservation always has been the System's principal focus. Over the years, numerous statutes, such as the 1962 Refuge Recreation Act and the 1966 National Wildlife Refuge System Administration Act, have reaffirmed the fundamental principle that recreational uses are important but secondary to wildlife conservation on federal refuges. We believe that the cumulative effect of various provisions in H.R. 511 would fundamentally change this relationship.

H.R. 511 undermines the Refuge System in four principal respects.

1. The bill severely weakens the FWS's current statutory authority to regulate certain recreational uses and codifies the existing weak administrative standard used to regulate all uses.
2. The bill makes certain recreational uses co-equal with wildlife conservation as purposes of the National Wildlife Refuge System.
3. In this time of tight federal budgets, the bill would cause the FWS to devote increased agency resources and staff to recreational uses, which would come ultimately at the expense of wildlife conservation programs.
4. As the National Wildlife Refuge System moves into the 21st Century, H.R. 511 focuses the System on providing additional recreational activities while ignoring increasingly important management challenges relating to biological diversity.

Regulation of Recreational Uses

H.R. 511 impairs FWS's ability to regulate certain recreational activities on national wildlife refuges in several specific respects:

•Section 3 of the bill defines key terms such as "conserving" and "manage" to include live trapping and regulated taking (hunting and fishing). Since these terms are used throughout the purposes section (4) of the bill, and that section is the basis for determining whether or not to permit a particular use, these definitions would frustrate efforts to effectively regulate hunting, fishing and trapping.

•Section 4(D) makes providing opportunities for "compatible" fish and wildlife dependent recreation a System purpose. This is problematic because the definition section (3) makes these activities synonymous with words used throughout the pur-

poses section (4). Since compatibility is measured, in part, against System purposes, the definition section makes the standard for review circular. Moreover, in section 3, compatibility is defined in terms of consistency with either System purposes or individual refuge purposes. Due to the circularity problem detailed above, all the recreational activities specified in the bill could be determined compatible per se.

•Compounding this circularity problem, Section 6 contains a provision that creates a presumption that specified recreational uses are "generally compatible."

•Section 6 also contains a provision that gives special and preferential treatment to hunting and fishing on national wildlife refuges by essentially subjecting these uses to a different and weaker standard than any other category of secondary use. The provision stands on its head the FWS's existing discretionary authority to permit these uses and virtually mandates that they be allowed. Under this provision, these activities effectively must be allowed unless they can be proved to be: 1) incompatible (which is nearly impossible under the process established in the bill); 2) inconsistent with the principles of sound wildlife management; or 3) inconsistent with public safety.

•Language in Section 8(a) states that hunting and fishing are only to be allowed after the review process specified in the bill has been followed. As noted above, however, this process makes it virtually impossible for the FWS to ever find these activities incompatible.

•Section 5 defines a "compatible use" as one that "will not materially interfere with or detract from" the purposes of a refuge or the mission and purposes of the System. Since the controlling phrase is stated as an "either-or," the practical effect of this language is to enshrine the existing weak administrative "materially interfere" definition as the statutory basis for determining the compatibility of all secondary uses.

Effectively conserving wildlife in the midst of increasing demand for use of national wildlife refuges has been a longstanding challenge for refuge managers. Over the past 30 years a seemingly endless stream of reports by government agencies and private organizations has repeatedly expressed concern over excessive use of refuges. (A summary of some of those studies prepared by The Wilderness Society is included as Exhibit II.) In 1989, for example, the U.S. General Accounting Office (GAO) issued *National Wildlife Refuges: Continuing Problems with Incompatible Uses Call for Bold Action.* The GAO report, based on confidential questionnaires sent to 444 refuge managers and responses from 428 managers, revealed that 59 percent of the national wildlife refuges suffered from harmful uses that adversely affect the ability of refuge managers to manage for the wildlife purposes for which their refuge was created. Following the GAO report, the FWS appointed a Compatibility Task Group to conduct interviews with the managers of wildlife refuges and Waterfowl Production Areas. The Task Group's 1990 report, *Secondary Uses Occurring on National Wildlife Refuges,* surveyed 478 units of the Refuge System, and found that 63 percent of the refuges had harmful uses. The FWS report identified Florida's "Ding" Darling National Wildlife Refuge as having the greatest number of incompatible uses. Most of the incompatible uses at "Ding" Darling were attributed to levels of public use exceeding the carrying capacity of the resource. Wildlife observation and wildlife tour routes were identified as two of the incompatible uses at this refuge.

Today, the concerns raised in the GAO and FWS reports have been, or are being, brought under control. However, the long history of the reports demonstrates that widespread secondary use problems have a predictable habit of again taking root after a major reform effort. Thus, a familiar cycle exists in the management of refuge: In response to widespread problems, FWS places greater emphasis on controlling incompatible uses and on and on. This "fixed-broken" cycle has repeated itself over and over again in recent decades.

H.R. 511 undermines FWS' ability to effectively regulate secondary uses in two general ways. First, it would effectively establish a separate and weaker compatibility standard for certain types of recreational activities. Second, it would codify the existing but weak administrative definition of what constitutes a compatible use. Report after report has shown that, depending upon the circumstances, any type of use can be incompatible. All uses, including ones that are "wildlife dependent," should be held to the same effective regulatory standard.

Purposes of the National Wildlife Refuge System

H.R. 511 makes certain recreational uses co-equal with the conservation purposes of the National Wildlife Refuge System.

•Section 4(D) makes providing opportunities for "compatible" fish and wildlife dependent recreation a System purpose.

The bill establishes, for the first time ever, a set of system-wide purposes for the National Wildlife Refuge System. The importance of Congress establishing System purposes should not be overlooked. H.R. 511 would define in statute an identity for the only network of federal lands dedicated to wildlife conservation. The System purposes articulated in section 4 constitute the essence of the so-called "organic acts" that have long provided the basic management philosophy for our national parks, forests and Bureau of Land Management areas.

While various types of recreational activities and environmental education can, and should, play an important role in the Refuge System, such uses should not be afforded equal status with the System's various wildlife conservation purposes. Since the inception of the Refuge System, a clear distinction has always existed between "purposes" and "uses." That distinction must continue.

Allocation of Agency Resources and Staff

H.R. 511 gives certain recreational uses a leg up in the competition for increasingly scarce agency resources and staff and could lead the FWS to spend a disproportionate share of its resources on administering public use programs instead of conserving waterfowl, migratory birds, endangered species and other important elements of the nation's biological diversity.

•A provision in Section 6 states that "no other determinations or findings, except the consistency with State laws and regulations provided in subsection (m), are required to be made for fishing and hunting to occur." This language could easily be interpreted as implicitly repealing an existing requirement, contained in the 1962 Refuge Recreation Act, that the FWS must find that funding is available to administer public use programs before those programs are permitted.

Chronic funding shortfalls for the Refuge System led Defenders of Wildlife and other groups to join together in 1995 to form the Cooperative Alliance for Refuge Enhancement (CARE). CARE works to educate the American public and Congress about the need for greater federal funding for the Refuge System. Testifying on behalf of CARE earlier this week, the Wildlife Management Institute told the House Interior Appropriations Subcommittee that management programs to help recover endangered, threatened and candidate species, restore habitats and address resource threats are left unaccomplished on an increasing number of refuges. Another important but unmet resource conservation priority, I might add, relates to inventorying and monitoring the status and trends of fish, wildlife and plants in each refuge. As an active member of CARE, Defenders has supported the current federal resource allocation. This allocation places strong emphasis on providing recreational opportunities while assuring that this emphasis does not overshadow the need for important programs which directly benefit species and habitat. This balance must not be tipped in favor of public use over conservation.

Preparing the National Wildlife System for the Challenges of the 21st Century

Apart from inappropriately boosting the role of recreation in the National Wildlife Refuge System, H.R. 511 fails to recognize long overdue conservation needs relating to management of the System for species diversity. Refuge management legislation sponsored in the 103rd Congress by Sen. Bob Graham and Rep. Sam Gibbons stated explicitly that conserving biological diversity was one of purposes of the Refuge System. There is a strong international scientific consensus that depletion of biodiversity through the loss of species and natural habitat is one of the world's most serious environmental problems. The 1992 Putting Wildlife First report pointed out that any serious effort to protect biodiversity must start with the national wildlife refuges, the only system of federal lands for which protecting species and habitat is its top priority. The urgency of placing greater emphasis on biological diversity was further amplified by a 1995 Defenders of Wildlife study entitled *Endangered Ecosystems: A Status Report on America's Vanishing Habitat and Wildlife.* The scientific study found that natural ecosystems throughout the nation are in serious decline, especially those in Florida, California and Hawaii.

In articulating a set of purposes for the Refuge System, a careful balance must be struck between FWS's obligation to manage for traditional so-called "trust species" and the Refuge System's need to help conserve the diversity of this nation's fish, wildlife and plants. The absence of species diversity language in the purposes section of H.R. 511 is likely to discourage the FWS from even making biological diversity an important consideration in the management of federal refuges. As the nation approaches the 21st Century, this is simply unacceptable for the only network of federal lands established to conserve fish and wildlife.

H.R. 512: Discouraging the Establishment of New Refuges

Several recent reports, including *Putting Wildlife First* and the *Endangered Ecosystems* report, underscore the importance of acquiring and protecting represent-

ative portions of unique habitat types before they are lost forever. Unfortunately, H.R. 512 would erect a substantial new road block to habitat acquisitions that may be needed to improve the Refuge System. H.R. 512 requires a separate Congressional authorization, in addition to the already required appropriation law, before any Land Water Conservation Funds can be used for the establishment of a new refuge. The bill is identical to a committee amendment offered by Rep. Richard Pombo that added the provision to refuge management legislation considered in the 104th Congress (H.R. 1675). H.R. 512 would severely constrain FWS's ability to purchase quickly important habitat offered by willing sellers.

Even under the existing acquisition process, landowners are routinely told by the FWS that they must wait at least one and one-half to two years for Congress to appropriate funds. This delay has already proven unacceptable to some willing sellers. In Vermilion Parish, Louisiana, for example, FWS has apparently lost the opportunity to establish a new 7,700 acre refuge to protect wetlands and migratory birds and other species because the owners of the 5,000 acre Latanier Bayou tract could not wait for federal funds to become available. Lengthening an already long wait will only serve to further discourage willing sellers and exacerbate FWS's difficulties in acquiring land for new refuges. Requiring that Congress enact a separate law could effectively stymie the protection of biologically-important and imperiled wildlife habitat through the establishment of new refuges.

Does the Refuge System Need New Legislation?

Proponents of H.R. 511 point out there is no statutory list of purposes for the National Wildlife Refuge System, and no statutory definition of what constitutes a "compatible" use of a refuge, and that the refuges are not managed as a national system. If these were the primary goals of H.R. 511 Defenders of Wildlife could be a ready supporter. Indeed, Defenders and other conservation groups earlier urged Congress to enact the National Wildlife Refuge System Management and Policy Act, a bill sponsored by Senator Bob Graham. Unfortunately, the primary thrust of H.R. 511 is to inappropriately and unnecessarily elevate recreation at the expense of wildlife conservation. Defenders of Wildlife understands that Representative George Miller has, or will shortly, introduced refuge management legislation entitled the "Theodore Roosevelt Wildlife Legacy Act of 1997." We have reviewed a draft of this bill and believe that it accomplishes management objectives vital to the functioning of the National Wildlife Refuge System in the 21st Century without threatening the integrity of the System. The Theodore Roosevelt Wildlife Legacy Act provides a constructive approach that we urge the Committee to consider as an alternative to H.R. 511.

We urge the Committee to support the Theodore Roosevelt Wildlife Legacy Act as a balanced and sensible alternative to the step backward that H.R. 511 and H.R. 512 represent.

Exhibit 1

Uses Occurring on National Wildlife Refuges Which USFWS Can "Regulate and Control" (as of 1995)

Boat Ramps	1
Boating	1
Commercial Gathering (berries, Etc.)	1
Commercial Navigation	1
Educational Films And Photography Workshops	1
Hydroelectric Development	1
Landfills, Incinerators, Factories, Etc.	1
Mariculture	1
Mineral Exploration	1
Minnow Trapping	1
National Weather Services Automatic Rain Gauge	1
Radio Tower	1
Rollerblading/skating	1
Snorkeling And Scuba Diving	1
Water Extraction (nondomestic)	1
Wireless Aircraft Operation	1
Cemetary (active)	2
Commercial Boat Moorage	2
Fossil Collecting	2
Gas And Oil Extraction	2
Gravel Extraction	2
Houseboat Moorage	2
Military Air Exercises	2
Military Facilities	2
Other Natural Resource Development	2
Sewage Effluent	2
Shopping Centers, Stores, Banks, Other Retail Facilities.	2
Caving	3
Mining	3
Pets	3
Providing Public Access	3
Retained Occupancy Residence	3
Technical Climbing	3
Water Extraction (domestic)	3
Equipment/facility Rental	4
Frogging	4
Military Ground Exercises	4
Residential Activity	4
Airboats And Hovercraft	5
Concessions (other)	5
Gas And Oil Exploration	5
Ice Skating	5
Rockhounding	5
Water Skiing	5
Christmas Tree Harvesting	6
Personal Watercraft	6
Dredge Or Fill	8
Fishery Enhancement	8
Mountain Biking	9
Other Predator And Pest Management	10
Commercial Passenger Transport	12
Dogsledding	13
Exotic Plant And Animal Management	13
Subsistence Fishing	14
Subsistence Hunting	14
Subsistence Trapping	14
Scientific Collecting	16
Wildlife Photography And Art	16
Guided Sport Fishing	17
Subsistence Gathering	17
Civilian Aircraft Landings	19
Fishing Derbies, Clinics, Tournaments	20
Commercial Fishing	21
Snowmobiles	23
Field Trials	24
Other Hunting	24
Guided Sport Hunting	25
Chemical Weed Management	26
Commercial Photography And Video	27
Off-road Vehicles (other)	27
Mosquito And Other Vector Management	37
Timber Harvest	38
Private Exclusive Use (other)	39
Predator Management	41
Snowshoeing	41
Swimming And Beach Use	44
Guided Tours	45
Firewood Cutting	47
Beekeeping	49
Cross-country Skiing	52
Rights-of-way	53
Camping	57
Horseback Riding	58
Powerboats (other)	65
Picnicking	66
Noncommercial Gathering (berries, Etc.)	67
Bicycling	73
Boating (non-motorized)	92
Permitted Special Use (other)	92
Haying And Ensilage	101
Trapping	101
Jogging And Walking	102
Grazing	116
Other Migratory Bird Hunting	120
Teacher Workshops	120
Hiking And Backpacking	131
Farming	135
Teaching Students	160
Nonstaff Conducted Activities	185
Upland Game Hunting	186
Waterfowl Hunting	186
Interpretation	205
Big Game Hunting	207
Recreational Fishing	210
Scientific Field Studies	212
Wildlife Photography	221
Wildlife Observation	304
Total Uses NWRS can "Regulate and Control" =	4,592

Exhibit II

Over the last quarter century, over a dozen major reports have identified problems in the National Wildlife Refuge System. For example,

In 1968 . . . The "National Wildlife Refuge System Advisory Board on Wildlife Management", appointed by Secretary of Interior Stewart L. Udall wrote:

"The proximity of urban masses leads inevitably to pressure for larger picnic grounds, camping facilities, improved swimming beaches, motorboat marinas, water skiing, bridle paths, target ranges, and other assorted forms of play which are only obliquely related to refuge purposes." (from *Report on the National Wildlife Refuge System*)

In 1979 . . . The "National Wildlife Refuge Study Task Force" appointed by Assistant Secretary of Interior Robert Herbst wrote:

"Local pressures to use refuge lands for such benefits as grazing, timber harvesting, and public recreation prevent refuge managers from effectively managing refuges primarily for wildlife. . . Pressures to develop or degrade refuges for economic gain are growing exponentially." (from *Recommendations on the Management of the National Wildlife Refuge System.*)

In 1981 . . . The General Accounting Office wrote:

"The Service is properly operating and maintaining only about 46 percent of the nation's refuges. . . Local pressures to use refuge lands for such benefits as grazing, timber harvesting, and public recreation prevent refuge managers from effectively managing refuges primarily for wildlife." (from *National Direction Required for Effective Management of America's Fish and Wildlife.*)

In 1983 . . . The U.S. Fish and Wildlife Service wrote:

"Threats associated with pollutants, land uses, public uses, exotic species, individual development projects, etc. . . . are currently causing or have the potential to cause significant damage to Service-managed natural resources. . . An average of 18.6 resource problems were reported per refuge." (from *Fish and Wildlife Service Resource Problems, National Wildlife Refuges, National Fish Hatcheries, Research Centers*)

In 1989 . . . General Accounting Office wrote:

"National Wildlife Refuges are frequently not the pristine wildlife sanctuaries implied by their name. . . Despite the requirements that only compatible secondary activities be permitted, refuge managers report that activities they consider harmful to wildlife resources (such as power boating oil and gas drilling, mining, jet-skiing, over-grazing, and off-road vehicles) are occurring on nearly 60 percent of the wildlife refuges." (from *National Wildlife Refuges: Continuing Problems with Incompatible Uses Call for Bold Action.*)

In 1991 . . . **The U.S. Fish and Wildlife Service wrote:**

"Incompatible and harmful uses are occurring on many national wildlife refuges. . . Refuge managers reported 836 use occurrences as being harmful to refuge operations. . . The survey results indicated that 63% of refuge units reported [at least one] harmful use." (from *Report of Secondary Uses Occurring on National Wildlife Refuges*)

In 1993 . . . **The Interior Department's Inspector General wrote:**

"We concluded that at all of the refuges we visited, the U.S. Fish and Wildlife Service had not maintained the refuges in a manner that would effectively enhance and protect the wildlife." (from *Maintenance of Wildlife Refuges, U.S.Fish and Wildlife Service*)

I

105TH CONGRESS
1ST SESSION

H. R. 511

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

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 4, 1997

Mr. YOUNG of Alaska (for himself, Mr. DINGELL, Mr. SAXTON, Mr. TANNER, and Mr. CUNNINGHAM) introduced the following bill; which was referred to the Committee on Resources

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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.

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

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 91,000,000 acres of Federal lands
8 that have been incorporated within 511 individual
9 units located in all 50 States and our territories.

