PUBLIC ACCESS WITHIN THE NATIONAL WILDLIFE REFUGE SYSTEM

OVERSIGHT HEARING

BEFORE THE

SUBCOMMITTEE ON FISHERIES AND OCEANS

OF THE

COMMITTEE ON RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED NINTH CONGRESS

FIRST SESSION

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C O N T E N T S

	Page
Hearing held on Thursday, May 26, 2005	1
Statement of Members:	
Bordallo, Hon. Madeleine Z., a Delegate in Congress from Guam, Prepared statement of	87
Letter from David T. Lotz, President, Guam Boonie Stompers, submitted for the record	89
Duncan, Hon. John J., Jr., a Representative in Congress from the State of Tennessee	4
Prepared statement of	5
Gilchrest, Hon. Wayne T., a Representative in Congress from the State of Maryland	1
Prepared statement of	2
Kind, Hon. Ron, a Representative in Congress from the State of Wisconsin	6
Prepared statement of	7
Pallone, Hon. Frank, Jr., a Representative in Congress from the State of New Jersey	3
Prepared statement of	3
Pombo, Hon. Richard W., a Representative in Congress from the State of California, Statement submitted for the record	94
List of National Wildlife Refuge System units closed to the public submitted for the record	95
Letter to Steven Williams, Director, U.S. Fish and Wildlife Service, submitted for the record	106
Response to letter from Steven Williams submitted for the record	107
Letter to Steve Thompson, Operations Manager, California/Nevada Operations Office, U.S. Fish and Wildlife Service, submitted for the record	111
Response from Steve Thompson submitted for the record	112
Statement of Witnesses:	
Allphin, Robert C., Jr., Fair Access to Island Refuges	35
Prepared statement of	39
D'Angelo, James M., M.D., President and Chairman, International Midway Memorial Foundation	14
Prepared statement of	16
Dudley, Dr. William S., Immediate Past Director of Naval History, U.S. Department of the Navy, representing the International Midway Memorial Foundation	9
Prepared statement of	11
Farrell, Bradley A., Fair Access to Island Refuges	27
Prepared statement of	31
Hartwig, William, Assistant Director for the National Wildlife Refuge System, U.S. Fish and Wildlife Service, U.S. Department of the Interior	57
Prepared statement of	60
Response to questions submitted for the record	62
Hilding, Eric, Project NA-178, Statement submitted for the record	97
Letters submitted for the record	100
Langelius, Robert, Sr., President, Eastern U.S. Free Flight Conference	45
Prepared statement of	48
Mathewson, Dave, District 2 Vice President, Academy of Model Aeronautics	42
Prepared statement of	43

Page

Additional materials supplied:
Hirsche, Evan, President, National Wildlife Refuge Association, Statement submitted for the record 103
List of documents retained in the Committee's official files 118

OVERSIGHT HEARING ON PUBLIC ACCESS WITHIN THE NATIONAL WILDLIFE REFUGE SYSTEM

Thursday, May 26, 2005
U.S. House of Representatives
Subcommittee on Fisheries and Oceans
Committee on Resources
Washington, D.C.

The Subcommittee met, pursuant to notice, at 10:05 a.m., in Room 1324, Longworth House Office Building, Hon. Wayne T. Gilchrest [Chairman of the Subcommittee] presiding.

Present: Representatives Gilchrest, Pallone, Duncan, Drake, Kind, and Bordallo.

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

Mr. GILCHREST. The hearing will come to order.

I ask unanimous consent that my full statement be submitted to the record.

We look forward to the testimony this morning on access to U.S. wildlife refuges. We are here to understand those of you who feel that access is not readily accessible. We are here to understand what activities you feel are compatible with wildlife in those refuges. We are also here to try to understand the role of Fish and Wildlife in adhering to and implementing the statutes that we pass here in Congress. We want to blend all this information, to understand and know how much money needs to be appropriated to accommodate all of these activities.

I had a fascinating discussion last night with a Mike Johnson on Sand Island at Midway. I had a discussion with one of the Chugach employees who is a contractor on Sand Island. I had to say they were a little surprised, and wondered whether it was a crank call.

[Laughter.]

Mr. GILCHREST. I also talked to a Barbara Maxwell and a Jerry Leneky, in Honolulu, to have some understanding of what is going on in Midway, the access that people have. There are cruises, I understand, that go to Midway from Honolulu. There is one that will dock there June the 1st, mostly World War II veterans, to take tours of the battle area; to take tours of Sand Island and Eastern

Island; to look at the some 700,000 to 1 million albatross there and other wildlife.

So what we are going to try to do here this morning is to ensure that the refuges, whether they are in New York or the Caribbean or Midway or some other place in the United States, are protected, restored to bring back the prodigious bounty of nature that once abounded there; and to do as much as we can for the taxpayer, for individuals—whether you are flying an airplane, or whether you want to visit a national historic site because you visited that site when you were 50 or 60 years younger than you are today—and have access to that, because it is your tax dollars that have created and maintained and sustained all of these refuges.

So we are going to look into this deeply. This will be our first hearing, but we will continue to pursue information so that whatever is appropriate, we have the appropriate amount of information to facilitate those activities.

And I want to thank all of the witnesses for coming this morning. We look forward to your testimony. I will yield now to the gentleman from New Jersey, Mr. Pallone.

[The prepared statement of Mr. Gilchrest follows:]

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

Good morning, Today, the Subcommittee will conduct an oversight hearing on public access within the unique network of Federal lands known as the National Wildlife Refuge System.

It is now 102 years since President Theodore Roosevelt established the first wildlife refuge at Pelican Island, Florida. Since that time, the Refuge System has grown to 545 units that comprise 97 million acres of land and are located in every state and U.S. Territory.

Eight years ago, Congress enacted an historic organic act for the Refuge System. One of the fundamental features of that law was the establishment of six priority, but not exclusive, wildlife-dependent recreational uses.

By all reports, the Refuge System is widely popular with the American people. In fact, more than 39 million people visited one or more refuges last year.

Nevertheless, over the past five years, this Subcommittee has heard from a number of taxpayers who have been denied the opportunity to visit or engage in a recreational activity that is not one of the six priority uses.

The purpose of today's hearing is twofold. First, we want to get a better idea why 88 National Wildlife Refuge units, which represent 16 percent of the System's total, are entirely closed to the public. In my own district, the rapidly disappearing Susquehanna River National Wildlife Refuge is off limits to visitors. And, secondly, why have certain recreational activities been banned from units within the System?

From my perspective, the most troubling closure is at the Midway Atoll National Wildlife Refuge. Later this year, we will celebrate the 60th anniversary of the end of the Second World War in the Pacific. There was no battle more important in that conflict than the Battle of Midway. It was clearly the turning point of the war, and the last time the Japanese were able to mount an offensive operation. In fact, in testimony before this Committee in 1998, Admiral Thomas Moorer referred to Midway as our battle of Trafalgar.

Yet, since January 2002, the visitors program at Midway Atoll has been closed and it is now virtually impossible for World War II veterans, naval historians and wildlife enthusiasts to visit the island. There have been many questions raised about the Fish and Wildlife Service's enthusiasm for visitors on Midway. I am looking forward to being assured by the Service that once the airport management issue has been resolved, every effort will be made to resume the visitors program. This is the least we can do for those who sacrificed so much for this great country.

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

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

Mr. PALLONE. Thank you, Mr. Chairman. And I want to say good morning to our witnesses assembled here. I am eager to begin this hearing, so that my comments, hopefully, will be brief.

Not long ago, the National Wildlife Refuge System, our only system of Federal lands dedicated exclusively for fish and wildlife conservation, was commonly referred to as a hidden jewel. But after reading through the background material and testimony for today's hearing, I am afraid that this system may be a victim of its own success.

Today, the refuge system faces public demand for expanded opportunities to observe and enjoy the fish and wildlife resources. This demand is perhaps best expressed by annual public visitation that is close to 40 million visitors. And while we should celebrate that our refuges are no longer anonymous, increased public interest brings with it new challenges and new conflicts.

To a certain extent, Congress anticipated this paradox when, in 1997, it passed the National Wildlife Refuge Improvement Act and established a clear "wildlife first" mission for the refuge system. The Congress also specified that wildlife-dependent recreational activities were to be the priority, but not exclusive, public uses allowed within the system.

It is also clear, however, that Congress intended the refuge system to remain accessible for other types of outdoor recreation, as required under the Refuge Recreation Act. Otherwise, Congress would have repealed the requirements of that Act.

Now, today we will hear described circumstances of three unrelated situations at separate refuges. At each of these, different proposals for non-wildlife-dependent recreation activities were denied permits or access by the Fish and Wildlife Service. These situations all raise legitimate policy questions about access to remote areas, compatible use, health and safety concerns, and management constraints caused by shrinking operating budgets.

And we need to examine these circumstances carefully. While we want our refuges to be open and accessible for recreational use, these places must remain as safe havens for our Nation's fish, birds, and other wildlife. The "wildlife first" mission must remain the bedrock foundation to guide refuge management now and in the future.

And in closing, just let me say that I am sympathetic to the dilemma confronting refuge managers. Many managers do their best to provide opportunities for public access. And if the Congress can clarify policy to make their jobs easier, we should consider doing so.

So thank you again, Mr. Chairman.

[The prepared statement of Mr. Pallone follows:]

Statement of The Honorable Frank Pallone, Jr., a Representative in Congress from the State of New Jersey

Thank you Mr. Chairman. Good morning to you and good morning to our witnesses assembled here today. I am eager to begin this hearing so my comments will be brief.

Not too long ago the National Wildlife Refuge System B our only system of Federal lands dedicated exclusively for fish and wildlife conservation B was commonly

referred to as a "hidden jewel." But after reading through the background memo and testimony for today's hearing, I am afraid that the System may be a victim of its own success.

Today the Refuge System faces public demand for expanded opportunities to observe and enjoy fish and wildlife resources. This demand is perhaps best expressed by annual public visitation that is close to 40 million visitors. And while we should celebrate that our refuges are no longer anonymous, increased public interest brings with it new challenges and new conflicts.

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We need to examine these circumstances carefully. While we want our refuges to be open and accessible for recreational use, these places must remain as safe havens for our nation's fish, birds, and other wildlife. The wildlife first mission must remain the bedrock foundation to guide refuge management now and in the future.

In closing, allow me to say that I am sympathetic to the dilemma confronting refuge managers. Many managers do their best to provide opportunities for public access, and if the Congress can clarify policy to make their jobs easier, we should consider doing so. Thank you.

Mr. GILCHREST. Thank you, Mr. Pallone.

And I ask unanimous consent that the gentleman from Tennessee, Mr. Duncan, can sit on the dais. And I will yield to Mr. Duncan. Any opening statement?

STATEMENT OF THE HON. JOHN J. DUNCAN, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TENNESSEE

Mr. DUNCAN. Well, thank you very much, Mr. Chairman. I do appreciate your letting me be here briefly today. I have a markup in another committee and I have to leave shortly, but I mainly wanted to come here today to commend Dr. Jim D'Angelo, the President of the International Midway Memorial Foundation, who has worked on this issue for many, many years. I don't think there is anyone in this country who knows more about the history, the significance, the importance of Midway, and the strong feeling that many World War II veterans and others have about this particular part of our world.

My office, particularly my Deputy Chief of Staff, Don Walker, has worked with Dr. D'Angelo for many years. And we introduced legislation to designate the Midway Atoll as a national memorial over ten years ago. We worked for several years with Senator Jesse Helms of North Carolina, who was also very interested in this legislation.

In 2000, both the House and Senate included language in the Interior Appropriations Bill which designated Midway as a national memorial. It took several years to do this and to come up with this designation, because the Fish and Wildlife Service apparently did not want to accommodate the additional visitors that they felt they

would have to deal with if that legislation went through. There were some in the Fish and Wildlife Service who apparently wanted to keep Midway as some sort of private preserve for them and their employees.

In 2002, Midway Phoenix, which provided commercial air service to the island, left, due to what they felt were ridiculous environmental demands made by the Fish and Wildlife Service. Since that time, there has not been regular commercial air service to the island.

In March of 2002, the Washington Times ran a story with a headline that said, ''Historic Midway Shuts Down: Fish and Wildlife Discourages Visits to World War II Site.'' Later that year, the Times reported, ''The government refused to allow the International Midway Memorial Foundation permission to erect a flagpole because it was considered a strike hazard for birds.'' Placement of a memorial was also denied. Really, very ridiculous rulings, in my opinion.

In February 2003, the contractor hired to manage the fuel facilities at the island allowed 100,000 gallons of fuel to spill. But then, unbelievably, the Fish and Wildlife Service hired the same contractor to clean up its own spill; paying out an exorbitant amount of money to have that done, especially considering that it was paid to the company that did the spill.

Today, if you go to the Fish and Wildlife's website, there is a statement which says, ''The Service is involved in the consideration of legislation that would designate all or part of the refuge as a national memorial to the Battle of Midway,'' as if they supported this all along, instead of opposing it.

If you go to another section of their website on Midway, there is a detailed chronology of events dating back to 1859. It is detailed enough to state that on June 30, 1997, the last Navy personnel departed the island. However, this detailed chronology of events fails to mention that Congress passed legislation designating the island as a national memorial in 2000. This looks to me like they still have problems accepting the designation of the island as a national memorial.

Beyond all this, the island services and emergency landing strip for both commercial aviation and for our armed services. So it is very important that we keep this air strip open.

I am looking forward to the hearing today. And I hope that the Fish and Wildlife Service has a plan to keep this national memorial open and accessible to the public. And I hope the Subcommittee will pay great attention to the testimony of Dr. D'Angelo, who has really made his life's mission to work on this particular issue. And I thank you very much for letting me give this statement.

[The prepared statement of Mr. Duncan follows:]

Statement of The Honorable John J. Duncan, a Representative in Congress from the State of Tennessee

We have worked with Dr. Jim D'Angelo, the President of the International Midway Memorial Foundation, on this issue for many years.

In 1994 or 1995, my office was originally approached about introducing legislation to designate the Midway Atoll as a National Memorial.

We worked with Senator Helms for a number of years on this bill.

In 2000, language was included in the Interior Appropriations bill which designated Midway as a National Memorial.

It took approximately 5 or 6 years to designate one of, if not the most important, battlefields as a national memorial because the Fish and Wildlife Service did not want to accommodate the additional visitors that they might have to deal with.

In 2002, Midway-Phoenix, which provided commercial air service to the Island, left due to ridiculous environmental demands made by the Fish and Wildlife Service. Since that time there has not been regular commercial air service to the Island.

In March of 2002, the *Washington Times* ran a story with the headline: "Historic Midway shuts down—Fish and Wildlife discourages visits to WW II site."

Later that year, the Washington Times reported:

> "The government refused to allow the International Midway Memorial Foundation permission to erect a flagpole because it was considered a strike hazard for birds. Placement of a memorial was also denied."

In February 2003, the contractor hired to manage the fuel facilities at the Island allowed 100,000 gallons of fuel to spill. We were then told by the Fish and Wildlife Service in a meeting that they paid that same contractor to clean up its own spill.

Today, if you go to the Fish and Wildlife's Website, there is part of it which states:

> "Legislation: The Service is involved in the consideration of legislation that would designate all or part of the refuge as a national memorial to the Battle of Midway."

If you go to another section of their website on Midway there is a detailed chronology of events dating back to 1859. It is so detailed it states that on June 30, 1997 the last Navy personnel departed the Island.

However, this detailed chronology of events fails to mention that Congress passed legislation designating the Island as a National Memorial in 2000.

This looks to me like they still have problems accepting the designation of the Island as a National Memorial.

Beyond all this, the Island serves as an emergency landing strip both for commercial aviation and for our Armed Services. So it is very important that we keep this airstrip open.

I am looking forward to this hearing today, and I hope that the Fish and Wildlife service has a plan to keep this National Memorial open and accessible to the public.

Mr. GILCHREST. Thank you, Mr. Duncan. That is why we are holding this hearing, because there is a mix of different pieces of information. There is misinformation, from my perspective, on what is going on in Midway. And we will try to get through that today.

I do know, Jimmy, that there is a cruise ship that goes from Honolulu. And the one docking near Midway is "Pacific Princess," with 600 people which will be offloaded and have a tour of the Midway battlefield, and also have a tour of both islands on the atoll.

The gentlelady from Virginia.

Mrs. DRAKE. I have no statement, Mr. Chairman.

Mr. GILCHREST. Mr. Kind, any opening statement?

Mr. KIND. I will just be brief.

STATEMENT OF THE HON. RON KIND, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WISCONSIN

Mr. KIND. Thank you again, Mr. Chairman, for holding this very important, and very timely hearing, I might add. We are blessed in Wisconsin to have five of the national wildlife refuges located in our state, two in my congressional district. And right now, we are all going through the Comprehensive Conservation Plan process for these refuges. And they have just embarked on the public hearing and public comment period back home; having numerous public meetings, getting feedback from my constituents and those interested in the refuge, and especially the access issues in those refuges.

And right now, given a couple of the proposals that are out there, there is some controversy surrounding the CCP in their original version. But we are hoping that over the 120-day period, with the comment from the people, that we will, hopefully, end up with a good result. Because the key to any of these comprehensive conservation plans will be community buy-in and community acceptance, in order for it to ultimately work.

So I think it is a very timely hearing, very important. I thank all the witnesses for coming and look forward to your testimony, and yield back. Thank you, Mr. Chairman.

[The prepared statement of Mr. Kind follows:]

Statement of The Honorable Ron Kind, a Representative in Congress from the State of Wisconsin

Mr. Chairman, I want to thank you for holding this hearing today so this Subcommittee can explore the questions on why certain refuges are closed to the public and why certain activities are not permitted within our National Wildlife Refuge.

Public access to our refuge system is of particular importance to me. Since the first refuge was established in my home state in 1912, the Wisconsin refuges have become an integral part of life for our citizens. Our five wildlife refuges and two wetlands management districts attract millions of visitors each year. They provide critical habitat for our state's world-renowned wildlife resources as well as opportunities for recreation and ground-breaking research.

In addition to the Necedah Wildlife Refuge, my district is also home to the Upper Mississippi River National Wildlife and Fish Refuge, whose 240,000 acres extend 261 miles southwards from Wabasha, Minnesota to just north of Rock Island, Illinois.

The Upper Mississippi Refuge lies at the heart of an area that serves as a major migratory flyway for 40% of North America's waterfowl. It provides habitat for some 292 species of birds, 57 species of mammals, 37 species of amphibians and reptiles, and 118 species of fish. Moreover, it is the most popular of all our National Wildlife Refuges, attracting roughly 3.7 million visitors a year—more, I am proud to note, than Yellowstone National Park. The Refuge provides important social, cultural, and economic benefits to the people of our region. Without question, the Upper Mississippi River Refuge is truly a beautiful Refuge to visit and I commend my colleagues on this panel to read the Sunday, May 22, 2005 Washington Post article entitled, Lolling on the River: Following the Upper Mississippi by Land, which paints a wonderful portrait of its beauty.

This hearing, and the question of the appropriate level of public access in refuges, is particularly timely in that my constituents are currently weighing in on a draft Comprehensive Conservation Plan for the Upper Mississippi River Refuge.

As members of this Subcommittee know, the CCP is meant to establish new planning requirements for each refuge and clarify the standards and process used to regulate recreational and commercial uses. It requires that the "biological integrity, diversity and environmental health of the system is maintained for the benefit of present and future generations of Americans."

The U.S. Fish and Wildlife Service has begun a series of 16 public meetings on the draft CCP designed to help people understand what is in the plan and weigh in on a preferred alternative. While it is early in the process, one alternative currently identified as the Service's preferred plan for the Upper Mississippi Refuge, does seek to limit some public access and use, as a means to protect wildlife populations and habitat.

For example, the preferred alternative would add six new no-hunting zones, bringing the total to 13. The number of areas closed to waterfowl hunting would go from 15 to 21; and overnight camping and mooring of boats would be limited to islands and shorelines bordering the Mississippi's main channel.

The proposed CCP, especially the preferred alternative that would reduce some of these traditional and cherished activities in the Upper Mississippi River Refuge, has created a strong turnout by the public offering their feedback.

While developing the final CCP rule, every effort must be made to maintain public access, while balancing the future viability of wildlife and their habitat. As a sportsmen and avid user, I am a strong proponent of the landmark National Wildlife Refuge Improvement Act of 1997. As this Subcommittee knows, the Improvement Act reinforced the importance of wildlife-dependent recreation in our Refuge system

to include hunting, fishing, wildlife observation and photography, and environmental education and interpretation.

These have been commonly referred to as the "Big Six" uses of our refuges. This law further stated that these uses are to be given priority consideration over other uses under new requirements for comprehensive planning and determinations of compatibility. In addition, this Subcommittee has heard complaints where individuals have been denied the opportunity to undertake a certain activity in a Refuge that is allowed on similar federal lands without any apparent adverse impacts on existing wildlife resources. So, while we must act to ensure the future viability of healthy populations of wildlife and their habitat, we must be careful to balance those actions with unwarranted restriction on the public's use.

Mr. Chairman and Ranking Member Pallone, I appreciate the opportunity to hear from our distinguished panel of witnesses today. I look forward to hearing their thoughts on these important issues.

Mr. GILCHREST. Thank you very much, Mr. Kind.

Ms. Barbara Maxwell and Mr. Jerry Leneky, who are listening to the hearing from Honolulu—it is about quarter after 5:00 in the morning there—they said they would be up listening, with doughnuts and coffee. We would like to accommodate everybody in the room with doughnuts and coffee, but we didn't buy any this morning.

But thank you all for coming. We look forward to your testimony. The first two witnesses are Dr. William Dudley, Immediate Past Director of Naval History, U.S. Department of the Navy. Welcome, sir. And Dr. James M. D'Angelo, President and Chairman, International Midway Memorial Foundation.

Dr. Dudley, you may begin, sir.

Dr. DUDLEY. Thank you, Mr. Chairman, for this opportunity to testify on behalf of the——

Mr. GILCHREST. I apologize, but if we could just have a very short interruption, I understand in the anteroom there is a red-tailed hawk that would like to see the witnesses.

Mr. KIND. Mr. Chairman, if I may, I was just with—is it "Keisha"?—"Keisha," just a moment ago. And this is Linda Moore from the National Zoo. And "Keisha" is 14 years old. It had a broken wing, and it was taken in; and doing remarkably well right now. It hasn't had its breakfast yet, Mr. Chairman——

Mr. GILCHREST. Oh!

[Laughter.]

Mr. KIND. So you may want to keep a close eye on it.

Mr. GILCHREST. So that's why we don't have doughnuts.

Mr. KIND. What a beautiful bird; isn't it?

Mr. GILCHREST. Yes. Magnificent. Do you want to tell us anything else about your red-tailed hawk?

Ms. MOORE. Well, coffee and doughnuts definitely is not her idea of a meal.

Mr. GILCHREST. Coffee and doughnuts, not her idea. I guess, rodents.

Ms. MOORE. Right. But this particular bird is a bird that was injured in the wild. Red-tailed hawks as a species are doing very well across the country. But unfortunately, there are other species that aren't quite as adaptable and that need some help. So refuges certainly are an important part of giving those animals habitat.

Mr. GILCHREST. Are they in competition with eagles or osprey for territory?

Ms. MOORE. The red-tails really aren't. They are a completely different type of bird. During a lot of time, spending time out doing banding and things like that, I see eagles and red-tailed hawks flying around together quite a bit.

Mr. GILCHREST. Wow.

Ms. MOORE. And it's obviously like a play type of thing.

Mr. GILCHREST. Yes.

Ms. MOORE. But red-tails are a little more maneuverable than those big eagles, so they can get away faster.

Mr. GILCHREST. Are the red-tails in any danger? I know they are not endangered or anything, but do, let's say, turkey buzzards or black vultures eat their eggs or the young chicks? Is there any problem with that?

Ms. MOORE. Not usually. Red-tails are pretty protective around their nests. This particular female is a good sized red-tail, and you can see she is pretty formidable in size.

Mr. GILCHREST. Yes.

Ms. MOORE. She has got nice, big feet. And so, not too many things are going to actually try to mess around with her at the nest.

Mr. GILCHREST. Great.

Ms. MOORE. She can be very territorial about her area.

Mr. GILCHREST. Any other questions from anybody while we are here, about red-tailed hawks?

[Laughter.]

Mr. GILCHREST. Well, thank you very, very much for coming in.

Ms. MOORE. Thank you. Thank you for having me.

Mr. GILCHREST. Tell Steve we said "Hi."

Ms. MOORE. OK.

Mr. GILCHREST. Wow. I think now we can take the rest of the day off.

[Laughter.]

Mr. GILCHREST. OK. Dr. Dudley, thank you so much, sir, for your patience. You may begin, sir.

STATEMENT OF WILLIAM S. DUDLEY, IMMEDIATE PAST DIRECTOR OF NAVAL HISTORY, U.S. DEPARTMENT OF THE NAVY

Dr. DUDLEY. Mr. Chairman, thank you very much for the opportunity to give testimony on behalf of the International Midway Memorial Foundation.

Within approximately two years, the United States will commemorate the 65th anniversary of the Battle of Midway. This was a crucial battle for the U.S. Navy. It was a showdown between the triumphant aggressor, the Japanese Imperial Navy, and the U.S. Pacific Fleet. If Japan won this battle, the United States could lose its control of the Hawaiian Islands, probably the Aleutians, and the fleet would have to retreat to the West Coast. The Panama Canal would be threatened, and so would our western-most sates.

But there was even more at stake. If the United States were unable to gain this victory over Japan in the Pacific, what would happen in Europe? The Battle of Midway, as events were to prove, would become the linchpin for Allied victory over the Axis in World War II.

Less than four months after attacking Pearl Harbor, Admiral Yamamoto, commander in chief of the combined fleet, decided to lure the American fleet into battle in the Central Pacific, and destroy it. The Japanese admiral planned to attack the strategically located Midway Atoll by air, and seize it with amphibious forces; thereby inducing a counter-move by Admiral Nimitz's U.S. Pacific fleet. Yamamoto was convinced that he could destroy the fighting power of the U.S. Navy in the Pacific, attack the Hawaiian Islands again, and then resume the South Pacific offensive.

On Midway Atoll, our thin defenses included the U.S. Marines' Sixth Defense Battalion, a Marine air group of 22 long-range patrol planes. In addition, there were six Navy torpedo planes, 11 PT boats, four torpedo-equipped B-26s, and 15 B-17s. For shore defense, the atoll had five tanks, eight mortars, 14 surface guns, 32 anti-aircraft guns, and 3,632 defenders.

A key factor here was the Japanese commander was obsessed with the need to destroy Midway's defenses before taking on the United States fleet.

Thanks to American intelligence gathering, our weaker forces gave a splendid account of themselves. We ambushed the Japanese striking force at sea. Attackers from Midway kept the Japanese ships constantly maneuvering to avoid hits. The torpedo planes sacrificed themselves in head-on attacks. And our carrier-based dive-bombers sank all four of the Japanese carriers.

This so disheartened Admiral Yamamoto that he called off the invasion and headed for home. By the end of the battle, Japan suffered, in addition, one cruiser sunk, 325 aircraft destroyed, and 2,500 men killed or missing.

American losses included one carrier, one destroyer, 163 aircraft, 307 men killed or missing. From this point on, American forces went on the offensive.

How do we, as Americans, commemorate such a victory? It is for this reason that I appear before you, to ask your consideration of the reopening of Midway Atoll to public visitation. Citizens of the United States should be welcome to visit the ground where fellow American sailors and Marines gave their lives for their country.

Congress has declared the atoll to be a U.S. national memorial to the Battle of Midway. But the air strip is now all but closed, and facing ruin. The historic buildings have been allowed to decay, and may have been removed.

Under the Fish and Wildlife Service, almost all traces of our once-proud presence have been eliminated. I say "almost," because there is still, I hope, a remnant of the work contributed by the International Midway Memorial Foundation remaining on Midway, dating from 1995. It is a granite monument dedicated to the personnel of all services who served in the Battle of Midway. Its engravings and names record the great military victory that was won there.

But what is a monument without visitors? And where is the historical interpretation of the once-efficient airfield that launched planes to attack the imperial fleet? Where are the wayside markers to indicate where the dugouts, gun emplacements, and communications buildings once stood? There is little left of historic value. But this is not the way it should be.

And I would urge this committee to think of how it could be handled differently, by another agency, committed to both wildlife conservation and preservation of a noble historic tradition.

The Navy Department commemorates nationally only two events each year. One is the Navy's birthday, October 13th, 1775. The other is the Battle of Midway, June 4th, 1942. In a speech given two years ago, former Secretary of Defense James Schlesinger provided the most eloquent reason for why we should commemorate the Battle of Midway: "Midway was far more than a decisive naval victory. It was far more than the turning of the tide in the Pacific war. In a strategic sense, Midway represents one of the great turning points of world history."

I leave you with this thought. If this event can be considered so important, Americans should be able to recognize and to commemorate it at the Battle of Midway National Memorial on Midway Atoll.

Thank you for your kind attention and consideration.

[The prepared statement of Dr. Dudley follows:]

Statement of William S. Dudley, Immediate Past Director of Naval History, U.S. Department of the Navy, representing the International Midway Memorial Foundation

THE BATTLE OF MIDWAY: A GLOBAL TURNING POINT

Within approximately two years, the United States will commemorate the 65th anniversary of the Battle of Midway. This was a crucial battle for the U.S. Navy; it was a showdown between the triumphant aggressor, the Japanese Imperial Navy and the U.S. Pacific Fleet. This struggle would determine the course of World War II. If Japan won this battle and followed up its victory, the U.S. could lose its control of the Hawaiian Islands, probably the Aleutians, and the fleet would have to retreat to the West Coast. Not only that. The Panama Canal would be threatened and so would our westernmost states. But, there was even more at stake. If the United States were unable to gain this victory over Japan in the Pacific, what would happen in Europe? The Battle of Midway, as events were to prove, would become the lynchpin for Allied victory over the Axis in World War II.

Two days after Japan attacked Pearl Harbor, Nazi Germany declared war on the United States. German armies had already over-run the Poland, France, Belgium, and Holland. The British expeditionary army might have been exterminated had not their evacuation from Dunkirk enabled it to fight another day. During the Battle of Britain, the Royal Air Force had beaten back the savage German air attacks that were a premonition of invasion. In those dark days, the Anglo-American alliance was just gathering steam. President Roosevelt, his congressional allies, and the Joint Chiefs of Staff had created a "Europe First" strategy that would deal with German military threat across the Atlantic while defensively holding Japan at bay. Thus, the onset of the Battle of Midway raised a global crisis.

The Pearl Harbor attack of 7 December 1941 awakened the United States not only to the ruthlessness of the Japanese Empire but also to the importance of carrier aviation in mid-20th century warfare. The capital ship of World War II was to be the aircraft carrier, not the battleship. A less heralded weapon was the American submarine, which would also change the nature of warfare in the Pacific. Operating independently for the most part, these dark, silent vessels would eventually cut off Japan from its sources of supply.

The naval strategy pursued by Admirals Ernest King, Chief of Naval Operations and COMINCH (Commander in Chief, U.S. Fleet), and Chester W. Nimitz, Commander in Chief Pacific Fleet, after Pearl Harbor was to shove the Japanese off balance. At the same time, American naval leaders worked to strengthen their forces on the line of communications between the West Coast and Hawaii-Midway and that between California and Australia via the island groups of the South Pacific. Japan had fortified bases reaching into the Caroline, Marshall, and Gilbert Islands, but not yet so far as the Solomons.

To protect U.S.-Australia line of communication, Nimitz established a carrier covering and raiding strategy. By January Rear Admiral Frank Jack Fletcher's Task Force 17, centered on the carrier Yorktown, sailed into the southwest Pacific, escort-

ing transports carrying troops ordered to American Samoa. On 1 February carrier units raided the islands of Wotje, Roi-Namur, and Kwajalein. Soon afterward, other task forces launched raids against Lae and Salamaua, on the northern New Guinea coast. This was a rude intrusion into the area that the Japanese thought they controlled. Meanwhile, Rear Admiral William F. Halsey's carrier group hit Wake and Marcus Islands, both located about 1,000 miles from Japan. This hit and run strategy reached its climax with the dramatic and innovative Halsey-Doolittle raid.

In late March, sixteen B-25s were lifted on the flight deck of the carrier Hornet in San Francisco. Departing in complete secrecy, this unit rendezvoused with Halsey's battle group in the North Pacific. On 18 April, Halsey launched Doolittle's bombers launched Doolittle's bombers, when Japanese vessels reported sighting the task force. While the raid on Tokyo did little damage, it did cause embarrassment to the Japanese high command, diverted Japanese defense forces into search activity, and boosted American morale at a critical time. It also hardened the Japanese decision to strike at Midway Atoll.

Meanwhile, Admiral King's cryptographers learned by deciphering the Japanese naval code that the enemy was planning a major fleet penetration of the Coral Sea and an attack on New Guinea's Port Moresby. These forces would pose a grave threat to American bases at Samoa and New Caledonia and the U.S. Australia line of communication. U.S. intelligence also learned that the Japanese planned to establish airfields at Tulagi in the Solomons. In response, Admiral Fletcher led the Yorktown and Lexington carrier groups into the Coral Sea in search of the enemy. On the morning of 7 May, the American and Japanese sent their air units out. Each side made contact with and sank or damaged a few ships. The following day, however, the Japanese put two bombs and two torpedoes into Lexington, mortally wounding her, while hitting Yorktown with one bomb. The U.S. lost 43 planes and the Japanese, 77, in the Battle of the Coral Sea.

As a result, the Japanese did not press their naval advance toward Australia. Even before the Coral Sea fight, Admiral Isoroku Yamamoto, Commander in Chief of the Combined Fleet, decided to lure Nimitz's fleet into battle in the Central Pacific and destroy it. This was to be a major fleet battle in the Mahanian sense. The Japanese admiral planned to attack Midway Atoll by air and seize it with amphibious forces, thereby inducing a counter-move by Nimitz in force. Simultaneously, other Japanese units attempted to divert American attention by thrusting toward the Aleutian Islands in the North Pacific. Thinking that Yorktown as well as Lexington had been sunk in the Coral Sea battle, Yamamoto was convinced that he could destroy the fighting power of the U.S. Navy in the Pacific, attack the Hawaiian Islands again, and then resume the South Pacific offensive that Fletcher had so rudely interrupted.

The U.S. fleet was outnumbered before Midway, but American intelligence and the element of surprise evened the odds. Initially, however, Nimitz's and King's cryptographers differed in their analysis of Japanese moves. King's analysts thought the enemy planned to attack south toward the American-Australian sea line of communications while Nimitz's staff believed the Japanese intended to strike at Midway. Fortunately for the Pacific Fleet, the latter interpretation held sway. Anticipating when and where the Japanese fleet would arrive off Midway, and in what strength, Nimitz sent three carriers under the overall command of Admiral Fletcher to intercept. To command the Enterprise task group, the hospitalized Halsey recommended Rear Admiral Raymond Spruance, a "black shoe" sailor who had never served on board a carrier but whose other qualities recommended him highly.

Yamamoto's fleet was truly formidable. It consisted of Vice Admiral Nagumo's carrier striking force with four carriers, and 350 miles behind, the Main Force centered on the battleship Yamato, five smaller battleships, ten cruisers, twenty destroyers and two light carriers for air defense. The Midway Occupation Force, made up of troop transports (containing some 4,600 infantry), steamed in parallel hundreds of miles south of the Main Body. To meet the Japanese, the American fleet was comprised of two task forces, Task Force 16, under Rear Admiral Spruance, including the carriers Enterprise and Hornet, screened by six cruisers and eight destroyers, and accompanied by two oilers and their two destroyer escorts. When Task Force 17, commanded by Fletcher in Yorktown, sortied it had a screen of but two cruisers and five destroyers. Fletcher, the senior and more battle-tested admiral, was in overall command. The imbalance of these combatants was significant: Japan had 86 surface fighting ships as compared with the American force's 28, and as for aircraft, the Japanese carriers had 325 planes as against the American carriers' 233. If one adds the Midway-based aircraft, the American total swells to 348.

On Midway Atoll, our thin defenses included the Marine 6th Defense Battalion and a Marine Air Group, armed with seven Grumman F4Fs, 16 obsolete Brewster Buffaloes, and 18 SBD bombers. For reconnaissance, Midway had 22 PBY long-

range patrol planes. In addition, there were six Navy torpedo planes that had arrived too late at Pearl Harbor to depart with USS Hornet. Eleven PT boats were ready in case the Japanese invasion force came in close, and the Army Air Forces contributed four torpedo-equipped B-26s and fifteen B-17s. For shore defense, the atoll had five tanks, eight mortars, 14 surface guns, 32 anti-aircraft guns, and 3,632 defenders. The Midway communications station was equipped with underwater cable for secure message contact with headquarters at Pearl Harbor.

After Navy cryptographers at Pearl Harbor had identified Midway as the Japanese target and the intended attack date as 4 June, Nimitz's planners prepared an ambush for Nagumo's carriers. The admiral paid a visit to Midway on 2 May; he inspected the entire area, and interviewed the Navy and Marine Corps commanders. During the next month he poured reinforcements into Midway Atoll. It paid off. Between 0530 and 0545 on 4 June, Navy patrol planes reported contact with Admiral Nagumo's carriers. As Japanese planes headed for Midway, Army, Marine Corps, and Navy planes operating from Midway Atoll took off to strike at Nagumo's carrier task force. While these attacks did not hurt the enemy, they upset the timing of Nagumo's attack and caused him to order an additional bombing strike against Midway. For the Japanese, it was the land-based striking power of the forces on Midway that gave them pause. Admiral Nagumo was obsessed with the need to obliterate the airfield on Eastern Island and other defenses before the invasion of the atoll could take place. He was initially unaware that the U.S. Pacific Fleet carriers were within striking distance.

Enterprise and Hornet launched their aircraft, followed about an hour later by Yorktown's. The torpedo planes from Hornet, Enterprise, and Yorktown, flying low and under constant attack from ships and planes, failed to hit any carriers while taking heavy losses. Their attack, however, had drawn enemy fighters down virtually to sea level, so when dive-bombers from Enterprise and Yorktown appeared over the Japanese carriers and they faced little opposition from Japanese air defense. Akagi, Kaga and Soryu soon were ablaze amid fuel and ordnance explosions and all three would sink within 24 hours. Planes from Hiryu, the last operative Japanese carrier, followed the American bombers back to Yorktown and severely damaged her. A Japanese submarine later sank her. The U.S. pilots soon found the sub and sent her to the bottom. The only U.S. submarine near the battle was Nautilus whose tactics and torpedo firings made its presence known. Despite a lack of hits, Nautilus's presence distracted the enemy and contributed to his confusion. By the end of the battle, Japanese suffered four carriers sunk and one heavy cruiser sunk, 325 aircraft destroyed, and 2,500 men killed or missing. Among these casualties, the Japanese Navy lost some of its best naval aviators. Japanese industry could not easily replace the carriers lost at Midway. American losses included one carrier, one destroyer, 163 aircraft, and 307 men killed or missing.

The "what-ifs" of history stand out when one considers the alternatives: what if Nimitz's intelligence appraisals had not been followed; what if superb navigation had not brought the American bombers over the Japanese task force simultaneously? What if, despite having sunk the enemy carriers, Spruance had pursued westward into the big guns of Yamamoto's Main Force battleships? What if we had lost our carriers and the Japanese and had occupied Midway? Would it have put the Hawaiian Islands in jeopardy and forced the American defense perimeter back to the West coast? How would this have affected Allied forces in Australia and Europe? To be sure, the war would have been lengthened, and America's will to win would have been put to the test.

Fortunately, a combination of intelligence, skill, bravery, and luck turned the tide. Although much vicious fighting remained ahead, the Battle of Midway marked not only the major turning point in the Pacific War, it was a watershed event for World War II because it freed the United States from shifting to a "Pacific First" strategy in order to protect the West Coast and our nearby Pacific Territories, Alaska and the Hawaiian Islands. This, in turn, allowed what historian Samuel Eliot Morison called the "Two-Ocean War" to go forward. The invasion of North Africa, the first stepping-stone for Allied landings on the European mainland, was soon thereafter scheduled for November 1942.

Had we lost the Battle of Midway, despite Anglo-American entente and sentimental attachment to England, the real threat to American life, liberty, and property would have been seen as Japanese military power close to our shores. Nothing less than a complete harnessing of national will, blood, and treasure would have been mobilized to defeat that threat. England would have been thrown back on the diminishing resources of the British Empire; plans for a Second Front would have been postponed, as well as our invasions of Africa, Sicily, and Italy. The American victory at Midway made a huge difference in the way World War II was fought, globally.

It is for these reasons that I appear before you, representing the International Midway Memorial Foundation, to ask your consideration of the reopening of Midway atoll to public visitation. Citizens of the United States should be welcome to visit the ground where fellow American Sailors and Marines gave their lives for their country. I would also ask that you consider replacing Fish and Wildlife management with that of another agency. For a while in the 1990s, Midway was open to a limited number of visitors under the partnership of the Midway Phoenix Corporation and the U.S. Fish and Wildlife Service. While Midway Phoenix was operating the Atoll, Midway Atoll was not a great burden on the American taxpayers. But the Fish and Wildlife Service reversed itself and made life and work difficult for Midway Phoenix, discouraging visitors and effectively forcing Midway Phoenix out of business on Midway. The airstrip is now all but closed and facing ruin despite its strategic value for U.S. airline carriers. The historic buildings have been allowed to decay and many have been removed.

Almost all traces of a once proud presence have been eliminated. I say almost, because, there is still, I hope, a remnant of the work contributed by IMMF remaining on Midway, dating from 1995. It is a granite monument dedicated to the personnel of all services who worked here during World War II. Its engravings and names record the great work done was done there. But what is a monument without visitors, and where is the historical interpretation of the once efficient airfield that launched flights of U.S. Army Air Force B-17s, Marine Corps fighters and bombers, and Navy torpedo planes and bombers? Where are the wayside markers to indicate where the dugouts, gun emplacements, and communications buildings once stood? There is almost nothing left of historic value, and that has been, we believe, the intention of Fish and Wildlife staffers since Midway Phoenix departed. This is not the way it should be, and I would urge this committee to think of how it could be handled differently by another agency, committed to both wildlife conservation and the preservation of a noble historic tradition. It could, I submit, with the right philosophy and the right people under the direction of the Department of Interior.

The Navy Department today commemorates nationally only two events each year. One is the Navy's Birthday, October 13, 1775. The other is the Battle of Midway, on June 4, 1942. In a speech given two years ago, former Secretary of Defense James Schlesinger provided the most eloquent reason for why we should commemorate the Battle of Midway: "Midway was far more than a decisive naval victory. It was far more than the turning of the tide in the Pacific war. In a strategic sense, Midway represents one of the great turning points of world history." I leave you with this thought. If this event can be considered so important, Americans should be able to recognize and commemorate it at the Battle of Midway National Memorial on Midway Atoll. Thank you for your kind attention and consideration.

Mr. GILCHREST. Sir, thank you very much.

Dr. D'Angelo.

STATEMENT OF JAMES M. D'ANGELO, M.D., PRESIDENT AND CHAIRMAN, INTERNATIONAL MIDWAY MEMORIAL FOUNDATION

Dr. D'ANGELO. Thank you very much, Mr. Chairman, for this opportunity. I would like to introduce Jim Noon, our legal counsel.