10 (2) The System was created to conserve fish,
11 wildlife, and other habitats and this conservation
12 mission has been facilitated by providing Americans
13 opportunities to participate in wildlife-dependent
14 recreation, including fishing and hunting, on System
15 lands and to better appreciate the value of and need
16 for fish and wildlife conservation.

17 (3) The System includes lands purchased not
18 only through the use of tax dollars but also through
19 the sale of Duck Stamps and refuge entrance fees.
20 It is a System paid for by those utilizing it.

21 (4) On March 25, 1996, the President issued
22 Executive Order 12996 which recognized "wildlife-
23 dependent recreational activities involving hunting,
24 fishing, wildlife observation and photography, and

1 environmental education and interpretation as prior-
2 ity general public uses of the Refuge System".
3 (5) Executive Order 12996 is a positive step in
4 the right direction and will serve as the foundation
5 for the permanent statutory changes made by this
6 Act.

7 **SEC. 3. DEFINITIONS.**

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

10 **"SEC. 5. DEFINITIONS.**

11 "For purposes of this Act:
12 "(1) The term 'compatible use' means a use
13 that will not materially interfere with or detract
14 from the fulfillment of the purposes of a refuge or
15 the overall mission and purposes of the System spec-
16 ified in sections 4(a) (2) and (3), respectively, as de-
17 termined by sound resource management, and based
18 on reliable scientific information.
19 "(2) The terms 'conserving', 'conservation',
20 'manage', 'managing', and 'management', when used
21 with respect to fish and wildlife, mean to use, in ac-
22 cordance with applicable Federal and State laws,

1 methods and procedures associated with modern sci-
2 entific resource programs including protection, re-
3 search, census, law enforcement, habitat manage-
4 ment, propagation, live trapping and transplan-
5 tation, and regulated taking.

6 "(3) The term 'Coordination Area' means a
7 wildlife management area that is acquired by the
8 Federal Government and subsequently made avail-
9 able to a State—

10 "(A) by cooperative agreement between the
11 United States Fish and Wildlife Service and the
12 State fish and game agency pursuant to the
13 Fish and Wildlife Coordination Act (16 U.S.C.
14 661–666c); or

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

18 "(4) The term 'Director' means the Director of
19 the United States Fish and Wildlife Service.

20 "(5) The terms 'fish', 'wildlife', and 'fish and
21 wildlife' mean any wild member of the animal king-
22 dom whether alive or dead, and regardless of wheth-
23 er the member was bred, hatched, or born in cap-
24 tivity, including a part, product, egg, or offspring of
25 the member.

1 "(6) The term 'person' means any individual,
2 partnership, corporation or association.
3 "(7) The term 'plant' means any member of the
4 plant kingdom in a wild, unconfined state, including
5 any plant community, seed, root, or other part of a
6 plant.
7 "(8) The terms 'purposes of the refuge' and
8 'purposes of each refuge' mean the purposes speci-
9 fied in or derived from the law, proclamation, execu-
10 tive order, agreement, public land order, donation
11 document, or administrative memorandum establish-
12 ing, authorizing, or expanding a refuge, refuge unit,
13 or refuge subunit.
14 "(9) The term 'refuge' means a designated area
15 of land, water, or an interest in land or water within
16 the System, but does not include navigational ser-
17 vitudes or Coordination Areas.
18 "(10) The term 'Secretary' means the Secretary
19 of the Interior.
20 "(11) The terms 'State' and 'United States'
21 mean the several States of the United States, Puerto
22 Rico, American Samoa, the Virgin Islands, Guam,
23 and the insular possessions of the United States.

1 "(12) The term 'System' means the National
2 Wildlife Refuge System designated under section
3 4(a)(1).
4 "(13) The terms 'take', 'taking', and 'taken'
5 mean to pursue, hunt, shoot, capture, collect, or kill,
6 or to attempt to pursue, hunt, shoot, capture, col-
7 lect, or kill.".
8 (b) CONFORMING AMENDMENT.—Section 4 (16
9 U.S.C. 668dd) is amended by striking "Secretary of the
10 Interior" each place it appears and inserting "Secretary".
11 **SEC. 4. MISSION AND PURPOSES OF THE SYSTEM.**
12 Section 4(a) (16 U.S.C. 668dd(a)) is amended—
13 (1) by redesignating paragraphs (2) and (3) as
14 paragraphs (5) and (6), respectively;
15 (2) in clause (i) of paragraph (6) (as so redesig-
16 nated), by striking "paragraph (2)" and inserting
17 "paragraph (5)"; and
18 (3) by inserting after paragraph (1) the follow-
19 ing new paragraphs:
20 "(2) The overall mission of the System is to conserve
21 and manage fish, wildlife, and plants and their habitats
22 within the System for the benefit of present and future
23 generations of the people of the United States.
24 "(3) The purposes of the System are—

1 "(A) to provide a national network of lands and
2 waters designed to conserve and manage fish, wild-
3 life, and plants and their habitats;
4 "(B) to conserve, manage, and where appro-
5 priate restore fish and wildlife populations, plant
6 communities, and refuge habitats within the System;
7 "(C) to conserve and manage migratory birds,
8 anadromous or interjurisdictional fish species, and
9 marine mammals within the System;
10 "(D) to provide opportunities for compatible
11 uses of refuges consisting of fish- and wildlife-de-
12 pendent recreation, including fishing and hunting,
13 wildlife observation, and environmental education;
14 "(E) to preserve, restore, and recover fish, wild-
15 life, and plants within the System that are listed or
16 are candidates for threatened species or endangered
17 species under section 4 of the Endangered Species
18 Act of 1973 (16 U.S.C. 1533) and the habitats on
19 which these species depend; and
20 "(F) to fulfill as appropriate international trea-
21 ty obligations of the United States with respect to
22 fish, wildlife, and plants, and their habitats.".
23 **SEC. 5. ADMINISTRATION OF THE SYSTEM.**
24 (a) ADMINISTRATION, GENERALLY.—Section 4(a)
25 (16 U.S.C. 668dd(a)), as amended by section 3 of this

1 Act, is further amended by inserting after new paragraph
2 (3) the following new paragraph:
3 "(4) In administering the System, the Secretary
4 shall—
5 "(A) ensure that the mission and purposes of
6 the System described in paragraphs (2) and (3), re-
7 spectively, and the purposes of each refuge are car-
8 ried out, except that if a conflict exists between the
9 purposes of a refuge and any purpose of the System,
10 the conflict shall be resolved in a manner that first
11 protects the purposes of the refuge, and, to the ex-
12 tent practicable, that also achieves the purposes of
13 the System;
14 "(B) provide for conservation of fish and wild-
15 life and their habitats within the System;
16 "(C) ensure effective coordination, interaction,
17 and cooperation with owners of land adjoining ref-
18 uges and the fish and wildlife agency of the States
19 in which the units of the System are located;
20 "(D) assist in the maintenance of adequate
21 water quantity and water quality to fulfill the pur-
22 poses of the System and the purposes of each
23 refuge;

1 "(E) acquire under State law through purchase,
2 exchange, or donation water rights that are needed
3 for refuge purposes;
4 "(F) plan, propose, and direct appropriate ex-
5 pansion of the System in the manner that is best de-
6 signed to accomplish the purposes of the System and
7 the purposes of each refuge and to complement ef-
8 forts of States and other Federal agencies to con-
9 serve fish and wildlife and their habitats;
10 "(G) recognize compatible uses of refuges con-
11 sisting of wildlife-dependent recreational activities
12 involving hunting, fishing, wildlife observation and
13 photography, and environmental education and in-
14 terpretation as priority general public uses of the
15 System through which the American public can de-
16 velop an appreciation for fish and wildlife;
17 "(H) provide expanded opportunities for these
18 priority public uses within the System when they are
19 compatible and consistent with sound principles of
20 fish and wildlife management;
21 "(I) ensure that such priority public uses re-
22 ceive enhanced attention in planning and manage-
23 ment within the System;

1 "(J) provide increased opportunities for families
2 to experience wildlife-dependent recreation, particu-
3 larly opportunities for parents and their children to
4 safely engage in traditional outdoor activities, such
5 as fishing and hunting;
6 "(K) ensure that the biological integrity and en-
7 vironmental health of the System is maintained for
8 the benefit of present and future generations of
9 Americans;
10 "(L) continue, consistent with existing laws and
11 interagency agreements, authorized or permitted
12 uses of units of the System by other Federal agen-
13 cies, including those necessary to facilitate military
14 preparedness;
15 "(M) plan and direct the continued growth of
16 the System in a manner that is best designed to ac-
17 complish the mission of the System, to contribute to
18 the conservation of the ecosystems of the United
19 States, and to increase support for the System and
20 participation from conservation partners and the
21 public;
22 "(N) ensure timely and effective cooperation
23 and collaboration with Federal agencies and State
24 fish and wildlife agencies during the course of ac-
25 quiring and managing refuges;

"(O) ensure appropriate public involvement opportunities will be provided in conjunction with refuge planning and management activities; and

"(P) identify, prior to acquisition, existing wildlife-dependent compatible uses of new refuge lands that shall be permitted to continue on an interim basis pending completion of comprehensive planning.".

(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 paragraph:

1 "(4) Subject to standards established by and
2 the overall management oversight of the Director,
3 and consistent with standards established by this
4 Act, enter into cooperative agreements with State
5 fish and wildlife agencies and other entities for the
6 management of programs on a refuge or the man-
7 agement of parts of a refuge.".

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

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

11 "(3)(A)(i) Except as provided in clause (ii), on
12 and after the date that is 3 years after the date of
13 the enactment of the National Wildlife Refuge Sys-
14 tem Improvement Act of 1997, the Secretary shall
15 not initiate or permit a new use of a refuge or ex-
16 pand, renew, or extend an existing use of a refuge,
17 unless the Secretary has determined that the use is
18 a compatible use.

19 "(ii) On lands added to the System after the
20 date of the enactment of the National Wildlife Ref-
21 uge System Improvement Act of 1997, any existing
22 fish or wildlife-dependent use of a refuge, including
23 fishing, hunting, wildlife observation, and environ-
24 mental education, shall be permitted to continue on

1 an interim basis unless the Secretary determines
2 that the use is not a compatible use.
3 "(iii) The Secretary shall permit fishing and
4 hunting on a refuge if the Secretary determines that
5 the activities are consistent with the principles of
6 sound fish and wildlife management, are compatible
7 uses consistent with the purposes of the System
8 under subsection (a)(3)), and are consistent with
9 public safety. No other determinations or findings,
10 except the determination of consistency with State
11 laws and regulations provided for in subsection (m),
12 are required to be made for fishing and hunting to
13 occur. The Secretary may make the determination
14 referred to in this paragraph for a refuge concur-
15 rently with the development of a conservation plan
16 for the refuge under subsection (e).
17 "(iv) A new use of a Coordination Area first
18 made available to a State after the date of enact-
19 ment of the National Wildlife Refuge System Im-
20 provement Act of 1997 may not be initiated or per-
21 mitted unless the Secretary determines that the use
22 is a compatible use.
23 "(B) Not later than 24 months after the date
24 of the enactment of the National Wildlife Refuge
25 System Improvement Act of 1997, the Secretary

1 shall issue final regulations establishing the process
2 for determining under subparagraph (A) whether a
3 use of a refuge is a compatible use. These regula-
4 tions shall—
5 "(i) designate the refuge officer responsible
6 for making initial compatibility determinations;
7 "(ii) require an estimate of the timeframe,
8 location, manner, and purpose of each use;
9 "(iii) identify the effects of each use on
10 refuge resources and purposes of each refuge;
11 "(iv) require that compatibility determina-
12 tions be made in writing and consider the best
13 professional judgment of the refuge officer des-
14 ignated under clause (i);
15 "(v) provide for the expedited consider-
16 ation of uses that will likely have no detrimen-
17 tal effect on the fulfillment of the purposes of
18 a refuge or the purposes of the System specified
19 in subsection (a)(3);
20 "(vi) provide for the elimination or modi-
21 fication of any use as expeditiously as prac-
22 ticable after a determination is made that the
23 use is not a compatible use;
24 "(vii) require, after an opportunity for
25 public comment, reevaluation of each existing

1 use, other than those uses specified in clause
2 (viii), when conditions under which the use is
3 permitted change significantly or when there is
4 significant new information regarding the ef-
5 fects of the use, but not less frequently than
6 once every 10 years, to ensure that the use re-
7 mains a compatible use;
8 "(viii) require after an opportunity for
9 public comment reevaluation of each fish and
10 wildlife-dependent recreational use when condi-
11 tions under which the use is permitted change
12 significantly or when there is significant new in-
13 formation regarding the effects of the use, but
14 not less frequently than in conjunction with
15 each preparation or revision of a conservation
16 plan under subsection (e) or at least every 15
17 years;
18 "(ix) provide an opportunity for public re-
19 view and comment on each evaluation of a use,
20 unless an opportunity for public review and
21 comment on the evaluation of the use has al-
22 ready been provided during the development or
23 revision of a conservation plan for the refuge
24 under subsection (e) or has otherwise been pro-
25 vided during routine, periodic determinations of

1 compatibility for fish- and wildlife-dependent
2 recreational uses; and
3 "(x) provide that when managed in accord-
4 ance with principles of sound fish and wildlife
5 management, fishing, hunting, wildlife observa-
6 tion, and environmental education in a refuge
7 are generally compatible uses.
8 "(4) The provisions of this Act relating to de-
9 terminations of the compatibility of a use shall not
10 apply to—
11 "(A) overflights above a refuge; and
12 "(B) activities authorized, funded, or con-
13 ducted by a Federal agency (other than the
14 United States Fish and Wildlife Service) which
15 has primary jurisdiction over the refuge or a
16 portion of the refuge, if the management of
17 those activities is in accordance with a memo-
18 randum of understanding between the Secretary
19 or the Director and the head of the Federal
20 agency with primary jurisdiction over the refuge
21 governing the use of the refuge.
22 "(5) Overflights above a refuge may be gov-
23 erned by any memorandum of understanding entered
24 into by the Secretary that applies to the refuge.".

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

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

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

6 (2) by inserting after subsection (d) the follow-
7 ing new subsection:

8 "(e)(1)(A) Except with respect to refuge lands in
9 Alaska (which shall be governed by the refuge planning
10 provisions of the Alaska National Interest Lands Con-
11 servation Act (16 U.S.C. 3101 et seq.)), the Secretary
12 shall—

13 "(i) propose a comprehensive conservation plan
14 for each refuge or related complex of refuges (re-
15 ferred to in this subsection as a 'planning unit') in
16 the System;

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

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

25 "(iv) not less frequently than 15 years after the
26 date of issuance of a conservation plan under clause

1 (iii) and every 15 years thereafter, revise the con-
2 servation plan as may be necessary.
3 "(B) The Secretary shall prepare a comprehensive
4 conservation plan under this subsection for each refuge
5 within 15 years after the date of enactment of the Na-
6 tional Wildlife Refuge System Improvement Act of 1997.
7 "(C) The Secretary shall manage each refuge or plan-
8 ning unit under plans in effect on the date of enactment
9 of the National Wildlife Refuge System Improvement Act
10 of 1997, to the extent such plans are consistent with this
11 Act, until such plans are revised or superseded by new
12 comprehensive conservation plans issued under this sub-
13 section.
14 "(D) Uses or activities consistent with this Act may
15 occur on any refuge or planning unit before existing plans
16 are revised or new comprehensive conservation plans are
17 issued under this subsection.
18 "(E) Upon completion of a comprehensive conserva-
19 tion plan under this subsection for a refuge or planning
20 unit, the Secretary shall manage the refuge or planning
21 unit in a manner consistent with the plan and shall revise
22 the plan at any time if the Secretary determines that con-
23 ditions that affect the refuge or planning unit have
24 changed significantly.

1 "(2) In developing each comprehensive conservation
2 plan under this subsection for a planning unit, the Sec-
3 retary, acting through the Director, shall identify and de-
4 scribe—
5 "(A) the purposes of each refuge comprising
6 the planning unit and the purposes of the System
7 applicable to those refuges;
8 "(B) the distribution, migration patterns, and
9 abundance of fish, wildlife, and plant populations
10 and related habitats within the planning unit;
11 "(C) the archaeological and cultural values of
12 the planning unit;
13 "(D) such areas within the planning unit that
14 are suitable for use as administrative sites or visitor
15 facilities;
16 "(E) significant problems that may adversely
17 affect the populations and habitats of fish, wildlife,
18 and plants within the planning unit and the actions
19 necessary to correct or mitigate such problems; and
20 "(F) the opportunities for fish- and wildlife-de-
21 pendent recreation, including fishing and hunting,
22 wildlife observation, environmental education, inter-
23 pretation of the resources and values of the planning
24 unit, and other uses that may contribute to refuge
25 management.

1 "(3) In preparing each comprehensive conservation
2 plan under this subsection, and any revision to such a
3 plan, the Secretary, acting through the Director, shall, to
4 the maximum extent practicable and consistent with this
5 Act—
6 "(A) consult with adjoining Federal, State,
7 local, and private landowners and affected State con-
8 servation agencies; and
9 "(B) coordinate the development of the con-
10 servation plan or revision of the plan with relevant
11 State conservation plans for fish and wildlife and
12 their habitats.
13 "(4)(A) In accordance with subparagraph (B), the
14 Secretary shall develop and implement a process to ensure
15 an opportunity for active public involvement in the prepa-
16 ration and revision of comprehensive conservation plans
17 under this subsection. At a minimum, the Secretary shall
18 require that publication of any final plan shall include a
19 summary of the comments made by States, adjacent or
20 potentially affected landowners, local governments, and
21 any other affected parties, together with a statement of
22 the disposition of concerns expressed in those comments.
23 "(B) Prior to the adoption of each comprehensive
24 conservation plan under this subsection, the Secretary
25 shall issue public notice of the draft proposed plan, make

1 copies of the plan available at the affected field and re-
2 gional offices of the United States Fish and Wildlife Serv-
3 ice, and provide opportunity for public comment.".

4 **SEC. 8. EMERGENCY POWER; PRESIDENTIAL EXEMPTION;**
5 **STATE AUTHORITY; WATER RIGHTS; COORDI-**
6 **NATION.**

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

10 "(k) Notwithstanding any other provision of this Act
11 the Secretary may temporarily suspend, allow, or initiate
12 any activity in a refuge in the System in the event of any
13 emergency that constitutes an imminent danger to the
14 health and safety of the public or any fish or wildlife popu-
15 lation, including any activity to control or eradicate sea
16 lampreys, zebra mussels, or any other aquatic nuisance
17 species (as that term is defined in section 1003 of the
18 Nonindigenous Aquatic Nuisance Prevention and Control
19 Act of 1990 (16 U.S.C. 4702)).

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

1 "(m) Nothing in this Act shall be construed as affect-
2 ing the authority, jurisdiction, or responsibility of the sev-
3 eral States to manage, control, or regulate fish and resi-
4 dent wildlife under State law or regulations in any area
5 within the System. Regulations permitting hunting or fish-
6 ing of fish and resident wildlife within the System shall
7 be, to the extent practicable, consistent with State fish and
8 wildlife laws, regulations, or management plans.
9 "(n)(1) Nothing in this Act shall—
10 "(A) create a reserved water right, express or
11 implied, in the United States for any purpose;
12 "(B) affect any water right in existence on the
13 date of enactment of the National Wildlife Refuge
14 System Improvement Act of 1997; or
15 "(C) affect any Federal or State law in exist-
16 ence on the date of the enactment of the National
17 Wildlife Refuge System Improvement Act of 1997
18 regarding water quality or water quantity.
19 "(2) Nothing in this Act shall diminish or affect the
20 ability to join the United States in the adjudication of
21 rights to the use of water pursuant to the McCarran Act
22 (43 U.S.C. 666).

1 "(o) Coordination with State fish and wildlife agency
2 personnel or with personnel of other affected State agen-
3 cies pursuant to this Act shall not be subject to the Fed-
4 eral Advisory Committee Act (5 U.S.C. App.).
5 "(p) Nothing in this Act shall be construed as requir-
6 ing or prohibiting fishing or hunting on any particular ref-
7 uge except pursuant to a determination by the Secretary
8 in accordance with this Act.".
9 (b) CONFORMING AMENDMENT.—Section 4(c) (16
10 U.S.C. 668dd(c)) is amended by striking the last sentence.
11 **SEC. 9. STATUTORY CONSTRUCTION.**
12 Nothing in this Act is intended to affect—
13 (1) the provisions for subsistence uses in Alaska
14 set forth in the Alaska National Interest Lands Con-
15 servation Act (Public Law 96–487), including those
16 in titles III and VIII of that Act;
17 (2) the provisions of section 102 of the Alaska
18 National Interest Lands Conservation Act, the juris-
19 diction over subsistence uses in Alaska, or any asser-
20 tion of subsistence uses in the Federal courts; and
21 (3) the manner in which section 810 of the
22 Alaska National Interest Lands Conservation Act is
23 implemented in refuges in Alaska, and the deter-
24 mination of compatible use as it relates to subsist-
25 ence uses in these refuges.

1 **SEC. 10. REORGANIZATIONAL TECHNICAL AMENDMENTS.**

2 (a) REORGANIZATIONAL AMENDMENTS.—The Act of
3 October 15, 1966 (16 U.S.C. 668dd et seq.), is amended—

4 (1) by adding before section 4 the following new
5 section:

6 **"SECTION 1. SHORT TITLE.**

7 "This Act may be cited as the 'National Wildlife Ref-
8 uge System Administration Act of 1966'.";

9 (2) by striking sections 6, 7, 8, 9, and 10;

10 (3) in section 4 (16 U.S.C. 668dd)—

11 (A) by striking "SEC. 4."; and

12 (B) by redesignating that section as sec-
13 tion 2 and inserting immediately above the text
14 of the section the following new heading:

15 **"SEC. 2. NATIONAL WILDLIFE REFUGE SYSTEM.";**

16 (4) in section 5(1), as amended by section 3 of
17 this Act, by striking "sections 4(a)(2) and (3)" and
18 inserting "section 2(a)(2) and (3)"; and

19 (5) in section 5(12), as amended by section 3
20 of this Act, by striking "section 4(a)(1)" and insert-
21 ing "section 2(a)(1)".

22 (b) CONFORMING AMENDMENTS.—

23 (1) Section 12(f) of the Act of December 5,
24 1969 (83 Stat. 283) is repealed.

25 (2) Section 5(b) of the Act of January 3, 1975
26 (88 Stat. 2123; 16 U.S.C. 459j–4) is amended by

1 striking "Administration Act, as amended (16
2 U.S.C. 668dd–668ee)," and inserting "Administra-
3 tion Act of 1966,".
4 (3) Section 320808(7) of the Recreational
5 Hunting Safety and Preservation Act of 1994 (16
6 U.S.C. 5207(7)) is amended by striking "section 4"
7 and inserting "section 2".

I

105TH CONGRESS
1ST SESSION

H. R. 512

To prohibit the expenditure of funds from the Land and Water Conservation Fund for the creation of new National Wildlife Refuges without specific authorization from Congress pursuant to a recommendation from the United States Fish and Wildlife Service to create the refuge.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 4, 1997

Mr. YOUNG of Alaska (for himself and Mr. POMBO) introduced the following bill; which was referred to the Committee on Resources

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A BILL

To prohibit the expenditure of funds from the Land and Water Conservation Fund for the creation of new National Wildlife Refuges without specific authorization from Congress pursuant to a recommendation from the United States Fish and Wildlife Service to create the refuge.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "New Wildlife Refuge Authorization Act".

1 **SEC. 2. NEW REFUGES.**

2 Notwithstanding any other provision of law, no funds
3 may be expended from the Land and Water Conservation
4 Fund established by Public Law 88–578, for the creation
5 of a new refuge within the National Wildlife Refuge Sys-
6 tem without specific authorization from Congress pursu-
7 ant to recommendation from the United States Fish and
8 Wildlife Service, to create that new refuge.

TESTIMONY
THE HONORABLE JOHN D. DINGELL
BEFORE
SUBCOMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES
COMMITTEE ON MERCHANT MARINE AND FISHERIES
U.S. HOUSE OF REPRESENTATIVES

August 9, 1994

The National Wildlife Refuge System:
A Foundation For Change

Mr. Chairman, it is always a pleasure for me to appear before this Subcommittee. I observe that I am becoming a regular witness. Just two months ago, I was here asking the Subcommittee to reauthorize the North American Wetlands Conservation Act.

It has been one of the highlights of my life to have been associated with of our Wildlife Refuge System in one way or another for almost 40 years. During that time, I have observed this system grow from some 300 refuges totalling 28 million acres in 1966 to 500 refuges containing over 91 million acres today.

I have been personally involved in a number of ways with most of the 500 Refuges that make up the System, including as this Subcommittee's Chairman from 1965 until 1974, and serving for over 25 years as a Congressional member of the Migratory Bird Conservation Commission where we have worked together to acquire over 600,000 acres of habitat for countless migratory birds and other wildlife. As the Subcommittee is aware, the Commission only reviews proposals for new refuges and refuge expansions, and specific land acquisition proposals for land to be purchased with Duck Stamp money.

Mr. Chairman, today we recognize the broad spectrum of public interest and values of the Wildlife Refuge System. I am proud of the fact that the System is now seen as having values for helping recover threatened and endangered species; for contributing to the diversity of an area; and, for serving more traditional fish and wildlife-related purposes such as hunting, fishing, wildlife observation and photography.

At these hearings today, I think it is important that we recognize our Nation's hunters and fishermen for providing the constant support that has been essential to the expansion and well-being of the Wildlife Refuge System. Not only have they supported the establishment and expansion of refuges by their votes, but also through "putting their money where their mouth is." They purchase duck stamps and raise substantial sums of revenues from the taxes collected on the sale of firearms and ammunition under the Pittman-Robertson Act program. They also

contribute to organizations such as Ducks Unlimited, Inc. and the Nature Conservancy -- organizations helping to acquire and restore wetlands. Most recently, sportsmen have helped bolster the cooperative undertakings under the North American Wetlands Conservation Act.

There are those who say that the Wildlife Refuge System could profit from an updated organic Act. A number of studies by the General Accounting Office and the Service have indicated that problems on our refuges range from overuse and toxic contamination to lack of funding and proper management. Yet, we a the National Wildlife Refuge System Administration Act and the Refuge Recreation Act have been the enabling statutes for the refuge system for thirty years -- and there is a temptation to say, "if it isn't broke, don't fix it." Nevertheless, if we do attempt to solve these problems and improve this System, it seems to me that we need to keep some important principles in mind.

1. First, any legislation enacted needs to be helpful to the Fish and Wildlife Service and the Refuge Manager, and not serve them up with a blizzard of paperwork. As you know, the System has expanded rather rapidly in recent years and it has not been possible to provide a proportionate increase in funding. This means refuge managers have to do more with less. We dare not give them an Act that simply requires them to go through numerous amounts of unproductive paperwork so that they see their future as managing the paper instead of the Refuge and its fish and wildlife resources.

2. We cannot convert the Refuge System from its historic emphasis on protection and management of fish and wildlife to areas where managers will have additional constraints on their ability to do the management they consider necessary to make the areas what Aldo Leopold envisioned as, "the finest example of modern wildlife management." We simply cannot take the refuges away from the hunters and fishermen -- who were the driving force for their establishment -- and put them under glass as museums or outdoor zoos or junior grade national parks. In my view, such a move would not be within the tradition or future of the National Wildlife Refuge System.

At this time, I do not want to provide specific comments or criticisms on the two legislative proposals before this Subcommittee, H.R. 833 and S. 823. There will be a number of groups and individuals who will provide an excellent analysis. I do believe the legislation reported by the Senate Environment and Natural Resources Committee is a substantial improvement from the original version.

In the final analysis, any legislation must contribute to sound, professional wildlife management that is built on a strong

foundation of past success while dealing with some of the difficult problems of incompatible uses.

Let me discuss specifically the topic of hunting and fishing on Wildlife Refuges. I do not know anyone who thinks that hunting and fishing should necessarily take place on all refuges or even all acres every year on individual refuges where hunting is normally permitted.

The current standard in the Fish and Wildlife Service regulations -- and has been the case for the past 30 years -- to open hunting on a refuge is that such activities must be compatible with the purposes of the refuge and with the principles of sound wildlife management, and will otherwise be in the public interest. It seems to me that such a standard is both simple and effective, and this Committee should seriously consider including this standard in any legislation it reports. Second, there are some who hold the misguided view that hunting and fishing is not a purpose of the Wildlife Refuge System. If hunting and fishing under appropriate conditions is not a purpose of the Wildlife Refuge System, then it seems to me that we have hopelessly lost our way.

I am particularly concerned about attempts to re-write history to make the 1962 Refuge Recreation Act, which I was the House Floor manager, to classify hunting and fishing related use of refuges as "incidental" or "secondary" use in the same category as campgrounds, visitor centers, farming, grazing, or oil and gas drilling. A careful reading of the 1962 Act and its legislative history do not compel that conclusion.

Let me provide a brief history of the 1962 Act. Following World War II, the nation experienced a tremendous increase in the use of outdoor recreation resources and facilities. To provide a basis for formulating legislation, Congress in 1958 established the Outdoor Recreation Resources Review Committee (ORRRC), chaired by Laurence Rockefeller, to make recommendations to the President and Congress to meet the nation's outdoor recreation needs. The ORRRC Report was transmitted to Congress in January 1962. I may say as an aside, Mr. Chairman, that while we tend to take a ho-hum approach to the work of such commissions, ORRRC was a spectacular success. Its recommendations lead to the establishment of the Land and Water Conservation Fund, the Wilderness Act, and the Wild and Scenic Rivers Act, and the establishment of the National Recreational Area System. Among other things, the ORRRC Report recommended that Federal lands be managed for their broadest possible recreational benefits consistent with other essential uses.

It was in this atmosphere that H.R. 1171 was introduced in the 87th Congress to increase the public benefits from national fish and wildlife conservation areas through their incidental use

for public recreation. As introduced, the bill did not contain the funding proviso.

By 1961, when this Subcommittee held hearings on H.R. 1171, hunting and fishing were long established on most refuges. Indeed, receipts from purchases by hunters of migratory bird stamps had financed the purchase of hundreds of thousands of refuge acres. In fact, more than three-fourths of the acquired areas in the Refuge System were purchased with sportsmen's dollars. My concern during these hearings related not to recreational uses such as hunting and fishing, which are directly related to the purposes of refuges, but instead to hiking trails, boat ramps, toilet facilities, picnic tables and other recreational amenities, which not only could make a refuge seem like Coney Island, but also draw away funds needed for primary refuge purposes. If I may be permitted to quote myself during the 1961 hearings:

> Mr. Dingell: It occurs to me that each time we pull an acre out of these refuges for construction of campground or construction of an educational exhibit or a museum or a concessionaire facility or the kind that we have, we withdraw from its primary purpose and take in effect duck stamp revenues and funds that hunters contribute to this program and use it for another purpose.

1961 Hearings at 53.

Mr. Chairman, I attach full printed hearings to my testimony. I defy anyone to read the record and conclude that the concern we expressed at the time was related to hunting and fishing. Because it did not, I drafted a third proviso, which requires a finding of available funds to cover those forms of recreation not directly related to refuge purposes. Hunting is actually a formal purpose of some refuges, but even where hunting is not a formal purpose, unless it is explicitly proscribed, it is "directly related" to primary purposes.

Mr. Chairman, in 1984, an animal protection group brought a legal action in the District of Columbia to end recreational hunting on all national wildlife refuges. One of their arguments was that funding determinations had not been made and, therefore, hunts on 250 refuges were illegal. The excellent brief of the Department of Justice and the U.S. Department of the Interior's Solicitor's Office forcefully answered that argument. After the case was dismissed, the USDI's Solicitor's Office wisely recommended that funding determinations be made out of an abundance of caution. But that prudent counsel is not a requirement of law, and a misreading of my amendment would constitute a betrayal of the American hunter.

Mr. Chairman, I attach a copy of the 1961 printed hearings

and the House and Senate reports. The legislation originated here and, as often happens, the other body followed our lead.

Thank you, Mr. Chairman, for allowing me to present my views to the Subcommittee.

TESTIMONY OF BRUCE BABBITT, SECRETARY OF THE INTERIOR, BEFORE THE SUBCOMMITTEE ON FISHERIES CONSERVATION, WILDLIFE AND OCEANS, HOUSE COMMITTEE ON RESOURCES, REGARDING H.R. 511, NATIONAL WILDLIFE REFUGE SYSTEM IMPROVEMENT ACT, AND H.R. 512, NEW NATIONAL WILDLIFE REFUGE AUTHORIZATION ACT

March 6, 1996

Mr. Chairman, I appreciate the opportunity to appear before this Subcommittee to testify on H.R. 511 and H.R. 512. Let me state at the outset, in a spirit of frankness and candor, that I am strongly opposed to both of these bills and would be compelled to recommend that the President veto either one if enacted in its present form. Let me also say that I spoke with Congressman Dingell yesterday and promised him that in his absence I would explain my objections carefully, in hopes that we may eventually be able to work out our differences and produce legislation that would strengthen and improve our wildlife refuge system.

The National Wildlife Refuge System is the world's greatest system of lands dedicated to the conservation of fish and wildlife. It is a system founded in faith; a belief that, in a country as bountiful and diverse as ours, there ought to be special places that are set aside exclusively for the conservation of this nation's fish and wildlife resources. These special places are National Wildlife Refuges. Unlike other areas where wildlife is shunted aside by the relentless forces of the bulldozer, chain saw and plow, the conservation of wild creatures, large and small, reigns supreme in wildlife refuges. In wildlife refuges, the conservation needs of wildlife are paramount.

The central, overarching purpose of the National Wildlife Refuge System is, and should be, the conservation of fish, wildlife and their habitat. If we do that job well, then there will be ample opportunity for compatible recreational uses which depend on diverse and abundant wildlife. Wildlife conservation is our purpose. Compatible recreational uses are benefits that flow from this purpose.

This distinction is where H.R. 511 and I part company. The bill scrambles the crucial distinction between "purpose" and "use" that has been at the heart of the refuge philosophy ever since Theodore Roosevelt created our first refuge at Pelican Island. It does so by mixing hunting and fishing, wildlife observation and environmental education as "purposes", rather than "uses", of the refuge system. Section 4(a)(3) effectively elevates recreational uses to mandatory parity with the traditional conservation purpose of the refuge system.

The bill, as I read it, would give the groups mentioned in section 4(a)(3) the right to sue each other for materially affecting their ability to use a refuge. In other words, under this bill, a bird watcher could sue a duck hunter under section 6, claiming that the hunter is "materially interfering" with his right which is protected as a "purpose" of the refuge under section 3. Similarly, the duck hunter could sue to stop school children from participating in environmental

education programs or bird watchers from observing migratory birds on the refuge. The combinations are nearly as numerous as the lawyers looking for work.

I am quite certain that this result was not intended by either the drafters or the sponsors of this bill. Nonetheless, it illustrates a fundamental defect of this bill - by attempting to deprive managers of sound discretion and to create a detailed system of statutory micro management, it will bring lawyers and judges ever more deeply into the management of our refuge system.

I should also note section 6, which provides that "when managed in accordance with principles of sound fish and wildlife management," hunting, along with fishing, wildlife observation, and environmental education, in a refuge is generally a compatible use. When taken with the definition of "management" in section 3, this section could amount to a statutory presumption that all wildlife refuges shall be open to hunting.

Undoubtedly, some will cast H.R. 511 as a litmus test of support for fishing and hunting. But let me say to you clearly, this debate is not about fishing or hunting on wildlife refuges. It is about two contrasting philosophies of how to manage wildlife refuges, and in that respect I must remain true to the tradition of Theodore Roosevelt and the sportsmen and women who have helped to build this system. If you were to suggest to me that birdwatching should be a statutory purpose of the National Wildlife Refuge System, I would say "no". Wildlife photography? "No". Conservation Education? "No".

Not because I am opposed to any of these uses. To the contrary, I enthusiastically support them all, including hunting and fishing. But I believe that the statutory purpose of the refuge system is, and must remain, singular: the conservation of fish, wildlife and their habitat.

Incidently, this is not a new debate. In 1968, a Departmental advisory committee on wildlife management -- known as the "Leopold Committee" after its chairman, Dr. A. Starker Leopold -- addressed this same issue. Their conclusion rings just as true today:

> "We concur ... that recreation on the refuges should in all cases be secondary to the primary purpose of management for wildlife enhancement, and under no circumstances should general recreation be permitted to interfere with this primary dedication."