I am honored to be here today to represent the brave men who fought in the Battle of Midway. And I feel that we are again at the crossroads regarding the outcome of a new Battle of Midway. The questions of the debate about public access to Midway are these: one, whether a national memorial should be on an equal footing with the wildlife refuge; and two, should the Federal agency having jurisdiction over this memorial be committed to it, as it is to the wildlife refuge? I believe the answer——

Mr. GILCHREST. Excuse me. I didn't get that last sentence.

Dr. D'ANGELO. Sure.

Mr. GILCHREST. Committed to—?

Dr. D'ANGELO. And, two, should the Federal agency having jurisdiction over the memorial be as committed to it as it is to the wildlife refuge? And the word "it" obviously refers to the memorial.

I believe the answer to both of these questions is "Yes." Therefore, the problem of public access to the Midway memorial can be resolved only when jurisdiction over Midway is shifted to an agency with an inherent ability to equalize its treatment of both historic and natural resources.

Despite attempts to show its interest in the memorial, Fish and Wildlife Service consistently, as would be expected, activated policies that put the needs of the refuge above that of the memorial. Concerns about the fate of Midway's historic sites are closely tied to the issue of public access to the atoll.

In 1994, Fish and Wildlife wanted to bury the historic air strip on Eastern Island, to return Midway to a pristine state. The Service planned for the demolition of 24 Category 1 and 2 historic structures, and opposed the designation of the historic air strip as a national historic landmark. The National Park Service's history department maintained a map of Eastern Island on which the air strip was crossed out and marked "Do not consider for historic landmark status."

In 1996, President Clinton signed an Executive Order affirming public access for Midway. In that same year, Fish and Wildlife Service signed a cooperative agreement with the Midway Phoenix Corporation to facilitate all the operations on Midway, including eco-tourism, at no taxpayers' expense. Indeed, this corporation donated $15 million to improve the infrastructure of Midway. However, it became apparent that Fish and Wildlife Service's continuing policies were detrimental to the success of eco-tourism.

Finally, when the Midway Phoenix Corporation refused to pay $2 million to Fish and Wildlife for fuel that the Service did not pay for, Fish and Wildlife claimed breach of contract, and the corporation was asked to leave Midway. The Midway Phoenix Corporation closed operations on Midway on May 1st, 2002.

On November 17th, 1999, H.R. 3194 was passed, directing the Secretary of Interior to designate the Midway Atoll a national memorial, and to consult with the International Midway Memorial Foundation on a regular basis. Two years later, these meetings had not occurred, and the Fish and Wildlife Service resisted attempts by the Foundation to host a ceremony on Midway for the 60th anniversary of the Battle of Midway.

Since Midway Phoenix Corporation departed, there was no real attempt by the Service to restore eco-tourism. I presented to the Department of Interior a plan based on Midway Phoenix's records in operating Midway and in providing public access. This plan provided a sound fiscal basis for all of the operations on Midway, making it imperative that all of the operations be under one cooperator. Its goal was to minimize taxpayers' expense, while covering all of the multiple operations of Midway, including eco-tourism. This plan was rejected by the DOI.

My conclusion that Fish and Wildlife was not really interested in the national memorial, nor public access, resulted in the Foundation's efforts to encourage legislation to direct the DOI to remove Fish and Wildlife's jurisdiction over Midway. In 2003, bills were introduced in the House and Senate to that end.

In summary, it is our position that the public should have access to Midway, simply because it has been designated a national

memorial. Therefore, the Fish and Wildlife Service should be replaced by an agency that has the capability of giving equal importance to the needs of the national memorial and the wildlife refuge. This viewpoint is the linchpin for any successful policy of public access.

Thank you for affording me the opportunity to express the Foundation's position on the issues involving the Midway Atoll.

[The prepared statement of Dr. D'Angelo follows:]

Statement of James M. D'Angelo, M.D., Founder, President and Chairman of the Board of Directors, International Midway Memorial Foundation

I am honored today to represent the brave men who fought in the Battle of Midway. It was their courage and blood that helped turn the tide of World War II. Sixty-three years ago, the Japanese naval juggernaut was leaving the waters of Japan and heading toward Midway. Then, against overwhelming odds the U.S. Navy won the most decisive naval battle in its history. It was a conflict that forever changed the course of the war in the Pacific. Today, I feel that we are again at a crossroads regarding the outcome of a new Battle of Midway.

Midway is much more than a wildlife refuge. The Midway Islands represent America's and the U.S. Navy's finest hour of sacrifice for liberty. It is a sacred place where Americans died in defense of their country and in so doing helped save democracy for the Western world. However, It is exactly the lack of appreciation of the significance of the Battle of Midway that has created many of the problems on Midway. (See Attachment A "Under-appreciated Victory" by former Secretary of Defense, James R. Schlesinger in the U.S. Naval Institute Proceedings, October 2003.)

The issue of public access to Midway Atoll has a more profound meaning than that which first meets the eye. The central questions of this debate should be whether the Midway National Memorial should be on an equal footing with a wildlife refuge; and should the federal agency having jurisdiction over the Memorial be as committed to a national memorial as it is to a wildlife refuge? If the answer to these questions is yes, as I believe it should be, then the problems facing Midway—-including that of public access—-will be resolved only when jurisdiction over Midway is given to an agency with an inherent ability to equalize its treatment of both historic and natural resources.

To validate the veracity of this statement, one must observe what I perceive to be a conflict of interest that is created when a federal agency, whose primary interest is wildlife, is asked to care for one of America's greatest National Memorials. Despite attempts to show its interest in the Memorial, the USFWS consistently, as it would be expected to, activated policies that put the needs of the Refuge above that of the Memorial.

The story begins in 1993 when the IMMF visited Midway Atoll with Midway veterans. We were all anxious to visit the famous airstrip on Eastern Island, which played such a prominent role in the outcome of the Battle of Midway. Still under Navy jurisdiction, LCDR Michael Driggers, USN was kind enough to take us there in his private boat. As we disembarked, representatives of the USFWS, traveling in two motorized rafts, angrily approached, shouting expletives, until they discovered we were with the LCDR Driggers. After that they continued to follow us as we toured the tiny island. This was my first experience with the USFWS. During that visit, it became apparent to me that the USFWS did not have the kind of interest that is necessary to preserve the rich history of Midway.

Upon returning to the states, my concern was that the Navy's departure would leave the historic sites on Midway vulnerable to destruction. These concerns were validated when I learned from the Acting Director of the USFWS that, if funds were available, the USFWS would destroy the historic airstrip on Eastern Island with dynamite and return Midway Atoll to a "pristine state". Equally as troubling was my observation that while going across Midway documents in the National Park Service's (NPS) History Department, I discovered a map of Eastern Island on which the airstrip was crossed out and the words "DO NOT CONSIDER FOR HISTORIC LANDMARK STATUS (HLS)" were written. I brought this discovery to the attention of National Park Service but no explanation was ever given to me. I was deeply troubled by the fact one of the most significant historic sites on the Midway Atoll was being excluded from Historic Landmark status.

This observation is further supported by a letter I received in January 1994, in which the Acting Director of the USFWS (See Attachment B) states that "the subject airstrip, although cited in the NPS report supporting designation of several

sites, was not included as part of the report." In fact, the four structures nominated for HLS by the NPS were all on Sand Island and never did receive HLS.

In February 1994, the IMMF received the full support for from Hawaii's State Historic Preservation Administrator to preserve all of Midway's World War II sites, including the airfield on Eastern Island (See Attachment C).

Further, in a letter dated August 1994 (See Attachment D), the Acting Director of the USFWS stated "...the Service opposes the designation of the area as a National Historic Park because of the presence of significant endangered, threatened and migratory species resources [sic] and our responsibilities for protection and management under the Endangered Species Act and other environmental mandates [sic]."

In a return letter to the Acting Director by the IMMF dated September 1994 (See Attachment E), I wrote "The only endangered species of terrestrial or bird life recorded at Midway Atoll are the Short-tailed Albatross and Peregrine Falcon. One, perhaps two, of the former have been annually observed using Sand Island. The latter is an occasional 'straggler' on the Atoll. Nothing planned by the IMMF would interfere with their habitat. Further, there is no data to suggest that Midway Atoll is the sole or primary habitat with regard to any endangered or threatened species, whether they be marine, terrestrial or bird...The IMMF fully supports the protection of these and any other endangered or threatened species utilizing the Midway Atoll...In conclusion then, IMMF does not support the proposal of USFWS to utilize the Midway Atoll solely as a wildlife refuge administered by the USFWS."

In April 1994, the IMMF became a member of the U.S. Navy's NAF Midway Reuse Committee and attended its first meeting in Pearl Harbor. There we presented a requested proposal entitled "Project NAS Midway" (See Attachment F). The proposal was rejected by USFWS. The Foundation was not asked to its next meeting until this turn of events came to the attention of Senator Jesse Helms, at which point I was asked to the Committee's third meeting.

Also in April 1994, the Foundation could not receive permission from General Kicklighter (of the World War II Commemorative Committee) to place and dedicate its Midway Memorial Monument on Midway. It was only after the IMMF turned to an official in CincPacFleet that permission was given to the IMMF to hold a ceremony on Midway in August 1995. That year, while under the jurisdiction of the U.S. Navy, the Foundation dedicated a significant Midway Memorial Monument, which was erected and dedicated by the IMMF on Sand Island with many Midway veterans in attendance. The keynote speaker at this ceremony was Admiral Jeremy M. Boorda, USN, Chief of Naval Operations.

In May 1994, a document published by the USFWS revealed their intention to totally subjugate Midway's great historic value to their primary mission of caring for the wildlife refuge. In their Cultural Resources Management Draft Plan Table 3: "Historic Resources Considered Physical Hazards to Wildlife Sand and Eastern Islands, Midway Atoll", USFWS listed 24 historic Category I and II structures that were planned for demolition, including the historic Cable Buildings, the Seaplane Hangar and Ramp and the Command Post. In addition, the USFWS recommended plans for acceptance to bury the airstrip on Eastern Island (See Attachments G and H). Upon receiving this information, letters of protest were immediately sent by Senator Jesse Helms and the IMMF (See Attachment I). Our concerns appeared to be heeded at the time as many (but not all) of the historic structures recommended for demolition by the USFWS were in the1996 edition of their Cultural Resources Plan listed as "secure or use" (See Attachment J).

During this time, the IMMF made every effort to work with the USFWS. The Foundation had frequent meetings with the USFWS in Virginia. Attempts were also made on Capitol Hill in 1996 to resolve the issue without legislation. Discussions were held by all interested parties and their legislative staffs on Capitol Hill regarding the designation of the Midway Islands as an Historic Landmark and the creation of an Advisory Committee for the historic aspects of the Islands.

However, a draft letter sent to Senator Helms in September 1996 by the Acting Director of the USFWS made no mention of designating the Midway Atoll as a National Historic Landmark (NHL) as had been previously agreed to in our meetings. This letter prompted Senator Helms to respond by stating in his return letter that in order to avoid remedying this omission by legislation, he strongly urged the Director to specifically commit to on making the Midway Islands a National Historic Landmark (See Attachment K).

This request was not acted on by the USFWS. After more than one year's time, Senate Bill S.940 was introduced by Senator Helms and was unanimously passed in the Senate in November 1997.

In 1996, President Clinton signed an Executive Order affirming public use for Midway (see attachment L (1). That same year, the regional USFWS on Midway

had signed a cooperative agreement with the Midway Phoenix Corporation (MPC) regarding Midway beginning in August 1, 1996. In the cooperative agreement between the two parties, it is stated,—In recognition of the outstanding wildlife and historic resources of Midway Atoll and the existing infrastructure on the Atoll, the Service determined that the resources should be made open to the public." (See Attachment L).

This corporation had responsibility for all operations and maintenance of the infrastructure, including those related to eco-tourism. A Public Access Plan was developed by the USFWS. The plan permitted up to 100 persons to visit the Atoll at one time. This number was in addition to the 170 staff living on Midway (See Attachment M). To its credit, MPC volunteered over 15 million dollars of its own funds to upgrade the infrastructure of the Atoll, including the construction of a new restaurant and beach pavilion. This infusion of funds for new construction and upgrading went a long way to attract new visitors to the Atoll. Indeed, they began to make a profit for the first time in July 2001. However, it was becoming increasingly apparent to the MPC that the USFWS' actions, such as lowering street signs and poisoning the ironwood trees on Eastern Island, were not enhancing Midway Atoll's image as a tourist destination. To make matters worse, the USFWS billed MPC for two million dollars worth of fuel that was GIVEN to the USFWS by the Department of Defense (See Attachment M).

At this point, the MPC decided that the $200,000 a year in the cooperative agreement that MPC was asked to donate to the Service "for the sole purpose of supporting the Service's responsibilities under this Agreement" (See Attachment N) was not fair. When this amount was not paid, the USFWS charged the MPC with a breach of contract and asked the corporation to leave. The MPC departure occurred on May 1, 2002.

It is of interest that, stated in the June 1999 USFWS Midway Atoll National Wildlife Refuge Historic Plan, was that "At some point in the future, it is possible that MPC will withdraw from the agreement. If this occurs, and there is no other party interested in continuing the services provided by MPC, then public use program would likely be curtailed...Closing the refuge to public access and reducing staff to a caretaker status would have an adverse effect on historic properties, because the current program of reusing (maintaining) and securing (preserving) Midway's historic properties would no longer be economically feasible" (See Attachment O).

In the meantime, and, after 5 years of effort, H.R. 3194 was passed on November 17, 1999 directing the Secretary of Interior (DOI) to designate the Midway Atoll a National Memorial and to consult with the IMMF on a regular basis (See Attachment P (2)). President William Clinton signed the bill into law in 2000. Later that year, Secretary of Interior, Bruce Babbitt signed a Secretary's Order designating Midway Atoll a National Memorial and directing the USFWS to establish a planning committee to address its management. In addition, he stated in a letter to the IMMF that the Service would continue to consult with the IMMF on a regular basis regarding the interpretation and management of the National Memorial, which is a part of the Midway Atoll National Wildlife Refuge (See Attachment P (1))

Over the next year, I repeatedly requested that the USFWS work together in planning the 60th anniversary of Battle of Midway. I stressed that an event of this magnitude required that we start planning early. However, my recommendations were rejected, in spite of the fact that without the Service's permission and commitment, the IMMF could not formulate a plan that included Midway Atoll. During this time there was no Midway Planning Committee nor did the Service consult with the IMMF on a regular basis regarding the interpretation and management of the National Memorial.

In January 2002, I was appointed by Secretary of Interior, Gale A. Norton to be a member of the Battle of Midway National Memorial Planning Committee (See Attachment Q). By April of 2002, the USFWS still had not held a single meeting with the IMMF regarding a commemoration ceremony on Midway for the 60th anniversary of the Battle of Midway and denied us permission to hold the ceremony on Midway because of the lack of time (See Attachment R). Phone conversations revealed that USFWS refused to grant the IMMF permission to place a flag pole on Midway which would fly the newly designed Midway National Memorial flag; nor would the Service permit a complimentary 5x3 foot National Memorial Monument at the site of the Foundation's present monument. To my knowledge, there is no sign provided by the USFWS that states that Midway is a National Memorial as there is that the Atoll is a National Wildlife Refuge.

Just before I was leaving for Hawaii to commemorate the 60th anniversary of the Battle of Midway in late May 2002, I learned that the first meeting of the Battle

of Midway Planning Committee would be conducted by telephone conference. Those recent events and those of the past by the Service led me to resign my position on the Battle of Midway Committee. I concluded that the goals of the Foundation would be better served by acting as an advisor to the Secretary or Assistant Secretary of Interior regarding Midway, as directed by Congress. I stated so in my letter to the Secretary of Interior. No response to my letter from the DOI was forth coming (See Attachment S (1)).

The newly appointed Assistant Secretary of Interior, Judge Craig Manson felt it appropriate, even at this late date to hold a 60th anniversary Battle of Midway commemoration ceremony on the Midway. I was honored and accepted the invitation by Judge Manson to be a guest speaker at this event.

Since MPC departed, there was no real attempt by the USFWS to restore eco-tourism. The corporations that followed were only charged with operations of the airport and the necessary infrastructure to maintain that responsibility. As a result, I met with DOI and presented a plan and analysis of sound fiscal policy for Midway, (see Attachment S (2)), based on the records of the successful months of operation of MPC's tenure.[1] This plan outlined a sound fiscal policy for all the operations on Midway. The key to its success was the imperative that ALL of the operations be under one cooperator, otherwise failure would be ensured. It was my feeling, and that of Congressman John J. Duncan (See Attachment S (3)), that this solution was well worth trying. Its goal was to minimize taxpayers' expense and, at the same time, cover all of the multiple operations of Midway, including eco-tourism. Interestingly enough, though this plan would require far less funding by the government for TOTAL operational service, it was rejected by the DOI.

It was becoming increasingly clear to me that the USFWS' attitude toward eco-tourism was not dissimilar to its attitude toward Midway's historic significance. With this conclusion in mind, the only realistic solution to the problems confronting Midway is to remove the underlying source of the conflict, namely the USFWS. The IMMF has encouraged Congress to pass legislation to direct the DOI to remove the USFWS' jurisdiction over Midway and replace it with an agency from within the DOI. Subsequently, on February 26, 2003, H.R. 924 was introduced in the House by Congressman John J. Duncan, Jr. Later that year, Senator Richard G. Lugar introduced S. 1574 (See Attachment T). Both of these bills were supported by the Navy League, the Marine Corps Aviation Association and Dr. William S. Dudley, then—Director of the Naval Historic Center. In addition, the Veterans of Foreign Wars, and the Association of Naval Aviation support public access to Midway (See Attachment U).

In conclusion, it is the position of the International Midway Memorial Foundation that the only long term solution to Midway's problems is for the DOI to replace the USFWS with another agency: one that has the capability of giving equal importance to the needs of the National Memorial as it does to the Wildlife Refuge. This viewpoint is the linchpin for any successful policy toward public access.

Thank you for affording me the opportunity to express the Foundation's position on the issues involving Midway.

Midway Photographs: (See Attachment V)

NOTE: Attachments to Dr. D'Angelo's statement have been retained in the Committee's official files.

Mr. GILCHREST. Thank you very much.

Dr. D'ANGELO. Thank you very much, Mr. Chairman.

Mr. GILCHREST. First of all, have either one of you been to Midway?

Dr. D'ANGELO. I have been there numerous times, Congressman.

Mr. GILCHREST. And Dr. Dudley?

Dr. DUDLEY. I have been there once, in 1995.

Mr. GILCHREST. And how did you get to Midway in 1995?

Dr. DUDLEY. Well, in 1995, they had arranged a special occasion for Midway veterans to visit immediately before—I think it was one week before—the 50th anniversary of the surrender. I was part of the party that went out there from the IMMF.

Mr. GILCHREST. And who arranged the trip?

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[1] The IMMF wishes to stress that it has no financial relationship with the MPC, nor has it ever received any donations from this corporation.

Dr. D'ANGELO. We did.

Dr. DUDLEY. Dr. D'Angelo's foundation did. I was there as a speaker.

Mr. GILCHREST. How did you get to Midway?

Dr. DUDLEY. We flew out on a charter jet.

Mr. GILCHREST. A charter jet to Hawaii?

Dr. DUDLEY. No, from Hawaii to Midway.

Mr. GILCHREST. I see. And was the charter jet by Midway Phoenix? Whose jet?

Dr. DUDLEY. It was Aloha Airlines.

Mr. GILCHREST. Aloha Airlines.

Dr. D'ANGELO. The cooperative agreement, Congressman, had not yet been signed between the Service and Midway Phoenix Corporation.

Mr. GILCHREST. And how long did you stay on Midway? A couple of days, or just one day?

Dr. DUDLEY. Just one day, sir.

Mr. GILCHREST. I see. At that time, in 1995, did the Navy still operate Midway?

Dr. D'ANGELO. Yes.

Mr. GILCHREST. They did?

Dr. D'ANGELO. Yes.

Mr. GILCHREST. And were there tours out there at that time?

Dr. D'ANGELO. No.

Mr. GILCHREST. There wasn't? So the veterans, or people who wanted to see Midway, basically didn't have access to Midway while the Navy operated the facility there?

Dr. D'ANGELO. Yes, that is true, Mr. Congressman. But I think it is also fair to say that at that time Midway was not designated a national memorial.

Mr. GILCHREST. I see. But did the Navy have visits occasionally there for people that wanted to see Midway, whether they wanted to see it for eco-tourism or whether they wanted to see it for the sense of the memorial for the battle during World War II?

Dr. D'ANGELO. Based on our own experience, we came back from Japan and were filming for a documentary film. And we had access to Midway, with permission granted by the Navy.

Mr. GILCHREST. Now, when was Midway turned over to Fish and Wildlife Service?

Dr. D'ANGELO. I believe that was in 1997. I do have that in my testimony. I believe it is 1997.

Mr. GILCHREST. So that in 1997, the Fish and Wildlife Service basically took over jurisdiction of that atoll, of the Marshall Islands. And then at that point, I guess Midway Phoenix contracted with the Navy to take out, would you say, regular sightseeing tours, or memorial tours to the island?

Dr. D'ANGELO. The way it worked was that Midway Phoenix signed the cooperative agreement with Fish and Wildlife in 1996. It basically wasn't until the Navy left, which I believe was 1997—1996 that the Navy left? OK. Well, the first year there was no air transportation. In 1997, Midway Phoenix began to fly out their own Gulfstream jets.

Mr. GILCHREST. How many people were on that jet?

Dr. D'ANGELO. Probably, no more than 20 at a time.

Mr. GILCHREST. What would the cost of that be, to anyone that wanted to visit, if they were flying on the Gulfstream?

Dr. D'ANGELO. Oh, well, we, I think, paid about $400, $450.

Mr. GILCHREST. Four hundred dollars round-trip?

Dr. D'ANGELO. Something like that, Congressman. Yes, Chairman—Mr. Chairman.

Mr. GILCHREST. You can call me, you know, "congressman," "Wayne," whatever.

[Laughter.]

Dr. D'ANGELO. You can call me "Jim."

Mr. GILCHREST. OK, Jim.

Dr. D'ANGELO. All right.

Mr. GILCHREST. Would they stay one day? Was there any accommodation to stay more than one day?

Dr. D'ANGELO. There was beginning to. I think it really began to flourish as Midway Phoenix began to put their $15 million in and built this beautiful restaurant that cost over a million dollars, when they began the jet flights of their own. And then finally, they got permission to have regular service by Aloha Airlines. And that started in 1998.

Mr. GILCHREST. And when you say regular service, was that once a week?

Dr. D'ANGELO. I believe it was twice a week, Mr. Chairman.

Mr. GILCHREST. Twice a week.

Dr. D'ANGELO. Yes, sir.

Mr. GILCHREST. And twice a week, there would be a plane of about 20 people?

Dr. D'ANGELO. No. The 737s could hold——

Mr. GILCHREST. Oh, 737s?

Dr. D'ANGELO. Yes. See, that was the benefit; that the Gulfstreams carried fewer people, but the 737s obviously carried more.

Mr. GILCHREST. So how many people would be on the 737s?

Dr. D'ANGELO. I would say over a hundred, would be my guess, with the 737.

Mr. GILCHREST. A hundred people. And there were enough people that there would be how many flights a week?

Dr. D'ANGELO. It would vary per season, but I have facts that originally the cooperative agreement, which is 30 people at any one time—then Fish and Wildlife changed it to 100. So the average maximum on the island at one time of visitors were a hundred.

Mr. GILCHREST. I see.

Dr. D'ANGELO. I believe they also had 170-people staff.

Mr. GILCHREST. Well, who had the 170-people staff?

Dr. D'ANGELO. That was between Fish and Wildlife, and Midway Phoenix, who was performing the functions out there.

Mr. GILCHREST. I see. Dr. Dudley, so you have been out there one time?

Dr. DUDLEY. Yes, sir, one time in 1995.

Mr. GILCHREST. And were you a part of the Battle of Midway?

Dr. DUDLEY. Oh, no, sir. I'm not quite that old.

Mr. GILCHREST. Oh.

[Laughter.]

Dr. DUDLEY. No, sir.

Mr. GILCHREST. I was a part of the Battle of Midway. At least, I have some jeans that were left over.

Dr. DUDLEY. Yes. Well, I wasn't there. But I think, like General Patton, I was virtually there.

Mr. GILCHREST. Virtually there.

Dr. DUDLEY. Yes, sir. I am a historian, and I worked for the Naval Historical Center for many years. And as soon as 1992 rolled around for the 50th anniversary of the Battle of Midway, I met Jim D'Angelo and others who actually were there at the Battle of Midway. And that stimulated my interest.

And so I have spoken several times at Midway commemorative events, Midway dinners, and so forth. But I continue to have this interest, even though I am not a veteran of that particular combat.

Mr. GILCHREST. Well, thank you very much, Dr. Dudley.

Dr. DUDLEY. Sure.

Mr. GILCHREST. I will yield to the gentleman from New Jersey.

Mr. PALLONE. I just have to comment, Mr. Chairman. I learned a long time ago in politics not to suggest anything about anybody's age.

Mr. GILCHREST. Well, Dr. Dudley looks so distinguished.

Dr. DUDLEY. Thank you.

[Laughter.]

Mr. PALLONE. I know that every one of the wildlife refuges is different, and every circumstance is different. And in my opening statement I made reference to how we are dealing with conflicting interests here; which is obviously going to be the case with Midway and so many of these cases.

I know it is not the same, but I couldn't help but think of my own district, where we have a national recreation center, national park, called Sandy Hook. And we literally have millions of visitors. I mean, starting this Memorial Day weekend, you won't even be able to get into the place, because there are millions of people.

But we have Fort Hancock, which is a historic site. And there is a big controversy now about whether or not we should spend money to fix that up, and what kind of access should be available.

And I just can't help but think that every one of these is not only weighing of interest, but also a money problem. In other words, at Sandy Hook we have an effort to privatize the reconstruction, or the restoration I should say, of historic Sandy Hook. And it is going to cost about $60 million, and it is being privatized. And most people don't want it, because they are afraid of the impact and they don't know how many visitors there are going to be.

And it just seems to me that this is, to some extent, a question of money. First of all, I assume that the agency that could possibly replace Fish and Wildlife would be the National Park Service. You are not saying that, but I suppose that is one possibility. And, you know, they are running out of money. I mean, they just don't have that much money.

So I guess I will ask a couple of questions. Would you suggest that the Park Service replace the Fish and Wildlife Service? And then, what kind of costs would there be? I mean, would you want daily visitation? Would people be able to come in every day? How would we maintain this, given limited resources? And if you went back to some private concessionaire, how would they make money?

Was Midway making money? It seemed like it is a lot of money that we are sinking into it, but not that many people were using it. So if you could just comment on some of these things.

Dr. D'ANGELO. Sure, I would be happy to comment. I think the key point is one of the questions you raised is certainly very legitimate. But that is one of the points of my testimony, and that is while Midway Phoenix Corporation was out there, it was virtually at no taxpayers' expense.

Now, at the moment, the month—and this is in my attachments; most of the statements that I made in my oral statement are backed up by documents—but the moment that Midway Phoenix Corporation made a profit, then the rules began to change. Then the conflicts increased; leading Midway Phoenix Corporation to leave. For example, I was very pleased to hear about the tour ship. But they would not allow a tour ship at the time that Midway Phoenix was——

Mr. PALLONE. But Dr. D'Angelo, even though they may have been making a profit—and I don't doubt your facts—if it is opened up to either daily visitation or eco-tourism, whatever you have suggested, there has to be some maintenance.

Let's assume the Park Service took over. They are going to have to have some staff. They are going to have to maintain things. You are not going to totally turn it over to the private sector.

Dr. D'ANGELO. No. But again, what I am alluding to is that when Midway Phoenix Corporation was there, it wasn't turned over to the private sector in terms of the jurisdiction. The corporation's responsibilities were for operation, which included eco-tourism. Originally, they tried to get a separate entity for eco-tourism, and that just didn't work.

And the point is that my personal opinion, based on the records, is that if there was a policy of equal footing, so that there was a reason for the people who want to remember the Battle of Midway, or if they don't, they want to go out there, that there is attention given to the national memorial. Of all the visitors that came out to Midway, 97 percent of them were environmentalists, which is great, but a lot of this——

Mr. PALLONE. But I guess you just——

Dr. D'ANGELO. Well, let me get back to your point.

Mr. PALLONE. Yes, please, just answer it.

Dr. D'ANGELO. I wanted to look, but I apologize for that.

Mr. PALLONE. What would you want? Would you want the Park Service?

Dr. D'ANGELO. What I offered to the Department of Interior was, when Midway Phoenix was out there, OK, it was virtually at no taxpayers' dollars. They were paying roughly $6 million, when there was none. I understand they paid over $10 million to clean up the fuel spill, which is another issue, OK, which we believe is due to negligence.

And in any event, the point is that this certainly could have been used as a trial basis. The money that Midway Phoenix, for example, wanted to go out there at one time was only $2 million, to do everything. Instead, they were denied an opportunity to renegotiate. And as a result, we went up to $6 million.

So the bottom line is that the private sector, based on a track record that has already been proven, if it is not hindered by the Wildlife Service, can cost minimal taxpayers' dollars. And I would argue that, if it turns out that this is incorrect, if we had tried it for two years, already the money that was spent would have been better served. And I personally feel, if that happened, we wouldn't be here today.

I have told Fish and Wildlife all along, this was a perfect opportunity for that agency to become a role model for the rest of the Federal Government; that they could show that the private sector and a Federal agency working together could be at minimal taxpayers' dollars, and be very efficient. And if I am not incorrect, I think this is the President's opinion, as well.

So I wanted that. I wanted everything to go the way it should. But for the reasons that are in the record, they did not.

Mr. PALLONE. I am not going to keep pursuing it, Mr. Chairman. I guess my concern is that, if you turned it over to a different agency, like the Park Service, there has to be some cost. And we would need to get some analysis of what it would cost the Park Service.

I understand you are talking about the private sector, but there has to be some cost associated with the Park Service, or whoever would replace it, to allow the private operation to take place. But we are not going to get to that today.

Dr. D'ANGELO. Well, I didn't mean to avoid it, but what I am telling you is that the Midway Phoenix Corporation, as it did once before where it donated $15 million of its own money, was ready to contract once again with Fish and Wildlife for all the operations, at no cost to Fish and Wildlife. And initially, there may have been a startup where, I agree with you, there might have been some funding. But they were willing to do everything for $2 million.

So even if you make the point, after looking at my analysis and the data I gave you, you will see that it certainly is not going to be $4 million more. Yet, we are spending today $6 million a year on a single operation, and that is the airport. To me, it is pretty clear. And to do that for two years, one could certainly see if that would succeed.

So you can look at the data I sent you, but if you have the private sector saying, "We are responsible," let everybody do an analysis. And if you need two or three million to upstart it, because the infrastructure is not being maintained the way it was when that corporation was out there, that is the solution. Any other solution, in my opinion, will fail.

Mr. PALLONE. All right. Thank you.

Dr. D'ANGELO. Right.

Mr. GILCHREST. Thank you, Mr. Pallone.

Ms. Bordallo.

Ms. BORDALLO. Thank you very much, Mr. Chairman. I have one question. Midway Atoll is included with several other remote islands in the Hawaiian Islands National Wildlife Refuge. And this refuge was created by President Roosevelt way back in 1909, and is one of our oldest.

Now, my question is, considering this heritage, and the fact that Midway Atoll provides extremely valuable sea bird habitat, why should the Fish and Wildlife Service responsibility for the refuge

be terminated? We know about the BRAC closures, but what about the termination for Fish and Wildlife Service?

Dr. D'ANGELO. Well, the reason for that termination is in more detail in my testimony; but a simple answer would be they don't recognize the fact that it is a national memorial to one of the most significant naval battles in this country's history. And so, as I pointed out, the question of the debate should be, should a national memorial, particularly of that significance, be given equal footing, or, as it is now, it is subservient to the policies of Fish and Wildlife?

And I think we can also state that Fish and Wildlife itself agreed to increasing visitors from 30 to a hundred. So the bottom line is, if it does no harm, and we are all in favor—I love wildlife. I am a big environmentalist. But I believe in fair play. If there is a history there, and Congress has designated it, President Clinton himself signed an Executive Order for public access, what is wrong with sharing the rich historical heritage?

The cable buildings—talking about President Roosevelt—were completed in 1903. And they connected the trans-Pacific underwater telephone line from Honolulu all the way to the Philippines. And those cable buildings are still out there, and they are decaying. President Nixon during Vietnam met there. There is rich historical significance in Midway.

We are not saying by any means we don't treasure the wildlife. I don't want to see anything happen to the wildlife or the environment. But I believe in fair play. We can't ignore that it is a national memorial that was designated by Congress and the former Secretary of Interior under President Clinton.

Ms. BORDALLO. What is the condition of the facilities right now? I mean, today.

Dr. D'ANGELO. There are photographs I attach now. When we first went out there, again, the corporation repainted, they revised, all at their expense, a beautiful restaurant. It is a gorgeous place.

Since that time, Fish and Wildlife has lowered all the street signs, so the birds don't run into them; but you worry about somebody hitting the pole, OK? They have poisoned the ironwood trees, and that has caused erosion. All right? Now, I am confident that if Midway Phoenix was out there, or any one of us were doing that, there would be a tremendous outcry.

And again, I come down to fair play between the historic sites—and what is Fish and Wildlife doing? There are a lot of people that are calling me that are environmentalists and lovers of wildlife, that are upset with Fish and Wildlife. So it is not just the historic value. Midway——

Ms. BORDALLO. Mr. Chairman——

Dr. D'ANGELO. Yes, go ahead. Sorry.

Ms. BORDALLO.—I think you made reference in your opening comments about how many refuges have been closed?

Dr. D'ANGELO. No, I didn't. No.

Ms. BORDALLO. Did you make reference to that in your opening? I thought I read that.

Dr. D'ANGELO. No.

Ms. BORDALLO. Have there been any other closures?

Mr. GILCHREST. Oh, you mean limited access to visitors?

Ms. BORDALLO. That's right. Yes.

Mr. GILCHREST. Oh, yes.

Dr. D'ANGELO. Oh, yes.

Mr. GILCHREST. Yes.

Dr. D'ANGELO. Yes, I didn't comment on that.

Ms. BORDALLO. He did. The Chairman made mention.

Dr. D'ANGELO. Yes, the Congressman, yes, the Chairman.

Ms. BORDALLO. How many of those are with limited access?

Mr. GILCHREST. Out of about 535, there are 88 with limited access.

Ms. BORDALLO. Eighty-eight. Yes. All right. I have no further questions, Mr. Chairman.

Mr. GILCHREST. Thank you, Ms. Bordallo.

I would like to say to both of you gentleman that, having gone back to Vietnam in 1991, after serving there in 1966-1967, it was really an extraordinary experience. I don't want to overstate that, but the sensitivity to history in order to remember the events of the past and pass that on to the present and future generations is really a way of sustaining the democratic process. So that is an extraordinary undertaking that we will seriously pursue.

And Dr. D'Angelo, you made a comment about that historic significance, and is it subservient to other things like wildlife. We don't want to take the view that either/or is subservient. They are both significant, and both important.

The historic significance of Midway: those people who are lucky enough to make that long-distance travel to get there and talk about those things with other people, and be able to have yourselves and history teachers talk about Midway not as something that used to be a memorial but the buildings are decaying, but as something that Americans can be proud of, that their grandparents and great grandparents participated in.

I think we can also strike a significant balance, though, between that and the sea turtles, the green sea turtles that are returning; the monk seals, that are endangered, that are now beginning to give birth on Midway; the dolphins, that had disappeared virtually for decades and are now back. The healthy wildlife that is coming back is a natural part of our natural history.

And so when we talk about sustaining our sense of the future, it is both the struggles of battles that we fought, but it is also the historic significance of the natural ecological integrity that we are smart enough to sustain and restore, as well.

So as we pursue this information about Midway, or the other refuges that we will talk about this morning, this Subcommittee will keep all of those things in mind. And your participation here this morning and the information that you have given us have been very vital to that undertaking. And I want to thank both of you very much.

Dr. D'ANGELO. Thank you, Mr. Chairman.

Dr. DUDLEY. Thank you very much.

Mr. GILCHREST. Thank you, sir.

Our second panel will be Mr. Bradley Farrell, Fair Access to Island Refuges; Mr. Robert Allphin, Fair Access to Island Refuges; Mr. Robert Langelius, President, Eastern U.S. Free Flight Con-

ference; and Mr. Dave Mathewson, District Two Vice President, Academy of Model Airplanes.

Welcome, gentlemen. Gentlemen, in the midst of your testimony, we will not be interrupted by any more red-tailed hawks, but we will probably be interrupted by a vote. But we will begin.

Thank you all for coming. We look forward to your testimony. Mr. Farrell, you may begin, sir.

STATEMENT OF BRADLEY A. FARRELL, FAIR ACCESS TO ISLAND REFUGES

Mr. FARRELL. Thank you, Mr. Chairman, Congresswoman, and Congressmen. I reside in Alexandria, Virginia. I represent Fair Access to Island Refuges, or FAIR. I am an amateur radio operator, and have been so licensed for 26 years by the Federal Communications Commission.

Our concern is the closing of two refuges in the Caribbean Sea, the Desecheo and Navassa National Wildlife Refuges, by the Fish and Wildlife Service, to Americans who propose to lawfully visit these island refuges under stringent existing regulations; while the Fish and Wildlife Service turns a blind eye to illegal and harmful use of these refuges.

FAIR and amateur radio operators support wholeheartedly the Fish and Wildlife Service's "wildlife first" approach to managing its refuges. I submitted applications for special use permits, pursuant to the 1997 statute, in 2002 for amateur radio on these islands. And amateur radio use of these islands was allowed by the Fish and Wildlife Service or other government departments for many years prior to the 1990s, when the Service barred access to these islands.

My applications were denied, so I appealed through the administrative process. During that process, the Fish and Wildlife Service agreed to produce to me all of the information upon which they based their decisions to close these islands. And over a 14-month period, they produced about 1,200 pages of their internal documents, copies of which are right here and I will submit for the record.

I may skip a few of these slides. I am using slides to bring you images of some of the information in this evidentiary record, which I feel is very important. And I may skip one or two, because the topics have already been covered.

But I do want to make a note about the 1997 National Wildlife Refuge System Improvement Act, because it has been discussed here today about balancing public use and protection of wildlife in these refuges. The standard Congress set in this well-crafted statute is sound professional judgment. The agency is required to use sound professional judgment in determining whether a use is compatible. And generally, if a use is found not to materially interfere with the agency's mission in a particular refuge—and it is decided case by case—then the use is compatible.

Now, the Fish and Wildlife Service points repeatedly to, I believe it is, six priority uses that are expressly stated in the statute as the focus of allowing use in the refuges. And that is not the approach that Congress took in adopting this law, as it clearly shown in the legislative history. In fact, Congressman Young of Alaska, on

the House Floor in 1997, said, "This bill neither mandates nor prohibits such non-wildlife-dependent activities, such as grazing, jet skiing, or oil and gas development."

Now, it is to be determined, pursuant to the statute, on a refuge-by-refuge basis. But unfortunately—and I am going to skip over this one, because Bob Allphin, who is sitting next to me, is going to cover that in more detail—unfortunately, it appears more to us that the Fish and Wildlife Service is making their decisions based more on opinion.

First, I am going to focus on Navassa. It is located between Jamaica and Haiti. It is about 1,300 acres in size. It has been a refuge since 1999. Prior to its becoming a refuge, other governmental departments allowed amateur radio operators to operate from there.

Reason for closure, according to the Fish and Wildlife Service: protection of sensitive ecology. In its correspondence to amateur radio operators and congressmen who have inquired on behalf of their amateur radio constituents when use was denied, the Fish and Wildlife Service has stated that the ecology of this island is so sensitive, visitors should not go there. And also, because it is difficult to access the island because of its rather steep sides.

What Congress [sic] doesn't tell the public, and has not told congressmen who have inquired, is that Navassa is among the healthiest habitats in the world, and its internal documents clearly show that.

Also, the Fish and Wildlife Service turns a blind eye to Haitian fisherman on Navassa. They camp there; they start fires; and they have harmed wildlife. And the Fish and Wildlife Service, in doing field work there in 2000, was aware of this; yet they did not tell these Haitian fishermen to leave. And when they got back to base, in their report on their trip to Navassa they recommended considering a permit program for Haitian fishermen to enter this refuge. Yet American taxpayers, who propose to go there pursuant to stringent regulations—amateur radio operators, for example—are barred from this island refuge.

This is a photograph from the U.S. Geological Survey website. And standing in the doorway of the old lightkeeper's house on Navassa is a USGS employee. But you can see he is hanging out there during field work the USGS was doing on the island with Haitian fishermen. And we have nothing against Haitian fishermen; we just think, again, it is an issue of fairness. Americans who propose to go to this refuge, under stringent guidelines that will protect the wildlife of the refuge and protect the flora and fauna of this refuge, should be given at least the same consideration. And quite frankly, I believe the statute requires it.

Regarding access to Navassa, the Fish and Wildlife Service in 2000 stayed on a ship during their nights there, for a week or more. Every day, they climbed a ladder system that they tell amateur radio operators is too risky for them to use, and there was no mishap. And the only recommendation when they got back was to get a better ladder.

This is a copy of the 2000 report that I was referring to. It comes from the Fish and Wildlife Service's records. I think this is very important because we are quoting here. Very recent fires, according

to the agency, covering several acres were evident in at least two areas of the island. One near Lulu Bay may have been the result of a campfire. Neither group of Haitians admitted to harvesting boobies—those are birds—or their eggs; though a crew member of a vessel stated he saw a fisherman attract a booby by holding up a fish, then knocked it down with a stick.

Yet these trespassers, who had no authorization to be there from the U.S. Government, were not told to leave. And Americans, who propose to go there under stringent regulations, cannot go there. And when they got back, they considered the permit program for Haitian trespassers.

Desecheo is located about 14 miles from Puerto Rico. It is much smaller than Navassa, about 360 acres in size. It has been a refuge since 1976. The reason, according to the Fish and Wildlife Service, that this island is closed is because of unexploded ordnance. This island was a bombing range in the 1940s and early 1950s. Also, drug smuggling, and illegal aliens.

But what Congress doesn't know, and what the Fish and Wildlife Service hasn't disclosed to congressmen who inquire, or to amateur radio operators, is that the U.S. Army Corps of Engineers went to the island in 2002, surveyed it, identified old bombs, and characterized those old bombs as largely innocuous scrap. And then later in 2002, a Navy demolitions team went to the island and blew up all three bombs that they found.

As a basis for closure regarding drug smuggling, the Fish and Wildlife Service includes incident reports from an area of up to 15 miles from Desecheo, which includes mainland Puerto Rico. And the records of the agency demonstrate that the last incident of drugs being found on the island was in 1990, when a bale of marijuana was found there, and that was 15 years ago.

Regarding illegal aliens, we don't deny that they get on the island, trying to make their way to Puerto Rico. But no one has ever been harmed by them. Also, the Fish and Wildlife Service regularly camps on this island. They go out there to try to trap monkeys and shoot goats that the Health Institute released several years ago for research purposes. And they camp overnight on the old helipad; which is exactly where hams used to be allowed to go here, and to which we have proposed to go.