The advice of the Leopold Committee has been followed ever since with spectacular results. As a result, wildlife dependent recreation, like hunting, birdwatching and fishing, flourishes in our refuges today. Among our 509 refuges, 283 allow hunting and 276 allow fishing. More refuge lands and waters are being opened to these uses each year. In 1996, the list of refuges open to recreational fishing grew by 12 and new hunting programs were begun on 9 refuges, and since I became Secretary of the Interior 24 new refuge hunting programs have been initiated.

Also in the past year, the Fish and Wildlife Service has begun new refuge partnerships with groups as diverse as the National Audubon Society, Safari Club International, and the North

American Nature Photography Association. These agreements will directly support management activities, increase volunteerism, and of course, promote compatible recreational use. The Service has embarked on an ambitious "Friends Initiative" in cooperation with the National Wildlife Refuge Association. This effort will provide a framework for interested private citizens to get involved and become an active participant in refuge management.

President Clinton's 1998 budget provides resources for the Service to develop comprehensive management plans for all of our refuges within the next 8 years. This effort will involve unprecedented numbers of Americans in the management of our refuge lands.

Mr. Chairman, we have worked hard to eliminate unnecessary impediments to allowing compatible wildlife-dependent recreation within refuges. For example, we have addressed an issue which you had raised to our attention in a prior hearing. Previously, when new areas were added to the refuge system, they were often closed to public use for long periods of time while the Fish and Wildlife Service completed planning for the area. Following up on Mollie Beattie's commitment to you two years ago, we have published a new policy requiring preacquisition consideration of existing recreational uses. Through this policy, the Fish and Wildlife Service will make interim determinations of compatibility for ongoing recreational uses prior to an area being acquired for the Refuge System. This will avoid the immediate closure of refuge areas upon acquisition and will inform the public, prior to acquisition, as to which wildlife-dependent recreational uses will be allowed to continue on newly acquired lands. As in other areas, a "no surprises" policy makes for good sense and good neighbors.

I could talk about many other positive things happening within the Refuge System: new and enhanced partnerships; a renewed commitment to strengthening the system's biological management; the continued elimination of incompatible uses; and on and on.

Mr. Chairman, these good things did not just happen. On March 25, 1996, President Clinton signed Executive Order 12996 on "Management and General Public Use of the National Wildlife Refuge System". This Executive Order, the first one ever issued regarding the management of the Refuge System, establishes a clear and singular mission for the refuge system: "to preserve a national network of lands and waters for the conservation and management of the fish, wildlife, and plant resources of the United States for the benefit of present and future generations." To carry out this mission and principles, the Executive Order requires us to implement ten directives.

One of these directives is particularly relevant to today's discussion. In the area of public use, the Executive Order identifies four specific classes of wildlife-dependent uses as "priority public uses" for the refuge system: hunting; fishing; wildlife observation and photography; and environmental education and interpretation. Where compatible and in the public interest, refuge managers are to provide increased opportunities for these uses and enhance the attention they receive in refuge management and planning. Let me compare this conceptual approach with the approach taken in H.R. 511.

The Executive Order maintains the crucial distinction between wildlife conservation as refuge purpose and compatible wildlife-dependent recreation as a priority public use. It articulates a singular and clear mission for the system -- **conservation**. But it recognizes that the use of our refuge lands and waters, to the extent that such use can be allowed, shall be reserved first to those recreational activities which depend and thrive on abundant populations of fish and wildlife. The obligation of the refuge manager is thus made clear; wildlife conservation is foremost. Where recreational activity is appropriate, let compatible wildlife-dependent recreation, including hunting and fishing, come first. My earlier comments illustrate how this concept is working at the ground level, and I am submitting with this testimony a report summarizing progress over the first year of the Executive Order's implementation.

Finally, I want to address a question raised last year about previously authorized military activities occurring refuge lands. During the past four years, we have worked closely with the Department of Defense to address issues of mutual concern based on the recognition that we must accomplish our collective goals of continued stewardship of our nation's public lands, as well as a trained and ready military. This recognition was memorialized in section 3(f) of Executive Order 12996 which directed the Secretary to "continue, consistent with existing laws and interagency agreements, authorized or permitted uses of the refuge system that are necessary to facilitate military preparedness." This statement, along with our expanded collaborative stewardship partnership and other existing authorities, is satisfactory to both Departments and we agree that no additional legislative action on this issue is necessary.

Mr. Chairman, the Administration is preparing detailed comments and recommendations on H.R. 511. This legislative report will be forwarded to your subcommittee by the end of this month.

Now let me turn momentarily to H.R. 512, which would prohibit the use of Land and Water Conservation Fund funds to establish new refuges unless Congress passes a specific law authorizing that refuge. Currently, of course, Congress approves all acquisitions funded through the Land and Water Conservation Fund through the annual appropriations process. Therefore, this bill accomplishes nothing other than adding an additional layer of Congressional approval and slowing the process of acquiring new wildlife refuges. H.R. 512 will simply make the Land and Water Conservation Fund more difficult to use for the timely acquisition of much needed refuge lands.

In summary, H.R. 511 would upset and weaken the long standing functioning of the National Wildlife Refuge System. Similarly, H.R. 512 makes changes which would impair establishment of new refuges. It is difficult to see how these bills will strengthen the refuge system or make the herculean task of refuge management easier for our managers and therefore, it is for these reasons that the Administration strongly opposes these bills.

I look forward to discussing these matters further with you, and to working with the Committee to advance the cause of refuge conservation.

ATTACHMENT

A PROGRESS REPORT

ON IMPLEMENTATION OF

EXECUTIVE ORDER 12996

EXECUTIVE ORDER 12996 - A PROGRESS REPORT

March 1, 1997

Executive Order 12996, on "Management and General Public Use of the National Wildlife Refuge System," was signed by President Clinton on March 25, 1996. This Executive Order defines the mission of the Refuge System "to preserve a national network of lands and waters for the conservation and management of the fish, wildlife, and plant resources of the United States for the benefit of present and future generations." The Executive Order identifies four guiding principles and outlines several directives to promote land stewardship and compatible, wildlife-dependent recreation on refuges. As such, the Executive Order provides a firm and explicit foundation for effective action, enhanced partnerships and expanded public involvement in support of the Refuge System. The following summary reflects progress over the first year of EO implementation.

* On May 17, nearly 60 people, representing 34 organizations, attended a workshop in Vienna, Virginia, to develop concensus on action items to implement the EO. There was overwhelming support at this workshop to embark on a collaborative approach to enhance the biological integrity of the Refuge System and promote compatible, wildlife dependent uses.

* The Service initiated a detailed needs assessment to evaluate and make recommendations to strenthen the Refuge System's **biological program.** As of this writing, a draft report of this analysis is undergoing internal review.

* A survey of refuges conducted in September 1996 identified more than 485 **new or enhanced partnerships** with other agencies and non-governmental organizations. Activities covered by these partnerships included habitat protection/management, environmental education. hunting, fishing, interpretation, photography and wildlife observation. Total projected cost of these projects was $55 million, with a Service-funded share of about $13.5 million. Contributed, non-Service staff time for these projects was anticipated to exceed 200 FTEs.

* National **memoranda of understanding** were signed with the National Audubon Society and Safari Club International. The Audubon partnership involves a multi-year initiative, leading up to the 100th Anniversary of the Refuge System, that will promote public support and awareness. Local Audubon chapters will work with individual refuges to expand volunteerism and collaborate on projects to enhance habitat, monitor bird populations and promote wildlife observation opportunities. The SCI partnership agreement, signed in January 1997, will promote wetland and riparian restoration, education, biological research and related activities on refuges. SCI has nearly 150 local chapters that will work with individual refuges on these projects. At this writing, a partnership agreement is being developed between the Service and the North American Nature Photography Association to promote collaboration on both national and refuge-specific projects, such as publications, interpretive exhibits, photographic workshops, youth programs, photo contests and media outreach.

* The Service embarked on an ambitious **"Friends Initiative"** in cooperation with the National Wildlife Refuge Association during 1996, to provide a framework for interested private citizens to work in collaboration with their local refuges. This Initiative was kicked off with a national training workshop and will expand in 1997 with development of a mentoring program and a workbook for establishing new Friends groups.

* Policy and procedures for **preacquisition consideration of refuge uses**, consistent with direction in the Executive Order, were issued by the Director in May 1996. The intent of this new policy is to inform the public prior to acquisition which wildlife-dependent recreational activities will be allowed to continue on newly acquired lands.

* The second **National Wildlife Refuge Week** was celebrated in early October 1996, with events held on nearly 200 refuges nationwide. Several hundred thousand people, including many first time visitors, participated in a diverse array of activities during the week, enhancing their familiarity with the System and its role in the conservation of fish and wildlife.

* The list of refuges open to **recreational fishing** grew in 1996 from 271 to 283. Nine new **hunting** programs were initiated as well, bringing the total number of refuges open to hunting to 285. The Service also began a project to overhaul and simplify the regulation setting process for permitted public uses. A proposed rulemaking to implement the improved process will be published in the Federal Register for public comment during summer, 1997.

* In 1996, the Service provided states with the opportunity to establish a special **youth waterfowl hunting day** for the 1996-1997 season. Forty states participated in the special youth hunting day and many refuges figured prominently in the program.

* The Service implemented a **comprehensive accomplishment reporting** process for the Refuge System during 1996. Accomplishment data will provide a foundation for sound policy development and ensure that the System is responsive to its diverse constituency.

* The Service has embarked on an accelerated program of **comprehensive management planning** on refuges Systemwide. This initiative will emphasize opportunities for active public participation and result in the development of well-defined objectives for natural resource management and public use.

* The Service has begun to implement a **Refuge Recreation Demonstration Fee Program**, based upon direction in the Omnibus Consolidated Rescissions and Appropriations Act of 1996. Under this program, participating refuges will received from 80%-100% of the entrance and user fees collected to improve visitor programs and facilities. Forty-two sites were identified for the Demonstration Program and additional sites are likely to come on board in 1997.

* To help refuges provide quality services and facilities for public recreation and education, a **customer service** evaluation card was developed and pilot tested. Based on the results of the test, the card was modified and printed for wider distribution and use beginning spring, 1997.

* The Service implemented two **long distance environmental learning** projects in 1996, in collaboration with insdustry partners. "Electronic field trips" by satellite were hosted at Bosque del Apache and Merritt Island refuges.

* In 1966, the Service initiated the first phase of a multi-year study to examine the economic impact of refuges. A draft report of the first phase, now in printing, examines the direct and indirect benefits of refuge visitation on local economies. Subsequent phases of this study will explore the economic impacts of refuge expenditures and the effects of refuge establishment on the value of adjacent lands..

An African trip yielded a trophy rhino fo Teddy Roosevelt.

photograph by UPI/Corbis-Bettman

John James Audubon

TESTIMONY BEFORE THE HOUSE SUBCOMMITTEE ON FISHERIES, CONSERVATION, WILDLIFE AND OCEANS OF THE COMMITTEE ON RESOURCES ON H.R. 511, THE NATIONAL WILDLIFE REFUGE SYSTEM IMPROVEMENT ACT OF 1997

by

R. Max Peterson, Executive Vice-President
International Association of Fish and Wildlife Agencies

March 6, 1997

Thank you, Mr. Chairman, for the opportunity to appear before you today to discuss H.R. 511, the National Wildlife Refuge System Improvement Act of 1997. The Association has worked closely with yourself, Chairman Young and Cong. Dingell on this bill over the last two years and enthusiastically supports H.R. 511 as a proposal which is good for fish and wildlife, good for the Refuge System, and good for our citizens who use and enjoy National Wildlife Refuges. We sincerely appreciate the efforts of yourself, Chairman Young, Cong. Dingell and respective staffs in their responsiveness to improving this bill.

As you know, Mr. Chairman, the International Association of Fish and Wildlife Agencies was founded in 1902 as a quasi-governmental organization of public agencies charged with the protection and management of North America's fish and wildlife resources. The Association's governmental members include the fish and wildlife agencies of the states, provinces, and federal governments of the U.S., Canada, and Mexico. All 50 states are members. The Association has been a key organization in promoting sound resource management and strengthening federal, state, and private cooperation in protecting and managing fish and wildlife and their habitats in the public interest.

The Association believes that in spite of some problems, the National Wildlife Refuge System, encompassing over 500 refuges across the Nation, is, in general, a success story about which we can all be proud. The Association's member states fully support consistent, professional, coordinated management of the National Wildlife Refuges. Despite some valid criticism of some activities permitted on individual refuges, the National Wildlife Refuge System has been professionally managed in the past and should continue to be so managed in the future. The Association agrees with the 1968 Leopold report on the National Wildlife Refuge System which declared that "the national refuges should stand as monuments to the science and practice of wildlife management."

President Clinton, in Executive Order 12996 of March 25, 1996, recognized the importance and significance of National Wildlife Refuges for fish and wildlife conservation and appropriate public use. The Executive Order creates a mission for the System conserving fish, wildlife and their habitats,

recognizes the contribution of sportsmen and women, endorses compatible fish and wildlife-dependent recreational use and environmental education as priority general public uses, and establishes directives for the Secretary of the Interior in administering the System. The Association sincerely appreciates the Executive Order, and recognizes that most of the language has been incorporated verbatim into HR511, thus ensuring its permanence beyond this Administration. Further, HR511 provides additional necessary statutory assurances for ensuring the integrity of the NWR System and its appropriate public use, thus creating a more comprehensive organic act for administration and management of the System.

As you are aware, Mr. Chairman, the Association has worked over the past several Congresses towards meeting an objective of producing a bill which will be helpful to the U.S. Fish and Wildlife Service and Refuge Managers in improving the management of the System, and continue to meet fish, wildlife and habitat conservation objectives while providing for legitimate and appropriate fish and wildlife dependent uses of Refuges by the citizens of the United States. We believe HR511 meets these objectives.

HR511 clearly establishes in statements of mission and purposes that the System is ". . . to conserve and manage fish, wildlife, and plants and their habitats within the System for the benefit of present and future generations of the people of the United States." The statement of purposes elaborates on this to embrace the FWS's conservation responsibilities for migratory birds, anadromous fish and threatened and endangered species (the jurisdiction for which is concurrent with the States); to fulfill international treaty obligations; and to provide opportunities for compatible fish- and wildlife-dependent recreation including fishing and hunting, wildlife observation and environmental education. We believe this statutory affirmation clearly enables the Secretary to protect the integrity of the NWR System and manage individual refuges consistent with the purpose of the individual refuge.

HR511 also clearly establishes in statute compatibility standards and process which all uses must satisfy in order to take place on Refuges. This is a vital step in order to ensure that the mission of the System is clearly pre-eminent over uses which may degrade or destroy fish and wildlife habitat.

HR511 also meets three principal concerns of the Association regarding any NWR organic legislation. First, it recognizes the responsibilities and role of the State fish and wildlife agencies and the need for true coordination and cooperation between the U.S. Fish and Wildlife Service and the State fish and wildlife agencies in meeting the conservation objectives of the National Wildlife Refuges. Second, it provides legislative affirmation that, where appropriate, fish and wildlife-dependent recreation and environmental education activities are among the purposes of the National Wildlife Refuge System. And third,

satisfies our concerns that new processes created for compatibility determination and planning are not so onerous and time consuming that the professional Refuge Manager is engaged and consumed by process, and unable to meet on-the-ground needs and conservation objectives of fish, wildlife and habitat conservation and compatible public use for fish and wildlife dependent recreation. In other words, we want refuge managers to concentrate on scientifically sound resource management and not be diverted to managing a mountain of recurring paperwork that does not contribute to "on-the-ground" management.

H.R. 511 recognizes that the States have broad trustee and statutory responsibility for and primacy in the arena of fish, wildlife and their habitats within their borders, including on most Federal public lands. State fish and wildlife agencies have concurrent jurisdiction with the U.S. Fish and Wildlife Service for migratory birds, anadromous fish, and Federal listed threatened and endangered species.

H.R. 511 recognizes that National Wildlife Refuges are important components of and contribute significantly to the ecosystems in which they are found. The bill recognizes that it is vital to consider the role of and relationship with adjacent private and state lands when determining how to meet the conservation objectives for both the Refuge and the ecosystem in which it is found. Cooperation and coordination with the State fish and wildlife agencies, most of which have developed statewide, comprehensive fish and wildlife resource and habitat conservation plans, is thus vital to meeting these objectives. We particularly appreciate the Federal Advisory Committee Act exemption in H.R. 511 for the Secretary in coordinating conservation efforts with State agencies. Although the 1995 Unfunded Mandates Act contains a limited exemption to FACA for Federal/State coordination, it is not broad enough to cover the numerous coordination activities that must take place between States and the Fish and Wildlife Service in fish and wildlife conservation.

The Association also concludes that H.R. 511 addresses our concerns that the planning and compatibility process do not become so burdensome that the professionally trained Refuge Manager spends all of his/her time satisfying process. As you are aware, Mr. Chairman, Refuge management and operations are seriously underfunded now. Adding processes that are not essential to meeting Refuge conservation objectives for fish, wildlife and their habitats, and providing appropriate fish and wildlife-dependent recreational uses and environmental education for our citizens, simply adds workload to an already overloaded staff and results in delay and confusion, as well as deprive the public an opportunity to visit these public lands.

Individual Refuge conservation planning is vital, and public input and involvement should be a critical part of that as HR511 so provides. The

Association supports planning for individual Refuges or a related group of refuges in the same area. However, the Refuge Manager should take advantage of existing fish and wildlife surveys and inventories, habitat assessments, comprehensive resource and habitat plans, recreational surveys and impact studies, and other data from the State fish and wildlife agency and other sources to facilitate development of the Refuge conservation plan, rather than creating these data as original sources.

Likewise, existing written determinations of compatibility for existing uses on each National Wildlife Refuge, which were conducted in order to satisfy an October 1993 legal settlement with several conservation groups, should obviate the need to redo compatibility determinations under H.R. 511 until significant change to the particular use triggers a re-evaluation. It is important that the passage of any National Wildlife Refuge legislation not require that these compatibility determinations be redone to satisfy a newly created standard developed as a result of passage of the legislation.

As I indicated earlier, the Association concurs with the establishment in H.R. 511 of purposes for the NWR System to serve as general guidance for management of existing units and expansion of the Refuge System. These purposes will also establish benchmarks against which determinations of use compatibility can be tested. However, not all purposes are created equal nor required on every Refuge, as some critics of this proposal suggest regarding hunting and fishing. Each Refuge's priorities should reflect both the purposes of the individual refuge, the nature of the resources available, public input on draft plans, and the nature of opportunities and problems on other lands within the State. Further, the Association has never advocated that all purposes be satisfied on all Refuges. We have always held that opportunities for compatible fish and wildlife dependent recreational uses should be provided for where they are appropriate and compatible with the purpose for which each Refuge was established and with the purpose of the System. Likewise, although many Refuges do, not all Refuges have listed threatened or endangered species, significant migratory bird populations, interjurisdictional fish habitats, or marine mammals. Therefore, to suggest that HR511 makes all purposes equal, or requires the satisfaction of all purposes on every Refuge, is inconsistent with the reading of the bill, in particular the savings clause in Section 8(a) which reads "Nothing in this Act shall be construed as requiring or prohibiting fishing or hunting on any particular refuge except pursuant to a determination by the Secretary in accordance with this Act."

We further concur with establishing opportunities for compatible hunting, fishing and environmental education as a purpose of the System, for several reasons. It seems clear to us that Congressional intent, as reflected in the relevant legislation and legislative history, has been to establish the primary purpose of the National Wildlife Refuge System as advancing the objectives of

fish and wildlife conservation, including providing for, at least in part, fish and wildlife related recreational use in the form of hunting, fishing, trapping, nature observation, enjoyment and education, where such use is compatible with sound fish and wildlife management principles. The 1962 Refuge Recreation Act provided for consideration of other than wildlife dependent recreational uses if they were compatible with and would not prevent the accomplishment of, the primary purposes for which the areas were acquired or established, this being fish and wildlife conservation and in many cases, hunting, fishing and trapping. The 1966 Refuge Administration Act further gave to the Secretary of the Interior the authority to "...permit the use of any area within the System for any purpose, including but not limited to, hunting, fishing, public recreation and accommodations, and access whenever he determines that such uses are compatible with the major purposes for which such areas were established". In a separate section, the Act authorizes the Secretary to permit other habitat altering uses, such as easements for utilities, roads, ditches, etc., whenever he determines that these uses are compatible with the purposes for which these areas were established.

Also, making fish and wildlife dependent recreational uses and environmental education purposes of the System recognizes the important contributions of sportsmen to the NWR System through the use of federal waterfowl stamp funds, the North American Wetlands Conservation Act and other Federal-private cost share programs for acquisition of Refuges. Identifying these activities as a purpose also reinforces that these uses are appropriate and legitimate activities on NWRs, which serve to provide opportunities for our citizens to learn more about fish and wildlife and their habitats through experiences on NWRs. These activities will collectively engender greater public support for Refuges and insure that these lands continue to be dedicated primarily to conservation purposes.

We would further point out that fish and wildlife dependent recreation and environmental education, conducted under professional supervision of the Refuge staff, are minimally intrusive activities that generally do not require the establishment of significant physical facilities on Refuges. The allowable harvest of certain game species is done within the statewide seasons and bag limits provided for by the Federal and State agencies with responsibility for fish and wildlife conservation. Seasons, bag limits, and other harvest restrictions are regularly reviewed with significant opportunity for public participation, and adjusted to reflect changes in population size, breeding success, habitat conditions, harvest levels, etc.

The Association strongly concurs that fish and wildlife dependent recreational uses (including hunting and fishing) and environmental education should be permitted to continue on new lands added to the System on an interim basis until such uses are determined to be inconsistent or incompatible. The

current process of immediately closing new refuges until a planning process is completed creates unnecessary confusion, ill will and local economic impact, particularly where there is no good reason to close an area except "that's the way we have always done it". We believe that most traditional fish and wildlife dependent recreational uses or environmental education, for example, are compatible with perhaps only minor modifications placing temporal or seasonal restrictions on use to protect sensitive nesting areas, for example. We suggest that close cooperation with State fish and wildlife agencies, which also manage public lands for conservation and public use, can facilitate integration of these existing activities with other conservation efforts for Refuges. Under HR511, the Secretary retains the authority to stop or modify an existing use but would not be required to do so as he does now. You may recall that Congress required continuation of certain fish and wildlife related uses on the refuge lands added in Arkansas to the White River and Cache River NWRs through the Potlatch exchange.

The Association looks forward to continuing to work with you and the Committee on passage of H.R. 511 which will improve the management of the NWR System, advance conservation objectives for fish and wildlife and their habitats, and provide for appropriate uses by the citizens of the United States. We again commend yourself, Chairman Young and Congressman Dingell for the efforts reflected in H.R. 511.

I would be pleased to address any questions at this time.

gjt:avrn/c:\testmony\95refuge.act

TESTIMONY of

SUSAN LAMSON

DIRECTOR, CONSERVATION, WILDLIFE AND NATURAL RESOURCES

INSTITUTE FOR LEGISLATIVE ACTION

of the

NATIONAL RIFLE ASSOCIATION OF AMERICA

regarding the

NATIONAL WILDLIFE REFUGE SYSTEM ADMINISTRATION ACT of 1997

MARCH 6, 1997

before the

SUBCOMMITTEE ON FISHERIES CONSERVATION, WILDLIFE AND OCEANS

of the

HOUSE COMMITTEE ON RESOURCES

The National Rifle Association of America (NRA) appreciates the invitation to testify on a subject of vital importance to our membership -- the future management of our National Wildlife Refuge System. Well over half of the 511 refuges within the System provide for hunting opportunities and over 70 percent of our members hunt, many of whom also participate in other forms of wildlife-dependent recreation on refuge lands.

The NRA wholeheartedly supports HR 511 for it recognizes the important role of the hunting community to the conservation mission of the Refuge System. Hunters' dollars have contributed to the expansion of the System from a 3-acre island created in 1903 to a network of lands and waters that today comprise more than 92 million acres. While we gave our strong support to similar legislation introduced in the last Congress, we applaud the efforts of the author and the bill's primary co-sponsors in addressing issues that were raised about HR 511's predecessor. As we have commented before, this is a landmark, innovative and truly visionary approach to the future management of our Refuge System.

My specific remarks begin with Section 4 which lists the purposes of the System. The NRA unequivocally supports the addition of purpose (D) "to provide opportunities for compatible uses of refuges, consisting of fish and wildlife-dependent recreation, including fishing and hunting, wildlife observation, and environmental education." As I testified before this Subcommittee in May, 1995, making wildlife-dependent uses a statutory purpose recognizes that people are a critical element to the present and future support of the Refuge System. Those who have helped to pay for the System should not continue to be treated as a secondary or subsidiary element.

This belief is borne out in the Findings section of HR 511 which recognizes that the American people have a right to enjoy the benefits derived from the investment they make through their tax dollars, Federal Duck Stamp purchases, and entrance fees. It is also expressed by the Fish and Wildlife Service (FWS) which recognized, in the opening pages of its booklet on the Refuge System entitled "Promises for a New Century," that:

> National Wildlife Refuges are gifts to ourselves and to generations unborn...simple gifts whose treasures are unwrapped every time someone lifts binoculars to the flash of feathered color, every time a child overturns a rock, and every time a hunter sets out the decoys or an angler casts the water.

Elevating wildlife-dependent uses to a purpose of the Refuge System does not give "carte-blanche," as some have claimed, for these types of uses to occur on **all** refuges. Likewise, HR 511 does not mandate that the FWS ensure that the other five listed purposes of the System be applied on **all** refuges. This point is reinforced in the requirements for preparing comprehensive conservation plans whereby the purposes of the System *applicable* to a particular refuge must be identified and described. Furthermore, purpose (D) does not speak to wildlife-dependent uses, but to **compatible** wildlife-dependent uses.

In Section 3, Definitions, HR 511 clearly states that uses, wildlife-dependent and all other uses, must be compatible with the purposes of a refuge or the overall mission and purposes of the

Refuge System. It also anchors the determination of compatibility upon the rock of sound resource management and scientific information. Additionally, in Section 5, Administration of the System, the word **compatible** is tied to each and every statutory instruction to the Secretary relating to the recognition of priority general public uses, expansion of opportunities for such uses, and identification and provision for such uses on new refuge lands. I believe the burden of proof falls to opponents of purpose (D) to show how that purpose could materially interfere with or detract from the FWS' ability to fulfill the purposes of a given refuge or the overall mission and other purposes of the Refuge System.

Another reason why the NRA strongly supports the inclusion of wildlife-dependent uses as a purpose is to statutorily shield the Refuge System from lawsuits such as the one filed by the Humane Society of the United States in 1984 to shutdown the System to hunting and trapping. The following are examples of numerous statements that HSUS has made regarding these uses on refuge lands:

> Once upon a time, national wildlife refuges were what their names implied - inviolate sanctuaries...However, in the early 1950's, the U.S. Fish and Wildlife Service, which is responsible for managing the National Wildlife Refuge System, began to allow hunting at a handful of refuges. Gradually, Pandora's box was opened.
>
> Of all the inappropriate activities now taking place on wildlife refuges, surely sport hunting and trapping represent the most blatant betrayal of the refuge system.
>
> ...hunters...wish to deliberately destroy refuge wildlife and defeat the whole purpose for which the system was established...
>
> The HSUS will do everything in its power to end this travesty and restore refuges to the places of protection they were intended to be.

The NRA is concerned that unless wildlife-dependent uses are made a statutory purpose of the Refuge System, the hunting community and the FWS can expect future litigation over the definition of "refuge" in the context of the Refuge System's mission and purposes. In response to the HSUS lawsuit, refuge managers compiled over 2,000 pages of administrative record and 5,000 pages of discovery material. Refuge managers ought not to be made conservators of paper rather than of species. The bill before you today will minimize such a diversion of refuge resources. HR 511 is an organic act designed to statutorily set the structure for the future management of the System. This legislation presents THE opportunity for the Congress to ensure that compatible wildlife -dependent uses, such as hunting, are expressly allowed.

The NRA fully supports the compatibility process required by HR 511. Under this new process, the bill supports wildlife-dependent uses as a purpose of the Refuge System in four ways. First, the bill recognizes these uses as presumptively compatible with the purposes of the Refuge System. Secondly, it requires the Secretary to permit hunting and fishing on refuge lands if such

uses are found to be compatible with clearly defined and unbiased criteria. Third, it allows hunting and fishing to continue on newly acquired lands unless such uses are determined incompatible with the purposes of the refuge or with the purposes of the Refuge System -- thereby establishing a "good neighbor" policy during the transition in land ownership. Fourth, it subjects these uses to a less demanding review process than that for "secondary uses," thus ensuring that the process does not exhaust the fiscal and administrative resources to manage the System. This is especially important inasmuch as the operations and maintenance backlog of the System need not be exacerbated by unnecessary and burdensome standards and procedures.

In summary, we appreciate the opportunity to comment on HR 511 and look forward to assisting in the process of making this organic legislation a reality.

TESTIMONY BEFORE THE HOUSE OF REPRESENTATIVES
SUBCOMMITTEE ON FISHERIES CONSERVATION,
WILDLIFE AND OCEANS,
COMMITTEE ON RESOURCES,
ON HR511, THE NATIONAL WILDLIFE REFUGE
SYSTEM IMPROVEMENT ACT
by Gary T. Myers, Executive Director
Tennessee Wildlife Resources Agency

Mr. Chairman and members of the Subcommittees, thank you for the opportunity to comment on HR511. I head the Tennessee Wildlife Resources Agency, which is the state agency responsible for the management of Fish and Wildlife in Tennessee. I want to make you aware of a movement in the Conservation Community which I believe will become a significant force driving the future expansion of the Federal Refuge System. And, I want to make you aware of the importance of HR511 to the success of that movement.

As you know, in May of 1986, the Canadian Minister of Environment and the U.S. Secretary of the Interior signed the North American Waterfowl Management Plan. The Plan, developed with heavy state and provincial involvement, established acreage targets for priority waterfowl habitat areas in the United States and Canada over a 15-year period from 1986 to 2000 and estimated that $1.5 billion would be required to accomplish these objectives.

Since the Plan was signed in 1986, about $1 billion has been spent. In the United States, over a million acres have been protected; 420,000 acres restored; and over 1.5 million acres enhanced for waterfowl.

I don't have the numbers but am aware that a good many acres were added to the Federal Refuge System since the Federal Government did their part to meet national waterfowl habitat needs.

In 1990, federal, state, and private interests joined together to address the needs of neotropical birds through Partners In Flight. This group is following in the footsteps of the North American Waterfowl Management Plan in their development of a North American Plan for neotropical birds. A large body of experts will eventually reach consensus on the habitat needs of neotropical birds across our nation, and eventually in Canada, Mexico, and beyond. Already, those experts are folding songbird habitat work into the Lower Mississippi Valley waterfowl joint venture. A common goal for songbirds and waterfowl is the reforestation of thousands of acres of bottom land hardwood. Thus, an important component of one plan is also part of another, creating additional support for action. Bottom land hardwood reforestation also benefits game species eventually leading toward possible partnerships with the National Wild Turkey

Federation, Audubon, Ducks Unlimited and others to leverage state and federal dollars. These types of activities are occurring to some extent now. Shorebird experts are also developing a national plan and efforts are underway to bring fish into the equation in the Lower Mississippi Valley. It is likely that flooded bottom land hardwoods serve as rich nursery areas for fish from the Mississippi River. And it is no secret that ducks also thrive in flooded bottom land hardwoods. These are the same forests that songbirds, turkey, deer, and squirrel frequent, providing additional opportunity for support and funding. These same forests also fulfill the habitat needs of a number of threatened and endangered species as well.

Over time, strengthened migratory bird partnerships will facilitate the development of an International Migratory Bird Management Plan that will become a major force driving the expansion of the Federal Refuge System. Partnerships developed through that plan, and others will evolve into biodiversity initiatives, and ultimately impact ecosystem management, restoring wildlife populations, plant communities, and more. This evolution opens new doors for funding, partnerships, and leveraging, but may create the possibility that we may eventually lose sight of the original purpose of each refuge. HR511 ensures that this does not happen as we move forward. Many of us old-fashioned single species managers would be uncomfortable without this assurance.

Likewise, some hunters are convinced that hunting will one day be phased out on Federal Lands designated primarily to meet the needs of migratory songbirds. And, I suspect that some bird watchers are fearful that they may eventually be excluded from some Federal Refuges that meet the habitat needs of game species. HR511 provides assurances to both groups to the extent practical, paving the way for an evolution of partnerships never before thought possible.

The fair treatment guaranteed by HR511 to hunters and non-hunters is crucial if we are to realize partnerships essential to the formation of a national network of lands and waters designed to conserve and manage fish, wildlife, plants and their habitats across America.

HR511 does more than insure the integrity of the existing refuge system and provide a level playing field for hunters and non-hunters. It establishes purposes which clearly posture the refuge system to play a major role as the nation moves to address habitat needs of a host of species, including inter-jurisdictional fisheries and all migratory birds, recover endangered or threatened species, fulfill treaty obligations, and provide for recreation and environmental education. The Tennessee Wildlife Resources Agency strongly supports passage of HR511.

DAVID READE
CHIEF OF STAFF

Assembly
California Legislature
BERNIE RICHTER
ASSEMBLYMAN, THIRD DISTRICT

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PUBLIC EMPLOYMENT, RETIREMENT AND SOCIAL SECURITY

HR 512 (Mr. Young of Alaska)
New Wildlife Refuge Authorization

Chairman Saxton, Members of the Sub-Committee.

Thank-you for the opportunity to address you this day on an issue that has caused a great deal of pain and economic hardship on my constituents.

A great many of our existing wildlife refuges were created by opportunities that presented themselves when we built levees to protect life and property.

A great deal more of our wildlife refuges are protected by levees which keep rampaging rivers within their preferred channels and keep flood waters from inundating or destroying critical refuge habitat.

As you ponder the bill that is before you, I urge you to note that new opportunities to create wildlife refuges require careful evaluation to be sure that the very act of placing or creating a wildlife refuge does not in-and-of-itself create a new or enhanced danger to human health and safety.

In my home state of California, the placement of wildlife refuges has exacerbated the systematic maintenance of the levees which is required to protect the integrity of the very levees which helped to create the wildlife refuges in the first place or which protect the refuges themselves from destruction.

Levees, which are essentially piles of dirt, sand and rocks must be watched closely for elements which will destabilize the levee walls. It is critical that the required maintenance and repair of levees be conducted in a consistent and timely manner. However, many levee maintenance and repair issues are held hostage by the Endangered Species Act and the Clean Water Act which are simultaneously raised to higher levels by the placement of wildlife refuges.

Maintenance of levees includes the removal of over-grown vegetation. As vegetation increases in size it has more opportunity to snag passing debris causing a tangle of driftwood, plants and man-made trash. This natural dam impedes the flow of water down the levee and is particularly critical during floods when restricted flows put enormous pressure on the sides of levees which are more than likely weakened by the interlaced rodent tunnels.

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The control of vegetation in our levee systems is restricted by the presence of the Elderberry Bush, habitat for the endangered Elderberry Beetle. For example, due to the "harm or harass" provision in the endangered species Act, nothing can be done to control vegetation which may impact the beetle or its habitat. In other cases, large vegetation like trees also contribute to the natural dam process, thus weakening the integrity of levees. But their removal is impeded by the endangered status of the Chinook salmon.

Example:

- Reclamation District 784 determined that repair work was needed on 30 miles of levee. No new levees were planned, only major maintenance to restore existing levees to their original condition. By the time the project was implemented, the Corps identified 43 clumps of Elderberry bushes that would be disturbed during the restoration process. The Corps determined that **before** any levee work could start, it was necessary to create an 80 acre mitigation site. The $1.9 million site was located on the river side of the Feather River levee. Further discussions by the State and federal resource agencies added a large pond to the mitigation project for wetlands habitat. The agencies dictated that the 17 foot deep pond was to be dug near the levee wall.

  Members, please note the following from the "Biological Opinion" proffered by the U.S. Fish and Wildlife Service for the specific project, dated January 26, 1993. [Biological Opinions dictates the mitigation measures which must be implemented before the project can commence.]

  > "To offset adverse impacts to the beetle and its habitat, the project includes a mitigation plan based on the Service's compensation guidelines (at least 5 to 1).
  >
  > "Thirty-seven (37) **elderberry shrubs** containing one thousand five hundred and thirty-eight (1,538) elderberry stems, lost (*projected to be lost*) during construction will be offset by planting seven thousand six hundred and ninety **(7,690) elderberry seedlings**. The elderberry seedlings will be planted on fifty-six point five (56.5) acres of land (*on the river side of the levee*).
  >
  > "A survival rate of 80 percent of the elderberry shrubs and associated native plants shall be obtained at the end of the 10 year monitoring program. The Corps shall insure that six thousand three hundred and seventy (6370) elderberry shrubs, and two thousand four hundred and sixty-five (2465) associated native plants are in good health at the end of the 10 year period beginning with the date the mitigation program is initiated."