You see now a copy of the compatibility determination for amateur radio for Desecheo. The compatibility determination says that amateur radio is not compatible because it is not safe.

But if you look at the language of the compatibility determination—and it is in the materials I am submitting for the record—the Fish and Wildlife Service says there is no significant biological impacts anticipated from amateur radio use.

And it also states that the greatest impact amateur radio would have on this island is the trampling of some grass. And we're assuming that means when the amateur radio operators were walking from the beach, where they land, to the helipad; if they don't land by helicopter, which is what the Fish and Wildlife Service does at times.

This is a map from their files showing a route, one of the many routes on Desecheo the Fish and Wildlife Service uses to hike the

interior. Their records show they have hiked this island extensively since 1979.

Amateur radio operators have been good stewards of these island refuges, both in the Caribbean region and in the Pacific and other areas. The Fish and Wildlife Service's own records demonstrate that amateur radio's "no trace left behind" approach is working, and has worked.

This is a copy of a special use permit issued to amateur radio operators before they were banned from going to this island. This is key, this document right here. This was attached to the special use permit. It is an outline drawing of the island of Desecheo. The crosshatched area is the area the Fish and Wildlife Service, from the 1970s, 1980s, and early 1990s, identified for amateur radio operators to go, that was safe for them, and not to leave that perimeter. And the helipad is a tiny dot in that area.

This is important because it demonstrates that the Fish and Wildlife Service, before they banned use, was doing the balancing that the 1997 statute requires; balancing a responsible, reasonable public access to a wildlife refuge, while protecting wildlife.

And they are doing it, for example, in a national wildlife refuge in South Dakota, which is closed to the public. It is a nesting ground for eagles. It is called the Karl Mundt National Wildlife Refuge.

So what the agency has done, they have teamed with the U.S. Army Corps of Engineers. They built a platform, an observation platform, on core land adjacent to the refuge. And visitors can go there and observe these beautiful birds from the platform. And it is no different from what they did here.

Desecheo is not surrounded by adjacent land. It is surrounded by water. But what the Fish and Wildlife Service did is carved out an area where reasonable public access—whether it is for amateur radio, or bird watching, or any other activities that are compatible with this refuge—can be carried out.

I am almost finished. I know I am running short on time. This is a copy of one of the Fish and Wildlife Service's reports. And it expressly says that amateur radio operators went to Desecheo, they have been very responsible, have complied with the conditions of their permits.

The landing issue, which the Fish and Wildlife Service has brought up time and again, is not an issue. The Fish and Wildlife Service lands on Desecheo by helicopter or boat. Nothing in this information that they turned over indicates that anyone—hams, or otherwise—has ever been injured. The same for Navassa.

One of the bills that we are supporting in Congress is H.R. 1183. The Ranking Democrat on the House Resources Committee introduced it. It would require limited public access to Desecheo and Navassa. We support this bill, but really, the 1997 statute already requires that. It requires the Fish and Wildlife Service to balance public access that is reasonable to the protection of wildlife. That is what they were doing before, and we think that they should do it again.

I want to thank the committee, and I will try to answer any questions you have.

[The prepared statement of Mr. Farrell follows:]

Statement of Bradley A. Farrell, Fair Access to Island Refuges

My name is Brad Farrell. I reside at 7423 Salford Court, Alexandria, Virginia. I am a lawyer practicing in the District of Columbia. I represent Fair Access to Island Refuges, or "FAIR" and I am an Amateur Radio operator, licensed by the Federal Communications Commission for 26 years. Our concern in the closing of the Desecheo and Navassa national wildlife refuges by the U.S. Fish and Wildlife Service to Americans who propose to lawfully visit these island refuges under stringent regulations while the Fish and Wildlife Service turns a blind eye to illegal and harmful use of these refuges.

We thank the Fisheries Subcommittee for this opportunity to testify on the issue of public access to the nation's wildlife refuges.

1. Desecheo & Navassa Islands

Desecheo Island is a small uninhabited island of about 360 acres which lies approximately 14 miles west of Puerto Rico in the Caribbean Sea. R. 35 at 2. The Fish and Wildlife Service has been trying for years to remove goats and monkeys from the island. The monkeys were released on Desecheo many years ago by the National Institutes of Health for research purposes.

Navassa Island is located in the Caribbean Sea, approximately 40 miles west of Haiti. R. 35 at 2. Navassa was once the site of a guano mining operation, and later served as the platform for a lighthouse built and maintained by the United States government.

2. Why Desecheo and Navassa Are Important to Amateur Radio

Amateur Radio operators operated from Desecheo and Navassa for many years prior to the refuges being closed by the Fish and Wildlife Service. Amateur Radio operators seek to visit these islands to activate them for other Amateur Radio operators in the United States and throughout the world who seek to contact them and to obtain postcards that memorialize the contacts and tell something about the history and geography of each island. The operators who activate these island locations benefit because it allows them to practice operating from remote locations on non-commercial power and with small portable antennas, which is beneficial to this nation in times of emergency.

3. Fish and Wildlife Service Evidence

During an administrative appeal, I obtained from the Fish and Wildlife Service over a thousand pages of the agency's internal documents and reports which, in my opinion, demonstrate that the Fish and Wildlife Service has insufficient grounds for closing the Desecheo and Navassa refuges and that in closing the islands and barring Amateur Radio and other lawful uses of these refuges, has violated the National Wildlife Refuge System Improvement Act of 1997 ("NWRSIA"). These documents constitute most of the administrative record for my appeal (the "Appeal Record") and I have referenced a number of them in my written remarks submitted to the Fisheries Subcommittee (identified herein by the abbreviation "R.").

The NWRSIA, set forth in the United States Code beginning at Section 668dd, requires that the Fish and Wildlife Service determine whether a particular use of refuge be the product of sound professional judgment and that the Fish and Wildlife Service may bar use of a refuge if it materially interferes with the agency's mission in the refuge or on the basis of safety factors. The legislative history and an analysis of the statute, analysis of Fish and Wildlife Service internal documents, and how the Fish and Wildlife Service is violating the Act receives extensive treatment in my initial administrative appeal brief, which I have submitted to the Fisheries Subcommittee for the record in this proceeding.

The Fish and Wildlife Service has allowed Amateur Radio use of its island refuges in the Pacific Ocean. In fact, the agency's Pacific department has embraced Amateur Radio visits to the refuges under its jurisdictions, despite the fact that many of the same issues affecting the Caribbean islands also affect wildlife refuges in the Pacific. Unfortunately, the Fish and Wildlife Service has begun making it considerably more difficult and expensive for the public to visit the island refuges in the Pacific. Bob Allphin will discuss his experiences in visiting Pacific refuges for Amateur Radio operations during his remarks.

In the Caribbean, however, the Fish and Wildlife Service has closed Desecheo and Navassa refuges on the basis of purported safety issues, i.e., unexploded ordnance, illegal aliens and drug smugglers on Desecheo and on the basis of Navassa's sensitive ecology. However, the agency's own records and other evidence do not, in our view, support the agency's decision-making. Fish and Wildlife Service records are devoid of any evidence that Amateur Radio operators were ever threatened or harmed by illegal aliens, drug smugglers or ordnance. In fact, the Refuge Manager

has admitted that the agency is aware of no one who has been harmed in the Refuges by the purported threats. R. 35 at 7, R. 44 at 2. The fact that no one has been harmed on these islands is further supported by the verifications of two Amateur Radio operators that are included in the Appeal Record. R. 183, R. 182.

The evidence demonstrates that the Fish and Wildlife's position is the progeny of unsubstantiated and speculative assertions not grounded in evidence, upon which layer by layer, year after year, the same misapplication of the statute was perpetuated by service personnel who exceeded their authority under the NWRSIA by actively discouraging, through deceptions and misrepresentations, lawful use of the Refuges. The unlawful position ultimately endorsed by the agency director mischaracterized and misconstrued the NWRSIA, and was incorrectly represented to be the law to applicants for permits for Amateur Radio use of the Refuges and to Members of Congress who inquired about Amateur Radio use of Desecheo and Navassa. The result is that the Fish and Wildlife Service has barred lawful, reasonable use of the Refuges pursuant to agency regulations while simultaneously allowing trespassers to enter the Refuges, unchecked and without repercussions despite the agency's knowledge that trespassers are harming the Refuges.

The Fish and Wildlife Service evidence provides merely speculative support for the Fish and Wildlife Service's conclusion that there is risk of harm on Desecheo Island to Amateur Radio operators by illegal aliens, drug smugglers or ordnance, if any. Indeed, the Fish and Wildlife Service's own records clearly demonstrate that (1) the agency's assertions concerning alleged safety issues in the Desecheo Refuge are speculative or baseless and fall short of the evidentiary standards established by the federal courts (See e.g., Arizona Cattle Growers' Ass'n v. U.S. Fish and Wildlife Service, 273 F.3d 1229 (9th Cir. 2001)), and (2) the agency's assertions concerning the purported sensitive ecology in the Navassa Refuge are fabrications, belied, in part, by the Refuge Office's own internal reports, and its discussion of adopting a formal permit program that would formally recognize the presence on Navassa Island of alien transients who are likely responsible for setting fires and harming wildlife on the island.

Neither compatibility determination for Desecheo or Navassa nor any Fish and Wildlife Service records so much as suggest that that Amateur Radio use of these refuges would disturb or harm wildlife.

4. The Desecheo Refuge

a. Compatibility

The Desecheo Compatibility Determination states that the Refuge Office anticipates "No significant biological impacts" and that only "Minor disturbance (e.g., trampling of vegetation) would occur due to the transport of equipment across refuge property and use of the campsite." R. 1. The Compatibility Determination does not conclude that Amateur Radio is incompatible with the Desecheo Refuge, and, in fact, supports the Fish and Wildlife Service's prior view that Amateur Radio is a compatible use of the Desecheo Refuge. Instead, the Compatibility Determination identifies three safety factors as a basis for closing Desecheo.

b. Purported Safety Factors

- "unexploded ordnance" from Desecheo's bombing range days;
- Desecheo served "as a drop-off point for illegal aliens"; and
- drug trafficking "is common in the area."

R. 1.

a. Unexploded Ordnance

Desecheo's bombing range days ended in the early 1950s. Ordnance on Desecheo, if any exists, does not present a threat to visitors who abide by the conditions of use the Fish and Wildlife Service imposed upon visitors for many years. The Fish and Wildlife Service required Amateur Radio operators to stay within an area the agency concluded was free of ordnance, primarily near the helipad, which is a large concrete slab. This is demonstrated by the many special use permits issued by the agency prior to 1993 which included maps of Desecheo, clearly outlining a perimeter to which Amateur Radio operators were to confine their activities.

The agency's own records demonstrate that the Fish and Wildlife Service has never considered ordnance on Desecheo Island other than a marginal risk. Fish and Wildlife Service personnel have been visiting Desecheo Island for at least 30 years and have hiked the island extensively. R. 151, 158-160, 162-167, 170-171, 174-175. Nevertheless, the U.S. Army Corps of Engineers inspected Desecheo Island for ordnance in March 2002. R. 140, R. 170. During the inspection, Corps personnel examined old bombs and fragments on Desecheo Island, concluded that most of the objects they found were "innocuous scrap", and assessed the risk of harm from the six

rusting and damaged bombs found as "low" or "marginal." R. 140 at 6-1-6-3, 7-, R. 140 App. D-1 at 11. This information is contained in a report issued by the Corps in 2002 about its inspection and extensive review of historical data concerning Desecheo Island. The report was issued in June 2002. R. 140.

Ordnance identified on the island was destroyed by a United States Navy demolitions team as verified by a report dated December 19, 2002 verifies. R. 200. Thus, the "innocuous scrap" identified by the Army Corps of Engineers was, apparently out of an abundance of caution, destroyed. According to the report, three bombs were detonated. The demolitions team reported that it was unable to detonate three shells the Fish and Wildlife Service had identified in hilly terrain which is not near the area Amateur Radio operators have operated from in the past.

b. Illegal Aliens & Drug Traffickers on Desecheo Island

The Fish and Wildlife Service has taken into account reported activity up to fifteen miles outside the Desecheo Refuge. The Fish and Wildlife Service has produced no evidence that any illegal aliens have ever threatened or harmed anyone on Desecheo. A letter authored by the Desecheo refuge manager on September 25, 2003 letter is telling: "The Service does not have direct evidence that such intercepts have or would put visitors at risk[.]" R. 35 at 3 ▌7.

Furthermore, there is no evidence to support the Fish and Wildlife Service's assertion "that almost all migrant and drug smuggling ventures" use Desecheo Island "as a referential landmark, a rest area, a temporary hideout pending cover of darkness or for emergencies". Fish and Wildlife Service records include no evidence to show that illegal aliens or illegal drug traffickers pose any more of a threat on Desecheo Island than do illegal aliens or drug traffickers anywhere else in the United States. The only evidence of drug trafficking on Desecheo Island produced by the Fish and Wildlife Service was of a stash of marijuana found in the old cable house in 1990—and that was fifteen years ago. R. 147.

c. Landing on Desecheo Island Can be Done Safely

The Fish and Wildlife Service asserts that there is "no landing site but rather a small boat has to be brought to the shore at Desecheo[.]" R. 40 at 2. Desecheo has a cove and beach area adjacent to the proposed operating site on the Helipad that is ideal for landing on the island and has been used in the past by Amateur Radio operators authorized to land on the island. R. 196 at 12 (original document page 14). There is no evidence in the Fish and Wildlife Service records to show that Fish and Wildlife Service personnel or other government personnel who enter the Desecheo Refuge frequently to hunt goats or trap monkeys have been injured landing on or departing from the island. There is no evidence that anyone who has ever visited Desecheo has been injured landing on or departing from the island by sea or otherwise.

An unsolicited e-mail message in which a Michigan man who was denied a special use permit for Amateur Radio, details his telephone conversation with the Desecheo refuge manager who informed him that she has visited Desecheo Island with her family. If this is true, it supports the other evidence which demonstrates that Desecheo is safe for access by other than non-government employees. A copy of the e-mail message is submitted to the Fisheries Subcommittee for the record.

5. The Navassa Refuge

The Navassa refuge is being used by fishermen from Haiti as a campground and the fishermen have harmed the refuge and its wildlife. The Fish and Wildlife Service has been aware of this since at least 2000 and has chosen to do nothing about it, all the while barring from the refuge Americans who seek to visit the island for lawful reasons consistent with the NWRSIA.

a. Compatibility

The Navassa Compatibility Determination does not address Amateur Radio use of the refuge. It concludes that "it is unclear at present what negative impacts might result" from various "recreational activities." R. 2 at 2. The Compatibility Determination addresses proposed "wildlife-dependent recreation", R. 2, stating, in part: "Use of the island for recreational purposes could substantially impact a number of terrestrial species, most notably nesting birds such as the Red-footed Booby" and "Traditional uses of the area (e.g., subsistence fishing) should not have a significant impact on trust resources if the level of activity remains constant."

The Fish and Wildlife Service typically tells applicants seeking Amateur Radio use permits for Navassa that the island's ecology is in such a sensitive state that visitors are not allowed on the island. However, a May 2000 Fish and Wildlife Service internal report prepared by the Refuge Office states that the marine habitat surrounding Navassa Island is in "excellent condition", and is "very healthy". R. 161

at 1, 3. Scientists who have surveyed Navassa support the Fish and Wildlife Service's conclusions, stating that Navassa is a "pristine and entirely unexploited marine habitat" and is a habitat "that may remain in a relatively unexploited state." R. 25 at 46 (original document page numbers). No evidence supports the agency's assertion that the "flora and fauna" of Navassa are in a sensitive state. Furthermore, information obtained from the U.S. Geological Survey internet site shows considerable photographic evidenced that USGS personnel roamed extensively over Navassa Island on foot. R. 23 at 3. Presumably, there was no impact from their exploration on the ecology or flora and fauna of Navassa Island nor any material interference with the Fish and Wildlife Service's purpose and mission in the Refuge. It stands to reason that Amateur Radio operators confined to a tiny perimeter on the edge of the Navassa Refuge for a brief period would have even less impact on the Refuge's ecology.

b. Navassa is a Campground for Haitian Fishermen

The Fish and Wildlife Service's records reveal that Navassa is a camp-ground for Haitian fishermen who fish the surrounding waters and that the agency is content to do nothing about the harm caused by these trespassers—even considering encouraging the fishermen to visit the island through a permit program. The agency's report for field work in the Navassa refuge for the year 2000 states that fires had been started on the island, that fishermen reported seeing other Haitians harm wildlife, and that Fish and Wildlife Service personnel, learning about the harm the fishermen caused the refuge, didn't bother to tell the Haitians to leave the island. When Fish and Wildlife Service personnel returned to their office in Puerto Rico and prepared their report, they recommended that permits be issued for Haitians to go to Navassa. R. 161 at 5.

The Navassa Compatibility Determination concludes that "Traditional uses of the area (e.g., subsistence fishing) should not have a significant impact" on Navassa. R. 161 at 4. The evidence shows that traditional uses are camping by subsistence fishermen who roam Navassa Island at will, start fires and harm wildlife. The Fish and Wildlife Service has made no attempt to prevent fishermen from entering or camping on Navassa Island. If such traditional use of the Refuge should not have a significant impact on the refuge as the Fish and Wildlife Service has concluded, then it stands to reason that Amateur Radio activity, a temporary, passive presence confined to the very edge of the Refuge, will not have a significant impact, if any, on Navassa Island. United States citizens whose taxes pay to support the national wildlife refuge system, who propose to use the Navassa Refuge for compatible, lawful activity under agency supervision, are denied use of the Navassa Refuge in favor of illegal aliens the Fish and Wildlife Service encourages to continue unauthorized and uncontrolled habitation of the island and its waters.

c. Landing on Navassa Island Can be Done Safely

The Fish and Wildlife Service asserts that there is "no landing site" but rather "cliffs have to be climbed from a small boat at Navassa." R. 40 at 2. Helicopter landings on Navassa have been used by government personnel in the past and are the easiest and safest way of getting on and off the island. A ladder has been safely used to access Navassa by Fish and Wildlife Service personnel and Amateur Radio operators, R. 182, without known mishap. The Fish and Wildlife Service admits that landing on Navassa Island is difficult but not impossible. R. 161 at 1. Surely landing on Navassa Island cannot be as difficult as the Fish and Wildlife Service suggests, if agency personnel Joseph Schwagerl, Beverly Yoshioka, and Glen Callingford spent nights on a research vessel offshore during field work, R. 30 at 2, only to have to climb on and then off the island six times during three day-trips to the island, using a ladder. Id. When the field team returned to base that year, the only recommendation regarding improved access to Navassa was to suggest installing a better ladder. R. 30.

6. Distance & Law Enforcement

Neither Desecheo nor Navassa are remote because both Refuges are easily accessible by existing licensed aviation and marine charter transport services. R. 161 at 1, R. 197. As the Fish and Wildlife Service has previously demonstrated in issuing special use permits for Amateur Radio use of Baker Island in the Pacific, the remoteness of a refuge was not a factor. No law enforcement personnel were dispatched to accompany the visitors into the Baker refuge, which is some sixteen hundred miles from Hawaii. Desecheo is 14 miles from Puerto Rico; Navassa is 40 miles from Haiti.

Congress has not mandated that the Fish and Wildlife Service "maintain a law enforcement presence" in the Refuge, nor does the Fish and Wildlife Service have any legal basis for asserting that it is required to do so, or make the presence of

law enforcement personnel in the Refuge a condition precedent to authorizing visitors to the island. The Fish and Wildlife Service did not require a law enforcement presence in the Baker Island Refuge as a prerequisite to issuing a special use permit for the Baker Island Operation. R. 190.

Remarkably, the Fish and Wildlife Service has stated that it is willing to place its personnel at risk on Desecheo and Navassa but not non-government visitors. We know of no law or regulation that would allow the Fish and Wildlife Service to subject its civilian employees to such risks and it is unreasonable to believe that any government agency other than military or law enforcement departments of the government would do so.

7. Costs

The Fish and Wildlife Service has indicated that it does not have sufficient funding to allow access to the Desecheo and Navassa refuges. In my application for special use permits for Amateur Radio on Desecheo and Navassa, and in subsequent conversations with the agency, I offered to pay for the cost of sending up to two Fish and Wildlife Service field personnel to the refuges to supervise us, and to pay for transportation to and from the island. The Fish and Wildlife Service required a similar obligation by Amateur Radio operators for the Baker Island visit in 2002. Proposals of this kind, if granted by the agency, would entail no additional costs above and beyond the administrative costs of reviewing the applications. I have proposed a means by which the Fish and Wildlife Service could reduce the administrative time and costs necessary to reviewing application in my initial appeal brief (pages 77-79).

8. Conclusion

Amateur Radio is a compatible use of the Desecheo and Navassa refuges. Only speculative evidence, at best, suggests the presence of safety factors, and the Fish and Wildlife Service's prior issuance of permits for Amateur Radio for Desecheo and permits for Navassa issued by other agencies demonstrate that safety is not an issue. Furthermore, the closure of Desecheo and Navassa have barred lawful, compatible uses of these refuges consistent with the NWRSIA, leaving the islands to be harmed by trespassers.

The NWRSIA and its legislative history require the Fish and Wildlife Service to balance protection of wildlife and responsible public access. The relevant facts support reasonable, responsible public use of the Desecheo and Navassa national wildlife refuges, not just for Amateur Radio, but for all Americans who desire to go there to enjoy and appreciate these island refuges. If the agency is concerned about opening the floodgates of public use, then it can, under existing regulations, or through additional rule-making, adopt guidelines for applications for special use permits that will allow an appropriate degree of access to the refuges, as envisioned by the NWRSIA.

H.R. 1183, introduced by Congressman Nick Rahall, the Ranking Member of the House Resources Committee, addresses these issues and would allow limited public access of these island habitats.

NOTE: Additional information submitted for the record by Mr. Farrell has been retained in the Committee's official files.

Mr. GILCHREST. Thank you very much, Mr. Farrell. And we will now hear from Mr. Robert Allphin.

Mr. ALLPHIN. It is pronounced ALL-phin.

Mr. GILCHREST. ALL-phin.

Mr. ALLPHIN. But that's been a problem all my life. Thank you.

Mr. GILCHREST. ALL-phin.

STATEMENT OF ROBERT C. ALLPHIN, FAIR ACCESS TO ISLAND REFUGES

Mr. ALLPHIN. My name is Bob Allphin. I reside at 4235 Blackland Drive, Marietta, Georgia. And I have two red-tail hawks nesting in my back yard.

Mr. GILCHREST. Really?

Mr. ALLPHIN. However, I only observe them through binoculars, so I appreciate the opportunity to see one up close and personal.

Mr. GILCHREST. That's great.

Mr. ALLPHIN. Thank you for that.

Mr. GILCHREST. You are welcome.

Mr. ALLPHIN. I represent Fair Access to Island Refuges, or FAIR. And I wish to thank the Subcommittee for the opportunity to testify on the issue of public access to certain U.S. wildlife refuges.

I am enjoying an early retirement and my family, two young grandchildren, travel, and my hobby that has interested me since I was a young boy: amateur radio, sometimes called "ham radio." I have held an amateur radio license for 47 years, since I was 13 years old. And I am one of 700,000 federally licensed amateur radio operators in the United States, and among several million worldwide.

Although the hobby is very diverse, you are probably most familiar with a certain facet of the hobby that involves emergency communications. If you have ever been directly affected by a hurricane or a tornado or a flood, or read accounts of the aftermath of September 11th or, more recently, the tsunami in the Indian Ocean, then you have read about the emergency communications role played by unpaid volunteers with their ham radios.

On a national level, hams operate through the Radio Amateur Civil Emergency Service, or RACES, which is coordinated through FEMA, and Amateur Radio Emergency Service, ARES, which is coordinated through our national organization, the American Radio Relay League, and its field volunteers. In those areas of America where there are tornadoes and hurricanes, many hams are involved in Skywarn, which operates under the National Weather Service.

Other hams have entirely different interests, ranging from amateur television, antenna design and experimentation, bouncing signals off our own satellites that we have launched, and even sometimes bouncing signals off the moon. Some just enjoy shooting the breeze with a fellow ham in a neighboring state, or on the other side of the world.

However, my interest involves transmitting and contacting other hams worldwide while I am visiting rare and out-of-the-way places. This way, I combine two of my passions, two of my interests, travel and hamming. Thus far, I have operated my ham radio from 42 different countries.

Now, while most hams with interests similar to mine are on the receiving end of these radio contacts, and they are making them from ham radios in their living room or their den or their basement; I am among those few who travel to those out-of-the-way places.

And these places are typically where there are no hams, no resident hams, or for whatever reason, there is little or no radio activity. These places are usually uninhabited, isolated, or politically difficult. In our ham radio world, there are 335 of these places, called "entities." They range from entities as large as Russia, Canada, or the USA, to as small as Kingman Reef in the Pacific Ocean, which is about 1,000 miles southwest of Hawaii, and is nothing more than a spit of land about 450 feet long, 25 feet wide, and 5 feet above water at high tide.

These are all entities for amateur radio purposes, and hams collect contacts with these entities, much like other citizens collect stamps, coins, art, or sports memorabilia. Many of these entities

are in the Caribbean and Pacific regions, and are administered by the U.S. Fish and Wildlife.

Here is a sample of those confirmation cards that are sought after the contact is made. This is a card from Navassa in 1988 for an amateur radio operation there. And this is a card from Desecheo for contacts made in 1985.

Mr. GILCHREST. Where do you get those cards from?

Mr. ALLPHIN. After the radio contact is made, the person who made the contact requests these confirmation cards, and adds them to their collection. And in addition, they can apply for certain awards.

Mr. GILCHREST. Who makes up the cards?

Mr. ALLPHIN. Generally, they are made up by the members of the expedition.

Mr. GILCHREST. Oh. Interesting.

Mr. ALLPHIN. Now, of course, the other benefit is that the operators themselves in these isolated places are honing their emergency operating skills, using small, portable antennas and small radios and emergency power.

We have brought along with us an example of some of those small radios, that are back here in the back of the room. One of the small devices is the radio itself. The other is the power supply. And there is a sample of modern technology in terms of antennas.

I just thought it might be interesting to point out that we are not talking about setting up large towers 100 feet tall, or anything like that. We can accomplish what we want to accomplish with some mighty small footprints, if you will.

Mr. GILCHREST. Are they on right now, so other ham operators can hear the hearing?

Mr. ALLPHIN. They are not. If we had gotten here a little earlier, we might have been able to hook that up.

Mr. GILCHREST. We should have accommodated that.

Mr. ALLPHIN. I want to point out that over the years there has been a good partnership between amateur radio operators and the Fish and Wildlife Service. In fact, there remains a very good partnership between Fish and Wildlife and amateur radio operators in the Pacific region. But unfortunately, in recent years, not so good in the Caribbean area, as part of the southeastern region. It is like they are operating under a different set of rules, or maybe different legislation.

Oftentimes, when amateur radio operators apply for and receive a permit to visit and operate their radios from a refuge, Fish and Wildlife personnel will accompany them. This allows Fish and Wildlife personnel to visit the refuge and do their work more frequently than might otherwise be possible during times of budgetary restrictions.

Of course, with Fish and Wildlife personnel on hand, they can also be sure that the ham visitors stay within the restrictions of their permit that require that their visit have little or no impact on the local ecology, the environment, or wildlife.

Needless to say, this cooperative relationship also allows a few fortunate citizens a chance to visit and enjoy places that most U.S. citizens will never have the opportunity to see or experience.

As an example, in January 1993, I was part of a ham radio expedition to Howland Island, one of the refuges in the Pacific. As a matter of interest, this is the island that Amelia Earhart and her navigator, Fred Noonan, were looking for when they disappeared in 1937.

We sailed to Howland on an 85-foot schooner that our group had chartered, and were accompanied by two Fish and Wildlife employees. One was Dr. Beth Flint, a Fish and Wildlife Service biologist. I am quoting her directly, ''I hope you guys take advantage of this opportunity. You're going to a place that, unfortunately, most of the public never, ever gets to see, even though it belongs to them. These places just can't tolerate a lot of public use, for obvious reasons. We are delighted when some people get to use it, and hope that you will become advocates for these resources.''

She also said, ''It's pretty easy to operate without causing death and destruction, if you're real careful. I'll be able to teach you guys how to do it without having to cause mortality to the birds.''

When we arrived at Howland Island, she and the other Fish and Wildlife employee, Mr. Dave Woodside, went ashore in the first Zodiac, and surveyed the area. They marked the nesting colonies with colored flags, and then marked where we could put up our tents and antennas. Since we had two camp sites, she marked a clear pathway between the sites.

Dr. Flint spent considerable time with us, showing what to do and what not to do in order to protect the birds. And for those of us who wanted to learn more, she was a wealth of information. It was much like a high school field trip, for those of us that didn't want to spend all of the time on the radios.

I have also operated ham radios from Kingman Reef, that spit of land that I mentioned earlier, and on nearby Palmyra Island. Although the islands were not under Fish and Wildlife control at that time, in October of 2000, in January of 2001, the had become Fish and Wildlife refuges. I notice on the Fish and Wildlife website that Kingman Reef, not unpredictably, is now closed to public access.

Today, there continues to be an excellent relationship between the Fish and Wildlife Service in the Pacific area and amateur radio operators. In fact, as recently as 2002, a permit was granted to a Yugoslav citizen who led a multinational team of radio operators to the Baker Island refuge.

In the Caribbean, it is a different story. We are not sure why. At least 16 requests for permits from radio amateurs to visit these two refuges, Navassa and Desecheo, have been turned down in the last ten years. The most recent denial was in March of this year.

Prior to 1992, permits were issued with regularity. The reasons cited for the refusals are usually the same, time and time again. As Mr. Farrell has already testified, Fish and Wildlife's own records contain evidence that amateur radio is indeed a compatible activity, under current legislation. And the reasons given for the denial of access may be less than accurate or truthful.

Personally, I have been involved with two groups that have requested permits to visit Desecheo. One application filed by Dr. Carl Henson—I'm sorry, Mr. Carl Henson—of Virginia, and the other by Mr. Farrell, himself. Both requests were denied.

Mr. GILCHREST. Mr. Allphin——

Mr. ALLPHIN. Yes, sir.

Mr. GILCHREST.—I am just going to interrupt you for a second. This is a fascinating story. We have other pressures. You are about into ten minutes now. We have your testimony. So if you could just wrap up.

Mr. ALLPHIN. Yes, sir. I'm sorry. My time remaining says "5.20."

Mr. GILCHREST. I think that is 5.20 over the original five minutes.

Mr. ALLPHIN. Oh. OK. I'm sorry.

Mr. GILCHREST. That is all right.

Mr. ALLPHIN. I fully understand the problem.

Mr. GILCHREST. Thank you.

Mr. ALLPHIN. I think I can finish in about 60 seconds, if that will be all right. I just want to point out that the United States is not the only country that has ecologically sensitive and pristine ecosystems. In 1997, I and a group of 19 others applied to the Australian Government for a permit to visit Heard Island. That island is a protected area, the subject of a management plan covered by 13 different pieces of legislation. It is also a national historic landmark. We have also operated from Thule Island, and from South Georgia, pristine islands owned by the U.K.

I guess the point—and in summary—is that while Fish and Wildlife, amateur radio operators, and the wildlife benefit from a cooperative relationship in the Pacific, and other nations cooperate with U.S. amateur radio operators and allow access to their pristine, sensitive, and important areas, why is it—why is it—that with the Caribbean region of Fish and Wildlife we are continuously denied access to Desecheo and Navassa?

Again, I apologize for misunderstanding the system. This is my first, and probably last, time——

[Laughter.]

Mr. ALLPHIN.—of speaking in front of a Subcommittee. And I want to thank you all for that opportunity.

[The prepared statement of Mr. Allphin follows:]

Statement of Robert C. Allphin, Jr.,
Fair Access to Island Refuges

My name is Bob Allphin; I reside at 4235 Blackland Drive, Marietta, Ga. Like Mr. Farrell, I represent Fair Access to Island Refuges, or "FAIR". I wish to thank the Subcommittee for this opportunity to testify on the issue of public access to the certain U.S. wildlife refuges.

I am enjoying an early retirement and enjoying my family, 2 young grandchildren, travel and my hobby that has interested me since I was a young boy-Amateur Radio also known as Ham Radio. I have held an amateur radio license for 47 years since I was 13 years old and am one of 700,000 federally licensed amateur radio operators in the U.S. and among several million worldwide. Although the hobby is very diverse, we are probably best known for providing what is sometimes the only communications available during National and local emergencies. If you have ever been directly affected by a hurricane, tornado, flood or read accounts of the aftermath of Sept. 11th or more recently, the Tsunami in the Indian Ocean you have heard of the emergency communications role played by unpaid volunteers with their ham radios.

On a National level, hams operate through the Radio Amateur Civil Emergency Service (RACES), which is coordinated through the Federal Emergency Management Agency (FEMA), and the Amateur Radio Emergency Service (ARES), which is coordinated through the American Radio Relay League and its field volunteers. In those areas prone to tornados and hurricanes, many hams are involved in Skywarn, which operates under the National Weather Service.

Other hams have entirely different interests ranging from amateur television, antenna design and experimentation to bouncing signals off our own satellites that we have launched and even sometimes off the moon. Some just like "shooting the breeze" with a fellow ham in a neighboring state or around the world. However, my interest involves transmitting and contacting others hams worldwide while I am visiting rare and out of the way places. This way I combine two of my interests—travel and hamming. Thus far I have operated my ham radio from 42 different countries.

While most hams with interests similar to mine are on the receiving end of these contacts and are made from their ham radios in their living room or den at home, I am among those who travel to those out of way places where few hams may live or for whatever reason, there is little or no radio activity. These places are usually uninhabited, isolated or politically difficult. In our ham radio world there are 335 of these places, called entities. The range from entities as large as Russia, Canada or the USA to as small as Kingman Reef in the Pacific Ocean about 1000 mile SW of Hawaii, which is nothing more than a spit of sand about 450 ft long, 25 feet wide and 5 feet above water at high tide. These are all entities for amateur radio purposes and hams collect contacts with these entities much like others collect stamps, coins, art or sports memorabilia. The U.S. Fish and Wildlife Service in the Caribbean and Pacific regions administer a number of these entities.

Over the years there has been a good partnership between amateur radio operators and the FWS. In fact, there remains a very good partnership between FWS and Amateur Radio operators in the Pacific region, but unfortunately in recent years not so good in the Caribbean area. It's like they are operating under a different set of rules of different legislation.

Oftentimes, when amateur radio operators apply for and receive a permit to visit and operate their radios from a refuge, FWS personnel will accompany them. This allows the FWS personnel to visit the refuge and do their work more frequently than might otherwise be possible during times of budgetary restrictions. Of course, with FWS personnel on hand they can also be sure that the ham visitors stay within the restrictions of their permit that require that their visit has little or no impact on the local ecology, environment or wildlife. Needless to say, this cooperative relationship also allows a few fortunate citizens the chance to visit and enjoy places that most U.S. citizens will never have the opportunity to see or experience.

In Jan. 1993, I was part of a Ham radio expedition to Howland Island, one of the Refuges in the Pacific. As a matter of interest, this is the island that Amelia Earhart and her navigator, Fred Noonan were looking for when they disappeared in 1937. We sailed to Howland on an 85-foot schooner that our group chartered and were accompanied by 2 FWS employees. One was Dr. Beth Flint, a FWS biologist. I am quoting her directly—I hope you guys take advantage of this opportunity. You are going to a place that, unfortunately most of the public never, ever, gets to see even though it belongs to them. These places just can't tolerate a lot of public use for obvious reasons. We are delighted when some people get to use it and we hope you will become advocates for these resources."

She also said, "It's pretty easy to operate without causing death and destruction if you're real careful"..I'll be able to teach you guys how to do it without having to cause mortality to the birds."

When we arrived at Howland Island, she and the other FWS employee, Mr. Dave Woodside went ashore in the first zodiac and surveyed the area. They marked the nesting colonies with colored flags and then marked where we could put up our tents and antennas. Since we had 2 campsites, she marked a clear pathway between the sites. Dr. Flint spent considerable time with us showing us what to do and not to do to protect the birds. And for those of us who wanted to learn more, she was a wealth of information. It was much like a high school field trip for those of us that who didn't want to spend all their time on the radios.

I have also operated ham radios from Kingman Reef, that spit of sand that I mentioned earlier and on nearby Palmyra Island. Although the islands were not under FWS control at that time in October, 2000; in early 2001 they both became FWS refuges.

Today, there continues to be an excellent relationship between the FWS in the Pacific area and amateur radio operators. In fact, as recently as 2002 a permit was granted to a Yugoslav citizen who led a multi-national team of radio operators to the Baker Island Refuge.

In the Caribbean it is a different story. We are not sure why. At least 16 requests for permits from radio amateurs to visit two refuges, Navassa and Desecheo, have been turned down in the last 10 years. The most recent denial was in March of this year. Prior to 1992, permits were issued with regularity.

The reasons cited for the refusals are usually the same time and time again. As Mr. Farrell has already testified, FWS own records contain evidence that Amateur

radio is a compatible activity under current legislation and the reasons given for denial of access may be less than accurate or truthful.

Personally, I have been involved with two groups that have requested permits to visit Desecheo. One application filed by Mr. Carl Henson of Virginia and the other by Mr. Farrell. Both requests were denied despite our willingness to sign any releases or waivers that might be requested, submission to any reasonable restrictions imposed by FWS upon our operations to protect the environment and wildlife and our offer to have FWS personnel accompany us. Yet we were denied!

In late 2002, I represented a small group of hams and submitted a written proposal for a joint operation on Desecheo with 8-10 amateur radio operators and the Puerto Rico Emergency Management Agency. We were working with Mr. Raphael Guzman, Executive Director, who happens to be a ham, and he was interested in pursuing the idea of joint emergency communications exercise to help train his personnel. We also proposed that the training exercise be highly publicized and used to provide visibility and recognition for the 100th Anniversary of the U.S. Refuge System. Our proposal was to help bring a higher level of understanding and appreciation by the general public of the USFWS and the U.S. Refuge System. It would have also publicized PREMA. Mr. Guzman met with FWS personnel in Puerto Rico, presented our plan and he was denied permission for this training exercise.

The United States is not the only country that has ecologically sensitive and pristine ecosystems scattered around the globe. In 1997, I and a group of 19 other amateur radio operators applied for and received a permit from the Australian government to conduct radio operations from Heard Island. Heard Island is one of the world's rare pristine island ecosystems and lies in the complete absence of alien plants and animals, as well as human impact. Heard Island is a protected area and the subject of 13 different acts of protective legislation. It is also the site of an old Antarctic research base that is a national historic landmark. We sent 16 days on the island camped right next to this historic landmark. We complied with all of the many restrictions placed upon us and were able to enjoy this very special place—thanks to the Australian government.

In 2000, I and a small group of 12 amateur radio operators were given permits to set up camp and operate our radios from Thule Island, the southernmost island in the South Sandwich Island group near Antarctica. This island is the home of one of the largest concentrations of Chinstrap penguins in the world and a protectorate of the United Kingman.

We also spent 12 days on South Georgia Island, one of the most prolific wildlife areas in the world. South Georgia is home to the greatest concentration of Antarctic and sub-Antarctic wildlife on the planet. In the summer, there are 2.2 million fur seals crowding the shoreline; 95% of the world's population. The 360,000 elephant seals that breed on the island is more than half the world's population. A very special place, a protectorate of the UK, and available to amateur radio operators, under strict conditions.

In summary, while the FWS and amateur radio operators and the wildlife benefit from a cooperative relationship in the Pacific region, and other nations cooperate with U.S. amateur radio operators and allow access to their pristine, sensitive and important areas around the world, why is it that in the Caribbean region of the FWS we are continuously denied access to Desecheo and Navassa Island refuges? How can this U.S. agency discriminate against American citizens, the owners of these islands, when the 1963 Act clearly requires that the Department of the Interior to use a nationwide approach to administering our wildlife refuges. Something is wrong. Something is not right! My thanks to the subcommittee for allowing me to testify but more importantly for thanks looking into these important questions.

Mr. GILCHREST. Thank you very much, Mr. Allphin. we would like to have you back numerous times.

We do have one vote. Is it just one vote? I think what we will do, we will go over there; vote; and come right back. So we will have a pleasant, ten-minute break. Thank you very much.

[Recess.]

Mr. GILCHREST. The Subcommittee will come to order. Thank you for your patience.

We will begin with Mr. Dave Mathewson—Is it "Matheson" or "Mathewson"?

Mr. MATHEWSON. It is Mathewson.

Mr. GILCHREST. Mathewson. Thank you.

STATEMENT OF DAVE MATHEWSON, DISTRICT 2 VICE PRESIDENT, ACADEMY OF MODEL AIRPLANES

Mr. MATHEWSON. Thank you, Mr. Chairman. Mr. Chairman, members of the committee, my name is Dave Mathewson. I am a district vice president with the Academy of Model Aeronautics. The academy is a national organization of over 160,000 members involved in the international hobby and sport of model aviation.

In 1997, the training facility at Galeville, New York, was deemed excess by the West Point military Academy. Control of the property was reassigned to the U.S. Fish and Wildlife Service, and renamed the Shawangunk National Wildlife Refuge. On December 7th, 1997, after over 26 years of co-existence between aeromodelers and the grassland habitants, the Service, claiming incompatibility, banned our members from continuing their use of this facility for free-flight modeling.

I am here today to describe to you the academy's efforts to return aeromodeling to this property, and the unyielding reluctance of the Fish and Wildlife Service to fairly consider our request.

On May 23rd, 2001, Mr. Wes DeCou, the academy's flying site assistance coordinator, testified before the Committee on Resources examining recreational access to Federal lands. The briefing paper on this hearing condensing Mr. DeCou's remarks described how our members flew at Galeville to the satisfaction of biologists at West Point, and in fact were involved in a working relationship with those biologists to create and maintain a grasslands area on the property.

The briefing noted the Army conducted two separate environmental studies at Galeville, and found no adverse impact in the region as a consequence of aeromodeling. The briefing describes how modelers approached the Service, after being restricted from the site, expressing a desire to continue to use the facility.

The modelers committed to a plan that included a limited flying schedule, the hiring of an environmental professional to monitor impacts on wildlife, and maintaining the grasslands. The Service refused the modelers' request, despite the studies, past history, and the modelers' commitment to continuing to be sensitive to the surrounding environment.

On November 6th, 2001, a draft compatibility determination was released by the Fish and Wildlife Service, focusing on free-flight modeling at Galeville. The academy's review of the draft revealed several misleading statements, erroneous conclusions, and references to studies having no direct relationship to model flying.

The academy contracted Mr. Ken Scartelli, of Northeast Environmental Management Systems, to prepare a response to the draft. Mr. Scartelli had authored a site survey in 1996, concerning the Galeville property. In both his 1996 study and his 2001 response, Mr. Scartelli concluded that use of the site for free-flight activities would pose no significant negative impacts to the site.

Referring specifically to the draft CD, Mr. Scartelli concluded that the CD contains numerous errors, exaggerations, and distortions of data. These include mismanagement of fact, ignoring pertinent information, speculation, citing of unrelated studies, and in-

ternal inconsistencies. Moreover, it provides no credible data to support its conclusion.

Members of the academy provided over 2,100 responses objecting to the conclusion of the CD. Included in these responses were several letters by noted experts and others having direct involvement in refuge management, that indicated the draft's conclusion was flawed. In spite of this, the Service upheld their position in issuing the final CD on February 20th, 2002.

On February 27th, 2002, the academy appealed this decision. This resulted in a meeting with Dr. Mamie Parker, Fish and Wildlife Service Regional Director, and members of her staff. The academy presented a letter from former Congressman James Hansen, at the time Chair of the Congressional Committee on Resources, and a sponsor of the National Wildlife Refuge Improvement Act of 1997.

That letter indicated the Service, in denying modelers access to Galeville, was misinterpreting this legislation regarding use policies at National Wildlife refuges. In essence, the response of the staff at this meeting was, "It doesn't matter." The meeting concluded with our efforts being dismissed.

Subsequent to this meeting, the academy suggested to Dr. Parker that limited short-term use of the facility for free-flight aeromodeling be allowed, so that a relevant study could be conducted to prove conclusively the impact of aeromodeling on the habitat. Once again, our efforts were rebuffed. In her reply, Dr. Parker did recognize and thank the modelers for their past stewardship of the site.

The Eastern U.S. Free Flight Conference, with the support of the academy, has worked hard to try to negotiate an agreement to return to Galeville, while being extremely sensitive to the primary purpose of the refuge. In each instance, they have met with unreasonable resistance.

The irony is that the Service is quick to point out that Shawangunk is a man-made facility. The fact is, Shawangunk is a man-made refuge. What the Service fails to tell you is that it was the aeromodelers who played a major part in its creation. In return for their efforts, the modelers were simply told to get out.

In his closing statement from the Resources Committee hearing in 2001, Congressman Hansen said, "Today's hearing made it clear that we have lost the proper balance between protecting the environment and allowing the American people to enjoy their own public lands. A prompt and sharp course correction is called for." The academy agrees.

Mr. Chairman, members of the committee, on behalf of the Academy of Model Aeronautics and the Eastern U.S. Free Flight Conference, thank you for this opportunity.

[The prepared statement of Mr. Mathewson follows:]

Statement of Dave Mathewson, District 2 Vice President, Academy of Model Aeronautics

Mr. Chairman, Ranking Member, members of the committee, my name is Dave Mathewson. I am a district vice president with the Academy of Model Aeronautics. The Academy is a national organization of over 160,000 members involved in the international hobby and sport of model aviation.

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On November 6, 2001, a draft compatibility determination (CD) was released by the Fish & Wildlife Service focusing on free flight modeling activities at Galeville. The Academy's review of the draft revealed several misleading statements, erroneous conclusions, and references to studies having no direct relationship to model flying. The Academy contracted Mr. Ken Scartelli, of Northeast Environmental Management Systems, to prepare a response to the draft. Mr. Scartelli had authored a site survey in 1996 concerning the Galeville property. In both his 1996 study and his 2001 response, Mr. Scartelli concluded that,—".use of the site for free-flight activities would pose no significant negative impacts to the site." Referring specifically to the draft CD, Mr. Scartelli concluded that, "The CD contains numerous errors, exaggerations, and distortions of data. These include mismanagement of fact, ignoring pertinent information, speculation, citing of unrelated studies, and internal inconsistencies. Moreover, it provides no credible data to support its conclusion."

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The Eastern U.S. Free Flight Conference, with the support of the Academy, has worked hard to try to negotiate an agreement to return to Galeville while being extremely sensitive to the primary purpose of the refuge. In each instance they've met with unreasonable resistance. The irony is that the Service is quick to point out that Shawangunk is a man-made facility. The fact is, Shawangunk is a man-made refuge. What the Service fails to tell you is that it was the aeromodelers who played a major part in its creation. In return for their efforts, the modelers were simply told to get out. In his closing statement from the Resource Committee hearing in 2001, Congressman Hansen said, "Today's hearing made it clear that we have lost the proper balance between protecting the environment and allowing the American people to enjoy their own public lands. A prompt and sharp course correction is called for." The Academy agrees.

Mr. Chairman, members of the committee, on behalf of the Academy of Model Aeronautics and the Eastern U.S. Free Flight Conference thank you for this opportunity.

Mr. GILCHREST. Thank you very much. Now I am going to pronounce Mr. Langelius——

Mr. LANGELIUS. That is good enough.

Mr. GILCHREST. OK.

Mr. LANGELIUS. Langelius.

Mr. GILCHREST. Langelius.

Mr. LANGELIUS. Yes, sir.

Mr. GILCHREST. Thank you very much, sir.

STATEMENT OF ROBERT LANGELIUS, SR., PRESIDENT, EASTERN U.S. FREE FLIGHT CONFERENCE

Mr. LANGELIUS. Thank you, Mr. Chairman. My name is Robert Langelius. I am the President of the Eastern U.S. Free Flight Conference—that is EUSFFC—a group formed to coordinate the competition activities and sporting efforts of the aeromodelers and their clubs whose aircraft are specially designed to fly free, yet safely and satisfactorily, without active control.

I want to thank you and the other members of the Subcommittee for the opportunity to provide my feelings about public access to a specific unit of the National Wildlife System. The unit is renamed the Shawangunk National Wildlife Refuge, but it was formerly known as Galeville Airport in Wallkill, New York.

The request to me asked six questions, and my responses will follow this brief statement, if I might.

The aeromodeling community observed the transfer of the Galeville Airport site by the Department of Defense to the National Wildlife Refuge System, first with disappointment, and then with frustration, and then with anger. And the reason is the General Services Administration, that had mandatory hearings for transfers—the aeromodeling community was excluded from any testifying.

No one heard of our ongoing activities for 28 years; our historical usage; the maintenance that we accomplished, and I will speak to that in our questions and answers; the security and the insurance protection that we provided; and our critical dependency on that site.

The exclusion was wrong, it was illegal, and the transfer should not have taken place. But when it did, we contacted the staff of the U.S. Fish and Wildlife Service to regain access, or at least attempt to regain access, to the site. And we were stonewalled; we were lied to; we were condemned. We were roundly discouraged in every effort we made to resume what had been a productive and mutually cooperative relationship with West Point.

When we approached Congress for help, we found many supporters, and a particularly staunch supporter in the advocate of Congressman Benjamin Gilman. However, all were treated with the same cavalier attitude. They just didn't bother to continue communications as promised, and it was just a debacle.

The years since the transfer have dramatically increased our disillusionment and frustration with the U.S. Fish and Wildlife

Service. They are consumed by, in my opinion, a completely intransigent mentality, from top to bottom. The U.S. Fish and Wildlife Service will stop at nothing to impose wilderness, go back to wilderness. That is my understanding, and that is basically where they come from.

The response to the first question that was given to me is—how often were model airplanes flown on the Galeville Airport? And informally, we had a daily aeromodeling exposure. There were folks on there practically every day, weather permitting. Formally, the Eastern Free Flight Conference, we would arrange with West Point for about 17 to 20 days annually.

How many people were actually involved in this activity? The total combined membership of the clubs in the conference was approximately 400 flyers, daily and walk-on flyers. Weekday and weekends numbered approximately from five to 20. Scheduled contests drew from 50 to 75 flyers.

And many international flyers came and flew on the field from Japan, England, Poland, Israel, Germany, France, Turkey, Hungary, the Ukraine, Russia, and Sweden. This is a famous site for flying model airplanes; the best site and the only site like it in northeastern United States.

Question number three: What steps were taken to protect the resident wildlife and surrounding habitat? And we are very proud of this. The EUSFFC actively sought the guidance from the West Point environmental officer for the following purposes. We initiated a periodic mowing of the facility to convert it to a savannah type of appearance of all the grassy areas; the removal of second growth trees designated by the environmental officer.

The environmental officer also supervised the introduction of model retrieval paths to concentrate our general movement across the grassy areas and reduce the time spent out there. The West Point environmental officer was frequently on the field, observing our operations. And we had an excellent relationship with him.

All aeromodelers were required to remove any and all refuse from the field—theirs, or anyone else's—and pets were controlled.

Question number four was, what impact did model airplanes have on wildlife? And there was a significant positive impact, as the fields were mowed for the first time in decades and the removal of the burgeoning second growth trees opened up sight lines for nesting birds. They came in droves.

I believe there was no negative impact by model airplane flying at Galeville. This opinion is shared by many noted biologists, especially those who took time to visit and study the Galeville site. These same biologists stated our activity was benign.

And the final question was: Like to know of our efforts to continue this recreational activity after the refuge was closed. The closing of the Galeville site was obviously a disaster for us, because there is no comparable site in northeastern United States. All our qualification events for international teams had to be shifted to Muncie, Indiana; Dayton, Ohio; or northern Florida.

We had to consolidate or eliminate our major annual contests. And a large farm site in Engleside—which you are probably familiar with, Mr. Chairman; Engleside, Maryland—was used, but the

farm is only available one weekend in early spring and one weekend in late fall, and the weather conditions are poor to impossible.

A member of the EUSFFC purchased a sod farm in Wawayanda, New York, and general free-flight activities have centered about this location since that time. The site, however, has serious flaws. The area is crisscrossed by canals and a river. The sod is surrounded by corn and wheat fields, which makes model retrieval difficult. Senior aeromodelers have major problems traversing the canals. Model losses are high. And travel distances are extreme and prohibitive for youths and those on limited budgets.

Final question. I am sorry to take so much time. The justification of the EUSFFC [sic] for denying your request. The aeromodeling community has been very disappointed by the findings of the U.S. Fish and Wildlife Service. The compatibility report was simply a Lexus-Nexus search of all negative information found pertaining to full-scale aircraft, and that was creatively projected onto our models. Then they luridly embellished those results with all kinds of dramatic effects.

They negatively distorted our retrieval activities, and suggested tales of modelers in off-road four-wheels, grinding up nests and scattering flocks. Their report was absolutely outrageous.

Fish and Wildlife Service never took time to observe our activities. They said the field is at no time capable of accommodating our activity; yet there is a picture in my package I sent you folks, this monstrous tractor and mower that they use to mow. And there is a tiny, little person—that is a human being in the middle of that. And they say we can't fly, there is no time we can do it. I wonder when they do it.

The U.S. Fish and Wildlife Service rejected our observations of positive bird responses during model retrieval; yet they claim they observed similar responses when they mowed.

And finally, the proposed budget aspect—which I am glad to see Congressman Pallone is here, because he is very concerned about the monies—the proposed budget impact was a complete fabrication by the Fish and Wildlife Service. The only expense we would be, would be for a lock and a privy—and it is for public use, the privy. And we historically paid for both of them. There was absolutely no truth in that report, sir.

I would like to conclude with the observations of a retired employee of the Fish and Wildlife Service. His comments are quoted in the "Missing Lynx" article I put in here. He observed, "The agency pushed out the people who didn't fit the anti-hunting, anti-fishing, anti-land-management profile. They've got to get back to science."

I think since Jamie Clark there has been a change, a tidal change, in attitude. The Fish and Wildlife Service is no longer interested in supporting people and providing access. I think they have stonewalled many, many people, and fabricated a lot of activities—rejection to them.

Thank you very much for your time.

[The prepared statement of Mr. Langelius follows:]

Statement of Robert Langelius, Sr., President,
The Eastern U.S. Free Flight Conference

My name is Robert Langelius, and I am the president of an organization known as the "Eastern U.S. Free Flight Conference" (EUSFFC), a group formed to coordinate the competition activities and sporting efforts those aeromodelers whose aircraft are designed to fly safely and satisfactorily without active control.

I would like at this time to thank yourself and the other members of the Sub-Committee for the opportunity to provide my feelings about public access to a specific unit of the National Wildlife System. The unit has been re-named "The Shawangunk National Wildlife Refuge" and was formerly known as "Galeville Airport" in Wallkill, New York.

The request asked six questions and my responses are on a separate attachment.

I would like, however, to make a brief statement:

The aeromodeling community observed the transfer of the "Galeville Airport" site from the Department of Defense (DOD) to the National Wildlife Refuge System with disappointment, frustration, and anger!

During the General Services Administration (GSA) mandatory hearings, the aeromodeling community was excluded from testifying about their ongoing activities, our historical usage, the maintenance and development we had made, the security and insurance protection we provided, and our critical dependency on the site!

That exclusion was not only wrong but it is ILLEGAL and should have negated the transfer!!

When the transfer was completed we engaged the staff of the U.S. Fish and Wildlife Service (USFWS) to regain access and we were "stone walled", lied to, condemned, and roundly discouraged in every effort we made to resume what had been a productive and mutually cooperative relationship with the DOD!

The years since that transfer have dramatically increased the aeromodelers frustration with an agency (USFWS) that has a completely intransigent mentality from the top to bottom and will stop at nothing to impose its will!

Thank you!

Response to questions in Congressman Gilchrest's Letter of May 5, 2005

Question 1 "How often were model airplanes flown from the 'Galeville' airport"?

Informally, there was a daily aeromodeling presence on the "Galeville" site (weather permitting)

Formally, the Eastern U.S. Free Flight Conference (EUSFFC) would negotiate with West Point for approximately seventeen to twenty days annually!

Question 2: "How many people were involved in this activity"?

The total combined membership of the clubs in the conference was approximately four hundred flyers. Weekend "walk on" flyers numbered approximately ten to twenty flyers.

Scheduled contests drew from fifty to seventy-five flyers. Many international flyers from Japan, England, Poland, Israel, Germany, France, Turkey, Hungary, Ukraine, Russia, and Sweden have joined us in major competitions at "Galeville".

Question 3: What steps were taken to protect the resident wildlife and surrounding habitat?

The EUSFFC actively sought guidance from the "West Point" Environmental Officer for the following purposes:

Initiate a periodic mowing of the facility to convert it to a "savannah" type appearance of the grassy areas.

The removal of second growth trees designated by the Environmental Officer.

The Environmental Officer also supervised the introduction of model retrieval paths to concentrate general movement and reduce the time spent in the grassy areas.

The West Point Environmental Officer was frequently on site and we had an excellent relationship with him.

All aeromodelers were required to remove any and all refuse from the field—theirs or anyone elses.

Pets were controlled.

Question 4: "What impact model airplanes had on the wild life"?

I believe there was no negative impact by model plane activity at "Galeville"!

There was a significant "positive" impact as the fields were mowed for the first time in decades and the removal of the burgeoning second growth trees opened sight lines for the nesting birds!

This opinion is shared by many noted biologists and especially those who took the time to visit and study the "Galeville" site!

The biologists stated our flying activity was "benign"!

Question 5: "Like to know of your efforts to continue this recreational activity after the refuge was established in 1999?

The "EUSFFC" recognized the closing of the "Galeville" site was a disaster for aeromodeling! There is no comparable site in the Northeastern United States.

We consolidated major annual contests.

A farm site in Engleside, Maryland, is used, but the farm is only available for one weekend in early spring, and one weekend in the late fall, when the weather conditions are poor to impossible!

Major contest activity shifted to Muncie, Indiana, Dayton, Ohio, and Northern Florida.

A member of the "EUSFFC" purchased a sod farm in Wawayanda, New York. General free flight activities have centered about this location since that time.

The site has very serious flaws! The area is "criss-crossed" by canals and a river, the sod is surrounded by corn and wheat fields which makes model retrieval very difficult. Senior aeromodelers have major problems traversing the canals and model losses are high!

Travel distances are extreme and prohibitive for youths and those on limited budgets!

Question 6: The justification of the "USFWS" for denying your request.

The aeromodeling community has been very disappointed by the findings of the "USFWS"!

The compatibility report was simply a "Nexus Lexus" search and all negative information associated with "full scale" aircraft was projected onto our models! The "USFWS" then creatively embellished those results to validate the "non compatible" decision!

They distorted our activities and suggested lurid tales of modelers in "off "road" four-wheelers grinding up nests and scattering flocks of nesting birds! There was no truth in the report.

The "USFWS" never even took the time to observe what we do!

They say the field is at no time capable of accommodating our activity, yet the mowing rig they use is monstrous! The impact their mower makes is far in excess of our retrieval activity!

The "USFWS" staff rejected our comments "the birds often follow us around catching the bugs we kick up"! Yet they stated the same thing happened when they mowed "Galeville".

There would be more cooperation if the "USFWS" spent more time "observing" our activity and less time denying it!

The proposed budget impact was a complete fabrication! All we ever required was a lock and a "privy" and we payed for them both!

I would like to conclude with the observations of a retired employee of the "USFWS" (in "the missing lynx" article) he observed "...the agency pushed out people that didn't fit the anti-hunting, anti-fishing, anti-land management profile. They've got to get back to science..."

How prophetic!!!

Mr. GILCHREST. Yes, sir. Thank you, Mr. Langelius. Is that right?

Mr. LANGELIUS. Yes, sir.

Mr. GILCHREST. Langelius. Where are you from?

Mr. LANGELIUS. I am from White Plains, New York.

Mr. GILCHREST. White Plains.

Mr. LANGELIUS. Have to drive to Engleside to fly a model airplane.

Mr. GILCHREST. Engleside.

Mr. LANGELIUS. Yes, sir.

Mr. GILCHREST. Well, you know, we have a lot of farmland in my district.

Mr. LANGELIUS. I know. It has been suggested we go out there. But I don't want to recover—I got my first grandson this year.

Mr. GILCHREST. What county is White Plains in?

Mr. LANGELIUS. It is Westchester County.

Mr. GILCHREST. Westchester County.

Mr. LANGELIUS. North of New York City.

Mr. GILCHREST. My father and two brothers were born in Rockland County.

Mr. LANGELIUS. Wow, that is where that field is.

Mr. GILCHREST. In Rockland County?

Mr. LANGELIUS. Yes.

Mr. GILCHREST. They were born between Congers and Valley Cottage.

Mr. LANGELIUS. OK. A lot of flyers from that area.

Mr. GILCHREST. Old farmhouse was built in 1812, and the road in front of the farmhouse is called "Gilchrest Road."

Mr. LANGELIUS. Whoa!

Mr. GILCHREST. Ben Gilman used to tell me he was taking care of it all the time.

Mr. LANGELIUS. Well, God bless Ben Gilman, I have to say.

Mr. GILCHREST. Yes.

Mr. LANGELIUS. That is a classic congressman. I am sorry he is not still in the Congress.

Mr. GILCHREST. I guess we will start with the model airplane part of this first. The model airplane group or association apparently extends, I guess, nationally and internationally. When did you start flying those model airplanes at Galeville?

Mr. LANGELIUS. Yes, sir. About the early '70s. We were there for 28 years when the Department of Defense budget was dried up and they had to divest themselves of Galeville. It was West Point, was the range.

Mr. GILCHREST. I see.

Mr. LANGELIUS. Twenty-eight years, sir.

Mr. GILCHREST. So you were out there flying those model airplanes for 28 years.

Mr. LANGELIUS. On that site.

Mr. GILCHREST. On that site.

Mr. LANGELIUS. Yes, sir.

Mr. GILCHREST. And Galeville was a military airport for West Point?

Mr. LANGELIUS. No, sir, it was a military Air Force Base. It was an emergency field that was set up during World War II.

Mr. GILCHREST. I see.

Mr. LANGELIUS. For adjacent training areas and bombers training. And 3,200-foot runways, two concrete runways.

Mr. GILCHREST. I see. Now, are those runways still operable?

Mr. LANGELIUS. Not any more. Not since Fish and Wildlife got them.

Mr. GILCHREST. Are the runways still there? Is it still asphalt there?

Mr. LANGELIUS. Yes, they are. Yes, they still are. But they are overgrown. No attention is being paid to the runways, and the growth coming through the cracks is starting to really create major problems with the concrete surface.

Mr. GILCHREST. So that Galeville—or Galesville—is 566 acres?

Mr. LANGELIUS. Approximately, yes. But there is an adjacent area that the Park Department——

Mr. GILCHREST. Is that the state, or the Federal?

Mr. LANGELIUS. No, it was given by the Fish and Wildlife agency, I think to kind of satiate some concern by the local township. They wanted a piece of the action, or a piece of the field. And they gave them a piece.

Mr. GILCHREST. So you are saying the state fish and game department gave the Fish and Wildlife Service some land?

Mr. LANGELIUS. The Fish and Wildlife Service took over the whole field. They divested a few acres of it, about 120 acres, I think. Started around 600, ended up around 120 for them and about 500 for the——

Mr. GILCHREST. I see. OK.

Mr. LANGELIUS. The field itself, now.

Mr. GILCHREST. What is the refuge called now?

Mr. LANGELIUS. It is now called the Shawangunk—I believe—forgive me—the Shawangunk National Wildlife Refuge.

Mr. GILCHREST. What is "Shawangunk"? Is that an Indian tribe?

Mr. LANGELIUS. Shawangunk is the town. It is an Indian name of the town in which it resides.

Mr. GILCHREST. I see. I see. How much is forested of that 500 acres?

Mr. LANGELIUS. Very little. Just around the perimeter.

Mr. GILCHREST. Just around the edges?

Mr. LANGELIUS. It is not even forested. Along the two sides, it is forested.

Mr. GILCHREST. It is like a hedge row or a tree line?

Mr. LANGELIUS. That is exactly it.

Mr. GILCHREST. So you said up until what year could you fly these airplanes?

Mr. LANGELIUS. Well, we flew until the budget crunch, and they ran out, and they didn't want to insure it any longer. So around '95, we were told. We got one final contest in. Around '95 is when it was shut down.

Mr. GILCHREST. So I understand that Galeville was on the BRAC list because of the closing military bases. It was shut down as a result of that. Then through whatever measure or means, it was transferred to the Fish and Wildlife Service. So when that was transferred to the Fish and Wildlife Service, for a couple or three years you continued to have the model airplane activity out there?

Mr. LANGELIUS. Oh, no, sir.

Mr. GILCHREST. No?

Mr. LANGELIUS. No, sir. As soon as it was apparent that the Fish and Wildlife Service was going to get it, we started negotiating with them.

Mr. GILCHREST. With Fish and Wildlife?

Mr. LANGELIUS. Yes, sir. And our first president, the current president at the time, he was told summarily, "We get that land—" they didn't even have it yet. They said, "If we get it, you're out of here." That was the words they used, "You're out of here."

Mr. GILCHREST. So your last time of flying model airplanes was when the Air Force base was still an Air Force base?

Mr. LANGELIUS. It was a range, sir, an airborne assault range from West Point.

Mr. GILCHREST. OK.

Mr. LANGELIUS. Yes, sir.

Mr. GILCHREST. But the year after it was transferred to the Fish and Wildlife Service——

Mr. LANGELIUS. We never have flown an airplane on it since.

Mr. GILCHREST. I see.

Mr. LANGELIUS. They won't even allow us to demonstrate what we do.

Mr. MATHEWSON. The modelers were restricted from using the site in December 1997. But there was a time lag between the time when West Point relinquished control of the property until it became a national wildlife refuge, which I believe was in 1999. But in the interim, the modelers were not allowed to use the facility.

Mr. GILCHREST. Because of the transition between liability and responsibility and all of that?

Mr. MATHEWSON. That would be my understanding.

Mr. GILCHREST. Who initiated this to become part of the Fish and Wildlife Service refuge system? Was it Ben Gilman?

Mr. LANGELIUS. No, it was in the environmental report, when they were accessing the property.

Mr. GILCHREST. I see.

Mr. LANGELIUS. It emerged in the dialog. They thought it would be a good thing. Environmentally, because you can't build on it. It is a little too wet.

Mr. GILCHREST. I see.

Mr. LANGELIUS. And it is a perfect site for modeling, because nobody can build on it. We would be there in perpetuity, if we could only get access. And that is why we took such good care of it.

Mr. GILCHREST. Sure.

Mr. LANGELIUS. Because, I mean, it was our sanctum sanctorum.

Mr. GILCHREST. Sanctum sanctorum. Sounds like a senator.

[Laughter.]

Mr. GILCHREST. Gentlemen, thank you very much.

Mr. LANGELIUS. Thank you, sir.

Mr. GILCHREST. We will continue to take a look at this, pursue this, and do the best by you and the Service.

Mr. Pallone.

Mr. PALLONE. Thank you, Mr. Chairman. I wanted to ask Mr. Farrell and Bob Allphin, the ham operators, a couple of questions. Mr. Farrell, did you know of any instance where the operations of ham radios negatively affected any fish or wildlife species? Have ham radio operations been documented anywhere as having an impact on migratory birds, to your knowledge?

Mr. FARRELL. I am aware of none, Congressman. And looking at the information that was provided to me by the Fish and Wildlife Service for Desecheo and Navassa—which those refuges were the subject of my applications for use permits—nothing in the information provided to me indicates that. But as far as other refuges, I am not aware. And Mr. Allphin may be able to address that.

Mr. PALLONE. If you want to add anything, sure.

Mr. ALLPHIN. I am not aware of any instance of negative consequences to the wildlife.

Mr. PALLONE. OK. I know both of you said that you are environmentalists. And you know that, as I mentioned earlier, the refuge system is operated under a clear "wildlife first" mission. Do your organizations support that mission? And when your expeditions set up to broadcast and then depart, what remains at the site that you occupied, if you want to answer it?

Mr. FARRELL. I will answer the first part of that question. I believe I did state that on the record, that our organization and all the amateur radio operators that I know of who are interested in doing this kind of thing are supporters of wildlife and the environment in general. And our organization, Fair Access to Island Refuges, does support, as I said earlier, the "wildlife first" policy of the Fish and Wildlife Service.

Mr. PALLONE. What about what remains after you have left? Is there anything left there when you leave, or how does it work?

Mr. ALLPHIN. As the old saying goes, only our footprints. We take that very seriously. If I may give you an example of how seriously we take it, although this doesn't involve a refuge property, there is an island that I am trying to go to called "Peter the First," which is off the coast of Antarctica. The last operation down there was in 1994. It is owned by Norway. And the amateur radio operators were ferried on and off the island by helicopters from Russian ships.

The last flight off the island, there were several large bags of human refuge [sic] which had to be collected during the operation. The helicopter pilot refused to take it aboard the helicopter; at which point, the team locked arms and said—I am not sure I can quote this exactly; there was a four-letter word used—"Refuge [sic] no go; we no go." At which point, it was loaded aboard, and they were taken back to the Russian ship.

And that is the attitude of all the amateur radio operators that I am aware of that are involved in this kind of thing.

Mr. FARRELL. And I would just note, if I can, that the special use permits issued by the Fish and Wildlife Service for Desecheo, for example, include, in addition to the map you saw and the image of the permit and the attached map, a list of conditions. And there are several in here in the record. But they include requirements to remove the effects of the operation there.

And I believe that I stated earlier that one of the reports noted that the amateur radio operators did fully comply with the requirements of their permit. And there is nothing in this record to indicate otherwise.

Mr. PALLONE. Well, I was going to ask you, Mr. Farrell, with regard to Desecheo, if I understand you correctly, the Fish and Wildlife Service denied your request for special use permits to visit the Desecheo refuge because the Service determined that the use, which had been permitted both prior to and after the Service acquired the island, was now incompatible. Obviously, you don't agree that that compatibility determination was accurate. But would you comment on that?

Mr. FARRELL. I can expand on that. I do believe the compatibility determination is accurate. The conclusion drawn by the Fish and Wildlife Service states that it is incompatible because of the safety issues. But it actually states that the greatest impact from the

amateur radio operators entering the refuge onto the island would be the trampling of the grass, carrying their equipment from the shoreline to the helicopter pad. And the criticism doesn't say this in the compatibility determination, but I will note that if a helicopter was taken there, that impact would not even occur.

So the compatibility determination does not conclude that the use is incompatible. It concludes that the use is not allowed because of safety issues; one of them being unexploded ordnance. And I can expand on that, as well. I think that is a very important point that the Fish and Wildlife Service is raising that is not always fully discussed by the agency.

Mr. PALLONE. OK. Thank you.

Mr. GILCHREST. Thank you, Mr. Pallone.

Ms. Bordallo.

Ms. BORDALLO. Thank you very much, Mr. Chairman. I have a question for Mr. Langelius.

Mr. LANGELIUS. Yes, ma'am.

Ms. BORDALLO. Correct me if I am wrong now, but it is my understanding that model planes have been used as an effective means to keep birds away from airfields in order to reduce or eliminate in-flight collisions with aircraft. And consequently, it seems reasonable to assume that aerial modelers could scare away birds that are nesting or fledging.

So in light of the known ability of model planes to harass birds, how can you conclude that aeromodeling within a refuge poses no threat to the birds located there?

Mr. LANGELIUS. That is an excellent question, Congresswoman, but it is not valid. The truth is, you may use a model airplane to frighten birds twice or three times. But it is not effective long-term, because they become acclimated in two days.

They attempted to do it. Many airfields have tried. But it is worthless, because the birds very quickly recognize no threat.

Ms. BORDALLO. I see.

Mr. LANGELIUS. But it is a good question, because it brings out the fact that what you spoke to was the response of the U.S. Fish and Wildlife. It was rather distorted.

Ms. BORDALLO. Yes, that is why I asked it.

Mr. MATHEWSON. Congresswoman, could I add to that, please?

Ms. BORDALLO. Yes. Surely.

Mr. MATHEWSON. I think there is a distinct difference between the type of model airplane mentioned in the study, and what Mr. Langelius does at Galeville. The airplanes in the study are radio-controlled model airplanes, and they are used specifically for trying to move birds, for instance, from around the perimeters of airports. It is done intentionally.

The type of airplane that Mr. Langelius flies is a free-flight model. The motor runs for probably in the neighborhood of eight to ten seconds; shuts off; the model glides from that until the duration of the flight.

And I think it is also important to point out that Fish and Wildlife, I think, mentioned back in the late '90s that this is one of the most pristine areas in the Northeast as a grasslands habitat. But you have to take that in the context that Mr. Langelius and the members of his organization were there for 26 years before that.

And it is entirely obvious that the refuge was thriving, in spite of the models.

Ms. BORDALLO. I have a quick follow-up for Mr. Langelius.

Mr. LANGELIUS. Yes, ma'am.

Ms. BORDALLO. If what you say is true, and the birds become acclimated to the situation, does the U.S. Fish and Wildlife document this?

Mr. LANGELIUS. They document and retain those things which they think are to their value, and they dismiss out of hand anything that they don't.

Ms. BORDALLO. Thank you. I have a question for the two of you now, Misters Mathewson and Langelius.

Mr. LANGELIUS. Yes, ma'am.

Ms. BORDALLO. In the time that your organizations have been denied access to conduct your activity at the—Shawangunk Refuge?

Mr. LANGELIUS. Yes.

Ms. BORDALLO. Is that the way to pronounce it?

Mr. LANGELIUS. Well, that is the way they——

Ms. BORDALLO. Pretty good. All right. I am assuming that you have found alternative locations to conduct your activities. So what new locations have you found to fly your model planes?

Mr. LANGELIUS. Well, in my testimony, we have found for one weekend competition twice a year we now go to Engleside, Maryland, which is quite a drive from the northeast.

Ms. BORDALLO. So your activity, then, has been diminished.

Mr. LANGELIUS. Remarkably. However, a very affluent fellow in the group purchased a sod farm. And although it looks pretty, it is a desperate thing, because we have to climb over canals; and there is a creek that borders the trees; corn fields, wheat fields; the airplanes disappear, and we can't traverse and recover them. But, thank you.

Ms. BORDALLO. I can't see why anyone would say "No" to you.

Mr. LANGELIUS. Thank you, ma'am.

Ms. BORDALLO. Thank you, Mr. Chairman.

Mr. GILCHREST. Thank you, Mrs. Bordallo. Engleside is not too far from where I live.

Mr. LANGELIUS. That's right.

Mr. GILCHREST. In fact, just north of Chestertown.

Mr. LANGELIUS. Exactly. That is where we eat.

Mr. GILCHREST. Where do you eat in Chestertown?

Mr. LANGELIUS. Well, we go to that little restaurant on the James River.

Mr. GILCHREST. Oh, that is the old——

Mr. LANGELIUS. It washed away a couple of years ago.

Mr. GILCHREST. On the Chester River. On the Chester River.

Mr. LANGELIUS. Yes, sir, Chester River.

Mr. GILCHREST. The Old Wharf.

Mr. LANGELIUS. Yes.

Mr. GILCHREST. Might I recommend, The Old Wharf is a good place and I go there occasionally, but The Black-Eyed Susan, two former students of mine run it, so you might want to try that.

Mr. LANGELIUS. Definitely on the agenda.

Mr. GILCHREST. Right in Kennedyville, though, there is a place called "Vonny's."

Mr. LANGELIUS. My familiarity with the area is not—there is a hook that runs around back toward Delaware, and there was a beautiful restaurant there, also—great steak house, also.

Mr. GILCHREST. Oh, that is on the C&D Canal, Chesapeake-Delaware Canal. Next time you are in town, though, give me a call. We will go canoeing.

Mr. LANGELIUS. Oh, I would love share how those airplanes fly.

Mr. GILCHREST. Oh, and I would like to come down there and fly.

Mr. LANGELIUS. Yes.

Mr. GILCHREST. Gentlemen, thank you very much.

Mr. FARRELL. Mr. Chairman, may I make one additional comment?

Mr. GILCHREST. Yes, you can, sir.

Mr. FARRELL. And I will make it brief. I want to just touch on the issue of unexploded ordnance on Desecheo, because I think it is very important. In my exchange of correspondence with the Fish and Wildlife Service during my appeal process, and the production by the agency of these, as I call them, discovery materials for my appeal, the Fish and Wildlife Service provided me with picture after picture, photograph after photograph after photograph, of bombs on Desecheo.

No one disputes the fact that this island, Desecheo, is a former bombing range. The issue here that is very important, the question that needs to be asked that I have never gotten an answer from the Fish and Wildlife Service on, is, having hiked the island extensively by Fish and Wildlife personnel for 30 years, having camped out there regularly, having been to the island and no injuries having ever occurred or mishaps of any kind by amateur radio operators or anyone else or the Fish and Wildlife Service, what changed in 1993, having allowed amateur radio operators to go there many times before, that caused the Fish and Wildlife Service to say, "No go, and one of the reasons is unexploded ordnance"? Were more bombs dropped? I don't think so.

Mr. GILCHREST. Well, that is a question we will pose to the Fish and Wildlife Service.

Mr. FARRELL. Thank you.

Mr. GILCHREST. Mr. Pallone.

Mr. PALLONE. I was just going to actually follow up on that, what you just commented on. Is that denial unique? Have you been allowed to broadcast from other refuges where unexploded ordnance is present, to your knowledge?

Mr. FARRELL. Well, I haven't applied for a special use permit, or permission generally, for another refuge. But there is another refuge in Massachusetts, the Ox Bow National Wildlife Refuge, which has ordnance on its grounds. And interestingly, the brochure that the Fish and Wildlife Service provides to visitors to that refuge has a warning that says, "Stay clear. If you see anything, report it to the refuge office." I am summarizing.

There is no reason that that should not be the approach on Desecheo; and was the approach, if you look at the old special use permits issued by the Fish and Wildlife Service. The message may not have been worded exactly the same, but the requirement for information was there.

Mr. PALLONE. OK, that is a good point. Thank you.

Mr. FARRELL. Thank you.

Mr. GILCHREST. Can you go to Viegas, the amateur radio operators?

Mr. FARRELL. To my knowledge, there is no prohibition on going there. It does not fall under the category of a distant entity or country, as we were discussing earlier, so the interest in that island is not there. So I am not sure if you can or not.

Mr. GILCHREST. So there are designated places within the ham operators international association——

Mr. FARRELL. National association.

Mr. GILCHREST. National association. There are a list of places that are designated as points of interest to travel to and communicate from?

Mr. FARRELL. And I believe the number is 335. And that is the American Radio Relay League, our national association. But ham operators internationally pursue this challenge of contacting those remote locations.

Mr. GILCHREST. I see.

Mr. FARRELL. And not so remote.

Mr. GILCHREST. I might recommend Engleside as one of those places.

[Laughter.]

Mr. FARRELL. We will keep it in mind.

Mr. GILCHREST. Or Kennedyville.

Mr. FARRELL. Thank you, Congressman.

Mr. GILCHREST. We will try to strike a balance and have some better, clearer understanding as we pursue these questions and places that you would like to visit and the public would like to see; help sustain wildlife populations, and see how we can make the mix compatible.

Mr. FARRELL. You know, that is really all we ask for, is to strike a balance and to observe and embrace the statute as it is written.

Mr. GILCHREST. Gentlemen, thank you very much.

Mr. FARRELL. Thank you, Congressman.

Mr. LANGELIUS. Thank you.

Mr. GILCHREST. Mr. Hartwig. Our third panel, the gentleman from Fish and Wildlife Service will come and give us all the answers to all the questions that we have. Mr. Hartwig, welcome, sir. Thank you very much for your patience. And you may begin your testimony.

STATEMENT OF WILLIAM HARTWIG, ASSISTANT DIRECTOR FOR THE NATIONAL WILDLIFE REFUGE SYSTEM, U.S. FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

Mr. HARTWIG. Thank you, Mr. Chairman and members of the Subcommittee. I am William Hartwig, Assistant Director of the U.S. Fish and Wildlife Service, and Chief of the National Wildlife Refuge System. Thank you for the opportunity to testify before the Subcommittee and discuss the many opportunities for public use on national wildlife refuges throughout the country.

The National Wildlife Refuge System has a long history of significant contributions to the conservation of our Nation's wildlife. In 1903, President Theodore Roosevelt created the first refuge when he set aside a 5-acre island, Pelican Island in Florida, as a

breeding ground for birds. Today, there are 545 national wildlife refuges and 37 wetland management districts that protect more than 96 million acres of the best fish and wildlife habitat in America.

America loves the National Wildlife Refuge System. A national visitors' satisfaction survey found 95 percent of the visitors were satisfied, or very satisfied, with the quality of their experiences while visiting refuges. Last year, nearly 40 million people visited refuges. These visitors found great hunting and angling opportunities, intriguing interpretive and educational programs, and numerous wildlife to photograph and enjoy. Visitation, volunteerism, and community support all continue to grow.

The Refuge System has struggled at times in the past. There were conflicting views about how the refuge system should be managed. In 1989, the GAO issued a report entitled, "Continuing Problems With Incompatible Uses Calls for Bold Action." Congress took that bold action in 1997, when it enacted the National Wildlife Refuge System Improvement Act.

This new law gave the refuge system a clear mission: wildlife conservation for the benefit of present and future generations. It clearly states that all uses of refuges must be compatible with the primary purposes of the individual refuge and the mission of the refuge system.

The Service has published policy and regulations on how we make compatibility determinations, and we ensure that the public is involved in those determinations.

Through the Improvement Act, Congress recognized people were essential to the wildlife conservation, and that citizens who were involved in using and enjoying refuges were more likely to become involved in their stewardship. The Act recognized that wildlife-dependent recreation is often compatible with wildlife refuge purposes and directly related to the mission. It declared these activities as legitimate and appropriate uses that help the American public develop an appreciation for fish and wildlife.

As such, the Act made compatible wildlife-dependent recreation the priority public use of the refuge system, and directed the Service to provide increased opportunities; particularly for hunting and fishing, interpretation, environmental education, wildlife observation, and photography.

Most visitors to refuges participate in more than one type of wildlife-dependent recreational activity. Over 495 national wildlife refuges and wetland management districts are open to at least one of the six priority public uses. Wherever it is compatible, refuges are working to increase opportunities for quality wildlife-dependent recreation activities for the public to enjoy and appreciate their outdoor heritage. We expect another 49 refuges to join this list in the near future, depending on funding and staffing levels.

We have made great progress in providing increased recreational opportunities on refuges. Yet refuges cannot be all things to all people. When Congress determined that compatible wildlife-dependent recreation is an appropriate use and should receive priority, it follows that other uses appropriate elsewhere may not be appropriate on refuges.

Refuge managers are frequently asked to permit a wide variety of such uses. Auto shows, concerts, flea markets, and road races of all types have their place, but wildlife refuges may not be the appropriate place for these types of activities.

In instances where a proposed use is found to be appropriate, it is further reviewed to ensure it is compatible with our wildlife conservation mission. Following this rigorous examination, those non-wildlife-dependent uses found compatible are allowed on refuges. An example of such non-wildlife-dependent recreation is swimming and beach activities on refuges.

In many instances, the use has been found both appropriate and compatible, since such use would not materially interfere with, or detract from, fulfillment of the refuge system mission or a refuge's purpose.

In contrast, with Shawangunk Grasslands National Wildlife Refuge, the Service determined that continued use of the refuge for flying model airplanes was not compatible with the purposes for which the refuge was established: managing migratory birds.

The model airplanes would have not only affected the wildlife for which the refuge was established, but also the visiting public seeking a wildlife-dependent experience. The refuge is simply too small to accommodate the requested activity, and refuge staff and funding resources are insufficient to monitor and maintain the facility for anything other than a low-impact wildlife-dependent use.

There are 27 refuges that are closed to all public entry and use. They total 16,000 acres, less than 1/10th of 1 percent of all of the refuge lands. Most of these refuges are remote and isolated. In some cases, refuges are closed to the public because of danger, such as unexploded ordnance left over from past military exercise. Nomans Island National Wildlife Refuge in Massachusetts is an example of the type of closure.

In other cases, refuges are closed to protect critical wildlife populations; such as the case with the 798-acre Karl Mundt National Wildlife Refuge in South Dakota, which is closed to protect nesting bald eagles. Even though this refuge is closed to public access, the Service, in cooperation with the Corps of Engineers, has developed a nearby observation platform and an interpretive kiosk just off the refuge to facilitate public enjoyment of eagles in the area. Similarly, several "refuges" that are closed have observation or interpretive opportunities.

To conclude, the conservation work of the Service depends on the support of the citizens. Refuges are important to local communities for recreation, and as a part of their natural heritage. We have learned that people who use and enjoy refuges are often the best advocates for cooperative conservation efforts.

We will continue to look for additional opportunities for compatible wildlife-dependent recreation, while staying true to our wildlife conservation mission. Mr. Chairman, this concludes my prepared statement. I would be prepared to answer any questions.

[The prepared statement of Mr. Hartwig follows:]

Statement of The Honorable William Hartwig, Assistant Director, National Wildlife Refuge System, U.S. Fish and Wildlife Service, Department of the Interior

Mr. Chairman, and Members of the Subcommittee, I am William Hartwig, Assistant Director for the National Wildlife Refuge System for the U.S. Fish and Wildlife Service (Service). Thank you for the opportunity to testify before the Subcommittee and discuss the many opportunities for public use on National Wildlife Refuges throughout the country.

The National Wildlife Refuge System has a long history of significant contributions to the conservation of our nation's wildlife. The Refuge System had humble beginnings. In 1903, President Theodore Roosevelt set aside 5-acre Pelican Island in Florida as a breeding ground for birds. The Refuge System has grown tremendously over the past century. Today there are 545 national wildlife refuges and 37 wetland management districts that protect more than 96 million acres of the best fish and wildlife habitat in America. These lands are home to a spectacular collection of wildlife, from the giant moose of Kenai Refuge in Alaska to the ancient alligators of Okefenokee Refuge in Georgia. Millions upon millions of birds, more than 700 different species, use refuges as breeding grounds, as stepping stones to rest on their annual migrations, and as winter homes.