  To make matters worse, the Corps committed to the mitigation project without consulting RD 784. Minutes from a RD784 Board Meeting confirm that the Corps was not familiar with the details of the topography. The minutes further show from questions raised by the district board chairman Rex Archer that the RD 784 had not been told about the marshland

i.e., pond, and that RD 784 objected to the construction of the pond so close to the levee. The minutes show that the Corps said they "would look into the problem" and the Corps reassured the RD784 Board that "it (the pond)would not created a problem," besides, "it would be very expensive to fill the hole back in again."

In further discussions in the same meeting, the minutes note the RD Manager Gene Anderson expressed concern that the "hole dug" by the corps intercepted the channel which allows water to come up on the land side as boils. Finally, the minutes show that Board Attorney Steve Jones suggested the district should follow up with a letter voicing its concerns, giving a history of that section (of levee) and stating that RD 784 thinks that a grievous error is being made.

Please let your record show that seepage was noted on the land side of the levee after the pond was dug.

My point -- The disastrous levee failure in early January of this year that claimed the lives of three of my constituents, occurred at the lower end of the mitigation site. The levee failure flooded 500 homes, 9,000 acres of prime farm land, displaced 35,000 people, and flooded the largest employers in one of California's poorest counties, **while simultaneously destroying the $1.9 million mitigation project and major amounts of wildlife and additional habitat**.

A new dilemma has presented itself, it is now year two of the mitigation project and all seedlings, shrubs, beetles and whatever other habitat existed are gone !

The Corps and the Fish and Wildlife Service's first priority was construction of the mitigation site. Only a small part of the levee restoration work was completed. Because of this levee failure, a portion of the Feather River levee targeted for repair has been washed away and 1-1/2 miles of Bear River levee now needs extensive repair.

Ironically, adding insult to injury to the direct loss of the specific mitigation site and all the attenuated flood damages, the operators of the land report that over **100 additional clumps of Elderberry Bushes** washed out due to bank erosion during the January 1997 floods.

The Corps was advised that a mistake had been made. The Corps discounted the error. Lives and property were lost. This is incredible!

Wildlife habitat acquisition induced levee failures -- the acquisition of habitat without the related funding for repair and maintenance of levees that protect the habitat have caused specific levee failures with disastrous consequences.

Example:

- In the early 1990's, the California Department of fish and Game purchased a 350 acre almond orchard from The Nature Conservancy. This property is located at the confluence of Pine creek and the Sacramento. During the 1995 floods, the levee on the orchard property owned by DFG broke down to field grade. Three thousand acres of adjoining orchards were flooded and continued to flood even during the nominal releases from Keswick dam. No repairs have been undertaken as DFG claims that no money is available for levee construction. However, they continue to purchase property by way of the Mountain Lion Protection Act. DFG desires to create riverain habitat threatens their neighbors with the huge financial losses. The acres flooded as a direct result of DFG environmental policy represent an investment of $10MM by private landowners.

Rodent tunnels created by squirrels, gophers and muskrats undermine the integrity of levees when these rodent holes become channel ways for water. Protected species like the giant garter snake move into rodent holes, further restricting levee upkeep.

Example:

- Reclamation District 1500 worked with the Army Corps of Engineers (the Corps) and environmental regulators for 6 to 7 years to complete the permit process for repair work of a portion of levee. The contract for repair had been let and the work was ready to start when the discovery of a dormant giant garter snake stopped repairs entirely until after the current 1997 flood season.

TESTIMONY OF JOHN BARANEK BEFORE THE HOUSE SUBCOMMITTEE ON FISHERIES CONSERVATION, WILDLIFE AND OCEANS OF THE COMMITTEE ON RESOURCES ON MARCH 6, 1997

INTRODUCTION

Thank you Mr. Chairman for the opportunity to testify today.

My name is John Baranek. I am the President and General Manager of the Herzog Company, a family farming corporation located in Courtland, California. I am a third generation steward of the land. My grandfather bought land in the Courtland area in the 1890s, and the land we presently farm in 1902. Our farm is comprised of 600 acres of premium wine grapes and 230 acres of levees, sloughs, and riparian habitat.

As required by House Rule 11, clause 2(g), my resume is attached which outlines my professional background in viticulture. Neither my corporation nor I personally are recipients of any federal grants.

THE UNITED STATES FISH AND WILDLIFE SERVICE: A BAD NEIGHBOR

The Service began its involvement in Stone Lakes by creating an "Interagency Policy Group." This was made up of nine government agents and excluded land owners. It immediately proceeded to misrepresent to the public the true magnitude of its plans.

Stone Lakes area property owners felt comfortable with the original 5,000 acre refuge proposal in North Stone Lake, most of which was already under a combined ownership of the State of California and the County of Sacramento. To our surprise, at a meeting of the county board of supervisors in 1991 we were introduced to a 74,000 acre study area as a proposed refuge! The supervisors then instructed USFWS to add two directors from

local reclamation districts to the "Group." They were added, but the "Group" never had another meeting!

General public opposition forced the USFWS to do an EIS. The result was the reduction from a 74,000 acre proposal to a 9,000 acre core area, with an additional 9,000 acres in cooperative management. However, the current proposed boundary is still well in excess of the 5,000 acre plan that was originally presented. We are also still waiting for a Refuge Management Plan, which was due to be completed by 1994.

The Sacramento County Board of Supervisors has supported local residents and land owners throughout this ordeal. For the past several years, and as recently as February 24, 1997 the supervisors have refused to sign a Memorandum of Understanding allowing county land to join the refuge, primarily because of the lack of a Management Plan.

State and federal officials representing Stone Lakes have also supported our efforts to get a straight answer from the willfully misleading USFWS bureaucracies in Sacramento and Portland. The Portland office, in its Report to Employees in February of 1993, acknowledged that its greatest problem was adding land without adequate staffing or funding to handle these new acquisitions. And yet this power hungry bureaucracy continues to expand its reach.

ENVIRONMENTAL CONCERNS WITH THE REFUGE

The location of the refuge, surrounded by levees that have flooded five times in twenty years, is a crime. This bath tub effect acts like a large animal trap. Most species drown or are displaced to become feed for predators, or become road kill on the surrounding highways and roads. It does not make sense to intensify the population of animals, only to destroy them by man's good intentions.

The Stone Lakes area is a major flood way for South Sacramento. In wet years most of the refuge area floods. Major flooding has occurred in 1982, 1983, 1986, 1995, and most recently January 1997. Pictured in the accompanying exhibit is the 1986 flood which covers the entire refuge area. The Refuge Manager, Tom Harvey, admits major problems in achieving the goals of the refuge. He stated in March of 1995, "A huge body of scientific literature exists that proves that water level differences even as small as a few centimeters can have a great effect on wetland and riparian communities, especially on species establishment."

Regional Sanitation District drainage and non-treated surface runoff from the Sacramento urban population flows through the Stone Lakes Refuge. Part of the water is then pumped into the Sacramento River at Freeport. The California State Water Control Board has identified the entire Beach Lake area, which is part of North Stone Lake, and the adjacent Sacramento River from the towns of Freeport to Hood a candidate for "Toxic Hot Spots." These toxins may create health problems for migratory waterfowl. In an extreme case, this could result in deformity of wildlife as happened at the Kesterson Refuge near Los Banos, California.

Most recently, the Service has considered new ways of managing the refuge. They have asked the county for a suspension of grazing prohibitions on county owned land. They are considering controlled burns, and livestock grazing among other options. Actually, these are not new ideas. It is what local residents have been doing for over one hundred years, to the benefit of the wildlife abundant in the area.

We need HR 512, which requires concurrence from both the Service and Congress in order to create a refuge. This will eliminate the kind of bureaucratic land grabbing over the objection of area residents that is occurring at Stone Lakes.

In conclusion Mr. Chairman, I have a bumper sticker that proposes what is best for both people and wildlife in the Stone Lakes area. It says, "Save the Delta from the Fish and Wildlife Service."

RESOURCES

1. THE STATE OF THE NATIONAL WILDLIFE REFUGE PROGRAM IN REGION 1
A Report to Employees
February 1993
Department of the Interior
U.S. Fish and Wildlife Service
Pacific Region
Portland, Oregon

2. STONE LAKES INTERAGENCY POLICY GROUP
U.S. Fish and Wildlife Service
2233 Watt Ave. , Suite 375
Sacramento , CA. 95825

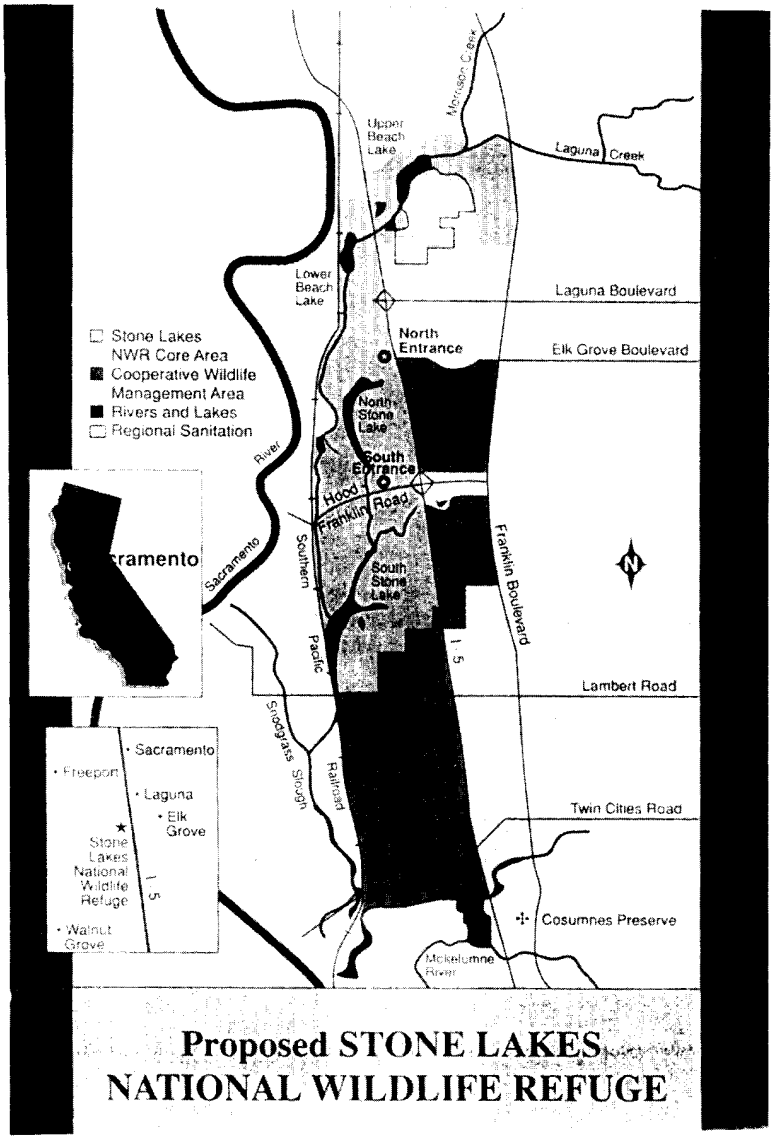
3. STONE LAKE NATIONAL WILDLIFE REFUGE
South Sacramento Preservation Council
P.O. Box 43
Hood , CA. 956394.

4. MAP of STONE LAKES
U.S. Fish and Wildlife Service
Stone Lakes Refuge Office
2233 Watt Ave. , Suite 375
Sacramento, CA. 95825

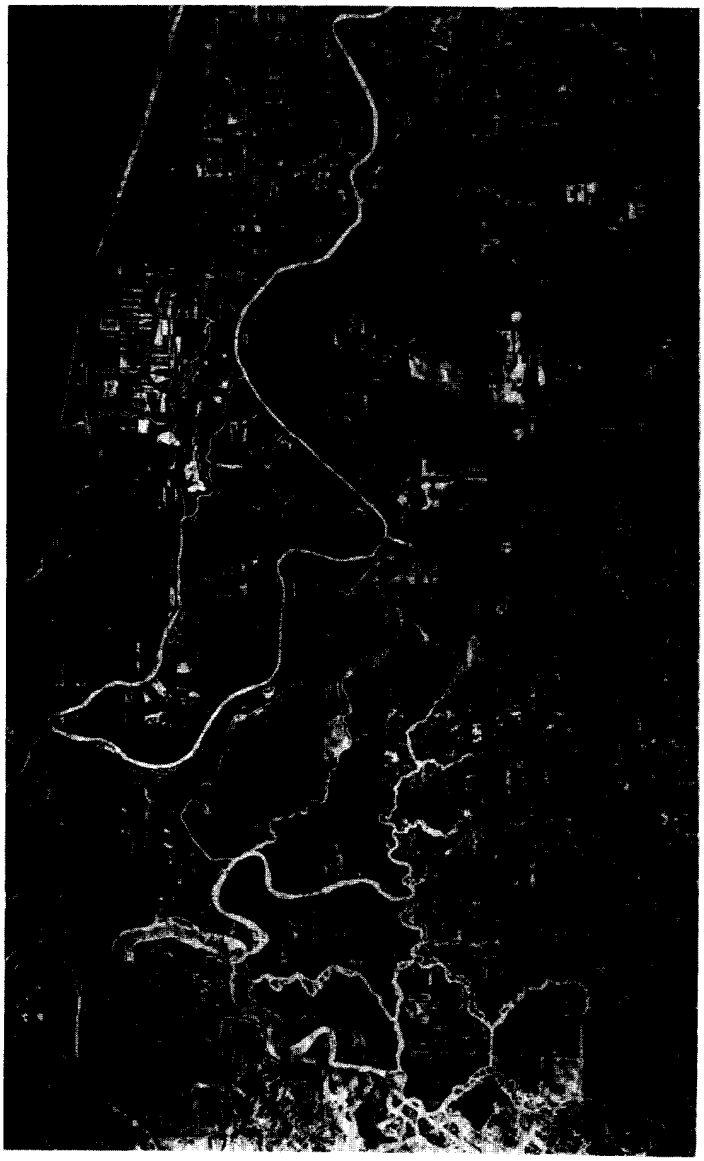
5. 1986 SOUTH SACRAMENTO CO. FLOOD PHOTO
California State Department of Resources

6. LETTER BY THOMAS E. HARVEY
Refuge Manager
Stone Lakes National Wildlife Refuge
2233 Watt Ave. , Suite 375
Sacramento, CA. 95825

7. DRAFT FUNCTIONAL EQUIVALENT DOCUMENT :
DEVELOPMENT OF THE WATER QUALITY
CONTROL POLICY FOR IMPLEMENTATION
OF THE BAY PROTECTION AND
TOXIC CLEANUP PROGRAM
Division of Water Quality
January 1995
State Water Resources Control Board
California Environmental Protection Agency



Proposed STONE LAKES NATIONAL WILDLIFE REFUGE



HOW TO CREATE AN ENTITLEMENT PROGRAM
WITHOUT CONGRESSIONAL OR EXECUTIVE OVERSIGHT IN 10 EASY STEPS
A CASE STUDY: STONE LAKE NWR

Step 1. Identify a site with the potential of being plausibly exploited as an environmentally sensitive area.

Step 2. Identify potential crisis scenario's to subject area, real or imagined. Generic arguments such as, "90% of the habitat is destroyed and only 5% of the species remain" or "the area is threatened by rapid urban or agricultural development," work well.

Step 3. Line up groups friendly to your viewpoint who will articulate your arguments in step's 1 & 2. The task of these groups is to create a crisis and ask for a solution. The solution being government intervention in the form of a National Wildlife Refuge (NWR).

Step 4. The U.S. Fish & Wildlife Service (USF&WS) must respond to this "massive public outcry." The USF&WS will prepare a preliminary survey summarizing the area in question (step 1) and detailing the threats to this critically important environmentally sensitive area (step 2). The survey also will detail the massive public outcry (step 3) and the strong community support for federal intervention.

Step 5. The Regional Director of the USF&WS will make a decision to proceed, by authorizing the preparation of an Environmental Assessment (EA).

Step 6. The public relation's campaign begins with the USF&WS announcing that they are in town to solicit public input about a potential project. Hearing's will be scheduled, maps will be prepared and assurances given that this is a fair and impartial process. The groups identified in step 3 will appear at every hearing articulating the arguments in step's 1 & 2. The campaign will attempt to enlarge the crisis and ultimately provide the solution of a NWR.

Step 7. The USF&WS will announce it's in house evaluation has determined the most suitable project size. The groups in step 3 will announce their disappointment that the project is not larger, but will agree to support the "smaller" project as a step in the right direction.

Step 8. The Regional Director will prepare and sign the Record of Decision (ROD) detailing step's 1,2 & 3 as justification for his creation of this NWR, imposing it's boundaries on a map. The Director will go on to say that the decision was reached after a lengthy public hearing process when in reality the decision occurred in step 5, well before the hearing process.

Step 9. Congress will receive endless request's for funding of this important "existing" project though it lacked authority or oversight in the creation process. Eventually Congress will give in and provide certain level's of funding for yet another "worthy project."

Step 10. In the name of environmentalism, the Service perverts environmental laws and runs roughshod over laws designed to protect public health. It introduces flood and disease risk into populated areas. When challenged on these points the Service throws up a smoke screen of evasion and attempts to threaten and smear its accusers. Then the Service refuses to deal with the merits of the objection claiming superior knowledge. As an entrenched bureaucracy, its heavy-handed and oppressive tactics are not directly responsible to anyone, least of all the citizens its actions affect. As if this were not enough, it crowns its scheme by grotesquely wasting the taxpayers' money pursuing expensive projects while cheaper and more deserving ones are readily available.

10 TROUBLESOME OBSERVATIONS AND QUESTIONS

1. Why is the USF&WS allowed to create entitlement programs without any Congressional or Executive oversight?

2. With this lack of oversight the USF&WS routinely disregards the law with impunity.

3. With this impunity it is up to the citizens whose lives and property are affected to challenge the USF&WS' arrogance, in costly court proceeding's.