America loves the National Wildlife Refuge System. Last year nearly 40 million people visited refuges. These visitors have found great hunting and angling opportunities, intriguing interpretive and educational programs, and numerous wildlife to photograph and enjoy. Some 33,000 citizens volunteered their time to help care for these lands and provide recreational opportunities for visitors. There are 245 Friends organizations that have incorporated to help support their local refuge. Visitation, volunteerism, and community support all continue to grow.

The Refuge System has struggled at times in the past. There were conflicting views about how the Refuge System should be managed. In 1989, the General Accounting Office issued a report on the Refuge System entitled, Continuing Problems with Incompatible Uses Calls for Bold Action. Congress took that bold action in 1997 when it enacted the National Wildlife Refuge System Improvement Act (Improvement Act).

This new law gave the Refuge System a clear mission:

> ...to administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans.

Through the Improvement Act, Congress recognized that people were essential to wildlife conservation and that citizens who were involved in using and enjoying refuges were more likely to become involved in their stewardship. The Improvement Act also recognized that deeply-rooted American traditions of hunting and fishing, and other forms of wildlife-dependent recreation, were often compatible with wildlife refuge purposes. Congress declared that with respect to the Refuge System, it is the policy of the United States that compatible wildlife-dependent recreation is a legitimate and appropriate general public use of the System, directly related to the mission of the System and the purposes of many refuges. Congress recognized that these recreational activities generally foster refuge management and help the American public develop an appreciation for fish and wildlife.

The Improvement Act made compatible wildlife-dependent recreational uses the priority public uses of the System and directed that they receive priority consideration in refuge planning and management. It directed the Service to provide increased opportunities for families to experience compatible wildlife-dependent recreation, particularly opportunities for hunting, fishing, interpretation, environmental education, wildlife observation, and photography.

In 2004, the Service selected the Refuge System to go through a Program Assessment and Rating Tool, or PART, evaluation. As a result of that evaluation, the Refuge System is developing a five year strategic plan to be released later this year that will serve as the basis for any future PART analysis. A primary component of the strategic plan will examine and outline how to better measure quality opportunities for compatible wildlife-dependent recreation. This examination will determine how many such opportunities currently exist, and establish goals for increasing priority public uses throughout the System.

As stated earlier, in 2004 the Refuge System welcomed nearly 40 million visitors, a 6 percent increase from 2001. Within the 40 million visits to refuges, this included approximately 2.3 million hunting visits, 7 million fishing visits, nearly 34 million wildlife observation and photography visits, and about 29 million visits involving interpretive and environmental education programs. As you can see, most visitors to

refuges participate in more than one type of wildlife dependent recreational activity. Over 495 national wildlife refuges and wetland management districts are open to at least one of the six priority public uses.

The 2004 national visitor satisfaction survey, covering 47 refuges, demonstrated that 95 percent of visitors were satisfied or very satisfied with the quality of their experiences while visiting refuges.

Wherever it is compatible, refuges are working to increase opportunities for quality wildlife-dependent recreational activities for the public to enjoy and appreciate their outdoor heritage. One way we have done this is through the construction of boardwalks, boat ramps, interpretive kiosks, and observation blinds. Simple projects such as these have proven to be a low cost, low maintenance, and highly effective approach for providing visitors with greater access to refuges.

The Refuge System also manages and maintains more than 2,500 miles of foot and water trails and is aggressively pursuing partnerships at the national and local levels to expand and improve our trails system.

Our volunteer workforce and Friends organizations are an integral component of providing recreational opportunities. Many visitor centers would close and interpretive programs halt without the efforts of the citizen-stewards who volunteer their time at refuges.

We have made great progress in providing increased recreational opportunities on refuges. Yet refuges cannot be all things to all people.

The Improvement Act makes clear that the mission of the Refuge System is wildlife conservation for the benefit of present and future generations. It clearly states that all uses of refuges must be compatible with the primary purposes of individual refuges and the mission of the Refuge System. The Service has published policy and regulations on how we make compatibility determinations and we ensure the public is involved in those decisions.

In view of the fact that Congress determined that compatible wildlife-dependent recreation is an appropriate use of the Refuge System and should receive priority in our management, it follows that other uses appropriate elsewhere may not be appropriate on refuges. Refuge Managers are frequently asked to permit a wide variety of such uses. Auto shows, concerts, flea markets, and road races all have their place, but wildlife refuges may not be the appropriate place for these types of activities.

The Service has drafted policy on how managers are to determine when non-wildlife dependent recreational uses are appropriate. We have involved the public and worked closely with our State fish and wildlife agency partners to craft this policy. We look forward to issuing a final policy to assure that managers are consistent in how they make these decisions.

In addition, even appropriate uses such as wildlife dependent recreation, are further reviewed to ensure they are compatible with our wildlife conservation mission. Generally, priority uses such as hunting or wildlife observation do not present any issues. In some cases however, even priority uses are not found compatible. In those instances, the Refuge Manager may need to balance between or among competing uses or, if absolutely necessary, disallow one or more uses. Compatibility determinations are made in writing, and identify the anticipated effects of the proposed use on refuge resources.

This compatibility determination process also applies to non-wildlife-dependent recreation activities. Through this rigorous examination, in some cases compatible non-wildlife-dependent uses are allowed on refuges, such as swimming and beach activities. In these instances, the use has been found both compatible and appropriate, since such use would not materially interfere with or detract from fulfillment of the Refuge System Mission or refuge purposes.

In contrast, at Shawangunk Grasslands National Wildlife Refuge, the Service determined that continued use of the refuge for flying model airplanes was not compatible with the purposes for which the refuge was established, managing migratory birds. The model airplanes would have not only affected the wildlife for which the refuge was established, but also the visiting public seeking a wildlife-dependent experience. The refuge is simply too small to accommodate the requested activity, and refuge staff and resources are designed to monitor and maintain the facility for low impact, wildlife-dependent public uses only.

There are 27 refuges that are closed to all public entry and use. They total 16,000 acres, less than 0.1 percent of refuge lands. Most of these refuges are remote and isolated. In some cases, refuges are closed to protect the public from danger, such as unexploded ordinance left over from past military exercises. Nomans Land Island NWR in Dukes County, Massachusetts, is one example. In other cases, refuges are closed to protect critical wildlife populations. Such is the case for the 798-acre Karl E. Mundt NWR in South Dakota which is closed to protect nesting bald eagles. Even

though this refuge is closed to public access, the Service, in cooperation with the U.S. Army Corps of Engineers, has developed a nearby observation platform and interpretive kiosk to facilitate the public enjoyment of eagles in the area. Similarly, several closed refuges also have wildlife observation and interpretive opportunities.

On other refuges which are considered open to public use, some portions of the land may be closed to certain activities. Seasonal closures and sanctuary areas are tools used to provide for public use, not curtail it. These management techniques allow us to enjoy hunting and fishing and other wildlife dependent recreation in ways that are compatible with conservation, not in conflict with it. A great example is at Pelican Island, where the original 5-acre island remains to this day an inviolate sanctuary for breeding birds. But the Centennial Trail, dedicated on the Refuge System's 100th birthday in 2003, leads visitors by restored wetlands and native vegetation to an observation tower that allows visitors to view the nesting pelicans, wood storks, ibis, and egrets from a distance that protects the birds from disturbance.

The conservation work of the Service depends on the support of citizens. Refuges are important to local communities for recreation and as part of their natural heritage. We have learned that people who use and enjoy refuges are often the best advocates for cooperative conservation efforts. We will continue to look for additional opportunities for compatible wildlife-dependent recreation while staying true to our wildlife conservation mission.

Mr. Chairman, this concludes my prepared statement. I will be pleased to respond to any questions you may have.

Response to questions submitted for the record by the U.S. Fish and Wildlife Service

QUESTIONS FOR THE RECORD BY THE HONORABLE WAYNE GILCHREST

(1) Currently 88 refuges out of the 545 National Wildlife Refuges are closed to the public. Since this represents 16 percent of the entire system, what is the justification and rationale for closing them to visitors?

Although sixteen percent of refuges are closed to the public, the total area of all 87 closed refuges encompasses less than 54,000 acres, or less than one-tenth of one percent of the area in the refuge system. Consistent with the National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge Improvement Act of 1997, and to the extent that the U.S. Fish and Wildlife Service (Service) has jurisdiction, national wildlife refuges (except those in Alaska), are closed to all public access and use until they are specifically opened for individual uses following analysis and evaluation. Individual refuges are opened after the Service has determined that a specific use can be offered in a safe and compatible manner. When determined compatible, the National Wildlife Refuge System Improvement Act grants wildlife-dependent public uses priority over all other public uses. In Alaska, national wildlife refuges are generally open to wildlife-dependent recreational uses as long as such uses are conducted in a manner compatible with the purposes for which the refuges were established. Refuges in Alaska may be closed to specific uses if those uses are determined to be incompatible with refuge purposes. The subsistence uses of fish and wildlife by local rural residents have priority over other consumptive uses.

The reason why individual refuges remain closed varies depending on the situation, but typically can be attributed to public safety concerns; the need to protect wildlife and its habitat (including endangered species from harassment); and, a lack of legal access rights. In addition, closed refuges may also be new refuges for which a public use plan has yet to be completed. For a complete list of refuges currently closed to public access, please see Tables 1-3 on pages 18-20 below.

(2) How often are these closures reviewed and what is the likelihood that any of these units will be open in the future?

Administrative closures, resulting from a compatibility determination, are reviewed whenever conditions change or significant new information relative to the closure and its effects becomes available. Closures are also reviewed during the comprehensive conservation planning process, and at least every 10-15 years. Closures due to deed restrictions are permanent unless the restrictions are removed or changed. The tables on pages 18 through 20 below list the refuges that are currently closed and the reasoning behind the individual closures.

(3) Just prior to World War II, a significant number of refuges were established in the State of North Dakota. What was the significance of these designations in 1939? It appears the vast majority of these refuges involve an easement or

mixed fee easement. In those cases, why where these lands declared part of the refuge system, who controls access or determines compatible activities on those lands, who maintains them and why are most of these units closed to the public?

In the 1930s, the United States was faced with an economic depression, massive drought, and declining waterfowl and other wildlife populations. To address these crises, the federal government developed several economic and conservation initiatives. Beginning in 1935, the government worked with states and private landowners to sign dozens of refuge easement agreements in North Dakota. These refuge and flowage easements were established for the purposes of: (1) water conservation, (2) drought relief, and (3) migratory bird and wildlife conservation purposes. The Work Progress/Programs Administration and Civilian Conservation Corps programs provided jobs to build the water control structures needed to impound and manage water levels. Landowners were given $1.00 for these easements, but greater value was realized in reliable water sources for farming and provision of jobs for local communities.

The government revised the status of these lands in the late 1930s and 1940s. Easement lands in close proximity were combined, establishing an approved acquisition boundary, and designated as migratory bird sanctuaries (later changed to national wildlife refuges) under the authorities of executive orders and various conservation laws. Ninety-three percent of these lands still remain in private ownership and the Service has no control over public access.

The North Dakota Easement National Wildlife Refuges encompass 47,296 easement acres within the boundaries of 39 individual refuges ranging in size from 160 acres to 5,506 acres. There are currently no Service personnel dedicated to managing these easement refuges. The responsibility of management of these areas, including making compatibility determinations, is assigned to refuge managers from nearby staffed refuges.

A draft Comprehensive Conservation Plan is currently being developed that will evaluate the easement refuges and determine each refuge's worthiness to be part of the System. Some refuges may be considered for management by the State of North Dakota, which owns some of the fee title interests within the refuge lands.

(4) Where does it stipulate in the National Wildlife Refuge System Improvement Act of 1997 that only hunting, fishing, wildlife observation, photography, environmental education and interpretation are permissible activities within the system? Isn't it true that both the Committee Report and House Floor debate make it clear that the so-called Big Six are given priority but not exclusive use within the system?

The National Wildlife Refuge System Improvement Act of 1997 does not stipulate that hunting, fishing, wildlife observation, photography, environmental education and interpretation are the only permissible public activities within the National Wildlife Refuge System. The Act states that these six activities are to be considered as the general "priority public uses" of the Refuge System and shall receive priority consideration over other general public uses in planning and refuge management.

(5) Describe for the Subcommittee what are Special Use Permits? What is the statutory authority for these permits and what are the necessary conditions to obtain one?

A Special Use Permit is required for uses of refuge services, facilities, privileges, or products of the soil, that are provided at refuge expense and not usually available to the general public under the requirements of Title 50 CFR or other published regulations. Some common examples of activities authorized by Special Use Permits include grazing, cabin rentals, and rights-of-way uses for road or power-lines across refuge land. Individual refuge managers are responsible for identifying, evaluating, approving, and administering specialized uses of the refuge consistent with Service policy and procedures.

Individuals or organizations interested in obtaining a Special Use Permit for a specific activity must first submit an application to the appropriate Refuge Manager. The application requests the full name, address and phone number of the applicant; the period of requested use, and a description of the requested use. The refuge manager (or his/her designee) then evaluates the requested use and determines if it is first, appropriate and secondly, compatible with the individual refuge's purposes and management objectives. The refuge manager may add special conditions to the permit to minimize conflicts with other refuge management programs.

The issuance of a Special Use Permit is authorized by the National Wildlife Refuge System Administration Act, as amended, and the Refuge Recreation Act.

(6) The Service currently has a contract with the Chugach Alaska Corporation to operate the Midway Atoll infrastructure. Is this entity interested and capable of operating a visitor concession program?

The current contract with Chugach McKinley, Inc., does not include provisions for conducting a visitor concession program at Midway Atoll National Wildlife Refuge. The contract includes operating the infrastructure of the island (including the airfield), maintaining facilities, conducting food services, providing transportation, and some landscape maintenance that benefits wildlife (e.g., removing tall vegetation around buildings, removing invasive Australian pines from around the airfield).. Through their current activities, the contractor will maintain lodging and provide meals for occasional visitors. The Service did not contract with Chugach McKinley to provide for visitor services, therefore we are unable to respond regarding their interest. The Service is currently reviewing bids for a 2006 Base Operations Support Services (BOSS) contract, which included 'placeholders' for the eventuality of supporting a visitor services program at Midway Atoll National Wildlife Refuge. However, the Service only recently received a market analysis and feasibility study for a visitor service program at Midway, and has not yet decided whether these services would be provided by the Service, a concessionaire, or multiple concessionaires (which may or may not be the BOSS contractor).

(7) What is the status of discussions involving which federal agency is going to pay for the operation of the Midway Airport in the next fiscal year?

Officials from DOT/FAA have assured their commitment to pay their fair share of the cost to operate the airport and shared infrastructure at Midway in FY 2005 and beyond. They have estimated their share this year to be approximately $1.8 million, which they have provided. Working with FAA, we have reduced total cost of Midway operations for FY 2005 to $5.6 million, including $4.3 million for airport operations.

(8) For the bird species protected on Midway, including the two species of albatross, please provide population numbers, times of year when present in the area, and what habitat features and components required by the species at these times, are being maintained by USFWS management policies i.e., keeping open grass or sand habitats, removing trees, and eliminating aerial hazards?

Midway Atoll National Wildlife Refuge provides habitat for three species of albatrosses: Laysan (441,000 pairs), Black-footed (20,400 pairs), and the endangered Short-tailed (1 individual). Albatrosses are found at Midway nine months of the year (late October to early August) and use a variety of habitats including grassy fields, sandy areas with native vegetation, introduced ironwood forest, and native and introduced shrub habitat. Highest densities of albatrosses are found in grassy fields and sandy areas with native vegetation.

The refuge conducts the following management activities to maintain high quality nesting habitat for these species: Requiring nighttime airplane operation to avoid albatross strikes; replacing above ground power and communication lines with below ground lines; and controlling (through mechanical means such as mowing, herbicide application, and hand pulling) introduced plants and replacing them with native species.

(9) How sensitive are albatross or other colonial nesting waterbirds to disturbance during nesting season and what are the risks to the survival of the population, eggs or chicks disturbed by human activities during nesting periods? During other times of the year?

The type and level of risk to albatrosses and other waterbirds from humans entering a colony varies by species, location, and nesting habitat, however, most species are very sensitive to disturbance. Most seabirds exhibit insular tameness, which is behavior characterized by a lack of the wariness one might observe in birds living in areas with terrestrial predators. Because of this trait, it sometimes appears as if humans pose no problems for these species. In fact, there are a number of potentially serious consequences every time a seabird colony is entered, even by experienced researchers. For example:

- Mechanical -- At most seabird colonies in the central Pacific birds nest on three different levels, under the ground, on the surface, and in the shrubs and trees. At many times of the year it is difficult to walk in some parts of a colony without stepping on eggs or caving in burrows below the surface.
- Thermal -- Although the climate of the tropical and subtropical islands seems mild, it can pose problems for nesting bird species. Consequently, adults have evolved to virtually never leave eggs and tiny chicks unattended. The presence of people can disrupt the adults, and their displacement from the nest for more than 3 or 4 minutes may lead to the loss of the egg or chick.
- Biological -- In some colonies, one species may take advantage of human disturbance to prey upon other species when they are disturbed and leave their nests. In general, there is a much lesser chance of disturbing Albatrosses and other sea birds at times when they are not nesting. However, humans can still

cause damage to nesting habitat which will have repercussions when the birds do return to nest.

(10) How much space does an albatross on land, need to become air born or to land?

The amount of runway an albatross needs to become airborne depends on wind speed and relative direction. On a windless day an adult Laysan Albatross might need as much as 20-30 meters to get aloft; however, it generally takes much less room to land (this is an anecdotal estimate based on personal experience of local Service personnel and is not a scientific measurement). When birds nest in thick trees or shrubbery they must sometimes walk long distances out to the beach or a clear area in order to take off.

(11) Amateur radio operators have requested Special Use Permits to broadcast from the Desecheo, Navassa Island and Farallon National Wildlife Refuges. These requests have been unanimously rejected. The Service has indicated that Desecheo is closed because of unexploded ordnance. Yet, Special Use Permits were routinely issued to the public prior to 1998. Since this has been a refuge since 1976, what conditions have changed during the past seven years that warrant denying any public access?

Between 1994 and 1998, a total of 11 Special Use Permits were issued for Desecheo. The only permit issued for amateur radio operations was issued in 1994. All other permits were for research or drug interdiction. The process for evaluating uses at refuges changed significantly in 1998 with passage and implementation of the National Wildlife Refuge System Improvement Act, which presents a consistent regulatory method for determining compatibility. This new process required reevaluation of Special Use Permits issuance, and it was determined in 1998 that public access should no longer be allowed on Desecheo NWR because of safety considerations. The Service has issued relatively few Special Use Permits at all three refuges because of the agency's concerns regarding public safety. The issuance of a permit authorizing use and access assumes that areas, facilities, and operations that the permittee may be exposed to are free from recognized hazards.

(12) In 2002, the U.S. Army Corps of Engineers issued a report on the unexploded ordinance on Desecheo, what were their findings? Is it not true that the Army found that these unexploded ordnance did not pose a catastrophic or critical risk to the public? If that is the case, why not issue the permits?

The Service is unaware of any declaration by the U.S. Army Corps of Engineers (Corps) that unexploded ordnance poses no risk at Desecheo National Wildlife Refuge. A 2002 Archives Search Report on this subject does not reveal such a declaration. As referenced in a 2002 draft report, the Corps conducted a site inspection with Service personnel and relocated three UXO's on the surface that had been found previously. These were detonated in 2002 by Explosive Ordnance Disposal (EOD) personnel from the U.S. Navy. Completion of this process does not mean the area has been cleared or declared safe. No complete surface or subsurface survey for UXO has been conducted on the island of Desecheo. The Risk Assessment, included in the 2002 report, states that the hazard severity is catastrophic although the probability is occasional. The latter is based on factors such as distance to inhabited areas and inaccessibility of the island.

(13) What does the USFWS believe is its liability for "inviting" the public to areas that have public hazards, for visitor "invitee" injuries when the USFWS did not know (or could not be expected to know) about the hazards involved, for injuries to unauthorized visitors caused by known or unknown hazards, and for employees in the course of their duties on National Wildlife Refuges?

The United States Government has an affirmative duty for any known hazard to provide warning or make safe areas where there is public access. The level of this duty depends on the laws of the state or jurisdiction in which the area is located. Liability may be limited by external factors such as existence of a recreational use statute, contributory negligence of the person entering the property, and other defenses available to the United States under the Federal Tort Claims Act (28 USC Sec. 2671 et. seq.) This duty extends only to hazard that are known or are reasonably ascertainable, and therefore likely would not apply in cases where a visitor is injured by hazards that the Fish and Wildlife Service did not know about. In cases where unauthorized visitors are injured, the liability of the government is governed by state law.

The U.S. Government has full liability for all injuries received by federal employees in the course of carrying out their official duties. Although federal employees are not covered by the Federal Tort Claims Act, employees injured while acting within their scope of employment are entitled to coverage of all medical bills under the Federal Employee Compensation Act (5 USC Sec. 8181 et. seq.)

(14) There are several amateur radio operators who desire to obtain a Special Use Permit to broadcast from the Southeast Farallon Island. This island is closed to the public. However, in the past three years, 19 Special Use Permits have been issued affecting 44 different people. What was the purpose of these Special Use Permits? Did any of the permittees have an adverse effect or cause injuries to any of the 12 different bird species that inhabit that island?

All of the permits issued for Southeast Farallon Island were directly related to management and supported the accomplishment of refuge goals and objectives. For example, allowing a small number of media visits per year provides the general public with more information, photos, and video so that the can learn more about and appreciate this public resource. It provides a view of the refuge to members of the public that are unable to take a Farallon boat tour, which gives a first-hand experience. Specific information on the permits issued over the last 3 years is as follows:

In 2002, a total of seven permits were issued. Five permits (13 people) were for research and involved the following agencies/organizations: Gulf of the Farallones National Marine Sanctuary (inter-tidal monitoring), U.S. Geological Survey (bat survey), National Weather Service (service equipment located on the island), and State of California Water Quality Control Board (discharge monitoring). The latter two permits were one-day visits. Two one-day permits (4 people) were issued to the British Broadcasting Co. for filming a wildlife documentary on gulls. In 2003, a total of six permits were issued. Three permits (9 people) were for research and involved the following agencies: Gulf of the Farallones National Marine Sanctuary (inter-tidal monitoring), National Weather Service (service equipment located on the island), and UC Berkeley Lawrence Hall of Science (collect educational material for geology exhibit). The later two permits were one-day visits. Three permits (4 people) were media related and involved the following entities: NBC News, Time Warner, Inc, and a photographer.

In 2004, a total of six permits were issued. Five permits (13 people) were for research and involved the following agencies/organizations: Gulf of the Farallones National Marine Sanctuary (inter-tidal monitoring), National Weather Service (service equipment located on the island), UC Berkeley Seismology (maintain seismographic instruments), Center for Ecology and Hydrology (tick study), and Stanford University (shark research). One permit was issued for a 1-day media visit (1 person) by the Los Angeles Times.

The Service expects that some minor disturbances such as flushing of western gulls or other individual birds occurred during these visits. The Service also knows that occasionally permittees crush individual auklet burrows or step on gull eggs/nests, even though Service staff try to minimize those effects by training and orientation of all visitors.

(15) There are also a number of biologists, researchers, contractors, interns, photographers and reporters who either live on or have visited the Southeast Farallon Island in the past three years. Did any of these individuals adversely impact the bird populations? How was this prevented?

When South Farallon Islands were added to the National Wildlife Refuge System in 1969 the number of people allowed on the island at any one time was reduced to the minimum number needed to monitor and protect the wildlife and maintain a minimal infrastructure. The Service closed most of the island to all human contact, even to researchers and residents, and restricted activities to a few footpaths.

The Service recognizes that any level of human activity will cause some wildlife disturbance. However, the Service believes that the benefits of having a minimal human presence to monitor wildlife, restore habitat and protect the Refuge from more damaging disturbance outweighs the costs. The Service has established stringent standard operating procedures for staff and all visitors to ensure that bird and marine mammal populations are impacted to the least extent possible. In addition, a variety of conditions are attached to all Special Use Permits. As detailed above, all photographers, reporters and researchers (other than Point Reyes Bird Observatory staff) who conduct monitoring and care-taking duties on Southeast Farallon Island must have a Special Use Permit and meet certain criteria to visit the island.

(16) Since model airplanes were flown at the exact site for twenty eight years, without according to the Department of the Army any adverse effects on wildlife, what dramatic changes occurred in 1999 that caused the Fish and Wildlife to conclude that model airplane flying could never be a compatible activity at the Galeville Airport?

Although we do not have the specific justification, the West Point Military Academy suspended model airplane flying in 1995. On July 27, 1999, the General Services Administration (GSA) transferred 566 acres of the former Galeville Military Airstrip to the Service to create Shawangunk Grasslands National Wildlife Refuge. A memorandum dated October 17, 1997, to the GSA from the Regional Director for-

mally requested the transfer of land and defines the purpose for establishing the refuge as follows, "[the site] provides critical habitat for migratory birds and raptors. More than 120 species of birds have been identified at the site. It supports approximately 20 bird species which are designated as species of Federal or State 'management or special concern'."

The Department of the Army and the Service each have a distinct and unique mission. As such, it is to be expected that the criteria and methodology for determining wildlife impacts differ. As the purposes for which the property is managed changed, so have the uses compatible with that management strategy. As outlined above, the National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge Improvement Act of 1997, requires that an affirmative finding by the refuge manager be made of the compatibility of an activity before it is allowed on an individual national wildlife refuge. Service policy establishes the process for determining compatibility, including the procedures for documentation. It defines a compatible use as "a proposed or existing wildlife-dependent recreational use or any other use of a national wildlife refuge that, based on sound professional judgment, will not materially interfere with or detract from the fulfillment of the mission of the Refuge System or the purposes of the refuge."

At Shawangunk Grasslands National Wildlife Refuge a compatibility determination for the proposed use of model airplane flying and model airplane competitive events written by the former refuge manager and signed by the Regional Refuge Chief on February 20, 2002, found that model airplane flying and model airplane competitive events are not compatible with the purposes for which the Refuge was established.

(17) How does the Fish and Wildlife Service respond to the comments of Dr. Patrick Redig who analyzed the flying of model airplanes at Galeville and concluded that: "My experience and my knowledge of birds says that none of these activities will have serious or measurable negative impacts". Dr. Redig is a veterinary, Professor of Veterinary Medicine at the University of Minnesota and Director of the Raptor Center.

The compatibility determination for model airplane flying and model airplane competitive events on Shawangunk Grasslands National Wildlife Refuge contains eight pages of detailed information describing the direct and indirect impacts of aircrafts on migratory birds. Various model airplane activities have differing impacts on bird species. While we are not aware of any studies that specifically describe the impact of model airplanes on birds, it has been demonstrated that grassland birds have modified their behavior in response to kite-flying. Studies on impacts of passenger aircraft indicate that smaller, slower moving craft that fly at low altitudes have the highest impact on birds, perhaps because of their similarity to predators. In some places, model airplanes are used to deter birds from occupying runways and flight paths. In addition to the impacts of the models themselves, there has been a history of using motor vehicles or bicycles to recover the models. While this may not impact raptors, ground-nesting birds are vulnerable to such disturbances.

(18) Did the Service conduct a scientific analysis of the impact of free-flight planes on the six unlisted species of migratory birds at Galeville? Why not? Isn't it true that by their very nature, free-flight planes, unlike motorboats, motorcycles and personal water craft, produce almost no noise? Have you prohibited people from riding motorcycles or driving loud automobiles on the grounds of the Shawangunk Grasslands National Wildlife Refuge or other refuge units?

As stated in the compatibility determination, impacts to migratory birds from model airplane flying and competitions are both direct and indirect. These impacts stem from both the act of model airplane flying and its associated activities, such as retrieval of planes, which can involve motor vehicle and bicycles employed in nesting areas. Although no specific studies of free-flight planes have been conducted at Galeville, as mentioned above, even kite-flying has been demonstrated to have an impact on bird behavior. The Service determined there was enough existing scientific literature on this subject to make a compatibility determination.

Motorized vehicles such as motorcycles and cars are prohibited on the Refuge. Since the Shawangunk Grasslands National Wildlife Refuge was established, activities such as walking dogs, jogging, bicycling, riding horses, and use of all-terrain vehicles have also been prohibited.

(19) What is the current condition of the 8,000 foot runways at the Galeville Airport? Are the press reports accurate that the original refuge manager publicly stated that the runways should be destroyed? Is it the Service's view that this runaway should be destroyed?

Almost 30 acres of land on the refuge are occupied by old airport runways and taxiways. The runways are made of slabs of concrete and the taxiways and connec-

tors are made of asphalt. The runways, taxiways and connectors are all in various states of disrepair and continue to deteriorate. A drainage system underneath the old runway system has not been maintained and the site is getting wetter every year.

The Shawangunk Grasslands National Wildlife Refuge is currently in the process of developing a Comprehensive Conservation Plan (CCP) and Environmental Assessment (EA), as required by federal law. The planning process for the Refuge started several years ago and the refuge manager at the time publicly stated her intention for the developing CCP. Her intentions included removing the old airport runways and restoring the site to grassland habitat. When the CCP is released to the public, the Service will hold public meetings to hear comments on the proposals contained within this plan.

(20) Are there any conditions, restrictions or limitations that the Eastern U.S. Free Flight Conference could agree to that would cause the Fish and Wildlife Service to reexamine whether this activity could occur at Shawangunk Grasslands National Wildlife Refuge?

As noted in the response to question 16, the refuge manager conducted a compatibility determination and found that the activity is not compatible. However, the Service would reexamine that determination if the Conference submits a proposal that is significantly different than that which has previously been reviewed.

(21) How sensitive are grassland birds to model airplane or other aerial activity during nesting periods? Other human activity? What is their sensitivity to human activities during other times of the year?

As described in the responses to questions 17 and 18, the compatibility determination for model airplane flying made at Shawangunk Grasslands National Wildlife Refuge addresses the sensitivity of grassland birds to model airplanes at that site. The compatibility determination also addresses the frequency of disturbance from model airplanes to grasslands birds at the refuge during the breeding season, which occurs earlier than the nesting season. The Refuge is important to various bird species at different times of the year. Grassland birds use the Refuge for breeding and wintering, giving them a year-round presence. Migratory birds are observed there in the spring and fall, while the Refuge provides open grasslands in which raptors hunt during the winter. The Service has not comprehensively examined the sensitivity of grassland birds to model airplanes across the entire National Wildlife Refuge System.

(22) If the USFWS were to make arrangements to allow seasonal access to the refuges that support migratory birds, how would this access be enforced? How is the no access policy enforced now?

As mentioned in the answer to the previous question, the Refuge is an important resource for birds throughout the year. Therefore seasonal use would not be an effective method to decrease impacts on bird populations. There is no policy of "no access" on Shawangunk Grasslands National Wildlife Refuge. The refuge is open for wildlife observation, photography, and environmental education and interpretation. A full-time law enforcement officer is assigned to Wallkill River National Wildlife Refuge and Shawangunk Grasslands National Wildlife Refuge who is responsible for patrol and enforcement on both refuges. Similar situations exist on other National Wildlife Refuges throughout the country.

QUESTIONS FOR THE RECORD BY THE HONORABLE FRANK PALLONE, JR.

A. Desecheo National Wildlife Refuge

(1) When was the image created of Desecheo Island showing the locations of unexploded ordnance (UXO which was displayed for the Subcommittee on Fisheries during its hearing on May 26, 2005)?

This image was taken from the 2002 Archives Search for Desecheo prepared by the U.S. Army Corps of Engineers.

(2) Have any of the UXO identified on the Desecheo Slide been detonated by the government? On what date(s) was the UXO detonated?

Three unexploded ordnance were detonated by Explosive Ordnance Disposal (EOD) personnel in 2002.

(3) Which government entity recommended to the FWS that FWS use signs and other means to post warnings about UXO on Desecheo? Why was this information not provided to the Subcommittee on May 26? When was the recommendation made? Has FWS satisfied any of the recommendations? Which recommendations have not been satisfied? Why not?

The recommendation was made by EOD personnel to the U.S. Army Corps of Engineers in a memorandum dated December 2002. This is the same memorandum

that documented the detonation of ordnance on Desecheo. The Service has not installed signs specific to ordnance, but has installed boundary signs stating no unauthorized entry. The Service has posted notices in public locations advising the public that the Desecheo National Wildlife Refuge is closed. Closure information is also available on fact sheets published by the Service. These fact sheets are available both in hard copy as well as on the internet. These fact sheets specifically refer to the presence of unexploded ordnance on the island and the fact that the refuge is closed.

(4) What evidence can Mr. Hartwig point to in support of his statement to the Subcommittee on Fisheries on May 26 that there are UXO buried in Desecheo? Why has the FWS previously reported to applicants for permits that it does not know whether any UXO exists beneath the surface of Desecheo?

The island of Desecheo is known to have been utilized by the military for bombing practice. This is clearly documented by the U.S. Army Corps of Engineers Archives. Based on observations by Service and Corps personnel, the Service knows that there are UXO on the surface and partially buried on Desecheo. However, the entire island has not been surveyed for the presence of UXO on the surface or subsurface. No geophysical surveys have been conducted to detect metal objects beneath the surface. Therefore we cannot say with absolute certainty that there is UXO present beneath the surface, however it is most likely.

(5) Has Desecheo refuge manager Susan Silander or any other FWS personnel or authorized visitors taken a member or members of their family(s) or other non-FWS personnel to Desecheo for any reason after the Desecheo Refuge was closed? What were the reasons for the visit(s) and when did the visits occur?

Refuge Manager Susan Silander has not taken her family to the Desecheo National Wildlife Refuge. No other Service personnel have made unofficial visits or taken family to the island.

(6) Has the FWS authorized visits to Desecheo by school groups or by anyone else since the Desecheo Refuge was closed? What were the reasons for the visit(s) and when did the visits occur?

The Service has not authorized visits by school groups to Desecheo National Wildlife Refuge. The Service has authorized select research missions, which have included university professors and graduate students. All permittees granted access to Desecheo are required to be accompanied by Service personnel.

(7) If the Oxbow National Wildlife Refuge in Massachusetts has no unexploded ordnance UXO on the grounds, then why does the Oxbow refuge brochure mention UXO in its brochure? How do you reconcile this with your position on Desecheo?

The Service received three transfers of land from the U.S. Army at Fort Devens, Massachusetts (1974, 1988, and 1999). These lands now comprise approximately 1,547 acres of the 1,677 acre Oxbow National Wildlife Refuge. The transfers were made with the appropriate DOD ordnance clearance certification. The statement in the Refuge brochure is purely cautionary since no clearance certification can be absolute. There are no known firing ranges, no known weapons firing impact areas, and there have been no reports of UXO being located on Oxbow National Wildlife Refuge, which is in contrast to Desecheo National Wildlife Refuge.

(8) Why has the FWS not responded to Members of Congress who enquired about the current status of the UXO on Desecheo? If the FWS has responded, please include copies of such correspondence.

The Service has responded to all inquiries that it has received from Members of Congress about the current status of UXO on Desecheo National Wildlife Refuge. Copies of correspondence received by the Service from Congressional Members, and the accompanying responses, over the past 2 years are attached (Attachment #1).

(9) Has the FWS given consideration to the proposal set forth in Mr. Farrell's initial administrative appeal filed with the FWS in June 2004 for decreasing the burden on FWS personnel in handling requests from Amateur Radio operators for special use permits for Desecheo or Navassa islands? Has the FWS considered any other means of decreasing such burden other than closure of the Desecheo and Navassa refuges?

Mr. Farrell proposes the establishment of a narrow application window for special use permits and that each year two permits be authorized. Each permittee would need to follow reasonable, but stringent regulations on their visits and would have to execute "hold harmless" documents. Under this scenario access would be allowed initially on a test basis and would be closely supervised by Service personnel. If necessary, the Service would be reimbursed for the cost of personnel required to accompany them.

The establishment of a narrow window would not eliminate the safety issue that is the reason for closure. While strict measures may be incorporated into the permit, this will not eliminate the issue of safety and liability.

(10) Have any FWS personnel or authorized visitors to Desecheo or Navassa ever been suspected or investigated by any agency, including FWS, for suspicion of engaging in any illegal or unauthorized activity related in any way to the Desecheo and/or Navassa refuges? What were the suspected activities? Specifically, what charges or disciplinary actions were they subject to?

No, the Service is not aware of any violations by Service personnel or authorized visitors.

B. Navassa National Wildlife Refuge

(1) Have any FWS personnel or authorized visitors to Navassa been harmed landing or departing Navassa Island at any time? If so, please provide all supporting reports and/or other evidence.

The Service is not aware of any Service personnel or other authorized visitors being seriously harmed landing or departing Navassa Island. However, even without incident, access to Navassa is still considered extremely hazardous.

(2) Have FWS personnel used helicopters to land on Navassa, and if so, did any problems result from helicopter landings? Was FWS aware of U.S. Geological Survey's landing on Navassa using helicopter?

The Service has accessed Navassa by means of helicopter in the past. When doing so the Service must consider potential impacts to natural resources. Unauthorized landing of aircraft on any national wildlife refuge is forbidden. Helicopter pilots consider Navassa to be a risky landing site due to the uneven terrain, sharp limestone and loose sharp rocks. There was one instance of a problem during a helicopter landing where the helicopter landing skids and rear tail rotor were damaged. Given the hazards of landing on Navassa and the presence of fragile natural resources, the Service tries to keep helicopter landings to an absolute minimum.

The Service is aware that the U.S. Geological Survey landed by helicopter at Navassa prior to the establishment of the refuge.

(3) Mr. Hartwig testified that the ladder on Navassa Island was removed. Did the FWS remove the ladder? Did the FWS request that the U.S. Coast Guard remove the ladder? If so, why?

The ladder was semi-functional until 2001 and then fell apart due to deterioration. Since then, access has been limited and the island can only be accessed by approaching in a small boat and climbing up a cliff face. The U.S. Coast Guard was never notified and asked to remove the ladder, because their activities related to the island ceased many years ago.

(4) Members of Congress have enquired into whether Haitian fishermen who camp on Navassa are encouraged to do so by the FWS. Does the FWS allow this activity to occur or does the agency otherwise encourage it?

The Service does not encourage Haitian fishermen to camp on the island. Some fishermen do access the island inappropriately and illegally, but typically they sleep on their boats.

C. Pacific Wildlife Refuges

(1) In regard to Midway Island in the Pacific Ocean, when was the FWS policy on travel to Midway changed? Citizens have been told they could only visit Midway using FWS aircraft at a cost of $1,500/person and $7/pound of luggage. Is this correct?

The Service has provided limited access to Midway Atoll National Wildlife Refuge since January 2002. In June 2002, access was further limited when Aloha Airlines ceased operating the aircraft the Service regularly chartered to bring people, supplies, and materials to Midway Atoll. Since then, the Service's only regular access to Midway Atoll is by a chartered Gulfstream G-1 aircraft, which carries a maximum of 19 passengers and a total of 3,200 pounds (passengers and cargo). Almost all food supplies for Midway must be flown in, which uses a significant portion of the available weight. Thus the number of passengers that can be accommodated on each flight is extremely limited.

Visitors are not required to come to Midway aboard our chartered aircraft. Since 2002, most of Midway's visitors have arrived via cruise ships, but a few additional people have traveled there via privately owned sailboats and aircraft.

The fees of $1,500 for a round trip flight and $7/pound for cargo that exceeds the 50 pound per person limit, are accurate. Similar to major airlines, excess cargo fees are charged to discourage travelers from bringing more luggage than required.

(2) Please produce all lists of fees for visiting any NWR in the United States and its territories and/or possessions, including Midway Island, and include the legal basis for each fee, and the rationale for all fee structures?

The legal basis for the fee collection across the National Wildlife Refuge System is primarily the Federal Lands Recreation Enhancement Act (REA) (P. L. 108-447), and its predecessor, the Recreation Fee Demonstration Program (Fee Demo). Some sites previously collected fees under other authorities such as the Land and Water Conservation Fund Act (LWCFA) and the Emergency Wetlands Resources Act (EWRA). Both of these authorities were repealed by the REA and previously involved sites will either be required to terminate their programs or transfer to the new Recreation Fee Program by September 30, 2005. Many of our current REA-authorized sites were previously authorized by Fee Demo authority and many of those Fee Demo sites were initially authorized by either LWCFA or EWRA. However, the continuing sites are those collecting under REA and they all must conform to the fee criteria laid out in Section 3(b) of that Act.

There are currently 112 refuges covered under the REA program. The Service estimates that there were an additional 59 refuges authorized under the LWCFA or EWRA to collect fees. The Service is currently developing a national list of fees for all refuges which will be available by the end of the current fiscal year. In addition, throughout the National Wildlife Refuge System, the Service has been authorized to collect administrative fees for issuance of Special Use Permits, and to a limited degree, also been authorized to collect quarters fees from approved residents.

At Midway Atoll National Wildlife Refuge, fees have been collected under various authorities since the Service assumed jurisdiction of Midway in 1996. Midway developed its first comprehensive fee schedule in 2002. The fee schedule was developed after the Service was provided with permanent receipt authority for Midway Atoll National Wildlife Refuge (Public Law 107-206). The Service also developed these fee schedules in an attempt to be responsive to Congressional direction that the agency must recover costs from other entities using the airfield and the atoll for non-refuge purposes. The current Midway fee schedule is attached (Attachment #2).

Midway's $5,000 fee for a Special Use Permit is not standard across the National Wildlife Refuge System and is only applicable at Midway due to very high direct and indirect operating costs. The staff at Midway must devote significant time in reviewing applications, writing individual permits, monitoring their implementation, and ensuring compliance with terms. Time spent on these activities reduces time spent on refuge management activities.

Midway Atoll also charges a $5,000 fee to develop individual-specific compatibility determinations. In general, if the use at Midway is something that all the general public has access to such as yachting and yacht tie-down, the Service develops the compatibility determination at no charge. Within the last 2 years, the Service has only written one compatibility determination for Midway where a fee was charged. In that case, the Service charged the Missile Defense Agency the $5,000 fee for limited use associated with tracking missiles as they pass over the Refuge.

The fee schedule also lists a $25,000 infrastructure fee. The basis for this fee is the cost to overhaul the electrical generator at specified times ($120,000), the cost to inspect and clean fuel tanks regularly ($110,000), the cost to maintain water and sewer service to all facilities on the island ($100,000), the costs associated with providing general services to user agencies (e.g., storage space, transportation on-island, telephones, faxes) and costs associated with covering the expense of Refuge staff who routinely support the user agency.

Costs for lodging ($100/day) and meals ($32/day) are based on the Federal Travel Regulations government per diem rates for Midway Atoll. Transportation fees of $1,500 per person for a round trip flight and $7 per pound for excess cargo were derived from actual costs for chartering the Gulfstream G-1. Aircraft service fees, port service fees, and labor and equipment fees are based on covering the contract costs associated with providing those services or, in the case of equipment, to cover depreciation costs.

Cruise ship visitors pay a Refuge Access fee of $25 to help cover costs of additional Refuge staff and contractor time. Other costs paid by the cruise lines are a chartered flight to Midway to bring interpretive staff from our offices in Hawaii ($22,000 per flight) plus lodging and food for the interpreters while they are on Midway.

(3) Please also identify anyone who was allowed to access Midway Island or any other NWR under a waiver of the applicable fees, and please explain the rationale justifying the waiver?

Attached is a table indicating Special Use Permits issued for Midway Atoll National Wildlife Refuge over the past three years (Attachment #3). In the cases where fees were waived, the projects generally were either conducted by Service per-

sonnel not stationed at Midway and/or were for activities that benefit the refuge, including historical preservation. Fees have been waived for educational activities that have included both environmental education, consistent with the core mission of the Service, as well as historical interpretation related to the Battle of Midway. For example, recently, access and interpretation were provided to a cruise group of veterans touring important World War II sites.

The Service does not maintain a comprehensive list of individuals who have been allowed access to refuges under fee waivers. However, both the recreation fee collection authority under the Recreation Fee Demonstration Program (Fee Demo) and now the Federal Lands Recreation Enhancement Act (REA) allow fee waivers. These include free access for those visiting on official business, farmers covered under cooperative farming agreements, and volunteers. In addition, our entrance fee sites host Fee Free days. The rationale for these waivers includes courtesy to those benefiting our sites, the importance of educational opportunities, and outreach to those with low incomes. The REA contains similar language to that in the previous Fee Demo authority. The REA fee waivers/prohibitions include those under 16 years of age; outings conducted for noncommercial educational purposes by schools or bona fide academic institutions; units of the National Wildlife Refuge System created, expanded, or modified by the Alaska National Interest Lands Conservation Act (Public Law 96-487); and, those engaged in a non-recreational activity authorized under a valid permit issued under any other Act, including a valid grazing permit.

(4) When was the FWS web site for Midway Island changed to indicate a more liberal policy of traveling there?

Although the Service changed the text on the Midway Atoll National Wildlife Refuge website on June 9, 2005, the Service is still unable to facilitate the visitation of many people to the atoll at one time, due to transportation and staffing limitations. As described above, the charter aircraft available to the Service carries only 3,200 pounds of passengers and cargo, including the food needed to sustain the 45 residents working on Midway. Because the Service does not wish to mislead the public, the website continues to indicate that visitors must make their own way to Midway and have advance approval from the refuge manager before they can visit.

(5) When were Kingman Reef, Johnston Island and Palmyra Atoll closed to public access? What were the specific dates and reasons that the FWS web site information was changed to reflect these closures?

Johnston Island National Wildlife Refuge was created in 1926, but placed under the primary jurisdiction of the U.S. Navy (subject to use as a refuge) in 1934. The Department of Defense still has primary jurisdiction at Johnston; any public use on the atoll would require the permission of both the Air Force and the Service. Due to the presence of environmental contaminants, public safety remains a significant concern.

Kingman Reef and Palmyra Atoll National Wildlife Refuges were established by Secretary's Orders on January 18, 2001. Although public use was considered in the Palmyra Atoll Conceptual Management Plan, it was decided that safe and compatible public use was not possible due to higher priority needs for refuge personnel elsewhere in the Refuge System. Due to the remote location of Kingman Reef National Wildlife Refuge, the lack of a land base and support facilities to operate a visitor program, and the nearly pristine condition of the coral reef ecosystem, the Service determined that that Refuge would not be opened to public use in the interim period before development of a Comprehensive Conservation Plan. The Service is now in the process of developing the Comprehensive Conservation Plan for Kingman Reef and is scheduled to start a Comprehensive Conservation Plan for Palmyra later this year. Public use will again be addressed in these planning documents, and the public will have an opportunity to participate in the planning process.

D. National Wildlife Refuges Generally

(1) Please provide a list of all refuges closed as of September 14, 2004 and the reasons for their closure? Please reconcile these numbers the revised list of closed refuges provided in Mr. Hartwig's statement to the Subcommittee on May 26?

In preparation for the May 26, 2005 hearing on public access within the National Wildlife Refuge System, the Service obtained information concerning the number of refuges closed to public access. The information was obtained from a number of sources including refuge fact sheets, websites, existing databases, and in some cases, interviews with refuge managers. This data was obtained in May 2005 and should be similar to conditions as they existed on September 14, 2004.

Based on this information, a total of 87 units of the national wildlife refuge system are closed to public access. Of these, Table 1 lists 53 such units that the U.S. Fish and Wildlife Service generally does not hold authority to regulate public access.

Table 2 lists those refuges which are currently closed to public access but will likely be open to public use following the completion of their respective comprehensive conservation plans. Finally, Table 3 lists those refuges which are closed to public access for either public safety or wildlife protection reasons.

Table 1. Units of the National Wildlife Refuge System for which the U.S. Fish and Wildlife Service does not hold the authority to regulate public access, other than the prohibition of hunting on the North Dakota easement refuges.

State	Region	Type	Station Name
TX	2	NWR	Little Sandy NWR
CA	CNO	WMA	Butte Sink Wildlife Management Area
CA	CNO	WMA	Grasslands Wildlife Management Area
CA	CNO	WMA	North Central Valley Wildlife Management Area
CA	CNO	WMA	Willow Creek-Lurline Wildlife Management Area
MN	3	WMD	Tamarac WMD
MT	6	WMA	Blackfoot Valley Wildlife Management Area
ND	6	WMA	Dakota Tallgrass Prairie Wildlife Management Area
ND	6	WMA	North Dakota Wildlife Management Area
TX	2	NWR	Moody NWR
UT	6	WMA	Colorado River Wildlife Management Area
ND	6	EASEMENT	Bone Hill NWR
ND	6	EASEMENT	Buffalo Lake NWR
ND	6	EASEMENT	Camp Lake NWR
ND	6	EASEMENT	Canfield Lake NWR
ND	6	EASEMENT	Cottonwood Lake NWR
ND	6	EASEMENT	Dakota Lake NWR
ND	6	EASEMENT	Half-Way Lake NWR
ND	6	EASEMENT	Hiddenwood NWR
ND	6	EASEMENT	Hutchinson Lake NWR
ND	6	EASEMENT	Johnson Lake NWR
ND	6	EASEMENT	Lake George
ND	6	EASEMENT	Lake Otis NWR
ND	6	EASEMENT	Lambs Lake NWR
ND	6	EASEMENT	Little Goose NWR
ND	6	EASEMENT	Lost Lake NWR,
ND	6	EASEMENT	Pretty Rock NWR
ND	6	EASEMENT	Rabb Lake NWR
ND	6	EASEMENT	Rose Lake NWR
ND	6	EASEMENT	Shell Lake NWR
ND	6	EASEMENT	Sheyenne NWR
ND	6	EASEMENT	Sunburst NWR
ND	6	EASEMENT	Wintering River NWR
ND	6	EASEMENT	Wood Lake NWR
ND	6	EASEMENT	Appert Lake NWR
ND	6	EASEMENT	Ardoch NWR
ND	6	EASEMENT	Brumba NWR
ND	6	EASEMENT	Hobart NWR
ND	6	EASEMENT	Lake Patricia NWR
ND	6	EASEMENT	Lamesteer NWR
ND	6	EASEMENT	Lords Lake NWR
ND	6	EASEMENT	Maple River NWR,
ND	6	EASEMENT	Pleasant Lake NWR
ND	6	EASEMENT	Rock Lake NWR
ND	6	EASEMENT	School Section Lake NWR
ND	6	EASEMENT	Sibley Lake NWR
ND	6	EASEMENT	Silver Lake NWR
ND	6	EASEMENT	Snyder Lake NWR
ND	6	EASEMENT	Springwater NWR,
ND	6	EASEMENT	Stoney Slough NWR
ND	6	EASEMENT	Tomahawk NWR
ND	6	EASEMENT	White Lake NWR
ND	6	EASEMENT	Willow Lake NWR

Table 2. Seven units of the National Wildlife Refuge System which will likely be open to public access and use pending the completion of Comprehensive Conservation Plans.

State	Region	Type	Station Name
CO	6	NWR	Baca NWR
MI	3	NWR	Detroit River IWR
MS	4	NWR	Theodore Roosevelt NWR
NE	6	NWR	John W. and Louise Seier NWR
WY	6	NWR	Cokeville Meadows NWR
HI	1	NWR	Oahu Forest NWR
MN	3	NWR	Glacial Ridge NWR

Table 3. Twenty-seven units of the National Wildlife Refuge System which are closed to public access due to public safety or wildlife disturbance issues.

State	Region	Type	Station Name	Reasons for Closure
AR	4	NWR	Logan Cave NWR	wildlife protection – endangered bats and cavefish
CA	CNO	NWR	Blue Ridge NWR	wildlife protection - California condor recovery
FL	4	NWR	Passage Key NWR	wildlife protection - small size - 63 acres
FL	4	NWR	Pinnellas NWR	wildlife protection - small size - 394 acres
GA	4	NWR	Wolf Island NWR	wildlife protection - limited beach and uplands
MA	5	NWR	Mashpee NWR	wildlife protection - small size - 335 acres
MA	5	NWR	Massasoit NWR	wildlife protection - endangered species
MA	5	NWR	Nomans Land Island NWR	public safety - unexploded ordnance
MD	5	NWR	Susquehanna NWR	wildlife protection - 1.5 acre silt covered island
ND	6	NWR	McLean NWR	wildlife protection
ND	6	NWR	Stump Lake NWR	wildlife protection - nesting sites
ND	6	NWR	Wildrice Lake NWR	wildlife protection
OR	1	NWR	Three Arch Rocks NWR	wildlife protection - endangered species
PR	4	NWR	Desecheo NWR	public safety - unexploded ordnance
N/A	4	NWR	Navassa NWR	public safety - hazardous access
SC	4	NWR	Tybee NWR	wildlife protection – small island – 100 acres
VA	5	NWR	Featherstone NWR	No public access possible
VA	5	NWR	Nansemond NWR	wildlife protection - small size
VI	4	NWR	Green Cay NWR	wildlife protection - endangered lizards
WY	6	NWR	Bamforth NWR	no public access - wildlife protection
WY	6	NWR	Mortenson Lake NWR	wildlife protection - endangered Wyoming toad
CA	CNO	NWR	Castle Rock NWR	wildlife protection – seabirds and threatened species
ME	5	NWR	Seal Island NWR	public safety - unexploded ordnance
ND	6	NWR	Storm Lake NWR	wildlife protection
SD	6	NWR	Karl E. Mundt NWR	wildlife protection - bald eagle roosting site
WI	3	NWR	Gravel Island NWR	wildlife protection - island nesting sites
WI	3	NWR	Green Bay NWR	wildlife protection - island nesting sites

Although Mr. Hartwig did provide rough estimates at the meeting in September, those estimates represented the total number of both closed and unstaffed refuges—which are not mutually inclusive. There are currently over 200 refuges that are unstaffed, at least partially, but still considered open and have some type of limited public use.

(2) Please identify which NWRs over which the FWS does not control access (i.e., control is retained by the landowners)? Please identify the landowners and describe the conditions of these agreements between FWS and these landowners in regards to access and control of the site?

The list of 53 refuges over which the FWS does not control access is included in Table 1 of the previous question. The authority to provide public use on these tracts remains with the private landowner. Generally, on those areas that the Service acquired fee title the agency controls access and on those areas where the Service acquired an easement interest, it does not control public access. Beyond rights to control public access to an easement property, the primary condition of a typical easement agreement is that the landowner agrees not to drain, burn, or mow wildlife habitat in order to maintain or restore waterfowl nesting habitat. The Service holds tens of thousands of easement agreements with individual landowners.

The Service continually works to identify landowners and public access opportunities to refuges that contain a mixture of fee and easement holdings. For example, in the Mountain-Prairie Region, the Service conducts an annual audit of all holding to reconcile land ownership changes with the Region's records. When changes in land ownership are identified, the new landowners are contacted and advised of their rights and responsibilities under the easement agreement, thus ensuring that easement provisions are not violated. In addition, this Region also conducts aerial reconnaissance multiple times a year and conducts extensive mapping to track the status of easements and refuge access.

QUESTION FOR THE RECORD BY THE HONORABLE RON KIND

(1) The statute, Committee Report and House Floor debate make it clear that the Big Six recreational uses are given priority, but not exclusive use within the System. In light of the National Wildlife Refuge System Improvement Act of 1997, how will the Service weigh the concerns raised by citizens about the possible curtailment of these activities in the CCP finalization process?

The Service recognizes that the Big Six recreational uses are legitimate and appropriate uses of the Refuge System and are to receive enhanced consideration in planning and management. It is rare that the Service would curtail such uses on a refuge. Typically, this only occurs in instances where the resource impacts are unacceptable, public safety is a concern, or the use is deemed incompatible with the purpose(s) for which the refuge was established. Before the Service curtails any use, the public will be informed of the Service's intentions and allowed several opportunities to provide input during the planning process. All comments received from the public will be considered fully before finalizing any Comprehensive Conservation Plan.

QUESTIONS FOR THE RECORD BY THE HONORABLE NEIL ABERCROMBIE

Protection of Historic Resources:

(1) Testimony from the International Midway Memorial Foundation makes several allegations about the Fish and Wildlife Service's role in identifying historic structures to be maintained on Midway Atoll before it was transferred to the Service in 1996. Could you please clarify the various roles of the Service, the Navy, and the National Park Service in evaluating Midway's historic resources?

The role of the National Park Service on Midway Atoll is through their management of the National Historic Landmark (NHL) program, whereby they develop theme studies and look for examples to designate as NHLs. Study of Midway's heritage resources was initiated in 1986 when the National Park Service conducted a survey of World War II-era properties eligible for designation as an NHL. Nine structures, all defensive positions, were identified on Midway associated with the pivotal Battle of Midway, including ammunition magazines (ARMCO huts), a pillbox, and gun emplacements. All of the resources are located on the west side of Sand Island, on relatively undisturbed terrain. A buffer zone around the individual structures was included in the NHL. No resources were identified on Eastern Island for inclusion in the NHL.

The National Park Service also oversees compliance with the National Historic Preservation Act through the Advisory Council on Historic Preservation and State Historic Preservation Officers. The National Park Service has no legal authority for managing the historic resources on Midway.

The role of the Navy was to comply with the National Historic Preservation Act of 1966, as amended, and to consider the impacts of their activities on historic properties. This is the same responsibility that the Service assumed when it acquired Midway Atoll. It was the Navy's responsibility to identify the historic properties that would be affected by their base closure activities, which included lead paint removal and demolishing buildings and structures.

Between 1992 and 1994, the Navy sponsored studies of the Naval Air Facility on Midway carried out in conjunction with the Department of Defense Legacy Resources Management Program. The initial field effort consisted of an architectural history survey of the structures, buildings, and objects located on Sand and Eastern Islands. A military historian specializing in Cold War history performed archival research and surveyed resources on Eastern and Sand islands that were constructed after 1945. The historian concluded that none of the Cold War facilities at Midway were eligible for the National Register of Historic Places because they lacked the exceptional importance necessary for resources less than 50 years old. In addition

to the nine NHL structures, 69 buildings, structures, and objects associated with the 1903-1945 historic period on Sand and Eastern Islands were determined eligible according to criteria established by the National Register of Historic Places.

The Navy proposed demolishing 40 of the historic buildings during the base closure process. This action was considered an adverse effect and required consultation with the Advisory Council, National Park Service, Fish and Wildlife Service, and interested parties. Therefore, the Navy hosted a meeting in August 1995 with the Fish and Wildlife Service, National Park Service, Advisory Council, Hawaii State Historic Preservation Office, International Midway Memorial Foundation, 6th Defense Battalion U.S. Marine Corps, and Defenders of Midway Reunion Association. Many of the participants registered opinions that more of the historic buildings should be left standing. This led to a follow-up session with the Navy, Advisory Council, Service, and interested parties who reviewed all of the historic properties and recommended keeping more of the buildings to ensure the historic context of Midway was maintained. The results of this discussion were implemented in the 1996 Programmatic Agreement amongst the Navy, Service, and Advisory Council.

The Programmatic Agreement defined the historic properties and six types of preservation treatments: reuse, secure, leave as-is, fill, demolish, or relocate. According to the terms of the Agreement, only 15 properties were demolished in 1996, prior to the transfer of Midway to the Service. In accordance with the Programmatic Agreement, the Service completed the Midway Atoll National Wildlife Refuge Historic Preservation Plan in June 1999.

- Has the Fish and Wildlife Service destroyed any historic resources since Midway Phoenix Corporation left in 2002?

No, the Fish and Wildlife Service is not aware of the destruction of any historic resources since Midway Phoenix Corporation left.

- Does the Service provide any interpretation of these historic resources?

Yes. Since 2002, more than 5,200 visitors have enjoyed the historic resources at Midway Atoll. In June 2002, The Service brought 100 visitors to Midway to celebrate the 60th anniversary of the Battle of Midway. Since then, seven cruise ships have visited Midway, bringing more than 5,100 visitors to Sand Island. Three other ships were scheduled to stop but were precluded by weather and rough seas. Cruise ship passengers, many of whom are World War II veterans, come ashore for a 2 1/2-hour guided tour, primarily of the historic "downtown" area. Service staff and volunteers, occasionally accompanied by a National Park Service interpreter, are stationed at specific stops to provide information about the atoll's historic and natural resources. A series of interpretive panels providing historic information were completed in 2002 and are displayed when visitors are on the island.

- Does the Service put the needs of the Refuge above those of the National Memorial?

Consistent with the National Wildlife Refuge System Administration Act of 1966, as amended, every National Wildlife Refuge is managed first to conserve, manage, and, where appropriate, restore America's fish, wildlife, and plant resources and their habitats. However, the Act also requires that individual refuges be managed in accordance with the specific purposes for which the refuge was established. Executive Order 13022, which transferred Midway Atoll from U.S. Navy jurisdiction to the Fish and Wildlife Service in 1996, specifies that the Service "in a manner compatible with refuge purposes, shall recognize and maintain the historic significance of the Midway Islands" Thus the Service takes its administration of the Battle of Midway National Memorial very seriously, and the agency is proud to share Midway's history with visitors.

Fuel Spill:

(2) The Fisheries Subcommittee heard testimony that the fuel spill at Midway Atoll NWR was caused by contractor negligence. Could you please explain what caused the fuel spill and what actions were taken to clean it up?

In February 2003, approximately 100,000 gallons of JP5 fuel leaked from an underground pipeline near the fuel farm on Sand Island. The cause of the spill was found 2 feet below the surface where an old aluminum camlock fitting capping a steel spigot on an 8-inch fuel pipeline had corroded. The pipeline was in place during the Navy's occupancy of Midway.

As the primary land manager in 2003, the Service took immediate action to reduce the spread of fuel and to recover as much of the fuel as possible in order to limit the effects on natural resources. Service activities were coordinated with the U.S. Environmental Protection Agency, the National Response Team and the U.S. Coast Guard. The Service received $4.5 million in emergency supplemental funds for the fuel spill cleanup effort. Recovery efforts have been completed though some monitoring will continue indefinitely. In addition to the JP5 fuel, significant pockets

of contamination from earlier spills dating back to Navy operations were discovered and cleaned up to the extent possible. In terms of obligations, about 95% of the funds ($4.3 million) have been obligated, and the remainder will soon be expended to clean a tank that was storing recovered fuel and for related final expenses.

The fuel release affected only one Laysan albatross that was sitting on the ground at the site where the fuel bubbled up from the subsurface. The bird was cleaned and placed near its original site. No fuel was released into the marine environment and no historic resources were affected.

FWS/Midway Phoenix Corporation Relationship:

(3) The Fisheries Subcommittee heard testimony explaining how the contractual agreement between the Midway Phoenix Corporation and the Service was terminated.

- Please explain and clarify how was relationship between the Service and MPC ended?

It became apparent the Service and Midway Phoenix Corporation (MPC) disagreed over a variety of management issues and implementation of the cooperative agreement between the two parties. MPC defaulted on, and subsequently terminated, a fuels contract with the Service. In an effort to resolve the situation without further contention, the Service entered into a No Fault Settlement Agreement with MPC. There were no financial liabilities to either party.

- Did the FWS force MPC out of business, or did it ask MPC to leave Midway for violations or non-performance under the operative agreement?

The Service did not force MPC out of business. The Service expected MPC to meet the requirements of the Cooperative Agreement, but did not ask them to leave Midway Atoll. Both parties agreed it was in their best interest to terminate the agreement.

Airfield Status:

(4) Please describe the current status of the airfield, its operations and maintenance, and the costs associated with its present operation?

Midway's airport is fully operational and managed to meet the requirements of Federal Aviation Administration (FAA) Part 139 Airport Certification criteria (the same criteria used at most international airports in the United States). It is managed by American Airports Corporation under a subcontract to Chugach McKinley Inc. However, in an effort to lower costs associated with its operation and maintenance, Midway no longer has refueling operations available. The airport is open to emergency landings and Midway support flights, as well as other aircraft not needing fuel if they have prior permission to land. In early 2005, the Service and the FAA agreed that the airport should no longer be open to general air traffic because of its sporadic and insufficient use, as well as the substantial cost to the Government to operate an airplane fueling facility in the middle of the Pacific Ocean.

In FY 2005, the bulk of the cost for airfield and supporting infrastructure is being shared by the Service and FAA. The FY 2005 Service Budget included $4.0 million in operations and annual maintenance funding for Midway to cover refuge operational costs and the Service's share of airport, infrastructure, and fuel costs. The Service's current share of costs is based on a cost distribution methodology developed in FY 2004. This cost distribution methodology is currently being reviewed and, as required in FY 2005 Appropriations language, the Office of Management and Budget will decide on an equitable allocation of costs among executive department agencies to operate Midway.

Visitor Program:

(5) Please describe the current visitor program at Midway Atoll NWR? Do you have any plans to provide more opportunities for the public to visit the atoll? What is the current status of planned cruise ship visits to the refuge?

Due to the limited availability of air transportation to Midway, almost all of the current visitor program is based on the arrival of scheduled cruise ships. As indicated above, during the past few years we have welcomed seven cruise ships and more than 5,100 visitors to Sand Island. The most recent cruise ship, the Pacific Princess, arrived on June 1, 2005. Two more cruise ships are scheduled in March 2006, the Crystal Symphony and the Saga Ruby.

In September 2004, the Service contracted with Pandion Systems, Inc., to conduct a Midway visitor program market analysis and feasibility study. This study was to serve as a basis for future visitor services planning for Midway. The Service received the final report in May and is still evaluating its recommendations.

The Service is supportive of making regularly scheduled visitor opportunities available again once the basic infrastructure issues on Midway are resolved. Shar-

ing Midway's unsurpassed wildlife resources and its varied history with visitors is important to the Service.

ATTACHMENT #1

CONGRESSIONAL CORRESPONDENCE RE: UNEXPLODED ORDNANCE (UXO) ON DESECHEO NATIONAL WILDLIFE REFUGE

- Congressman Cliff Stearns, February 5, 2003
- Congressman Cliff Stearns, May 16, 2003
- Congressman David Price, August 5, 2003
- Senator Don Nickles, April 29, 2004
- Congressman David Vitter, August 23, 2004
- Senator John Warner, August 23, 2004
- Congressman Nick Rahall, September 1, 2004
- Senator Robert Byrd, September 7, 2004
- Congressman Mark Souder, September 10, 2004
- Congressman Richard Pombo, September 23, 2004
- Congressman Betty McCollum, May 6, 2005

Attachment #2

Midway Atoll National Wildlife Refuge
Schedule of Fees for Services Rendered
June 7, 2005

Aircraft Services Fees

Aircraft Landing and Handling Fees	
Attended hours of operation	$300.00
Unattended hours of operation	$400.00
Parking/Ramp Fees	
0<12,500 lbs. MGLW	$100.00/day
12,500<60,000 lbs. MGLW	$175.00/day
Over 60,000 lbs. MGLW	$250.00/day
Aircraft Fuel (JP-5)	Currently not available
Labor "Unattended Hours"	$100.00/hr/person
Air Stairs	$25.00/hour
Baggage Cart/Tug	$5.00/hour
Ground Power Unit	$15.00/hour

** Minimum charge equals one hour or one day.

Aircraft arrivals outside attended hours. Attended hours are 1900Z-0400Z/0800L-1700L, Monday through Saturday, except holidays. Payment may be made by cash, VISA, or MASTERCARD, or travelers checks.

Port Servicing Fees

Port Entrance Fee..(+65 feet)	$300.00/visit
Mooring Fee	$1.00/foot/day
Fresh water (per 1000 gallons)	$10.00
Electrical Power	$30.00/day
Fuel (diesel)	$5.00/gallon
Fuel (Gasoline)	$3.50/gallon
Boom deployment for fueling*	$500.00**

* Required by USFWS policy, ** per fueling operation

Boat Launching/Removal removal	$100.00

Refuge Administration Fees

Special Use Permit	$5000.00/fiscal year
Compatibility Determination	$5000.00
Environmental Assessment	determined by complexity
Infrastructure	$25000.00/fiscal year

Chartered Aircraft Transportation Fees

Round trip seat (Honolulu/Midway)	$1500.00
Cargo	$7.00/lb.

Guest Services Fees

Lodging	$100.00/day
Meals	$32.00/day
Medical and Medevac Services	
Medical visit	$60.00*
*Plus additional charges for medicine and supplies.	
Ambulance service	$30.00/trip
Via Glacier Bay	$250.00/trip
Via Boston Whaler	$200.00/trip
Hospital room	$500.00/day
Lodging	$100.00/day
Meals	$32.00/day
Transportation	
Bikes	$10.00/day
Golf carts	$25.00/day
Laundry (self serve, wash and dry)	$3.00 per load
Storage	
Freezer/Refrigeration (10' X 10' space)	$35.00/day
Dry Storage (Food, 50' X 50' space)	$25.00/day
Outdoor Storage (Equipment, 50' X 50' space)	$15.00/day
Indoor Storage (Equipment, 50' X 50' space)	$25.00/day

Labor and Equipment Fees

Equipment Rental Item	Daily Rental	Weekly Rental
1 ton truck	$40	$200
Forklift 2K	$250	$750
Forklift 4K	$400	$1200
Forklift 8K	$600	$1800
Forklift 10K	$800	$2400
Front-end loader	$600	$1800
Backhoe	$600	$1800
Skid-steer	$300	$900
Hi Reach 45'	$400	$1200
Truck, tractor w/flat bed trailer	$400	$1200
Pick-up truck	$40	$200
15 passenger van	$40	$200
Dolphin van	$60	$300
40 passenger bus	$75	$375
Boston Whaler, 25 foot	$400	$1200
Glacier Bay, 25 foot	$600	$1800
Cement Mixer	$1500	$4500
Small cement mixer	$200	$1000

Extended and/or special use equipment rates are negotiable. Some lifting equipment has not been weight test certified.

Skilled Labor	Hourly Rate	Daily Rate
Welder/Machinist	$50	$400
Administrative	$50	$400
Mechanic	$50	$400
Technician	$50	$400
Plumber	$50	$400
Electrician	$50	$400
Painter	$50	$400
Diver	$50	$400
Laborer	$25	$200

**Additional fee for supplies/materials (retail price + transportation cost).

Attachment #3

Midway Atoll NWR Special Use Permits (SUPs), 2002-2005

Midway Atoll NWR Special Use Permits (SUPs), 2002-2005				
Year	Permit Number	Name/Institution	$5,000 Fee	Comments
2005	5001	Dr. Umran Inan Stanford University	Paid	VLF Data Collection via antennae
	5002	Rachel Seabury University of Texas	Waived	Scientific Collection Permit—albatross blood stress factor data
	5003	US Navy Tacan Removal	Waived	Fee waived in exchange for cargo on USCG C-130
	5004	Phoenix Air	Paid	Use of airport/crew staging for Australian cargo shipment
	5005	Dr. Randall Kosaki (NOAA) aboard R/V Hi'ialakai	Paid	Use of Midway during 2 scientific voyages during summer 2005
	5006	NOAA charter @ Jake Asher F/V Casitas	Waived	Fee waived in exchange for cargo shipment and removal of marine debris from refuge lagoon and reef
	5007	Dr. Bud Antonelis	Paid	Monk Seal research
2004	4001	Chugach-McKinley Corp	Waived	Use and operation of fishing boat "Spinner D"—recreation for contractors
	4002	Jim Gose—Missile Def. Agency	Paid + $30K infrastructure	Monitor missile launch
	4003	Holger Schramm Bishop Museum, Honolulu	Waived	Educational—salvage specimens = 2 birds and box jellyfish
	4004	Dr. Dennis Savoil University of Miami	Paid	Air sampling station
	4005	Dr. Bud Antonelis	Paid	Monk Seal research
	4006	Steve Coles Bishop Museum, Honolulu	Waived	Scientific Permit—Collect sponge specimen
	4007	S. Middleton/ D. Littschwager	Paid	Fee paid by donating 100 copies of book to be published 10/05 ($6,500 value)
	4008	Andy Deering	Waived	Moorage of Sailboat while employed on island by CMI—fee waived because contracted employee
	4009	Dr. Jeffery Parker	Waived	Test/Inventory HAM radio equipment—on site as part of missile defense agency crew. Present a report to refuge personnel on equip. condition, needed repairs, etc
	4010	Lynn and Eileen Weber	Waived	Feathers and bones for educational purposes
	4011	Glynnis Nakai USFWS	Waived	Scientific Collection Permit—collection of midges
	4012	Myra Finklestein UC Santa Cruz	Waived	Collect Albatross boluses
	4033	Friends of Midway Atoll NWR	Waived	Permit to sell merchandise to Midway visitors—authorized by NWR Admin Act 1966, Refuge Recreation Act 1962 and NWR Volunteer Partnership Act 1998
	4042	Dr. Randy Kosaki NOAA	Paid	Collect fishes, biological samples and oceanographic data

2003	3004	Dr. Lee Ann Woodward	Waived	Fee waived for scientific permit—collect avian blood samples for contaminant level measurement
	3002	Dr. Randall Kosaki NOAA	Waived	Fee waived for scientific/educational purposes—collection of live fish specimens for public display at Waikiki aquarium and NWHI Learning Center-Hilo. 52 specimens max.
	3003	Dr. Jim Maragos USFWS	Waived	Fee waived for scientific permit—Assess health of corals of Midway
	3004	California Academy of Sciences ATTN: David Littschwager	Waived	Fee waived for educational/scientific purposes—salvage of dead bird specimens—10 total
	3005	Eric Gilman Beth Flint FWS	Waived	Fee waived for educational/scientific purposes—salvage of dead bird specimens—6 total
	3006	Dr. Bud Antonelis	Waived	NOAA Seal research. Fee waived for cargo on NOAA vessels
	3007	Dr. Rusty Brainard Marine debris crew base of operations	Waived	Fee waive for 2-3 week debris removal (nets, etc) provide (1) G-1 charter @$25K
	3008	EXCOR Inc	Paid + $25K for G-1	Japanese TV filming
	3009	Jean-Michael Cousteau	Paid	Filming
	3010	David Littschwager California Academy of Science	Waived	Fee waived for scientific research—salvage of 2 dead albatross and 2 dead Bonin Petrel
	3011	Dr. Thierry Work USGS	Waived	Fee waived for scientific research—collect 20 fish specimens for necropsy exam
	3012	Nick Nicolle and wife	Waived	Fee waived in lieu of work as volunteers on Midway—7/17-9/30/2003. Moorage of damaged sailboat
2002	2001	Dr. Russell Brainard NOAA/NMFS	Waived	Fee waived for scientific purposes—placement of data buoy
	2002	Dr. Jim Maragos	Waived	Fee waived for scientific purposes—collect, map and monitor corals at Midway
	2003	Dr. Charles Hutt USGS Seismological Lab		No SUP fee in 2002
	2007	Dr. Thierry Work USGS	Waived	Fee waived for scientific purposes—collect data on diseased coral.

Mr. GILCHREST. Thank you very much, Mr. Hartwig. Just a couple of sort of direct questions; Midway first. Is there access to the public? What kind of access to the public is there on Midway right now?

Mr. HARTWIG. Midway is open for the public to arrive and visit. As you pointed out in your earlier remarks, there will be a Princess Line cruise ship that shows up there next week, with about 700 passengers. All we ask is that the visiting public make arrange-

ments ahead of time; as we don't have interpretive staff onsite, and we make arrangements well in advance. And most of these cruises are made a year in advance.

Mr. GILCHREST. So there are interpreters that will accompany that cruise ship?

Mr. HARTWIG. They will fly out and be there when the passengers debark from the cruise ship, and be able to interpret both the military history as well as the wildlife activities on the refuge.

Mr. GILCHREST. OK. I am just reading this for the first time. On the Midway Atoll National Wildlife Refuge U.S. Fish and Wildlife Service website, "Due to operator's decision to leave Midway Atoll, the visitor program closed in January '02. Although our vision to maintain Midway as the only remote island national wildlife refuge open to public visitation has not changed, it may be some time before we can once again welcome visitors to the atoll on a regular basis. In the meantime, those able to provide their own transportation to Midway should contact the refuge manager for more information."

Could there be a line added to there to say, "We still welcome visitors; we don't have a program; there is no contractor; but there are other means to arrive"? I guess what I am saying is some people have told me that this is confusing, and people assume that when they read this they cannot get to Midway, even though there are other means and other ways to get there.

Mr. HARTWIG. Well, Mr. Chairman, immediately after this hearing, I am going to fire the web master.

Mr. GILCHREST. Please, I think it is my brother-in-law, so don't. [Laughter.]

Mr. GILCHREST. Please don't fire the web master. I don't want you to fire the web master.

Mr. HARTWIG. Actually, your comment is well taken. Actually, today even the runway could be utilized, as long as an airplane could get out there and get back without refueling. And of course, that is a major impact for most airplanes, to be able to do so at this time. But who knows what will happen in the years to come?

We certainly will modify that to indicate that the public is welcome. In fact, beyond cruise ships, we do happen to have others that do stop by in their private boats of all types; mostly larger yachts, etcetera. So we certainly are willing to modify it.

Mr. GILCHREST. And to the degree that I can, I understand the difficulties to the Fish and Wildlife Service. The original intent highest priority is a refuge for wildlife; bring back endangered species. And that is beginning to happen out there, so that is a very positive thing.

Midway, though, in particular, is there a system that can be if someone chooses to? You know, if some contractor from Hawaii, San Francisco, Florida, or wherever, decides that they want to begin regular excursions to Midway, that is possible, though, for people to have access to Midway that way?

Mr. HARTWIG. Absolutely. Yes, sir.

Mr. GILCHREST. On the Caribbean Islands, the ham radio operators two specific reasons for not being able to go to the two islands that they mentioned. One is safety, because the island is difficult to get on because of the high cliffs. And the other one, because of

the unexploded ordnance. Not because of the incompatibility of the activity.

Is there any way to work out those safety issues and ensure that the ham operators can conduct themselves in a compatible fashion? For example, I am not sure how to pronounce that one island, where the Army Corps of Engineers——

Mr. HARTWIG. Desecheo.

Mr. GILCHREST. Desecheo. You mentioned Massachusetts had a problem in a refuge where there was unexploded ordnance. And so there was an observation tower or a designated area selected for people to visit that refuge; not walk around on it, but there was a specific site that they could go to. Is that possible on Desecheo?

Mr. HARTWIG. Well, certainly, people are allowed to go by boat and circle the island, and they can see some things from the boat. I do happen to have with me a few photographs that I would be happy to show, to explain. We will talk about one, and then the other. But Desecheo, I would like to show you the picture.

This is Desecheo. You can see that it is a fairly small island. It is only a mile across.

Mr. GILCHREST. How many acres?

Mr. HARTWIG. Total acres, 350, about 350.

Mr. GILCHREST. Three hundred and fifty acres?

Mr. HARTWIG. Three hundred and fifty acres. It is a little dot in the Caribbean, a mile across. I want to address a couple of things here that are really problematic.

The first thing is that we generally do not invite the public or encourage the public to come to areas where there is still unexploded ordnance remaining. We do not have the authority or the expertise to determine where these bombs or other unexploded ordnance are located, or when the area is totally clean. That is usually the Corps of Engineers.

Mr. GILCHREST. Is there any activity ongoing now to remove those unexploded ordnance?

Mr. HARTWIG. The island still is listed on the FUDS list, which is the military's list of unexploded ordnance that needs to be cleaned up. We checked as recently as two days ago. They are confident that there are still problems located there.

They did an initial screening of the area, just surface screening, and indicated they didn't see very many problems other than ordnance that had been exploded; but they could not guarantee, and in fact they are knowledgeable that there are unexploded ordnance under the ground.

And in effect, we have on trips to the island discovered after heavy rains that some of these bombs are in fact exposed. As you can see by the dot up there in the left-hand side of the island, a 100-pound bomb was discovered very close to the area where the helipad was referred to by prior speakers.

Mr. GILCHREST. Was it live, do you know?

Mr. HARTWIG. It was live.

Mr. GILCHREST. Live ordnance?

Mr. HARTWIG. And there were others throughout the island that have been suspected, or have been uncovered over time. It is not known exactly how many are there, or where they are located.

Mr. GILCHREST. My time has expired, but we may have a second round. Mr. Pallone.

Mr. PALLONE. Let me just ask about Desecheo, and then I have some more general questions. Are there any other refuges that have unexploded ordnance onsite?

Mr. HARTWIG. There are other refuges that do have unexploded ordnance onsite. One was referred to in a prior panel. Ox Bow does not have unexploded ordnance onsite. That may be some relic of a sign. But I can tell you that we do have a nominal number of refuges that are closed for specific reasons, and some of those are unexploded ordnance that we have inherited through transfer.

Mr. PALLONE. But they are not all closed, the ones that have them?

Mr. HARTWIG. Every one that has unexploded ordnance, either the refuge is closed or, if it is large enough, portions of that refuge are open and other portions that have unexploded ordnance are closed. One such example, when I was regional director in the Midwest we inherited the Jefferson Proving Ground. It is a huge refuge, now called Big Oaks National Wildlife Refuge. And there are areas that are open to the public, and there are other areas that are closed to the public because of unexploded ordnance.

Mr. PALLONE. But even on these ones that are closed, don't you have sites, you know, like safe areas, for your own personnel to operate from?

Mr. HARTWIG. For management purposes, we do have some of our staff that will go to closed refuges, whether they are closed for unexploded ordnance purposes or they are closed for other reasons that conflict with our wildlife mission. Our management will still go there to do activities that are required to either know more about the area, so that we can in fact do a better study to understand if the area could be opened up to the public——

Mr. PALLONE. Because I was just going to suggest that the permit holders, like the ham operators, could broadcast from those safe areas where your own personnel are.

Mr. HARTWIG. That is possible. And in fact, that has been done in some locations, some of which have been mentioned earlier today. This island being only one mile across, and with unknown knowledge of where the unexploded ordnance is, we take a chance when we send our people out. There is no way that we would take the risk or liability, or encourage the public to be able to come there and go through the same possibility.

Mr. PALLONE. Let me ask a more general question. It has been mentioned that the Fish and Wildlife Service considers all refuges closed unless expressly open for use. Is that true? And if so, where specifically does the Service draw its authority for that?

Mr. HARTWIG. Our act, Refuge Improvement Act, as well as our establishing legislation, calls for all refuges to be closed until open, except those that are in Alaska. And of course, the wildlife management districts I referred to are open as well, as opposed to closed.

We go through a process immediately. Those activities that are ongoing, that we can do a fairly quick compatibility determination because they are maybe a "big six" activity or another wildlife-dependent activity, we make those early rulings to open those areas up to continuing use.

An example of this is Detroit River International Wildlife Refuge, where hunting is a major activity for local citizens. We have already determined that hunting will continue on that refuge, even though the full CCP process and compatibility determinations for all activities have not been completed.

Mr. PALLONE. So it seems like the term "closed" means different things, depending on the time of the year, or the purpose for which the refuge was established, the type of use. It is confusing to me, as to when the Service considers a refuge closed.

Mr. HARTWIG. Congressman Pallone, let me make an effort at trying to explain this, because it is very confusing to most people. Our act does not give us a term "closed." Basically, it says all refuges are closed until open.

We have 495 of our 582 refuge units that are open. To some activity, they are open. Twenty-seven are closed for public use, because of public safety or because the area is so small that there is not an ability to handle both the wildlife mission and the public.

We have two other groups of lands. Eleven of our refuges we have no authority to open, because when we purchased the easement on the lands associated with these refuges, there was not the public entry as a right that was purchased. In other words, the refuge is there for wildlife, but not for the public.

We have 49 other refuges that are currently undergoing study to determine whether those refuges can in fact be opened up to the public, in part or for all uses. About ten of those refuges are fairly new refuges. And I gave you the example of Detroit River. We have already predetermined that hunting will be a compatible wildlife-dependent use and will be authorized, but we have not determined other uses, and we will do so when we go through the CCP process, the comprehensive conservation fund process.

Thirty-nine of those areas are located in our wetland management districts, where we are working with our solicitor to determine whether those areas could in fact be opened up to the public. Prior opinions by our solicitor did not give us that ability.

Mr. PALLONE. Mr. Chairman, I know my time is up, but just related to this, I guess my question is, do you think it is best to leave it like this, on a refuge-by-refuge basis? Or would you have some consistency or some change in the law perhaps to make it more consistent?

Mr. HARTWIG. Congressman Pallone, I find that to be a totally effective way of doing things: the fact that each refuge is an individual refuge; has its own authorizing legislation, either general or specific; and has its own community that it sits within; each refuge has its own capability to handle a certain amount of the public.

As the Chairman has indicated, within his own district, Susquehanna Refuge, which used to be 4 acres in size, has now dwindled to about an acre and a half; has a difficult time handling people and birds that are on that island, as well.

So I think we have to look at each one of these at one moment in time each. Again, the good news is, 495 of the 582 areas are in fact open to the public for a wildlife-dependent activity. And we are looking at 49 more, to see if they can join that list.

Only 11 do we have no authority to be able to have public activity, whether we would like it or not, because those are easement

refuges that public access was not a part of what was purchased when those easements were purchased.

And as I say, the 27 areas, most of those areas, they occupy in total less than 1/10th of 1 percent of the entire National Wildlife Refuge System by acre, less than 16,000 acres of the total almost 100 million acres. These are often very, very small areas that it is difficult to have both people and wildlife in those very small areas. Some of these are an acre or two in size.

One I will give you as an example is our first refuge, Pelican Island. Pelican Island on the shore has a very nice observation walkway and deck. But the Pelican Island itself, which was a mere 5 acres in size, has dwindled in size as well. And that island is closed, because it is a nesting area for wading birds and pelicans.

Mr. PALLONE. Thank you. Thank you, Mr. Chairman.

Mr. GILCHREST. Thank you, Mr. Pallone.

Ms. Bordallo.

Ms. BORDALLO. Thank you very much, Mr. Chairman. I am going to follow up on Mr. Pallone's questioning here on the closure of the refuges.

Mr. Hartwig, you said that a total of 27 refuges are closed to all public entry and use. Now, this is a different number than the committee staff provided us as background for the hearing today; which was, based on their analysis, 88, or roughly 16 percent, are closed to public access.

So I want to reconcile this. I think you mentioned other numbers here: 11 and 49; which if you add that to the 27, adds up to 87. But you stated actually they are closed. They are all closed, then, 87 of them, rather than the 27; which is not a real accurate number. Is that correct?

Mr. HARTWIG. Well, let me respond, Congresswoman. The total number we have right now today is about 87. Twenty-seven, we have determined, are closed, 27. Forty-nine, we are still determining through our CCP process, should they be open or not.