4. The USF&WS resists any challenges to it's illegalities by wasting even more taxpayer dollars defending indefensible positions.

5. Why is their no impartial evaluation of proposed federal action, considering for example, cost vs. benefit?

6. Who in the government cares to carry out the provisions of the National Environmental Policy Act (NEPA)?

7. NEPA is well drafted legislation, yet it doesn't contain effective sanction's that the entrenched bureaucracy's fear.

8. What about good science? When pressed to provide empirical data backing up outrageous claims the Service resorts to evasion.

9. How many NWR's are currently un-funded projects?

10. What dollar amount have the USF&WS committed the taxpayer's to spend on entitlement programs it has created?

STATEMENT TO THE
FISHERIES CONSERVATION, WILDLIFE AND OCEANS
SUBCOMMITTEE OF THE
HOUSE RESOURCES COMMITTEE

Presented by:
Jeff Craven

March 6, 1997

Thank you Mr. Chairman for the opportunity to testify today. My name is Jeff Craven. I am a fourth generation dairy farmer from Cloverdale, Oregon. Our farm has been in the family for one hundred and eleven years. Farmland in Tillamook County consists almost entirely of perennial grass pasture. The pioneers of our county found these pastures to be ideally suited for dairy pasture. As a result, dairy farming is the major industry of Tillamook County. The Tillamook County Creamery Association has become world famous for production of high quality cheddar cheese.

As a result of our farming practices, our pastures have become an important habitat for many species of geese, ducks and other wildlife. This habitat is protected by zoning laws, till and removal laws and the Clean Water Act. In June 1990, landowners were notified that a refuge was being proposed in the Nestucca Bay area. The "Nestucca Bay Wildlife Refuge" included four thousand eight hundred acres, nearly all of the farmland in the Lower Nestucca drainage.

We discovered that one dairy farm had already been purchased by the Nature Conservancy at the request of the United States Fish and Wildlife Service. We became very concerned about the impact of the proposed refuge on the local economy and the dairy industry. Would our farm values be affected? What were the threats to wildlife? How would the short-grass goose habitat be maintained without the dairy farms?

Within three months, the U.S. Fish and Wildlife Service had completed their draft environmental assessment for the proposed refuge. We could not accept the Fish and Wildlife Service's conclusion that federal ownership and control was the best way to protect the habitat we were providing. We took the opportunity to comment on the draft environmental assessment, thinking we would be listened to.

By December 1990, the final environmental assessment was completed. Our concerns were not addressed. No changes had been made to reflect the public comment. The finding of "No significant impact" was due to become final after a 30-day comment period. We were totally frustrated. As a last resort we hired legal council. With the help of local, state and federal officials, we were able to put the project on hold except for the purchase of Nature Conservancy property that the U.S. Fish and Wildlife Service was "committed" to.

We negotiated an agreement with the Fish and Wildlife Service to develop a cooperative resource management program to protect the goose habitat. The Fish and Wildlife Service recognizes the importance of the dairy industry in meeting that objective. We now have a Memorandum of Understanding between the Fish and Wildlife Service and local landowners that meets the objective of protecting the habitat, but still keeps lands in private ownership. The Service revised the environmental assessment so that the preferred alternative is for wildlife habitat to remain in private ownership. The acreage of the "refuge" areas was also significantly reduced to more clearly identify important habitat.

It has been five years since we signed the Memorandum of Understanding with the U.S. Fish and Wildlife Service. Our dairy farms have continued to provide the important habitat to wintering Canadian goose populations. There has been no habitat loss, nor have any threats to that habit been identified. Despite few promises to operate the refuge property as a dairy, it has been out of production for five years. The Service now relies on the remaining area farmers to maintain the short-grass habitat that the geese need. Fish and Wildlife has struggled to establish a management plan and gain funding to provide habitat.

Mr. Chairman, I believe that H.R. 512 will help prevent some of the mistakes that happened in our situation from being made. We were lucky. We were able to come to a reasonable solution, but the cost was high, both financially and emotionally. With the congressional oversight provided by H.R. 512, I believe that creative solutions are more likely to be found. There are often far better ways to protect wildlife than converting private land into public land, and Congress and the American people need more opportunity to explore them.

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Testimony By
Daniel P. Beard, Senior Vice-President for Public Policy
National Audubon Society
Before The
Subcommittee on Fisheries, Wildlife & Oceans
Concerning H.R.511 and H.R.512
U.S. House of Representatives
Washington, D.C. 20515
March 6, 1997

Mr. Chairman:

Thank you for the opportunity to provide you with our views on H.R.511, the Wildlife Refuge Improvement Act of 1997, and H.R.512, the New Wildlife Refuge Authorization Act. We appreciate the Committee's interest in improving management of the National Wildlife Refuge System, our country's premier federal lands for the protection of birds and wildlife. The mission of the National Audubon Society, representing more than 550,000 Americans nationwide, is to conserve and restore natural ecosystems, focusing on birds, other wildlife, and their habitats for the benefit of humanity and the earth's biological diversity.

Audubon's history with the National Wildlife Refuge System dates back to 1903 when President Theodore Roosevelt established the first refuge, Pelican Island, in Florida, by executive order. Roosevelt was responding to concerns from early Audubon Societies and others about the senseless marauding of colonial nesting birds whose populations were threatened with dramatic declines. Before the end of his presidency in 1909, Roosevelt established 53 other sanctuaries that have served as the foundation of the current System.

Audubon societies hired wardens to watch over President Roosevelt's first wildlife sanctuaries. Today, National Audubon's 518 chapters throughout the country play a pivotal role at many wildlife refuges, assisting with volunteer coordination, public education, citizen science and maintenance projects. Auduboners have contributed thousands of hours at wildlife refuges, helping managers meet some of their basic needs where funding limits adequate staffing.

National Audubon Society also represents the fastest growing recreational constituency in America, and the Refuge System's largest user group. People who are interested in birds now account for 1 in 4 Americans, topping even the number of golfers in the United States. On wildlife refuges, bird

enthusiasts and others interested in wildlife observation contribute to almost 65% of visitation (see appendix A). In economic terms, bird watching is a cash cow for communities neighboring wildlife refuges, with some communities such as those around the new Cape May NWR in New Jersey receiving more than $10 million annually.

Accordingly, Audubon has a significant stake in seeing wildlife refuges managed in a way that promotes bird conservation; the quality of our recreational pursuits is directly linked to the health of the resource.

THE NATIONAL WILDLIFE REFUGE SYSTEM -- PUTTING BIRDS AND WILDLIFE FIRST

The events that have shaped the National Wildlife Refuge System have been sporadic and opportunistic, and have generally failed to provide the System with a clear long-term vision, instead responding to the needs of the moment. In spite of this, legislative mandates and executive orders affecting individual wildlife refuges and the System have repeatedly affirmed the need to place the protection of birds and wildlife first, allowing secondary uses where they are compatible with the purposes of refuges.

During the first 46 years of the Refuge System, wildlife refuges were, with few exceptions, considered "inviolate sanctuaries," set aside to provide safehaven for migratory birds and game species. President Roosevelt, who was an avid sportsman, wisely recognized that providing safehavens for hunted species to flourish would lead to enhanced hunting opportunities, especially on adjacent state and private lands.

The passage of the 1934 Migratory Bird Hunting Stamp Act marked a shift toward waterfowl protection and management as the primary emphasis of the Refuge System. Nevertheless, the vast majority of wildlife refuges remained closed to hunting until 1949 when an amendment to the act opened 25 percent of individual refuges to hunting subject to the Secretary of Interior's discretion. In 1958, that percentage was increased to 40 percent as a further amendment to the Duck Stamp Act. Although these amendments increased the role of recreation on wildlife refuges, there continued to be a presumption that a majority of refuge lands ought to be set aside as inviolate sanctuaries.

Recognizing the stress of increased recreation on wildlife refuges, Congress in 1962 passed the Refuge Recreation Act (16 U.S.C. 460k) which held that recreation could not interfere with refuge purposes. The legislation also included an important provision that required the Secretary of Interior to determine the availability of funds prior to authorizing a secondary use. In other words, funds were not to be diverted from existing bird and wildlife conservation efforts to facilitate recreation.

The National Wildlife Refuge System Administration Act of 1966 was enacted "For the purpose of consolidating the authorities relating to the various categories of areas that are administered by the Secretary of the Interior for the conservation of fish and wildlife..." (16 U.S.C. 668dd (a) (1)) emphasis added. The act also reaffirmed the Secretary of Interior's authority to allow secondary uses on refuges provided they are compatible with "the major purposes for which such areas were established."

The 1973 passage of the Endangered Species Act (U.S.C. 1531) prompted an expanded vision for the System, making protection and recovery of threatened and endangered species a priority for refuges. Currently, there are nearly 60 refuges set aside under authority of the ESA for the express purpose of helping to recovery threatened and endangered species.

Most recently, President Clinton signed Executive Order 12996 on March 25, 1996 that defined the mission of the National Wildlife Refuge System as preserving "a national network of lands and waters for the conservation and management of fish, wildlife, and plant resources of the united States for the benefit of present and future generations." In this EO, he underscores the importance of refuges providing "opportunities for compatible wildlife dependent recreational activities involving hunting, fishing, wildlife observation and photography, and environmental education and interpretation (emphasis added)."

A NEW DIRECTION FOR THE REFUGE SYSTEM?

In our view, H.R.511 represents a dramatic shift in direction for the National Wildlife Refuge System, one that moves the central focus of wildlife refuges away from bird and wildlife conservation toward recreation. As a representative of the Refuge System's largest constituency, we appreciate the authors' interest in helping to provide increased opportunities for birders on wildlife refuges. We are concerned, however, that such unduly placed emphasis on recreation will ultimately lead to a degraded resource. This will have the unintended affect of providing reduced opportunities to enjoy bird and wildlife viewing.

Our central concerns with the legislation are:

- H.R.511 makes certain recreational activities purposes of the National Wildlife Refuge System, coequal with bird and wildlife conservation.

- H.R.511 frustrates refuge managers' ability to regulate certain activities on refuges despite their impact on birds, wildlife and their habitat.

- H.R.511 overturns a long-standing policy of making new wildlife refuges inviolate sanctuaries pending a review of proposed secondary uses.

- H.R.511 includes a provision that appears intended to limit the U.S. Fish and Wildlife Service's ability to manage activities on navigable waters within refuge boundaries.

Recreation as a purpose of the Refuge System

As highlighted earlier in our testimony, the issue of recreation on wildlife refuges has over the years been addressed through legislation and administrative action, but always to the effect of making wildlife conservation the central directive of the Refuge System. In spite of this, wildlife-oriented recreation in particular has been generally accepted as appropriate on wildlife refuges subject to compatibility with the establishing purposes of refuges. Executive Order 12996 reaffirms this by acknowledging the importance of "compatible wildlife-dependent recreational activities involving hunting, fishing, wildlife observation and photography, and environmental education and interpretation" to the Refuge System.

In H.R.511, however, section 4 (D) identifies "fishing and hunting, wildlife observation, and environmental education" as purposes of the Refuge System, coequal with purposes that provide for wildlife conservation. The fundamental problem with making recreation equal in status to wildlife conservation is that it has the practical effect of making it much more difficult for refuge managers to balance the needs of wildlife and habitat with those of recreational users. The objective in passing organic legislation for the Refuge System is to make management decisions easier for refuge professionals, not more difficult.

A far more serious implication of making wildlife conservation and recreation coequal purposes concerns funding allocations for these activities on refuges. Presently, recreational activities absorb more than 20% of refuge operations funding. As a member of the Cooperative Alliance for Refuge Enhancement (CARE), we are acutely aware of the massive funding shortfalls suffered by the System. Indeed, this funding shortage means that the Refuge System is not meeting its tremendous potential for protecting migratory birds, recovering threatened and endangered species and restoring important bird and wildlife habitat.

By making certain recreational activities purposes of the Refuge System, these activities will presumably be entitled to a greater share of already inadequate refuge funding, at the expense of programs designed to conserve and manage wildlife. A further provision of H.R.511, highlighted in the next section of our testimony, would exacerbate this problem by overturning a provision in the 1962 Refuge Recreation Act that prohibits shifting money from wildlife

conservation efforts toward recreation. Clearly, we do not want to create a dynamic where recreational uses and wildlife conservation are competing head to head for scarce federal dollars.

Compatibility standards for recreational uses on wildlife refuges

We are particularly concerned about provisions in H.R.511 that would clear the way for the bill's identified recreational activities to occur on wildlife refuges at the expense of birds and wildlife.

For example, Sec. 3 (1) defines "compatible use" as one that "will not materially interfere with or detract from the fulfillment of the purposes of a refuge or the overall mission and purposes of the System ... as determined by sound resource management, and based on reliable scientific information." Since hunting, fishing, wildlife observation and education are purposes of the Refuge System, these recreational activities must only be found to be compatible with themselves to be considered compatible uses. Further, the term "materially interfere," places an excessive burden on refuge professionals to prove the incompatibility of uses, clearly favoring secondary uses over bird and wildlife conservation.

Adding to the likelihood that we are tying the hands of refuge managers, Sec. 6 (3)(B)(x) provides an assumption that "when managed in accordance with principles of sound fish and wildlife management, fishing, hunting, wildlife observation, and education in a refuge are generally compatible uses." However, the definition of "management" under Sec. 3 (2) includes "regulated taking" which is defined under Sec. 3 (13) to mean "pursue, hunt, shoot, capture, collect, or kill." Thus the language works to reaffirm the assumption of hunting and fishing as compatible uses.

Further, Sec. 6 (3)(A)(iii) directs the Secretary of Interior to permit fishing and hunting on refuges if these activities are found to be compatible -- Sec. 4 (D) ensures that they will be -- and consistent with public safety. It also states that no other determinations other than consistency with state laws will be necessary for these activities to occur. As previously noted, this provision is of considerable concern because it overturns a provision of the Refuge Recreation Act requiring that recreational activities be permitted only after compatibility has been established, and that sufficient funds are available beyond those which are necessary to conduct wildlife conservation initiatives.

Secondary uses on new wildlife refuges

Currently, new refuges are considered inviolate sanctuaries until refuge professionals have found secondary uses to be compatible with their establishing purposes. Sec. (6)(ii) of H.R.511 overturns this long-standing practice by stipulating that existing "fish or wildlife-dependent uses" shall be

continued unless the Secretary finds these uses to be incompatible. While the National Audubon Society believes that attention ought to be given to wildlife-oriented recreational uses in the planning process for new refuges, we believe that it is in the best interest of both recreationalists and wildlife that first priority be given to identifying the needs of wildlife.

Once again, this is an issue of practicality; limited funding for refuge personnel and management requires prioritizing of activities by refuge professionals. In our view, refuge professionals challenged with managing new wildlife refuges should not be burdened with having to develop time-consuming compatibility determinations for secondary uses when faced with pressing wildlife and habitat conservation responsibilities. We do, however, support H.R.511's call for the completion of comprehensive management plans, and believe that compatibility determinations for secondary uses ought to be included in these plans.

Navigational Servitudes

We are concerned that the definition of "refuge" under Sec. (3)(9), will reduce the U.S. Fish and Wildlife Service's authority to regulate activities on navigable waters within refuges. Although it is not immediately clear what the authors have intended by including "navigational servitudes" within this section, the Committee report on H.R.1675 clearly articulated an interest in limiting the FWS's authority in this respect. The 1989 General Accounting Office report, *Continuing Problems With Incompatible Uses Call for Bold Action*, cited 91 instances where incompatible uses occurring on navigable waters within refuges were beyond the Service's control. We believe that refuge organic legislation should provide the FWS with greater authority to manage activities on navigable waters within refuge boundaries, not less.

COMMENTS ON H.R.512

In our September 19, 1996 testimony to this committee concerning funding for the National Wildlife Refuge System, we articulated the critical importance of continuing to acquire land for the National Wildlife Refuge System. Although the vast majority of refuge lands have been withdrawn from the public domain (88.6%), purchased lands through the sale of Duck Stamps (1.3%) and Land and Water Conservation Fund (LWCF) dollars (2.2%) have been instrumental in preserving important habitat for migratory birds and threatened and endangered species (see appendix B).

Inexplicably, H.R.512 would make it more difficult for the U.S. Fish and Wildlife Service to acquire land using LWCF dollars for new wildlife refuges at a time when consensus nationwide among land managers is that habitat loss represents the greatest threat to species populations. In many instances,

the establishment of a new refuge may be the most critical and immediate action required to recover a particular threatened or endangered species.

Currently, most LWCF dollars for refuges are spent on completing refuges, but where opportunities present themselves to establish new refuges with lands obtained from willing sellers, FWS should not be further encumbered. The present system of earmarking LWCF funds for new wildlife refuges already provides an appropriate level of Congressional authorization; further approval should not be necessary and could jeopardize purchases by pushing the typical 1-2 year timeline for negotiations out even further.

Conclusion

National wildlife refuges provide outstanding wildlife-oriented recreational opportunities. In the September 1996 issue of Wild Bird magazine, more than 50% of the "Top 100 Birding Hotspots" in America were identified as being wildlife refuges. In 1995 nearly 24 million, or 64.1% of visitors to wildlife refuges went to observe birds and wildlife. More and more, refuges are where bird enthusiasts go to enjoy their favorite pastime. The fishing and hunting communities also benefit greatly from opportunities on wildlife refuges. With 56% of refuge units open to hunting, and nearly 94% of refuge lands, it is truly an outstanding resource for this user group (see appendix C).

In the 103rd Congress, National Audubon Society supported Senator Bob Graham's S.823, comprehensive organic legislation that provided direction and vision for the Refuge System. An amended version of that bill was supported by all of the organizations testifying this morning. We continue to believe that legislation providing a succinct set of purposes geared toward bird, wildlife and habitat conservation would benefit the System. Such a mandate would simplify management of refuges, help to fill in the gaps where individual refuge purposes are either tightly focused or vague, and give the National Wildlife Refuge System a clear identity. It is unfortunate that nearly 30 years and more than 60 million new refuge acres after an esteemed commission convened by A. Starker Leopold report stated that "what is sill lacking...is a clear statement of policy or philosophy as to what the National Wildlife Refuge System should be," the System is still bereft of a grander vision.

H.R.511 as currently written does not meet this higher standard for the National Wildlife Refuge System. While the bill does provide a set of purposes for the System and calls for the completion of comprehensive management plans, its central focus on elevating recreation we believe will degrade the resource and recreational opportunities along with it.

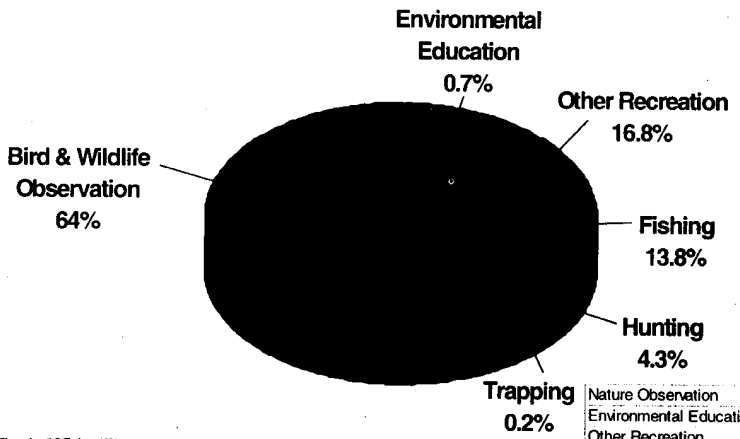
Conversely, we would support legislation that set out purposes for the System that emphasized conservation of bird and wildlife species and habitat on

wildlife refuges; the importance of protecting and recovering threatened and endangered species; and the fulfillment of international treaty obligations. Additionally, we would support such a bill that gave priority to wildlife-oriented recreational uses such as wildlife observation and education, fishing and hunting over other uses that are not dependent on the presence of wildlife. We have had an opportunity to review Congressman George Miller's draft "Theodore Roosevelt Wildlife Legacy Act" and find that its objectives represent a positive step for the Refuge System and is subsequently a bill we can support. We urge the Committee to consider this legislation as an alternative to H.R.511.

Mr. Chairman, thank you again for the opportunity to testify. I look forward to working with you as we work to define a vision for the future of the National Wildlife Refuge System.

Appendix A

National Wildlife Refuge System: Visitation and Activities



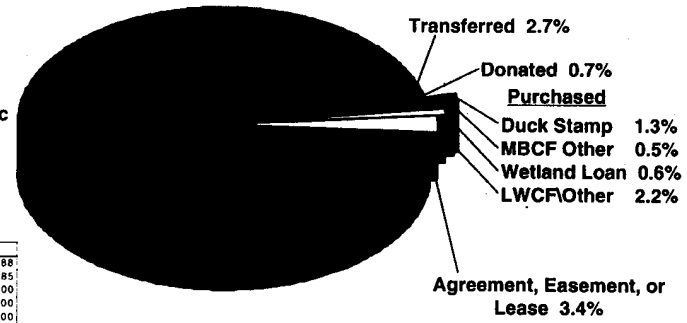
Nature Observation	23,729,223
Environmental Education	266,964
Other Recreation	6,222,322
Fishing	5,119,649
Hunting	1,604,294
Trapping	62,013
TOTAL "Visitation Activities"	37,004,465

Total of 27.1 million visitors for FY 1995.

Source: FWS, Refuge Management Information System

Appendix B

National Wildlife Refuge System: Total Acreage



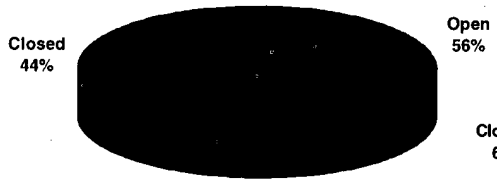
	Acres
Withdrawn	82,085,888
Transferred	2,494,885
MBCF: Duck Stamp	1,210,000
MBCF: Wetland Loan	570,000
MBCF: Other	418,000
LWCF/Other	2,070,000
Agreement, Easement, Loan	3,152,983
TOTAL	92,643,754

Land in the Wildlife Refuge System, including Wildlife Refuges, Waterfowl Production Areas and Coordination Areas.

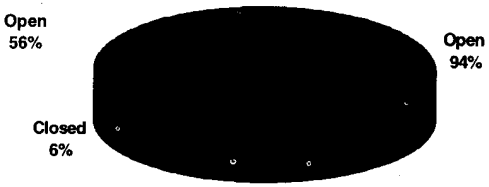
Source: FWS, Division of Refuges.

Appendix C

National Wildlife Refuge System: Hunting Access



Percentage of National Wildlife Refuge System units open to hunting, including Waterfowl Production Areas.



Percentage of National Wildlife Refuge System acreage open to hunting, including Waterfowl Production Areas.

Source: FWS, Division of Refuges.

International Association of Fish and Wildlife Agencies

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February 27, 1997

Mr. Charles W. Johnson
Parliamentarian
U.S. Capitol
H-209
Washington, DC 20515

Re: Rules of the House of Representatives, 105th Congress

Dear Mr. Johnson:

I am writing on behalf of the International Association of Fish and Wildlife Agencies, an organization founded in 1902 to represent the collective interests of the state fish and wildlife agencies. I write to clarify application to the Association of Rule XI(2)(g)(4) which establishes certain requirements for witnesses "appearing in a non-governmental capacity."

The International Association appears frequently before congressional committees to present testimony on behalf of the fish and wildlife agencies of the several States. On these occasions, the Association's testimony is often presented by an individual director of a state fish and wildlife agency. In other instances, testimony on behalf of the Association is presented by its Executive Vice-President or by senior staff. In all instances, such Association testimony will have been authorized by the state government members.

The International Association obviously is not a government, but it is composed of government, but it is composed of government members and only its government members are eligible to vote on positions taken by the Association before Congress. An appearance on behalf of the Association is thus, in a very real sense, the functional equivalent of an appearance by the state fish and wildlife agencies. Indeed, this has been so since the modern era of federal interest in natural resources began in the 1930's. In consequence, the Association does not appear before Congress in a "non-governmental capacity," and thus we would not construe House Rule XI(2)(g)(4) as applicable to this Association insofar as it relates to appearances in a non-governmental capacity.

Mr. Charles W. Johnson
February 24, 1997
Page 2

I would appreciate your confirmation of our understanding. I enclose for your information a copy of the Association's constitution and bylaws.

Sincerely,

R. Max Peterson
Executive Vice-President

pal/avm/s\max\ChasJnsn.doc

Enclosure: 1

BIOGRAPHICAL SKETCH

R. Max Peterson, Executive Vice-President
International Association of Fish and Wildlife Agencies

On January 1, 1989, Mr. Peterson succeeded Jack Berryman as Executive Vice-President of the International Association of Fish and Wildlife Agencies. The International Association of Fish and Wildlife Agencies, established in 1902, represents the state and provincial fish and wildlife agencies of the United States, Canada, and Mexico. Prior to his appointment as Executive Vice-President, Mr. Peterson served for 37½ years in a variety of positions in the U.S. Forest Service, the last 7½ years as Chief. Upon his retirement he was designated Chief Emeritus of the Forest Service by the Secretary of Agriculture.

His assignments with the Forest Service included Deputy Chief for Programs and Legislation, Deputy Regional Forester and Regional Forester for the Southern Region, and a variety of field assignments in the Pacific Southwest and Northern regions, as well as a previous assignment in the Chief's office.

Mr. Peterson is a native of Missouri and a graduate of the University of Missouri. He began his Forest Service career in 1949 in California and during the next nine years worked on three national forests in that State.

In 1958 Mr. Peterson was awarded the Rockefeller Foundation Fellowship to the water resource and land use planning program at Harvard University, where he obtained his master's degree in public administration in 1959.

In more than 40 years of work in natural resources, Mr. Peterson has served in a variety of regional, national and international organizations. This included serving as Chairman of the North American Forestry Commission from 1982 to 1984; Chairman of the FAO's Commission on Forestry; member and Chairman of the National Conservation Committee of the Boy Scouts of America; member and Vice-Chairman of the Board of the Graduate School of the U.S. Department of Agriculture; and head or member of the U.S. Delegation to World Forestry Congresses in 1960, 1971, 1978 and 1986.

Mr. Peterson received numerous honors including the University of Missouri Distinguished Service Award, the Advertising Council Award for Distinguished Public Service, the U.S. Department of Agriculture Distinguished Service Award, and the Presidential Rank of Distinguished Executive.

Mr. Peterson is a Fellow of the Society of American Foresters, a member of The Wildlife Society, a member of the American Society of Civil Engineers, and a Fellow in the Soil and Water Conservation Society.

Both in 1990 and 1995, he has worked actively with 15 other non-governmental organizations to develop agreed-upon principles for important features of the Farm Bill such as the Conservation Reserve Program, Swampbuster, etc.

Safari Club International

A NON-PROFIT ORGANIZATION • DEDICATED TO CONSERVING WILDLIFE AND PRESERVING HUNTING

TESTIMONY OF
SAFARI CLUB INTERNATIONAL

Before the Subcommittee on Fisheries, Wildlife and Oceans,
Committee on Resources
United States House of Representatives

on March 6, 1997

On the

NATIONAL WILDLIFE REFUGE SYSTEM
ADMINISTRATION ACT OF 1997
H.R. 511

Submitted by Robert Easterbrook, Sr.,
President, Safari Club International

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Chairman Saxton and members of the Subcommittee:

My name is Robert Easterbrook, Sr. and I am the President of Safari Club International (SCI). We appreciate the invitation to appear and testify before the Subcommittee, but we will limit our involvement to the submission of this statement in writing. We will be glad to answer any questions that the Subcommittee may have or to submit further information. As required by the new House rules, I have attached further information about our organization, including the grants that we have received from the Federal government.

SCI enthusiastically endorses and supports the passage of H.R. 511. In 1995, we testified similarly in favor of H.R. 1675 and that bill, which was nearly identical to H.R. 511, passed the House by an overwhelming margin of 287 to 138 despite a well-orchestrated campaign of dis-information by anti-sportsmen's groups.

H.R. 511 is a clear, well-written piece of legislation that provides a comprehensive and systematic approach to the management of the National Wildlife Refuge System. It recognizes the importance of wildlife-dependent uses of the System, while protecting the compatibility finding requirements. It sets out a clear statement of purpose and mission for the entire System and establishes a meaningful planning regime that will assure that the refuges meet their purposes both individually and as a system.

One of the main reasons for our support of the bill is that it recognizes the important role of sportsmen and sportswomen in preserving and supporting the Refuge System. The Refuge System was begun by the most famous American sportsmen, Teddy Roosevelt, when he established the Pelican Refuge in 1903. Today, the U.S. Fish and Wildlife Service administers nearly 92 million acres of the federal public lands (13%) in the National Wildlife Refuge System. Wildlife and plant conservation is the primary purpose of most units of the system, with specific purposes often being described in the statutes (or Executive Orders) which established individual refuges. Other uses, including fishing, hunting, grazing, timber or mineral use, etc. are allowed if they are compatible with the primary purpose. Currently there are 511 National Wildlife Refuges, 174 waterfowl production areas (2 million acres, most of which is leased) and 51 wildlife coordination units (318,000 acres). Hunting or fishing occurs on more than 270 of the refuges.

A few weeks ago SCI signed a Memorandum of Understanding with the U.S. Fish and Wildlife Service related to cooperation in regard to refuge operations and our programs. During his speech at the signing ceremony, Director John Rogers recognized the important role of sportsmen and sportswomen in the Refuge System. He said,

> I cannot overstate the importance of the linkage between America's hunting tradition and our conservation mission. The agreement we sign tonight is a continuation of a significant legacy that has conserved wildlife in this country for nearly 100 years.

And SCI has not just started working with the Refuge System either. As recognized by Director Rogers, we have been working with the System for many years. He said,

> The agreement builds on past cooperative ventures between the two organizations that include working to conserve wood ducks and eagles in Louisiana, a radio-collar study of fire effects on elk, and a peregrine falcon study at the National Elk Refuge in Wyoming.

One of the problems with the Refuge System is inherent in the way that it has come into being. It has been put together in a variety of ways, with different purposes for different refuges. While it makes sense for various refuges to stress various things, there needs to be something that ties these units together so that the word "system" has some meaning. H.R. 511 fills this void by establishing that "the overall mission of the System is to conserve and manage fish, wildlife and plants and their habitats within the System for the benefit of present and future generations of the people of the United States. H.R. 511 also sets forth six purposes of the System, including the provision of "opportunities for compatible uses of refuges consisting of fish- and wildlife-dependent recreation, including fishing and hunting, wildlife observation, and environmental education."

Beginning in 1984, some organizations attempted to eliminate sportsmen and sportswomen from the use and enjoyment of the Refuge System. They ignored the serious problems of funding and management that plagued the System and attacked hunting and fishing because they were philosophically opposed to those activities. Their attitudes are not shared by the vast majority of Americans. Survey data from a recent comprehensive 3-year study entitled "Factors Related to Hunting and Fishing Participation in the United States" suggest that 95 percent of Americans

approve of fishing and an overwhelming percentage approve of hunting. The campaign to end hunting and fishing on the Refuge System wasted an enormous amount of money and energy that would have been better spent operating and maintaining the System. For example, a massive effort to revise the Environmental Impact Statement under which the System operated ran from 1986 through 1993 without ever producing a final EIS. We understand that the project has now been scrapped.

During all of these years, the backlog of un-performed maintenance activities continued to grow. At this time, the Fish and Wildlife Service estimates that it would cost $440 million to catch up with the maintenance backlog. We have serious concerns with this, and as a result we have been working with other members of a Washington-based coalition of organizations called the Cooperative Alliance for Refuge Enhancement (CARE) to help deal with this problem.

One thing we have stressed all along is that the Administration needs to recognize the seriousness of the problem with the Refuge System and ask for enough money in the budget to deal with it. This year, for example, the Administration has asked for $192 million for Refuge operations and maintenance, but the CARE group is calling for $220 million as a more realistic figure.

We have also made it clear that part of the solution is to have realistic priorities in regard to acquisition of new lands for the Refuge System. We do not oppose new acquisitions, as evidenced by our support for the recent transfer of lands into the Kodiak Refuge in Alaska. However, we feel strongly that the priority should be on maintenance activities to bring the refuges up to standard, and operations to fulfill the purposes of the refuges and to assure that important wildlife-dependent recreation can continue.

In relation to land acquisition, we also want to make it clear that we do not support expansion of the System for the sake of expansion or for the sake of expanding the federal role in wildlife management. We support the notion that it is the state governments that have the primary role in managing all wildlife within state boundaries.

H.R. 511 speaks to both the expansion of the system and to the role of the States in two places. In the directions given by Congress on the administration of

the System, the bill requires the Secretary to "plan, propose and direct appropriate expansion of the System in the manner that is best designed to accomplish the purposes of the System and the purposes of each refuge and to complement efforts of the States and other Federal agencies to conserve fish and wildlife and their habitats." H.R. 511 also says that nothing in the Act shall affect 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."

The final thing that I want to address is the campaign of disinformation that was undertaken during the 104th Congress by groups who were opposed to H.R. 1675. Hopefully we will not see a repeat of the same kind of statements, built on half-truths and assumptions.

Several major national organizations put out literature that charged that the bill would "elevate recreation and even commercial uses of refuges to the status of purposes of the refuges, thereby minimizing compatibility reviews...". (Quoted from a flier from the National Wildlife Refuge Association et al., copy attached) A similar statement was that the bill would "redefine the very purpose of the ... System by making hunting, trapping and other recreation primary purposes -- in direct competition and on a co-equal basis with wildlife conservation ...". (Quoted from flier from The Wilderness Society, et al., copy attached)

Nothing could be farther from the truth! Both H.R. 511 and its predecessor, H.R. 1675, make clear that the bill does not do what is charged. H.R. 511 says that "the overall mission and purpose of the Refuge System is "to conserve and manage fish, wildlife, and plants and their habitats...". It also says that "In administering the System the Secretary shall ensure ... that the purposes of each refuge are carried out" and that "if a conflict exists between the purposes of a refuge and any purpose of the System, the conflict shall be resolved in a manner that first protects the purpose of the refuge...". Finally, H.R. 511 says that "the Secretary shall permit fishing and hunting on a refuge if the Secretary determines that the activities are ... compatible uses...". Therefore, in various sections of the bill it is clear that the purpose for the establishment of the refuge remains paramount and compatibility is required.

What the bill does do is sets priorities between various uses that are deemed

to be compatible with the purposes of each refuge, and wildlife-dependent uses "involving hunting, fishing, wildlife observation and photography, and environmental education and interpretation" are given priority over other compatible uses. The key is that all the uses must be compatible with the primary purpose for the establishment of the refuge. This in fact does exactly the opposite of what the critics implied, because it makes it clear that wildlife-dependent uses are the favored uses of the system, as opposed to non-wildlife-dependent recreation or commercial use.

For all the above reasons, we support H.R. 511. H.R. 511 is a comprehensive act that will improve the effectiveness and operation of the Refuge System. It deserves support and early passage.

Attachment: Information About Safari Club International

My name is Robert Easterbrook, Sr., and I reside at 32045 Dequindre, Madison Heights, Michigan, 48071-1521. My phone number is (810) 585-7029. I am submitting this statement on behalf of Safari Club International, of which I am the President. The address of SCI is 4800 West Gates Pass Road, Tucson, Arizona, 85745-9490, and our phone number is (520) 620-1220.

SCI is a non-profit organization recognized by the Internal Revenue Service as a charitable organization under Section 501(c)(3) of the Internal Revenue Code. SCI represents more than one million sportsmen and sportswomen worldwide. The bulk of our membership is in the United States, where we have more than 130 chapters, at least one in virtually every state. Our activities are in the areas of wildlife conservation, conservation education, protection of the right to hunt, and community service.

We have just signed a Memorandum of Understanding (MOU) with the United States Fish and Wildlife Service for joint activities with the National Wildlife Refuge System. SCI also participates in the Cooperative Alliance for Refuge Enhancement (CARE). This is a Washington, DC-based broad coalition of conservation groups supporting adequate funding for the operation and maintenance of the Refuge System.

Since October 1, 1994, SCI has received three Federal grants, all from the United States Fish and Wildlife Service under the African Elephant Conservation Act. The details are:

1. Grant # 14-48-0009-95-1229 - "Tanzania Communal Game Scout Quota Monitoring Program." February 24, 1995. Total value = $36,050

2. Grant # 14-48-0009-95-1230 - "Support for CAMPFIRE in Zimbabwe." February 24, 1995. Total value = $85,000

3. Grant # 14-48-98210-97 - "Survey of Tanzania Elephant Populations." December 27, 1996. Total value = $84,240

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