Ms. BORDALLO. But at this time——

Mr. HARTWIG. Right now, they are closed.

Ms. BORDALLO. That is right.

Mr. HARTWIG. But once we complete that, I feel confident that many of those will in fact move over to the open column. And 11, we cannot open, even if we wanted to. This august body could not open them.

Ms. BORDALLO. Yes.

Mr. HARTWIG. We do not have the wherewithal, as the current landowners contain the right of entry to the property. We did not purchase that when we purchased the easement.

Ms. BORDALLO. I just want to point out that a more accurate number to the committee would have been the 87, rather than the 27. Because they are closed now.

Mr. HARTWIG. They are technically closed now. And I would agree, 87 would be a better number.

Ms. BORDALLO. All right. How many units in your system today do not have the CCPs, or for which CCPs are pending final approval?

Mr. HARTWIG. Well, we have somewhere in the neighborhood of about 85 to 90 CCPs that have been completed, of the 545 national

wildlife refuges. And we have another 60 or 80 that are well underway, and we expect to have those done within another year, year and a half. And each year following has a similar number of refuges that are going through that CCP process.

Ms. BORDALLO. All right, a follow-up. Is public use and access policy in a particular refuge really driven by the CCP process? And how does the process involve the public and ensure that their input is gained?

Mr. HARTWIG. The actual operation and use of the refuge by the public is driven by the compatibility determination process, which is backed up by the Refuge Improvement Act of 1997. The CCP should address all of those compatibility determinations in an open, public forum. Compatibility determinations themselves, as you heard from earlier witnesses, are open for public response when in fact they are issued in draft, before they are finalized.

Ms. BORDALLO. And for the record, Mr. Chairman, I think it would be helpful if Mr. Hartwig could provide a list of which refuges have UXOs and are on the Army Corps' FUDS list.

Mr. HARTWIG. We would be happy to do so.

Ms. BORDALLO. Mr. Chairman, are we going to have another round?

Mr. GILCHREST. You can keep going, Ms. Bordallo.

Ms. BORDALLO. I can? Thank you. Since I have the gentleman here, this is something that is a very serious concern on Guam. And I am not so sure if you are aware. Is Guam part of your jurisdiction?

Mr. HARTWIG. Yes, it is. We have a refuge there.

Ms. BORDALLO. Very good, yes. Guam is home to a national wildlife refuge that was established in 1993 on land that was declared excess by the Department of the Navy. The mission and public access policies of the Guam National Wildlife Refuge, since its establishment, have remained a source of serious, serious concern in Guam. It is now a court case.

Public access to and through the Guam National Wildlife Refuge directly impacts the rights and ability of private landowners in northern Guam to access, develop, and use their property. Certain private landowners at Jinapsan Beach continue to contend with unfavorable and restrictive access policies, because their property is accessible only by crossing land owned by the Federal Government at Anderson Air Force Base, or alternatively, through the Guam National Wildlife Refuge.

And as a result, some landowners who operate eco-tourism operations have been adversely economically impacted; particularly in light of the heightened access restrictions imposed at Anderson immediately following September 11th.

It has now been over a decade since the Guam National Wildlife Refuge was established, and nearly five years since base access restrictions were imposed, and the issue of access to federally landlocked private property in Guam remains an unresolved matter. Landowners continue to seek a resolution of access for their property.

This hearing presents another opportunity for me to again raise this matter to the attention of the Department of Interior, and to encourage the U.S. Fish and Wildlife Service and the Department

of the Air Force to cooperate in determining a permanent alternative route of access for these landowners.

As I mentioned earlier, this is a court issue, and we are awaiting an environmental study. And I understand that process is in your agency's hands. And there is no report forthcoming, and this is a very serious situation. Do you have anything to say to that?

Mr. HARTWIG. Well, I am familiar with the issue. I believe we have talked about this issue. Part of the solution is the military granting access. I understand their concern for not doing that, relative to their security issues.

The other potential solution is, obviously, granting a right-of-way through the refuge. And we are pursuing the biological studies, as you know, to make sure that this is done in a straightforward manner, and that we have an environmental impact statement that allows us to pursue that. And the court has entered and will have some say-so as to what the ultimate solution is in this case.

Ms. BORDALLO. Well, I certainly hope the process moves forward—we have waited a long time, and the landowners there are very anxious, and this is a very serious concern.

Second, I want to mention to you that the Guam National Wildlife Refuge was previously open to the public until 5:00 p.m. each day. However, a change in policy last year has reduced the public access hours, and the gate is now closed at 4:00 p.m.

And this is another concern, with these reduced hours and the refuge's policy for public access within the boundaries, that has been raised with me at many local meetings; my constituents, the mayors, the government officials. And what is the reason for reducing the working hours by one hour?

Mr. HARTWIG. I am unfamiliar with that issue, Congresswoman. I will be happy to get that information for you and get back to you. I just don't know why. I mean, I certainly can tell you, throughout the refuge system we are reducing hours in some places, and that is directly related to capability to pay staff to be there for longer periods of time. But I don't know if that is the case here.

Ms. BORDALLO. Mr. Chairman, I just wish to have this statement and some of the accompanying documents placed into the record.

Mr. GILCHREST. Without objection. Without objection.

[The information submitted by Ms. Bordallo follows:]

Statement of The Honorable Madeleine Z. Bordallo, a Delegate in Congress from Guam

Thank you Mr. Chairman for convening this hearing today to examine the policies and practices of the U.S. Fish and Wildlife Service regarding public access to our nation's 545 Wildlife Refuges. This is an important subject and an area where I believe this Subcommittee's oversight responsibility should be exercised to the fullest extent possible in order to ensure fairness, reasonableness, and consistency in public access and public use policies across the National Wildlife Refuge System. Public access to, through, and within National Wildlife Refuges is also a subject of interest to my constituency.

My district, Guam, is home to a National Wildlife Refuge that was established in 1993 on land that was declared excess by the Department of the Navy. The mission and public access policies of the Guam National Wildlife Refuge since its establishment have remained a source of concern in Guam. Public access to and through the Guam National Wildlife Refuge directly impacts the rights and ability of private landowners in northern Guam to access, develop, and use their property.

Certain private landowners at Jinapsan Beach continue to contend with unfavorable and restrictive access policies because their property is accessible only by crossing land owned by the Federal Government at Andersen Air Force Base, or alter-

natively through the Guam National Wildlife Refuge. As a result, some landowners who operate eco-tourism operations have been adversely economically impacted, particularly in light of the heightened access restrictions imposed on Andersen Air Force Base immediately following September 11, 2001. It has now been over a decade since the Guam National Wildlife Refuge was established, and three years since base access restrictions were imposed and the issue of access to Federally landlocked private property in Guam remains an unresolved matter. Landowners continue to seek a resolution of access for their property. This hearing presents another opportunity for me to again raise this matter to the attention of the Department of the Interior, and to encourage the U.S. Fish and Wildlife Service and the Department of the Air Force to cooperative in determining a permanent alternative route of access for these landowners.

A June 30, 2000, stipulation by the U.S. District Court in Guam and landowners provided that the U.S. Fish and Wildlife Service and the Department of the Air Force would prepare an Environmental Impact Statement (EIS) to "afford an alternative permanent easement for a route of access." On August 15, 2000, the Department of the Air Force printed its notice of intent in the Federal Register to prepare an EIS for access. Prior to September 11, 2001, access was via base roads. However, the EIS is still not completed due to disagreement between the U.S. Fish and Wildlife Service and the Department of the Air Force. One of the three access alternatives that was proposed and studied by the initiated EIS was a road along an old bull cart trail through the Guam National Wildlife Refuge. I understand that this road was the preferred alternative, but that the U.S. Fish and Wildlife Service has not concurred. I have secured committee report language in the Fiscal Year 2005 National Defense Authorization Act that supports a resolution to this issue and which encourages the services of an outside organization, conversant with these issues in order to expedite completion of the EIS and to determine a permanent alternative route of public access to privately-owned properties at Jinapsan Beach. I ask that the U.S. Fish and Wildlife Service embrace this process and cooperate in the work to complete the EIS as soon as possible. Additionally, I ask that the U.S. Fish and Wildlife Service consider the Federal Lands Highway Program administered by the U.S. Department of Transportation as a means to providing for the construction of a public road within the Guam National Wildlife Refuge for access to Jinapsan Beach for private landowners, their sponsored guests, and visitors.

Lastly, I want to state my specific concern with the current public access hours at the Guam National Wildlife Refuge. The Guam National Wildlife Refuge was previously opened to the public until 5:00 p.m. each day. However, a change in policy last year has reduced the public access hours. The gate is now closed at 4:00 p.m. Concerns with these reduced hours and the Refuge's policy for public access within the boundaries have been raised with me at local village meetings, by constituents and Mayors, as well as by the Guam Boonie Stompers, a non-profit corporation in Guam organized to lead weekly recreational hikes for the general public. I ask that testimony on this issue from the Guam Boonie Stompers be included in the record for today's hearing. I would appreciate the attention of the U.S. Fish and Wildlife Services Headquarters to the issue of public access hours at the Guam National Wildlife Refuge. I would hope the Administration's budget request for Fiscal Year 2007 would budget accordingly to allow for the hours at the Guam National Wildlife Refuge to be more conducive to the public interest in Guam.

Thank you for the opportunity to present these issues at today's hearing.

[A letter submitted for the record by Mrs. Bordallo from David T. Lotz, President, Guam Boonie Stompers, follows:]

Guam Boonie Stompers
P. O. Box 20721
Barrigada, Guam 96921
May 26, 2005

The Honorable Wayne Gilchrest, Chairman
Subcommittee on Fisheries and Oceans
House Committee on Resources
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Gilchrest:

I am submitting testimony for your hearing on public access within the National Wildlife Refuge System scheduled for May 26, 2005. The Guam Boonie Stompers is a non-profit Guam corporation organized to lead recreational weekly public hikes and to promote the protection and education of natural and cultural resources on the island. The hikes, lead entirely by responsible volunteers, originated in 1970 and continued by the Guam Boonie Stompers since 2002.

Our concern is public access to the Guam National Wildlife Refuge. A general concern is that a couple of years ago the public access that had previously ended at 5 PM was changed to 4 PM. This seemed unreasonable to many users of the Refuge.

A more specific concern of ours is for the last few years, we have not been allowed to hike, once a year, to Ritidian Cave on Refuge property. Previously we had hiked to the cave when the area was a Refuge and even earlier when the site was a restricted military base, Guan Naval Facility. We were even the group that showed Refuge management the cave's location. Then for two years, we had received approval to hike to the Cave, but at the last moment Refuge management reneged.

The currently stated reason for refusing our access is due to turtle nesting on the beach sand. However, we can easily take a route inland from the beach on the limestone rocky plateau where turtles do not nest. Unfortunately, this logical rational has not been accepted by Refuge management.

I trust that you will consider our situation in any recommendations regarding public access to national wildlife refuges. For further information, I can be contacted at the address above and at 671-653-2897 or at davelotz@ite.net.

Sincerely yours,

DAVID T. LOTZ, President

cc: Hon. Madeleine Z. Bordallo

Mr. GILCHREST. Thank you very much.

Mr. Hartwig, can you tell us when the compatibility study determined that—is it Shawangunk? Am I saying that right?

Mr. HARTWIG. Shawangunk.

Mr. GILCHREST. Shawangunk. The compatibility determination, when was that made, as far as the model airplanes were concerned?

Mr. HARTWIG. In 2002.

Mr. GILCHREST. In 2002. And you took over the site in what year?

Mr. HARTWIG. Well, I think, as it was talked about on the earlier panel without a lot of the detail, the refuge was established in 1999, after a GSA transfer, and it was a result of the BRAC closure. This was an area that was put up. And in that process, we

took over 566 acres. There were additional acres that the community did get through the normal BRAC process. I think that was referred to by one of the other speakers.

So the actual use for model airplanes was curtailed by the military prior to the transfer, four years prior to the transfer. So there was no use for the four years prior to when we operated it.

Mr. GILCHREST. Is there any reason that the military canceled that use? Do you know what the reason was for it?

Mr. HARTWIG. I don't know the reason why they canceled the use. But I know that the use was not ongoing when we took over the land.

Mr. GILCHREST. And the issue with the incompatibility determination is the airplanes, or the number of people on the site, or a combination of the two?

Mr. HARTWIG. Well, I think it is a combination. It is a fairly small site, 566 acres. It is a wet meadow area. As the usage of the runway has diminished, we are seeing the area wetter; which is better for what we are doing with the neotrop birds and others.

There is a direct conflict between people who would like to go out there in a nice, quiet, pristine area and watch birds, as opposed to someone who would like to go out there and fly a model airplane, no matter how little noise it makes.

Mr. GILCHREST. Do you have any idea of the type of neotropical birds that fly through?

Mr. HARTWIG. I can certainly provide a list. I don't happen to have that off the top of my head.

Mr. GILCHREST. You said that 11 refuges are closed, permanently.

Mr. HARTWIG. Absolutely. Eleven refuges are closed because we do not have the authority to have the public set foot on the property.

Mr. GILCHREST. Oh, those are the easements?

Mr. HARTWIG. Those are the easements.

Mr. GILCHREST. Those are the easements. I see.

Mr. HARTWIG. Right.

Mr. GILCHREST. OK. And that is because you purchased the easement, but the people still live there?

Mr. HARTWIG. Right. They are still farming in many cases, and so it is private land. We have the right to have that property not developed.

Mr. GILCHREST. Right.

Mr. HARTWIG. And so they can continue to farm it.

Mr. GILCHREST. What is the budget for that in the Refuge System, every year.

Mr. HARTWIG. For—?

Mr. GILCHREST. For purchasing easements. Is there a line item for that?

Mr. HARTWIG. We don't have a line item for it. It comes out of the Migratory Bird Conservation Fund.

Mr. GILCHREST. I see.

Mr. HARTWIG. About in the neighborhood of 50 percent of the annual receipts in the Migratory Bird Conservation Fund go to the waterfowl production area of the United States, which is in the north-central part: western Minnesota; northwest Iowa; North,

South Dakota; and Montana. And I would say approximately a third to a half of those funds go into purchase of easements. It is a very robust program that we have there in the easements.

Mr. GILCHREST. I see. The two islands in the Caribbean that we were talking about, Desecheo and Navassa——

Mr. HARTWIG. Right.

Mr. GILCHREST. Are these pretty well determined to remain closed? Is there an ongoing study or determination of the possibility of opening part of them for the ham operators?

Mr. HARTWIG. Well, I think there is always a possibility. I think Desecheo, the situation we have, as you can see here, is as soon as the military has this location come up to its top of the list, where they are able to provide the funding to clean the area up so that we can in fact have the public arrive there, then my feeling is that we would certainly want to go through that compatibility determination again. And I would suspect that activities that we have heard about today would probably have a much better opportunity of doing that. I can't determine that today.

Mr. GILCHREST. Who is responsible, from your understanding, for cleaning up the unexploded ordnance on Desecheo?

Mr. HARTWIG. That is the Corps of Engineers, the military.

Mr. GILCHREST. The Corps of Engineers.

Mr. HARTWIG. Yes. Yes, sir.

Mr. GILCHREST. So then it would be likely that they wouldn't do it unless they received a specific appropriation for the island?

Mr. HARTWIG. My understanding of how they do their cleanup is they have a list, from top to bottom, most important to least important. And this is fairly low on their list. If it were moved to the top of the list, I am sure they would clean it up sooner than later. But like all government agencies, they are limited in funding.

Mr. GILCHREST. Right.

Mr. HARTWIG. And they only clean up so many per year.

Mr. GILCHREST. Do you have any other pictures of Desecheo?

Mr. HARTWIG. Yes, we do. You can see the nice rugged coastline; makes it kind of fun landing a boat. OK, here is Navassa. And this is the underwater coral reef area, which is very robust and something we are very concerned about making sure is there in the future.

Here is another picture of Navassa. It shows the landing site, if you can see it.

Mr. GILCHREST. Yes.

Mr. HARTWIG. It is kind of right in the middle, where there is a sheer rock cliff there.

Mr. GILCHREST. Couldn't you put some ropes, and people could climb up those ropes to get to the top of those cliffs?

Mr. HARTWIG. Well, actually, you can see right here they are coming off the boat on a cable that is hooked up.

Mr. GILCHREST. Oh, is that how they dock?

Mr. HARTWIG. Yes, until—the cable is now gone, actually, today. But my understanding is that is how people had to get onto the island, was via that.

Mr. GILCHREST. That is how the ham operators got onto the island? That is fascinating. I guess they were all former Marines or Navy SEALS.

Well, Mr. Hartwig, thank you very much. Oh, there is another.

Mr. HARTWIG. Well, we are moving out to the Hawaiian Islands.

Mr. GILCHREST. I see.

Mr. HARTWIG. And we are showing you a little bit of Midway. And incidentally, if the Chair would beg some indulgence here, I do want to address just very briefly some of the——

Mr. GILCHREST. You want me to beg indulgence? Or how does that work? I'm sorry. Please.

Mr. HARTWIG. If you would, sir. I just wanted to explain an offer to the committee recent photographs and descriptions of all of the historic preservation activities that we have undertaken in recent years since we have been there.

You can see how difficult this area is. This was, of course, essentially a town of 5,000, in the middle of the ocean; which is now basically uninhabited, except by bird life and other wildlife.

There in the background, there is certainly a historic gun emplacement, but also one of the memorials, which we keep up, and keep up the sidewalk around it. And when our visitors next week come off of the Princess Line, they will go over and take a look at this area, and see that it is maintained in good stead.

There is one of our guardians. You can see that the area has changed. It doesn't look the same as it might have looked in the 1940s, when planes were taking off and people were scurrying around, doing lots of things. Birds are now there. And our mission is to do both the historic preservation and our wildlife mission, and we believe we are doing both.

Mr. GILCHREST. Thank you very much, Mr. Hartwig.

Mr. Pallone.

Mr. PALLONE. Just a few more questions. It appears that the public access status of these remote Pacific island refuges has recently been changed to closed for public use. That is getting back to what I was asking before. When was that change made, and was it made after the completion of a comprehensive conservation plan? And what factors led the Service to conclude that these refuges must now be closed?

Mr. HARTWIG. Most of the changes from open to closed—and you have heard some discussion earlier by panels—were made after the 1997 Improvement Act, and after the GAO report, and after the lawsuit that we had that told us that we had somewhere in the neighborhood of 10,000 to 20,000 incompatible uses that had to cease and desist.

And so these were areas where we wanted to make sure we do the CCP, to fully analyze the activity, as they weren't ongoing, regular activities. And so each of these activities will be addressed, as those CCPs are completed. In most cases, the CCPs have not been completed.

Mr. PALLONE. And then, according to Mr. Farrell and Mr. Allphin, ham radio operators have a fairly long history of using refuges for training broadcast expeditions. And just for the record, have you any knowledge of any instance where a ham radio group operating under a permit was found in violation of any permit condition?

And again for the record, has the Service compiled any evidence demonstrating, or even indicating, that ham radio operations have harmed wildlife?

Mr. HARTWIG. I certainly have not received any evidence on either of those points. Our concern, certainly, on Desecheo was the safety concern. It had nothing to do with their activity being compatible or not; it was unsafe.

Mr. Farrell in his Powerpoint presentation went over many of those points—skipped over the one on safety, incidentally. But that is a major concern of ours with the public. We do not want to invite the public to an area that is unsafe, and we know it is unsafe.

Mr. PALLONE. And then, last, you know, I had mentioned budget constraints. And obviously, they limit the ability of the Service to provide coverage at all refuges. Could you please tell us what strategies you have been taking to overcome the lack of operating resources? And how has that affected law enforcement within the refuge system?

Mr. HARTWIG. We are trying to the best of our ability to take the available dollars that the Administration and Congress give us, to apply those most equitably where we have the greatest demand by the public for entrance. And that is why many of these remote areas in fact are closed to the public; because they are very difficult to get to, they are very expensive to maintain staffing there. And so we have concentrated in areas where they are closer to the public and there is more public demand for their access.

Mr. PALLONE. So I mean, the answer is, obviously, it is difficult to enforce. I mean, your lack of resources has affected the law enforcement within the refuges. That is some of the reasons why you are not keeping a lot of them open.

Mr. HARTWIG. That is correct. Our law enforcement capability is not as large as we would like to have it. It is as large as we can afford to have it. We do, in fact, have in the neighborhood of 40,000 volunteers that do help us to keep some areas open, where we are unable to have staffing there on a permanent basis or to have those hours extended.

Mr. PALLONE. What about these private enterprises, like was mentioned with Midway? Is that looked at in any kind of comprehensive way as a way of supplementing?

Mr. HARTWIG. We have very few private enterprise activities in the National Wildlife Refuge System. Many of our friends groups are private non-profits; are in fact doing some of this activity. But we have very few relations with private profit-making organizations.

Mr. PALLONE. And is that the way you like it? I mean, I am just asking. I am not taking a view on it.

Mr. HARTWIG. It is fairly new for us. We certainly prefer to manage the areas for the public, to make sure that what public access is available—and as I said, most of our refuges, there is public access—that that public access is free and open to all.

Most of these ventures with private entities do entail some public funding. That usually does not come at no cost to the government. And so we have to consider those activities along with other activities that we are funding as well.

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

Mr. GILCHREST. Thank you, Mr. Pallone.

Mr. Hartwig, thank you for your patience and indulgence here this morning. We enjoyed your testimony and your pictures.

And to all of the other witnesses that came, we appreciate your voice, as well. And we would like to continue to communicate with all of you, as we find a resolution to this issue.

Mr. HARTWIG. Thank you, Mr. Chairman.

Mr. GILCHREST. I would like to ask unanimous consent that Chairman Richard Pombo's statement be included in the record.

I would also ask that Dr. Robert Schmieder's statement be included in the record; and Mr. Eric Hilding, that his statement be included in the record.

[The prepared statement of Mr. Pombo follows:]

Statement by The Honorable Richard W. Pombo, Chairman, Committee on Resources

I want to compliment the Gentleman from Maryland, Chairman Gilchrest, for conducting this oversight hearing on public access within the National Wildlife Refuge System.

Since coming to Congress, I have supported the passage of the historic National Wildlife Refuge System Improvement Act of 1997, served as a member of the Refuge Centennial Commission and have consistently worked for increased funding for both refuge operations and backlog maintenance.

The American people deserve the finest Refuge System in the world. After all, they paid for those Federal lands with their hard-earned tax dollars. It is my firm belief that every effort should be made to allow the American people to visit and recreate within the 545 units of the system.

In fact, I wholeheartedly agree with the Fish and Wildlife Service that reminds us that: "Refuges belong to the American people. Each of us has an ownership of these public lands". From this hearing, I hope to have a better understanding of why nearly 90 refuges are closed to the public and what is the likelihood that some of these units will be open in the future.

Furthermore, there are a number of Americans who are being denied special use permits to visit a particular wildlife refuge or denied the opportunity because their recreational activity is not one of the six wildlife-dependent uses. As someone who was actively involved in the drafting of the organic act, I can state without hesitation that neither the letter nor the spirit of that law was designed to limit visitation to hunting, fishing, wildlife observation and photography or environmental education and interpretation. These six were given priority but they are not an exclusive list of permitted activities.

In fact, the author of P.L. 105-57, Chairman Don Young, stated on the House Floor that: "this bill neither mandates nor prohibits such non-wildlife dependent activities such as grazing, jet skiing, or oil and gas development".

While no one is suggesting we abandon the conservation of refuge fish and wildlife, or ignore compatibility determinations, the Fish and Wildlife Service should make every effort to facilitate legitimate recreational activities. It is frankly wrong that World War II veterans are unable to visit the Battle of Midway National Memorial, or that model airplane enthusiasts can no longer, after 30 years, fly their noiseless free-flight planes at the Galeville Airport, or amateur radio operators cannot obtain a special use permit to broadcast from the Desecheo, Southeast Farallon and Navassa Island National Wildlife Refuges. These ham operators have indicated that they are willing to agree to almost any reasonable stipulation established by the Fish and Wildlife Service. Yet, their requests have been repeatedly denied.

To again quote the Fish and Wildlife Service: "Refuges belong to the American people". I believe it is time we let them into more of the System!

I look forward to hearing from our distinguished witnesses and hopefully I will hear a commitment from the Fish and Wildlife Service that they will be more willing to facilitate greater refuge visitation in the future. As President Theodore Roosevelt, the father of the Refuge System, once said: "It is not what we have that will make us a great nation, it is the way in which we use it."

[The list of National Wildlife Refuge System units closed to the public submitted for the record by Chairman Pombo follows:]

NATIONAL WILDLIFE REFUGE SYSTEM
UNITS CLOSED TO THE PUBLIC

STATES	REFUGE	ESTABLISHED
Alabama	Mountain Leaf NWR	2004
Arkansas	Logan Cave NWR	1989
California	Blue Ridge NWR	1982
	Elliott Slough NWR	1975
	Farallon NWR	1909
	Hopper Mountain NWR	1974
	Marin Islands NWR	1992
	Pixley NWR	1958
Colorado	Baca NWR	2000
Florida	Lake Wales Ridge NWR	1993
	Passage Key NWR	1905
	Pinellas NWR	1951
	St. John's NWR	1971
Georgia	Wolf Island NWR	1930
Hawaii	Baker Island NWR	1974
	Hawaiian Islands NWR	1909
	Howland Island NWR	1974
	Jarvis Island NWR	1974
	Johnson Island NWR	1926
	Kingman Reef NWR	2001
	Midway Atoll NWR	1996
	Pearl Harbor NWR	1972
	Rose Atoll NWR	1973
Louisiana	Bayou Cocodrie NWR	1993
Maryland	Sussquehanna NWR	1978
Massachusetts	Mashpee NWR	1995
	Massasoit NWR	1983
	Nomans Land Island NWR	1998
Michigan	Detroit River International NWR	2001
Mississippi	Theodore Roosevelt NWR	2004
Missouri	Ozark Cavefish NWR	1991
	Pilot Knob NWR	1987
Montana	Creedman Coulee NWR	1941
	Lake Tribadeau NWR	1937
Nebraska	John and Louise Seier NWR	1999
Nevada	Anaho Island NWR	1940
	Moapa Valley NWR	1979
New Mexico	San Andres NWR	1971
New York	Conscience Point NWR	1971
	Seatuck NWR	1968

STATES	REFUGE	ESTABLISHED
North Dakota	Bone Hill NWR	1939
	Buffalo Lakes NWR	1939
	Camp Lake NWR	1939
	Canfield Lake NWR	1939
	Cotton Wood Lake NWR	1939
	Dakota Lake NWR	1939
	Half-way Lake NWR	1939
	Hiddenwood NWR	1939
	Hutchinson Lake NWR	1939
	Johnson Lake NWR	1939
	Lake George NWR	1939
	Lake Otis NWR	1935
	Lambs Lake NWR	1939
	Little Goose NWR	1939
	Lost Lake NWR	1939
	McLean NWR	1939
	Pretty Rock NWR	1941
	Rabb Lake NWR	1937
	Rose Lake NWR	1935
	Shell Lake NWR	1939
	Sheyenne Lake NWR	1935
	Stewart Lake NWR	1939
	Stump Lake NWR	1905
	Sunburst Lake NWR	1941
	Wild Rice Lake NWR	1936
	Wintering River NWR	1941
	Wood Lake NWR	1936
Ohio	West Sister NWR	1937
Oklahoma	Ozark Plateau NWR	1995
Oregon	Three Arch Rocks NWR	1907
South Carolina	Tybee NWR	1938
	Waccamaw NWR	1997
Texas	Little Sandy NWR	1986
Virginia	Featherstone NWR	1979
	Fisherman Island NWR	1973
	Nansemond NWR	1973
	Plum Tree Island NWR	1972
Washington	Copalis NWR	1907
	Flattery Rock NWR	1907
	Protection Island NWR	1982
	Quillayute Needles NWR	1907
Wisconsin	Fox River NWR	1979
Wyoming	Bamforth NWR	1932
	Cokeville Meadows NWR	1993
	Mortenson Lake NWR	1992
Puerto Rico	Desecheo NWR	1976
	Navassa Island NWR	1999
Virgin Islands	Green Cay NWR	1977

[The statement of Eric Hilding submitted for the record follows:]

Statement submitted for the record by Eric R. Hilding, K6VVA

My name is Eric Hilding. I am a United States Citizen and Military Veteran Honorably Discharged from completion of service in the U.S. Army Security Agency. I am a member of Rotary International, The Audubon Society, and have a great love of the outdoors and wildlife as did both of my deceased parents. One of my Uncles was Superintendent of a National Forest before his retirement. I am 61 years old, and have been a licensed Amateur Radio operator for 48 years, holding an "Extra Class" license designation. I also carry a valid "Emergency Responder ID Card" for Emergency Services in the Santa Clara County (California) Operational area.

Public Service has been an important part of my life, and my contributions started as a young teenage "Ham" radio operator in the late 1950's. I volunteered many after school hours to run "phone patch traffic" for overseas Military personnel, enabling them to talk directly with their families and loved ones without incurring the then high costs of overseas telephone calls.. It was a great privilege to have been able to do this with my low-powered Amateur Radio station for the troops in Thule (Greenland), various bases in Antarctica, and many of the Pacific Islands such as Midway Island, Johnston Island, Wake Island, the Marshall Islands, Guam and others.

My specific area of interest within the Amateur Radio hobby was International contacts with fellow "Ham" operators around the globe, or what we termed "DX" (for "distance"). Before taking a lengthy hiatus from the "DX bands" in the 1970's, I had contacted every major Island and country in the world except Iraq, which had no Amateur Radio activity permitted for many years.

While the newspapers, nightly television newscasts and politicians were perpetually focusing upon "doom and gloom" during the infamous Cold War era, the majority of the public were unaware that many thousands of U.S. Amateur Radio operators were contacting fellow Ham operators in the former U.S.S. R. and other "Iron Curtain" countries on a daily basis developing and maintaining friendships. I distinctly recall one Russian Ham operator telling me "Congratulations on the successful flight of USA Astronaut John Glenn." Yes, Amateur Radio has always been a primary source of International Goodwill and Friendship, and is one reason for our proposed brief, several day only, mission-specific Amateur Radio operation from the presently human inhabited SouthEast Farallon Island. A copy of Special Use Permit proposal is in your folders.

The image of America around the world has taken a serious beating. This has been partially due, of course, to all of the misinformation campaigns by our enemies including terrorist groups. All the more reason why the Farallon Islands Amateur Radio "Project NA-178" International Goodwill IOTA Endeavor is in the highest best interests of the United States of America. Since Mexico, Australia and other countries have granted access permits to similar wildlife habitat Islands for these special brief IOTA "Expeditions", the FWS access denials do not reflect well upon American policies.

The IOTA ("Islands On The Air") program, under the auspices of the Radio Society of Great Britain, is International in scope with approximately 20,000 serious participating Ham operators. Quite often the small teams of operators activating Islands are Multi-National and Multi-Cultural in composition, thus furthering the processes of International cooperation. As of May, 2005, The Farallon Islands are now in the Top 10 most needed Island entities out of approximately 1,200 in the program.. About two-thirds of the Top 500 IOTA enthusiasts needing a two-way, interactive contact with NA-178 (The Farallon Islands IOTA designation), are in European countries.

A copy of IOTA Chairman Martin Atherton's "To Whom It May Concern" letter submitted to FWS in August, 2004, is in your folders. As correctly noted in paragraph 3 therein:

> We have never heard of any problems related to wildlife disturbance and numerous radio operations have successfully taken place from wildlife habitats, islands, reserves and sites of scientific interest in North America, Europe and Australasia.

A great misconception has been that Ham operators are all a bunch of "geeks and nerds". I consider it a privilege to be in a hobby where my peer group includes people such as former U.S. Senator Barry Goldwater, respected television personality Arthur Godfrey, TV news anchor Walter Cronkite, former Prime Minister of India Rajiv Gandhi, U.S. Vice-Admiral Scott Redd, former Astronaut and Chief Scientist at NOAA Kathy Sullivan, former King of Spain Juan Carlos, Governor George Pataki, as well as Hugh Downs, Marlon Brando, Burl Ives, Chet Atkins, Ronnie Milsap, Andy Devine and other well known personalities and Heads of State, including former King Hussein of Jordan. After 48 years as a Ham Radio operator, my

only regret is that I passed up an amazing opportunity to join a group of fellow ham operators who went to Jordan at the invitation of former King Hussein, to operate in an International Amateur Radio event years ago.

Unfortunately, many one-sided media stories have been perpetuating a gross misinformation campaign by environmentalists that have misled the public into believing that a Special Use Permit grant for Ham Radio IOTA mission to The Farallon Islands would result in some catastrophic upset of the ecological balance of the Universe. It does not take a rocket scientist to see that many non-profit environmentalist groups have capitalized on the situation for fundraising purposes.

Intelligent decisions can only be made by careful analysis of facts. I applaud the diligent efforts of House Resources Committee Chairman Richard Pombo, Fisheries Subcommittee Staff Director Harry Burroughs and his associates for their investigations to get the real facts about human activity on The Farallon Islands as pertains to Public Access.

In correspondence from FWS Director Williams to Chairman Pombo dated November 18, 2004, we see an entirely different picture of reality pertaining to human activity on The Farallon Islands than what others have tried to depict as some kind of totally sanctimonious habitat. A copy of the correspondence is in your folders. The response to question #1 yields some startling statistics about human access and activity on the alleged "pristine" habitat. During 2002, 2003 and 2004, a total of 44 "permittees" and approximately 97 "other" individuals were physically on SouthEast Farallon Island (which included plumbers, contractors and other workers). FWS also indicated "We do not maintain a log of people who have visited the Island", which presumably includes those "individuals involved with Refuge management or support (e.g., [boat] skippers bringing supplies) for very short, closely supervised visits."

Regarding the existing structures on SouthEast Farallon Island listed in response to question #9, it seems paradoxical that while financially challenged families of six are forced to live in tiny 900 square foot apartments in the San Francisco Bay Area, that a handful of researchers enjoy the benefits of a "2,500 square foot residence" building on what is supposed to be a "pristine" wildlife habitat. And then there are the existing 8 communications antennas on SouthEast Farallon as explained in question #11, which a U.S. Coast Guard Lighthouse, power generation station and other buildings.

In further correspondence from FWS in response to Chairman Pombo's letter dated March 3, 2005, is mention of "bird strikes" and communications towers. All such studies generally involve AM Radio and other major commercial communications towers and structures in excess of 200 feet in height. I would like to direct your attention to correspondence material from the Massachusetts Audubon Society and MTechnology in your folders, as well as Exhibit 6 to our PROJECT NA-178 proposal to FWS. There is no evidence to suggest that less than 200 foot typical amateur radio antennas and towers of a permanent nature constitute a major problem to birds.

Our proposed temporary antennas are of portable design in nature, mostly "verticals" or special "dipoles" of slim, lightweight aluminum 1.5' or less in diameter, including any support poles. Any antennas would be 30 feet or less in height, either self-supporting, or possibly guyed with "Dacron" material lines (vs. "guy wire"). Considering the fact that birds are routinely "trapped" in nets on SouthEast Farallon Island for banding and research purposes, we do not believe any serious threat exists during a limited three day operational period from such minuscule antennae. Our objective, of course, would be to arrive at a mutually workable solution with FWS.

As set forth in Exhibit 4 of our PROJECT NA-178 access request application, the self-imposed and very stringent "Proposed Terms & Conditions of the Special Use Permit clearly demonstrated a concern and sensitivity for the environment on SouthEast Farallon Island, and willingness to adhere to FWS Supervisory restrictions while on the Island. At The same time, a realistic understanding of the degree of existing human activity there.

FWS reference to the brief Amateur Radio operation which took place on SouthEast Farallon Island in September, 1992, made no mention of any adverse impact on wildlife or bird kills, because there was none. Similarly, we anticipate none. What did result were donations and membership subscriptions to the wildlife research group with permanent staff involved on SouthEast Farallon. Indeed, a positive outcome.

One of the reasons given by FWS for denial of access permission was allegedly that the Secretary would not allow any new uses. For your information, all wireless communication, whether cell phones, marine radio or Amateur Radio are similar use and governed under Title 47 CFR. A cell phone is really a miniature, low-power transmitter-receiver similar to Amateur Radio "Transceivers" which we would uti-

lize (and had been used by the previous Ham operator on SouthEast Farallon Island in 1992). The FWS objection was invalid, and entirely without merit.

The PROJECT NA-178 SUP proposal specifically indicated an ancillary aspect of the activity would be Global promotion for the wildlife research programs at the Farallon NWR via various means, which pursuant to Exhibit 4, would include photographs and videos. This aspect of the mission is clearly one of "The Big Six" uses FWS claims they only need to cater to, yet still refused to acknowledge and grant a Special Use Permit. The law does NOT give FWS authority to exclude other bona fide public access purposes.

Just as many Amateur Radio operators are, or have been, heads of State and Internationally recognized figures, many are also wildlife enthusiasts. Our planned photographic and video documentary aspects of the IOTA Expedition to The Farallons is clearly a "Big Six" category permitted use. It is a documented fact that financial contributions to wildlife research involving The Farallons resulted from the very brief Amateur Radio operation there in 1992. I refer you again the letter from IOTA Chairman Martin Atherton, where he specifically states:

> There is considerable scope for education and fundraising as the expedition operators will send small postcards to confirm each radio contact made. These postcards contain information about the island, and where appropriate, an appeal for funding for the nature reserve.

As an additional "media" source, the World Wide Web provides the ability share photographs and even streaming video. Our intentions are to distribute a CD or DVD video ("Photographic") documentary to key Amateur Radio clubs and groups around the globe for presentation at International, Regional and local Ham Radio conventions. As a speaker at the International "DX Convention" last month, I gave a PowerPoint presentation "Progress Report" on our efforts to obtain permission to operate from SouthEast Farallon Island at the IOTA meeting. I also asked how many other Amateur Radio operators in attendance had ever sought to obtain access permission for an IOTA Expedition at The Farallons over the years and were denied. Approximately 20 to 25 hands were raised, and most were told "no" via an initial telephone inquiry to FWS.

A rationale given by FWS was that the granting of an Amateur Radio related Special Use Permit could possibly "open the floodgates" of additional requests from the public at large. We can understand the concern, but also believe FWS has overreacted in thought processes. The majority of the public will have no interest in physically going to The Farallon Islands. Considering FWS statistics that during 2002, 2003 and 2004 only a total of 35 permission requests were formally submitted for access to The Farallon Islands (9 of which were denied), this thinking is somewhat like having a mechanical problem with an automobile, but avoiding a trip to the repair shop to solve the specific problem out of fear of possibly having to replace every other part in the vehicle.

In the PROJECT NA-178 application proposal, it was clearly stated that once IOTA specific mission had been completed successfully, it would be "most unlikely that another Amateur Radio IOTA team would have interest in operating from The Farallons again for perhaps two to three years or more." Aside from the IOTA program, in my opinion there is no reason for any other type of Amateur Radio activity to take place on The Farallons, with the exception of emergency needs. Suggestions have been made to FWS as to a possible set of guidelines to be utilized in review and approval of any subsequent IOTA-specific requests in the future. On a limited and controlled basis with strict guidelines, I believe IOTA-specific Amateur Radio operations can be structured to be a "win-win" situation for the Amateur Radio Community, FWS and any wildlife research organization involved. IOTA-specific access guidelines should be incorporated into the Farallon NWR CCP.

The documented facts are that human beings and wildlife currently co-exist on SouthEast Farallon Island. Last week, 12 members of the media visited SouthEast Farallon Island with no adverse effects resulting to our knowledge.

All members of our PROJECT NA-178 team are U.S. Military Veterans. We served country to help insure that we would, in fact, have "Public Lands". The Farallon Islands are Public Lands, and we do not appreciate being treated as "2nd Class Citizens" behind the media who frequently visit The Farallon Islands. In light of America's current image in the International Geo-Political arena, we believe we have a significant contribution to make in furthering International Goodwill and Friendship, which is in the highest best Interests of the United States of America. Every U.S. Citizen, in my opinion, has a responsibility to contribute and as Amateur Radio operators, we have the ability to do this. What is required is for the FWS to expand its thought processes to include a Global Perspective.

For the reasons set forth herein, I find FWS denials of Special Use Permits for specialized Amateur Radio "IOTA Expeditions" to The Farallon NWR arbitrary and

capricious misinterpretations of the intent and "Spirit" of both the National Wildlife Refuge Administration Act of 1966 and the National Wildlife Refuge System Improvement Act of 1997. Respectfully submitted, (VIA E-Mail) Eric R. Hilding, K6VVA P.O. Box 1700 Morgan Hill, CA 95038 na178@k6vva.com

[Letters attached to Mr. Hilding's statement follow:]

RADIO SOCIETY

of Great Britain

41 Enniskillen Road,
Cambridge,
CB4 1SQ,
England.

August 2004.

To Whom It May Concern:

I am Chairman of the Islands on the Air Committee of the Radio Society of Great Britain which administers an award programme aiming to stimulate worldwide interest in making radio contacts with amateur radio operators on island groups around the world. To that end we have a defined list of over 1200 island groups, including recognised geographical entities such as the Falkland Islands and informal coastal groupings of individual islands, which operators will attempt to contact.

Many of these island groups of course contain no resident amateurs and there is an enthusiastic subset of programme participants who will try to make short visits with equipment appropriate to the environment and terrain. This is an important element of self-training which develops skills of immense use to emergency authorities in case of natural or terrorist-inspired disasters.

We encourage utmost sensitivity to environmental concerns with simple antenna and battery operation where necessary and timing of visits linked to non-breeding seasons. We have never heard of any problems related to wildlife disturbance and numerous radio operations have successfully taken place from wildlife habitats, islands, reserves and sites of special scientific interest in North America, Europe and Australasia. A recent operation took place from Isla Pelicano in Mexico with no problems.

We estimate that over 20,000 amateur radio operators worldwide are interested in making these island contacts if they can, and there is particular interest in contacting the Farallon Islands or Ano Nuevo Island which collectively make up one of our California groups. This one is virtually at the top of our "Most Wanted" list.

There is considerable scope for education and fund raising as the expedition operators will send small postcards to confirm each radio contact made. These postcards can contain information about the island and, where appropriate, an appeal for funding for the nature reserve.

As Chairman of the Islands on the Air Committee I would strongly urge that consideration be given to permitting an amateur radio visit to the Farallons or Ano Nuevo and am confident that any amateur radio team will be keen to agree a modus operandi that causes no significant impact on the flora and fauna.

Martin Atherton G3ZAY
Chairman, RSGB Islands on the Air Committee

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Registered Office: Lambda House, [illegible] Road, Potters Bar, Hertfordshire EN6 3JE. Telephone: 01707 659015. Fax: 01707 [illegible]
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Massachusetts Audubon Society

Center for Biological Conservation
208 South Great Road
Lincoln, Massachusetts 01773
(617) 259-9500

September 20, 1996

Atty. Fred Hopengarten
Volunteer Counsel
American Radio Relay League
Six Willarch Road
Lincoln, MA 01773-5105

Dear Atty. Hopengarten:

You have asked about whether amateur radio support structures and antennas, at heights no greater than 200 feet and not lighted, pose an undue hazard to birds. The short answer is probably not.

This question comes up from time to time, usually in the context of very large microwave antenna towers, or 1000+ foot TV towers. As best I know, even in that context, the Massachusetts Audubon Society has no official position that such structures pose a substantial hazard to birds.

In general, those of us who love birds are not concerned about small towers. Really tall structures, such as the Prudential Center with its reflective glass, or 1000 foot towers with lights, may, in peak months of migration, when nocturnal migrant bird are lured below the clouds, then present problems on occasion. Such illuminated structures can result in tower collisions under conditions of low overcast or fog. Even with such concerns in mind, however, the incidence of encounter with an amateur radio tower by migratory birds is probably a non-issue.

I have seen dead birds as a result of a collision with a five foot high chain link fence, so birds can theoretically collide with anything. There are lots of trees, poles, stanchions, and the like out there, but a relatively low number of amateur radio towers. Given the heights (less than 200 feet) of these towers, danger to birds from amateur radio support structures is undoubtedly minimal.

Sincerely,
Wayne R. Petersen
Wayne R. Petersen
Field Ornithologist

MTECHNOLOGY, Inc.

2 Central Street
Saxonville Industrial Park Building 1F
Saxonville, MA 01701
(508) 788-6260 Voice
(508) 788-6233 Fax

December 1, 2000

Atty. Fred Hopengarten
Volunteer Counsel,
The American Radio Relay League
Six Willarch Road
Lincoln, MA 01773-5105

Dear Mr. Hopengarten:

You have inquired about whether amateur radio antenna systems less than 200 feet in height present a danger to flying birds. I am pleased to respond on behalf of MTechnology, Inc., consulting engineers specializing in the application of probabalistic risk assessment techniques to mission-critical power systems.

Several years ago I had occasion to investigate this question. The basic answer is this:

Birds have lightning-fast reflexes and very keen eyesight. They can fly through thick woods they have never seen, in almost any kind of light or weather, and never touch a branch until they are ready to land. When they are ready to land, they will land precisely on the branch they want. If they are gregarious birds, like crows, that spot is often a matter of inches away from another bird. They can spot an insect or seed from scores of yards away, fly through a maze of branches, vines, and twigs, and land within inches of their target, every time.

Why are they so good at this? Its what they do. They are birds. Their flight control systems have evolved for millions of centuries and are far more sophisticated and complex than the best mankind has to offer. Birds will almost certainly continue to outperform human aircraft controls for a long time to come.

Ham radio antennae, cell towers, telephone poles, tall trees, cliffs, wires and other obstacles present no hazard to birds. Extremely fine wires that are hard to see can potentially trick them, but remember that their eyesight is several times keener than ours, and their idea of "extremely fine" is correspondingly smaller than ours. Tower guys may make attractive roosting spots, but they pose no hazards. It requires specially constructed "mist nets" to catch birds in flight. Modern "mist nets" are so fine that even the birds can't see them in dim light, but it took the development of materials like Kevlar™ to make threads that were fine enough and strong enough for a practical net.

The one hazard that does confuse birds is reflection of skylight from glass windows and building facades. Birds use their eyes to determine their flight path, and sometimes will head for daylight reflected from a window, flying into it at full speed. Some tall buildings hurt dozens of birds annually that way, and anyone who keeps a backyard birdfeeder has probably seen or heard a bird smack into their windows. This is due entirely to the

false cue given by reflected skylight, not to the bird's clumsiness. One can completely eliminate birds flying into windows by putting a silhouette of a hawk on the window, which the birds will see and avoid.

As to more authoritative sources, there are tens of thousands of articles in the literature on bird flight, published over the last 300 years or more. Anyone (and I do mean anyone) who has closely watched birds fly, land, feed, quarrel, and mate knows that birds are masters of their aerial environment. Mankind must resort to things like guns, rapidly spinning wind turbine blades, or high-speed aircraft to make a serious threat to a flying bird.

The fundamental point is this: Birds fly using their eyes, and they can easily see and avoid virtually any obstacle we choose to put up.

A few birds, like homing pigeons, use the earth's magnetic field for navigation. Navigation is not the same as flight control. Big chunks of steel may distort the local magnetic field enough to cause a pigeon to veer "off course" but so do many other things, including air currents, natural deposits of iron ore, and the sight of tasty seeds or fresh water on the ground below. Once they have flown out of the immediate vicinity of the steel, they will find their way home.

Last but not least: if towers were hazardous to birds, we would have found out about it 50 years ago, if not earlier. There have been towers and avid bird watchers around for a long time.

I am attaching some references to the literature which support the analysis presented above. I like the first - big predator birds LIKE the densest towers for building nests!

Sincerely,

Stephen Fairfax

Steve Fairfax, President

[A statement submitted for the record by Evan Hirsche, President, National Wildlife Refuge Association, follows:]

Statement of Evan Hirsche, President, National Wildlife Refuge Association

Mr. Chairman and Members of the Subcommittee:

My name is Evan Hirsche, and I am the president of the National Wildlife Refuge Association (NWRA). On behalf of the NWRA and its membership comprised of current and former refuge professionals and members of the more than 200 refuge "Friends" group organizations throughout the United States, thank you for the opportunity to testify on the issue of access to America's national wildlife refuges.

The National Wildlife Refuge System is the only network of Federal lands managed for the conservation of fish, wildlife, plants and their habitat. President Theodore Roosevelt created the first national wildlife refuge in 1903 on Florida's Pelican Island to protect brown pelicans as well as egrets and herons from commercial hunting. Today, the Refuge System, administered by the U.S. Fish and Wildlife Service (FWS), consists of 545 refuges in all 50 states and the territories.

Fewer than 10 years ago, Congress passed, and the president signed, the National Wildlife Refuge System Improvement Act of 1997 (Improvement Act). The Act builds upon the National Wildlife Refuge System Administration Act (NWRSAA) by providing an "organic" act for the Refuge System, a basic statute providing a mission for the System, and policy and management guidance for all units of the System. According to the House Resources Committee, the Improvement Act's "principal focus is to establish clearly the conservation mission of the System, provide clear Congressional guidance to the Secretary for management of the System, provide a mechanism for unit-specific refuge planning, and give refuge managers clear direction and procedures for making determinations regarding wildlife conservation and public uses of the System and individual refuges."

According to the Improvement Act, the mission of the National Wildlife Refuge System is:

to administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans.

Prior to the Improvement Act, numerous incompatible uses took place on national wildlife refuges. In 1992, the National Wildlife Refuge Association, along with several other organizations, sued the Secretary of the Interior for authorizing secondary uses on refuges without ensuring that these uses were compatible with those refuges. As a result, the FWS agreed to terminate secondary uses unless it determined the uses were compatible with the purposes of the refuge on which they occurred. The Improvement Act was written with the intent of remedying compatibility issues on refuges and to avoid similar litigation in the future.

The Improvement Act clearly requires that public use of a refuge may be allowed only where the use is compatible with the mission of the Refuge System and the purpose of the individual refuge. The Refuge Association strongly supports this requirement.

More specifically, the Act defines a compatible use as "a wildlife-dependent recreational use or any other use of a refuge that, in the sound professional judgment of the Director, will not materially interfere with or detract from the fulfillment of the mission of the System or the purposes of the refuge." In choosing the term "sound professional judgment," the Committee intended for the refuge manager to consider the biological resources and, based upon available science, whether they can sustain reasonable use. Moreover, the manager must determine if available resources, such as funding, personnel and infrastructure, are adequate to support the proposed use.

The Act provides clear and explicit guidance on compatibility determinations for refuges. The law plainly states that compatibility determinations must be in writing and involve extensive public review and comment. In fact, the Improvement Act was written with the intent of increasing the opportunities for public participation. According to the committee report that accompanied the Improvement Act, "incompatible uses are to be eliminated or modified as expeditiously as possible."

Further, the Improvement Act establishes compatible wildlife-dependent recreational uses as the priority general public uses of the Refuge System. The law lists six priority wildlife-dependent recreational uses for refuges: hunting, fishing, wildlife observation and photography, and environmental education and interpretation. These activities are found to be directly related to the mission of the Refuge System and the purpose of many refuges because they rely on healthy wildlife populations.

None of the activities discussed during this hearing on public access within the National Wildlife Refuge System are wildlife-dependent uses as defined by Congress.

Ham Radio Use

Ham Radio operators are actively working to gain access to a number of national wildlife refuges, island refuges in particular. Currently, there is legislation in Congress to allow access to two specific island refuges, Desecheo NWR in Puerto Rico and Navassa NWR in the Caribbean.

Desecheo NWR was established as a refuge for the purpose of protecting historic breeding grounds for seabirds, including red-footed boobies, white-bellied boobies, royal terns, bridled terns, and laughing gulls. The refuge was closed to public access in 1992 due to the presence of unexploded ordnance (UXO) on the refuge. In addition, illegal aliens and drug traffickers frequent the island. Because the island is ringed by steep, rocky cliffs, access to the refuge is perilous. The FWS found public access incompatible in 1998 in response to a request by amateur radio operators due to UXO, a lack of law enforcement ability and other safety concerns. According to the Improvement Act, the Secretary of the Interior must determine that the use is not only compatible, but it must be consistent with public safety.

Navassa NWR was established as a refuge for the purpose of protecting the unique ecosystem of Navassa Island, the adjacent coral reefs and marine waters. The island is an important nesting location for seabirds, with thousands of breeding pairs of boobies, frigate birds and tropicbirds. Navassa also contains some extremely rare plants, such as the Navassa palm, whose only living specimen is found on the island. Navassa was described as a unique preserve of Caribbean biodiversity during a U.S. Geological Survey-led scientific expedition in 1998. The FWS found public access to the island for wildlife-dependent recreation incompatible in 1999, due to biological impacts to terrestrial and marine plant and animal species, and a lack of law enforcement capabilities due to the area's remoteness.

The NWRA believes the Service's compatibility determinations for Desecheo and Navassa that find the use of the refuges by ham radio operators incompatible are reasonable and justified.

Model Airplane Enthusiasts

Model airplane enthusiasts have tried to gain access to the Shawangunk Grasslands NWR for many years. A compatibility determination by the FWS found that model airplane flying at the refuge is not compatible with its mission and purposes and those of the Refuge System.

The purpose of the Shawangunk Grasslands refuge is to "carry out the national migratory bird management program," with a primary management objective to "provide large expanses of undisturbed grasslands so that birds may nest, incubate their eggs, rear their young, rest, and feed." Many grassland bird species inhabit the refuge, including: northern harrier; upland sandpiper; short-eared owl; horned lark; bobolink; grasshopper; Henslow's; and vesper sparrows. In addition, fifty-eight bird species are found to nest on the refuge.

Model airplane flying—and associated activities such as plane retrieval—in no conceivable way complements the mission or purposes of Shawangunk Grasslands NWR or the broader Refuge System. This use would clearly serve as an obstacle to species recovery efforts on the refuge and it is not a wildlife-dependent public use. The NWRA supported the FWS' compatibility determination that found model airplane use on the refuge incompatible during the public decision process and we continue to support that decision today.

Midway Atoll

As described earlier, the Improvement Act defines a compatible use as "a wildlife-dependent recreational use or any other use of a refuge that, in the sound professional judgment of the Director, will not materially interfere with or detract from the fulfillment of the mission of the System or the purposes of the refuge."

Located northwest of Hawaii in the Pacific, Midway Atoll NWR was established as a national wildlife refuge for multiple purposes. One of the established purposes requires the FWS to "recognize and maintain the historic significance of the Midway Islands"." As such, public access to the refuge, especially by veterans of the historic battles fought at Midway during World War II, is clearly compatible with the establishing purposes of the refuge.

The NWRA supports visitation to Midway NWR. Unfortunately, the limited budget of the National Wildlife Refuge System is insufficient to maintain the landing field located on the island. In the absence of the funds necessary to operate and maintain the airstrip and carry out the other purposes of the refuge, the FWS cannot afford to accommodate high numbers of visitors. Funding is the primary reason veterans groups and others, such as bird watchers and wildlife enthusiasts, have had recent difficulty accessing the Midway Atoll NWR.

Rather than transfer management of the entire island to another agency, as recommended by groups like the International Midway Memorial Foundation, the NWRA urges Congress instead to facilitate an appropriate allocation of costs for airfield operations and maintenance among those Federal agencies and other entities that currently use or depend on this airfield.

The National Wildlife Refuge System is the crown jewel of wildlife conservation in America. Prior to the National Wildlife Refuge Improvement Act of 1997, many inconsistencies and incompatible uses were present on national wildlife refuges. However, thanks to this committee's leadership and that of Congress, along with an impressively diverse group of stakeholders, organic legislation was enacted that addressed these issues and shifted refuges from a collection of disparate units to a true National Wildlife Refuge System. The NWRA urges Congress to continue to stand behind this vital law when assessing questions of public access.

Additional background information was submitted for the record by Chairman Pombo follows:

A letter to Steven Williams, Director, U.S. Fish and Wildlife Service, submitted for the record by Chairman Pombo follows:]

SEPTEMBER 23, 2004

Mr. Steven A. Williams
Director
U. S. Fish and Wildlife Service
1849 C Street, N. W.
Washington, D. C. 20240

Dear Director Williams:

Last week, several members of my Committee staff met with Mr. Bill Hartwig, the Chief of the National Wildlife Refuge System, to discuss the Fish and Wildlife Service's ongoing efforts to deny U.S. citizens access to the Desecheo and Navassa National Wildlife Refuges. In addition, Mr. Hartwig was provided with information indicating that certain amateur radio operators are also being denied access to the Farallon National Wildlife Refuge.

Mr. Director, you should know that the fundamental reason that I supported the National Wildlife Refuge System Improvement Act of 1997 was because it helped to ensure access to our national wildlife refuge units. The taxpayers of this nation paid for the acquisition of these lands and unless there are extraordinary circumstances they should be permitted to utilize those lands. Regrettably, it appears there is a growing pattern by the Fish and Wildlife Service to deny access and the latest examples of this policy are reflected at Descheo, Navassa and Farallon National Wildlife Refuges.

In terms of the Farallon National Wildlife Refuge, I have a number of questions that I would like the Fish and Wildlife Service to answer in a complete and expedited manner. Please categorize the information by year, organization and purpose where appropriate.

The questions are:

(1) Since January 1, 1996, excluding Fish and Wildlife and Coast Guard personnel, how many different individuals have been physically allowed on the Farallon Islands?
(2) Since January 1, 1996, how many individual requests for access permission has the Fish and Wildlife Service received for the Farallon National Wildlife Refuge?
(3) Since January 1, 1996, how many Special Use Permits have been granted involving access permission to the Farallon NWR? How many have been denied and what was the justification?
(4) How many days per year are one or more individuals physically at the Farallon NWR?
(5) Who owns the structure adjacent to the United States Coast Guard Lighthouse, and do the Point Reyes Bird Observatory, Fish and Wildlife Service or other personnel have access to it?
(6) What criteria are utilized by the Fish and Wildlife Service to evaluate the Point Reyes Bird Observatory activities at the Farallon NWR or any other group or organization?
(7) Has there ever been ingress/egress to the Farallon NWR by means other than the main "crane" on Southeast Farallon Island (SEFI) or by way of a Coast Guard helicopter?
(8) Does the official Farallon National Wildlife Refuge also include: Noonday Rock, North Farallon Island, Isle of St. James, Middle Farallon Island, Maintop Island and Seal Rock?
(9) How many buildings or structures exist at the Farallon National Wildlife Refuge? Please provide the total number by type, the square footage of each structure, how and by whom are they utilized and are there currently vacant structures?
(10) How do Fish and Wildlife Service and Point Reyes Bird Observatory (PRBO) personnel communicate from the Farallon NWR?
(11) Are there communication antennas or antennas of any type located at the Farallon NWR? If yes, who owns them and for what purpose?
(12) Do PRBO personnel transmit and/or receive any type of radio, satellite, cell phone, or direct television transmissions at the Farallon NWR?
(13) How much rent does the PRBO pay for utilizing federal property at the Farallon NWR?
(14) Does the Fish and Wildlife Service provide any transportation for personnel, supplies or any services for PRBP or other organizations that may utilize the Farallon NWR? What is the cost of those services and what is the reimbursement policy?

(15) What has been the total number of PRBO personnel or other groups that have spent time at the Farallon NWR?
(16) During annual maintenance, are any non-governmental individuals or volunteers given access to the Farallon NWR?
(17) Does NOAA still maintain weather service or other equipment at the Farallon National Wildlife Refuge? If so, how is data transmitted?
(18) Are there any other federal or state agencies that have equipment or structures of any type at the Farallon National Wildlife Refuge? Please elaborate.

Mr. Director, I look forward to obtaining responses to these questions in the very near future. Should you have any questions, please do not hesitate to contact Todd Willens or Harry Burroughs of my staff at 225-2761. I want to thank you for your assistance in this important matter.

SINCERELY,
RICHARD W. POMBO
CHAIRMAN

[Mr. Williams' response to Chairman Pombo's letter follows:]

United States Department of the Interior

FISH AND WILDLIFE SERVICE
Washington, D.C. 20240

In Reply Refer To:
FWS/ANRS/018961

NOV 18 2004

Honorable Richard W. Pombo
Chairman, Committee on Resources
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for your letter of September 23, 2004, regarding access to national wildlife refuges for the purpose of amateur radio operations. I appreciate your concerns about providing opportunities for the public to enjoy refuges within the context of the provisions of the National Wildlife Refuge System Improvement Act of 1997.

I share your belief about the importance of allowing public access to national wildlife refuges, and we take our charge of implementing the National Wildlife Refuge System Improvement Act very seriously. Since passage of the Act we have greatly improved public access. For example, the Refuge System currently has 308 refuges open to hunting and 270 open to fishing. In the past 4 years, we opened 71 new hunting and fishing programs on refuges (21 migratory bird, 19 upland game, and 20 big game hunting programs, and 11 sport fishing programs).

Of the 545 refuges that currently comprise the Refuge System, the vast majority allow and encourage public access. In FY 2004, 482 of our 545 refuges reported public use activities However, virtually all refuges have at least some closed areas, some of which may be only seasonal. These closures are for various reasons, including the protection of endangered species and their habitat(s), the protection of waterfowl breeding and sanctuary areas, and for the protection of human health and safety caused by factors such as contaminants and unexploded ordinance. Pursuant to the National Wildlife Refuge System Administration Act of 1966, as amended, non-Alaska national wildlife refuges are closed until opened. Before opening individual refuges to specific uses we must find that proposed uses are compatible with the purposes of the individual refuges and determine that there are sufficient resources available for those uses.

We are pleased to provide the enclosed report, which first provides background information about the Farallon National Wildlife Refuge, and then responds to the specific questions posed in your letter.

Please contact me or William Hartwig, Assistant Director for the National Wildlife Refuge System at (202) 208-5333, if you have any further questions about this matter.

Sincerely,

Steve Williams

DIRECTOR

Enclosure

Response to September 23, 2004 House Committee on Resources Questions on Ham Radio Operator Access to Farallon National Wildlife Refuge

Background

The Farallon National Wildlife Refuge was established in 1909 by President Theodore Roosevelt, "as a preserve and breeding ground for native birds." The original Executive Order included only the Middle and North Farallons and Noonday Rock, since the Lighthouse Service maintained a lighthouse and support personnel on South Farallon Islands. South Farallon Islands were added to the Refuge in 1969.

One of the goals of the Refuge is to restore the historic abundance of wildlife. History has shown that the most important management action we can take is to protect them from disturbance. This management strategy is successful. These small rocky islands now support the largest seabird breeding colonies south of Alaska. The current seabird breeding population on South Farallon Islands is estimated at around 200,000 birds of 12 different species (up from 30,000 birds in the early 1900s). These populations have recovered slowly. It took over 100 years for elephant seals and northern fur seals to begin breeding again once they were extirpated. Common murres have increased from the low point of 6,000 in 1959 to a current estimated population of nearly 150,000—still far from their historic population of 400,000.

The wildlife remains vulnerable to human disturbance. Virtually every portion of the Refuge is used by some breeding bird or mammal species. Murres and cormorants nest on rocky areas and cliffs. They flush when humans on foot, boat or aircraft, approach too closely. An entire colony can be lost when human disturbance flushes adults from their nests, leaving chicks or eggs exposed. Pigeon guillemots and petrels nest in rock crevices, and auklets burrow into the soft soil on the marine terraces. Their burrows are difficult to see and can be easily crushed. This kills the birds during the breeding season, and destroys habitat even when the burrows are not occupied. Chaos results when seals and sea lions are disturbed on their haul-out areas—small pups can be crushed in the mad dash to escape into the ocean.

When South Farallon Islands were added to the Refuge in 1969, the number of people allowed on the island at any one time was reduced to the minimum number needed to monitor and protect wildlife, and maintain facilities. Most of the South Farallon Islands, including all important breeding areas, were made off-limits to even the few island residents. The Refuge worked closely with the Coast Guard to limit helicopter access (needed to maintain their lighthouse) to the non-breeding season and established a flight path for landings and take-offs that would avoid seabird colonies and marine mammal haul-outs.

While the purpose of the Refuge can only be fulfilled by limiting human access, we also want to provide an opportunity for the public to experience and appreciate the Refuge. As directed by the National Wildlife Refuge System Improvement Act of 1997, our focus is on wildlife-dependent uses. We provide limited opportunities for reporters and photographers to visit the Farallon NWR under Special Use Permits and television documentaries, news segments, magazine, and newspaper articles have all been published over the years. Visits are carefully supervised—an island resident must accompany the visitor at all times. The general public can also experience the Refuge's wildlife by taking a day-long boat tour. Boats that tour around the Farallon Islands are often able to show visitors better views of the Refuge's wildlife species and colonies that are located on rocky cliffs and hidden from view on land. In addition, since many of the Refuge's species are nocturnal, or nest underground or on inaccessible cliffs, they are not easily observed from the Refuge itself and are better observed at sea.

Logistics and safety are additional reasons for limiting public access. Access is very difficult. The islands are rocks rising sharply from the Pacific Ocean. The area is characterized by heavy fog, drastic fluctuations in water level (swell), high winds, and sudden changes in ocean state. These all combine to make boat landings hazardous and often impossible. There is no dock facility on the island; cargo and personnel are unloaded by use of a derrick, and a labor-intensive transfer from a shuttle boat to a personnel lifting device. The transfer operation requires a minimum of 3 island personnel to operate the equipment, and a boat landing typically takes a minimum of 6-8 hours staff time to prepare for and complete. Because only certain weather and sea conditions permit a safe landing, many scheduled landings are canceled, often after considerable staff time has been spent in preparation, and sometimes after the boat has traveled 5 hours or more from the mainland. Any visitor (e.g., media, contractors, researchers) not familiar with the island must be under the strict supervision of resident staff from Point Reyes Bird Observatory (PRBO), to prevent crushing of seabird burrows or flushing of wildlife. Because the number of island personnel is limited to minimize disturbance, resident staff may not be avail-

able to accommodate additional visitors who are not providing support to the Refuge.

Response to Specific Questions

(1) Since January 1, 1996, excluding Fish and Wildlife and Coast Guard personnel, how many different individuals have been physically allowed on the Farallon Islands?

We do not maintain a log of people who have visited the island. However, we went back through our maintenance records, contracts, Special Use Permits, and other documents in our Farallon files for the past 3 years. In 2004, 14 permittees and approximately 38 other individuals (contractors, cooperators involved in habitat restoration, and other government employees) visited the island to work on Refuge projects. In 2003, 13 permittees and approximately 27 other individuals visited the island to work on Refuge projects. In 2002, 17 permittees and approximately 32 other individuals visited the island to work on Refuge projects.

In addition, we have a Cooperative Agreement with the PRBO which requires them to staff the island with sufficient personnel to conduct biological monitoring and caretaking duties. One to 2 paid staff and 2 to 6 interns are on the island at any one time, and the shift of any one individual ranges from 1 to 3 months. We estimate 25-35 individuals are involved in accomplishing the work outlined in the cooperative agreement over a 1-year period. Also, the Cooperative Agreement allows the PRBO to land individuals involved with Refuge management or support (e.g., skippers bringing supplies) for very short, closely supervised visits.

(2) Since January 1, 1996, how many individual requests for access permission has the Fish and Wildlife Service received for the Farallon National Wildlife Refuge?

We do not keep a log of such requests. However, in reviewing our letters and e-mail files for the past 3 years, we received 14 written requests in 2004, 10 requests in 2003, and 11 in 2002. (Note that we do not have e-mail records of all requests from 2002.)

We do not tabulate the number of people who contact us by phone about access to the Farallon NWR. Most people who call are interested in seeing wildlife on the Refuge, and since the birds, marine mammals, geology, and other features of the Refuge are more easily and reliably viewed from a boat than from the Refuge itself, they are given information on Farallon Natural History Tours that operate out of the San Francisco Bay area. Over the last 4 years, the number of people touring the Refuge by boat has averaged 3,350 per year.

(3) Since January 1, 1996, how many Special Use Permits have been granted involving access permission to the Farallon NWR? How many have been denied and what was the justification?

Permit data for the past 3 years is as follows:

Year	Permits Granted[1]	Permits Denied	Access Requests[2]
2002	7	3	11
2003	6	2	10
2004	6	4	14

[1] Note that the number of permittees in Question #1 exceeds the number of permits granted in Question #3 because some permits allow access for more than 1 person.

[2] The number of access requests is greater than the sum of permits granted and permits denied because we were able to meet the needs of some requestors in other ways (e.g., research specimens were collected by island personnel).

Permits were denied because they did not meet the Refuge's primary or secondary criteria for access as determined by Compatibility Determinations required by law. There are two primary criteria: 1) research or study that is focused on Refuge resources, the results of which can aid in refuge management; or 2) media coverage of a unique aspect of Refuge resources that will reach the general public in newspaper, magazine, or television.

Secondary criteria include: 1) the activity will not interfere with any ongoing studies or Refuge operations; 2) the research is not intrusive or manipulative; 3) a research proposal following the format described in Refuge Manual is submitted and approved; 4) disturbance to wildlife and habitat can be minimized; and 5) the permittee can work out the logistics of getting from mainland to island (sometimes this involves chartering a boat).

(4) How many days per year are one or more individuals physically at the Farallon NWR?

Our Cooperative Agreement requires PRBO to maintain staff on the refuge 365 days per year for wildlife protection and safety purposes.

(5) Who owns the structure adjacent to the United States Coast Guard Lighthouse, and do Point Reyes Bird Observatory, Fish and Wildlife Service or other personnel have access to it?

The structure you refer to is actually part of the Lighthouse and it is owned by the U.S. Coast Guard (USCG). PRBO and the Service have access to it.

(6) What criteria are utilized by the Fish and Wildlife Service to evaluate the Point Reyes Bird Observatory activities at the Farallon NWR or any other group or organization?

PRBO must submit a research proposal for any studies that go beyond the monitoring data the Service requires them to collect per the terms of the Cooperative Agreement. Proposals are evaluated per the criteria listed in the response to Question 3.

(7) Has there ever been ingress/egress to the Farallon NWR by means other than the main "crane" on Southeast Farallon Island (SEFI) or by way of a Coast Guard helicopter?

Yes. There is an "alternate" landing site on the north side of the island which is accessible only during certain tidal and weather conditions. However, there is increased disturbance to Stellar sea lions when this site is used.

(8) Does the official Farallon National Wildlife Refuge also include: Noonday Rock. North Farallon Island, Isle of St. James, Middle Farallon Island, Maintop Island and Seal Rock?

Yes.

(9) How many buildings or structures exist at the Farallon National Wildlife Refuge? Please provide the total number by type, square footage of each structure, how and by whom are they utilized and are there currently vacant structures?

Residence	2500 sq. ft.	Living quarters	FWS/PRBO
Office/Lab	2500 sq. ft.	Work space	FWS/PRBO/Contractors
Powerhouse	1800 sq. ft.	Generators, electrical equip.	FWS/PRBO
Carpenter's Shop	950 sq. ft.	Workshop, power tools	FWS/PRBO
N. Landing Boathouse	750 sq. ft.	Boat/motor storage	FWS/PRBO
Lighthouse	unknown	USCG light & battery storage	USCG

All the structures are on Southeast Farallon Island. There are no vacant structures.

(10) How do Fish and Wildlife Service and Point Reyes Bird Observatory (PRBO) personnel communicate from the Farallon NWR?

The Service and PRBO personnel communicate via VHS (Marine Radio), Radio-Phone, and e-mail.

(11) Are there communication antennas or antennas of any type located at the Farallon NWR? If yes, who owns them and for what purpose?

There are eight antennas. Three are owned by the USCG for lighthouse communications, three are owned by the Service for radio/phone communications, and two are owned by UC Berkeley for transmission of seismographic data and e-mail.

(12) Do PRBO personnel transmit and/or receive any type of radio, satellite, cell phone, or direct television transmissions at the Farallon NWR?

PRBO personnel use radio transmissions as per answer 10, but no direct TV, although there is a TV with "rabbit-ears" antenna. Cell phone reception is poor and seldom used.

(13) How much rent does PRBO pay for utilizing federal property at the Farallon NWR?

Per the terms of our cooperative agreement, the Service furnishes housing to the PRBO staff conducting the monitoring, protective services, and maintenance duties required of them.

(14) Does the Fish and Wildlife Service provide any transportation for personnel, supplies or any services for PRBO or other organizations that may utilize the Farallon NWR? What is the cost of those services and what is the reimbursement policy?

No. PRBO and other organizations are responsible for arranging their own transportation.

(15) What has been the total number of PRBO personnel or other groups that have spent time at the Farallon NWR?

See response to Question 1.

(16) During annual maintenance, are any non-governmental individuals or volunteers given access to the Farallon NWR?

On occasion, volunteers with particular skills have accompanied Service staff to accomplish maintenance tasks on the Refuge. For example, plumbers have helped repair our water system, electricians have worked on our generators, and individuals with carpentry skills have helped build various structures.

(17) Does NOAA still maintain weather service or other equipment at the Farallon National Wildlife Refuge? If so, how is data transmitted?

Yes. NOAA has a small wind meter and small box with some instruments. PRBO personnel collect weather data from these devices daily and phone the results to the National Weather Service via our radio-phone.

(18) Are there any other federal or state agencies that have equipment or structures of any type at the Farallon National Wildlife Refuge? Please elaborate.

Yes. UC Berkeley Seismology Laboratory has two small (approximately 2 square feet each) instruments that record the Earth's vertical and horizontal movement. Also, see the response to Question 5.

A letter to Steve Thompson, Operations Manager, California/Nevada Operations Office, U.S. Fish and Wildlife Service, submitted for the record by Chairman Pombo follows:]

MARCH 3, 2005

Mr. Steve Thompson
Operations Manager
California/Nevada Operations Office
U. S. Fish and Wildlife Service
2800 Cottage Way
Sacramento, California 95825

Dear Steve:

As you are aware, my Committee is continuing to investigate various allegations that citizens are being denied legitimate opportunities to engage in various activities within units of the National Wildlife Refuge System.

In an effort to assist me, I would like responses to the following list of questions:

(1) Are there currently any seabird islands on the West Coast that allow public access? If there are, please list them and describe the uses?

(2) Has the U.S. Fish and Wildlife Service in the California/Nevada region ever experienced a problem with an employee or volunteer of a non-governmental organization on the Farallon NWR? What was the outcome and circumstances surrounding those cases?

(3) According to Director Steve Williams, there are currently eight radio antennas located on the Farallon NWR. Are these licensed by the Federal Communications Commission? What are the terms and length of the licenses? When do they expire and have they been previously renewed?

(4) What frequencies have been used by the Point Reyes Bird Conservancy during"the last four years for communications?

(5) Please describe specifically how the Point Reyes Bird Conservancy staff on the Farallon NWR insures wildlife protection and safety?

(6) For what purpose does UC Berkeley require "email" communications from the Farallons, and how frequently are UC Berkeley personnel on Southeast Farallon?

(7) Are you aware of any examples where radio antennas, cell phones or emails have adversely affected the seabird populations on the Farallon NWR? If there are examples, what were the impacts? If that is the case, why then are these transmissions still taking place?

(8) Are the Farallon Islands NWR so fragile and unique that the Fish and Wildlife Service has contemplated banning all human activity and presence on the Islands?

(9) In your professional judgement, is the Farallon Islands NWR more fragile and environmentally sensitive than the Galapagos Islands that received 90,533 human visits in 2003 and has built a commercial infrastructure including visitor accommodations?

(10) In Director Williams' response of November 18, 2004, he indicated that there are a number of existing structures in the Farallon Islands NWR including

office/lab, powerhouse, carpenter's shop, living quarters, north landing boathouse and others. Could you please provide for me pictures of each of these structures, if they are available, or at least a diagram of where each of these facilities are located in the refuge?

Steve, I would appreciate complete responses to these important questions and hope that you can make every effort to expedite this process. Should you have any questions or require clarification, please feel free to contact either Todd Willens or Harry Burroughs on my Committee staff at (202) 225-2761. I look forward to hearing from you soon.

SINCERELY,
RICHARD W. POMBO
CHAIRMAN

[Mr. Thompson's response to Chairman Pombo's letter follows:]

UNITED STATES DEPARTMENT OF THE INTERIOR
FISH AND WILDLIFE SERVICE
CALIFORNIA/NEVADA OPERATIONS OFFICE
2800 COTTAGE WAY, ROOM W-2610
SACRAMENTO, CALIFORNIA 95825-1846

APRIL 5, 2005

Honorable Richard W. Pombo
Chairman, Committee on Resources
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Pombo:

Thank you for your March 3, 2005, letter regarding activities at the Farallon NWR. Based on your request that we provide an expedited response to the questions posed in your letter, the following responses are based on the best information available at this time:

1. Are there currently any seabird islands on the West Coast that allow public access? If there are, please list them and describe the uses.

California: There are approximately 500 rocks and islands off the California coast that contain nesting seabirds. Included in this figure are small islets off larger islands. The vast majority of these islands/islets are administered by the Bureau of Land Management as the California Coastal National Monument. The National Park Service manages some seabird nesting islands as part of the Channel Islands National Park in southern California, and as part of Point Reyes National Seashore in northern California. Some seabird nesting islands are within the California State Park System (e.g., Ano Nuevo Island, Mendocino Headlands), and at least one nesting island is privately owned. Besides the Farallon Islands, USFWS also manages Castle Rock NWR. We are aware of public access on 6 of these islands: San Miguel, Santa Rosa, Santa Cruz, Anacapa, and Santa Barbara (part of the Channel Islands National Park), and on the privately owned and managed Santa Catalina Island. On the Channel Islands, public access consists of day use, hiking, guided interpretive walks, and overnight camping. These islands are large in comparison to the Farallon Islands, and seabird nesting occurs on a relatively small portion of the islands. Trail systems route people away from nesting cliffs and seasonal closures keeps the public away from other nesting areas. Seabird populations are small on Santa Catalina Island; public access occurs on the main island, while the small seabird population is mostly concentrated on the offshore islets.

Oregon[1]: USFWS manages 1,853 rocks, reefs and islands, along the Oregon coast as part of Oregon Islands National Wildlife Refuge. All of the rocks, reefs and islands are included as the Oregon Island Wilderness except Tillamook Rock. The USFWS also manages Three Arch Rocks NWR on the Oregon north coast and this 15-acre refuge includes 9 rocks and islands and is also a wilderness area (Three Arch Rocks Wilderness). Not all these locations host sea bird colonies. Some serve as haul out and breeding sites for marine mammals. There is no public access on any of the 1,862 rocks, reefs and islands. Two active research projects are currently being conducted by the Oregon Department of Fish and Wildlife and NOAA-Fisheries through Special Use Permits and are related to the recovery program for the

threatened Steller sea lion. The researchers are allowed to access a limited number of sites under conditions of the SUP. The refuge also has an active, on-going Leach's storm-petrel research project, but public access to the site is prohibited. Seabird surveys conducted by USFWS normally rely on surveys conducted by boat, on the mainland by viewing from a distance using scopes and through the use of aerial photography taken at high altitude. Access to any of the 1,862 rocks, reefs and islands by USFWS staff is very rare.

Washington[2]: USFWS manages 600 to 800 rocks, reefs and islands along the outer coast of Washington encompassing 60-acre Copallis NWR, 125-acre Flattery Rocks NWR and 300-acre Quillayute Needles NWR. The other islands range in size from less than one acre to about 36 acres, and most drop abruptly into the sea. There is no public access to these rocks, reefs and islands though occasional trespass has been reported. These rocks, reefs and islands serve as habitat for 14 species of nesting seabirds. Marine mammals—-sea lions, harbor and fur seals, sea otters and whales occur around the island. Destruction Island hosts the largest, breeding rhinoceros auklet colony outside of Alaska. All of the islands except Destruction Island are designated wilderness areas. Surveys conducted by USFWS normally rely on data obtained through aerial flyovers and related aerial photography. Other access to these protected areas by USFWS staff is very rare.

USFWS manages 83 of the approximately 700 rocks, reefs and islands along the inner coast of Washington scattered throughout the San Juan Islands of northern Puget Sound. The 83 islands making up the San Juan Islands NWR total almost 450 acres. They were set aside primarily to protect colonies of nesting seabirds, including pigeon guillemots, puffins, auklets, double-crested and pelagic cormorants. In order to help maintain the natural character of these islands, all the refuge islands, except Matia and Turn Islands, are closed to the public. The latter islands, which do not support colonies of nesting seabirds, are managed under a long-term agreement with Washington State Parks. Moorage and camping are allowed on Turn Island and on a 5-acre designated campground on Matia Island, which also has 1 mile of wilderness trail.

Lastly, Protection Island is located in the Strait of Juan de Fuca and serves as nesting habitat for 70-75% of Puget Sound seabirds. It hosts the second largest rhinoceros auklet population outside Alaska, the largest colony of glaucous-winged gulls in Washington, and one of the last two nesting colonies of tufted puffins in the Puget Sound area. Forty-eight acres was purchased by the Washington Department of Fish and Wildlife (WDFW) in 1975 and designated the Zella M. Schultz Seabird Sanctuary. It is managed by the USFWS and the WDFW under a memorandum of understanding. The remainder of the island was acquired in the 1980's by the USFWS and designated Protection Island NWR. Its acquisition came with some limited easements to existing owners/residents. There is one lifetime user, and 3-4 users with 25-year leases that are due to expire soon. They are permitted limited walking access to a beach in the winter and the use of their lots and access roads to the lots. There are some structures on Protection Island associated with previous and present landowners. In addition, there are two research programs currently active on Protection Island being implemented under terms of Special Use Permits by Andrew's University and Walla Walla College. There are also occasional USFWS-sponsored habitat management work parties to Protection Island in the non-breeding season to clean-up beach debris.

2. Has the U.S. Fish and Wildlife Service in California/Nevada region ever experienced a problem with an employee or volunteer of a non-governmental organization on the Farallon NWR? What was the outcome and circumstances surrounding those cases?

Yes. There are two incidents of which we are aware. During October 2003 an employee of PRBO brought a media person onto South East Farallon Island (SEFI) without a Special Use Permit (SUP), which violated one of the terms of our Cooperative Agreement. When PRBO's executive director became aware of the incident, she immediately informed the Refuge Manager and Project Leader, and a decision was made to remove the employee from SEFI that day (PRBO chartered a helicopter at their expense). The employee was fired as a result of the incident. The media person, an employee of Times Warner Inc., had obtained a Refuge SUP in August 2003 for the stated purpose of writing a series of magazine articles on Farallon seabirds. Unbeknownst to the Refuge at that time, her true motive for gaining access to the island was to write a book on white shark tagging research, which occurred during September-October. We understand that the book, which includes details of the October 2003 incident, as well as another time she was on the island without a permit but with the knowledge of the same PRBO employee (in 2001 or 2002), will be published by Random House in May, 2005. The Refuge terminated the permitting of

boat-based shark research from the Farallon Islands partially as a result of this incident.

In a second incident in September, 1992, an individual was issued a SUP to collect insects and soil samples. Although he was told by the Refuge Manager that he did not have permission to do so the individual brought his ham radio onto the island, and broadcast from the island.. While not a violation of the cooperative agreement, the PRBO staff person in charge of the island should have contacted the Refuge Manager when the permittee began broadcasting. As a result, the permittee was sent a letter saying that he had violated the terms of his SUP and was banned from doing future scientific work on the island.

3. According to Director Steve Williams, there are currently eight radio antennas located on the Farallon NWR. Are these licensed by the Federal Communications Commission? What are the terms and lengths of the licenses? When do they expire and have they been previously renewed?

The antennas are too small to require FCC licensing. However, licensing details for the radios and other communication equipment that these antennas support are given in the table below. The National Telecommunications Information Administration (NTIA), rather than the FCC, is the agency responsible for licensing communications for government purposes. PRBO has a station license from the FCC to operate a marine radio. UC Berkeley data transmissions take place in the unlicenced band of the spectrum.

We have taken the following steps in locating and designing these antennas in order to minimize birdstrike hazards: 1) Several antennas are co-located on the same pole, such that only 3 poles are needed to support all of these antennas; 2) Antennas are mounted at the base or side of existing buildings so that the length of antenna protruding above the roofline is no more than 5-6 feet; 3) Some antennas are used for multiple purposes (e.g., operation of a radio/telephone; transmitting seismology and e-mail data). Also, we are in the process of installing a wireless phone/internet system, which will eliminate the need for antennas #1, #2, and #7 on the table below. During the Comprehensive Conservation Planning (CCP) process for the Farallons, we will re-evaluate the bird strike issue and identify additional actions we can take to remove antennas, poles and other infrastructure that pose hazards to wildlife.

Table 1. (See Photos 3 & 4 in response to Question 10)

#	Location	Description	Licensing Information for Communication Equip.
1	Lighthouse	Colinear Array (~15' tall)	USFWS has NTIA (Dept. of Commerce) license for a 411.7 Megahertz frequency UHF radio to operate between Farallon Islands and the mainland. Update required by August 31, 2005 (has been previously renewed)
2	Lighthouse	7'tall fiberglass whip	Marine Radio Frequencies 16, 22, 68, 80. PRBO has FCC license for limited coastal marine station. Renews every 5 years
3	Lighthouse	Yaggi horizontal antenna	Owned/Operated by the U.S. Coast Guard. No information on frequencies or licensing available. (USCG owns the lighthouse)
4	Carpenter Shop	2.4 Ghz semi-parabolic dish antenna (24"x 18 ") for seismo data trans.	UC Berkeley Seismology Lab for seismic data transmission and email on (S) Band (in unlicensed band of spectrum)
5	Carpenter Shop	900 megahertz Yaggi (2-1/2' long)	UC Berkeley seismic data/email trans. (back-up for #4) (L) Band (in unlicensed band of spectrum)
6	Carpenter Shop	1.4 Ghz ground plane antenna (< 1' long)	UC Berkeley seismic data receive only antenna for clock (in unlicensed band of spectrum)
7	Carpenter Shop	Colinear array (15' tall) w/ 3 elements	Recreational grade VHF Marine Radio for safety; Operator license not required. Station PRBO has FCC license for limited coastal marine station (see #2 above) Call sign WHX383
8	Residence	Whip antenna (no photo)	Marine radio. Station License to PRBO (see #2)

4. What frequencies have been used by Point Reyes Bird Conservancy during the last four years for communications?

PRBO operates on VHF Marine Radio Channels 16, 22, 68, and 80. They also use the field station's radio/phone, operating on the 411.7 Megahertz frequency.

5. Please describe specifically how the Point Reyes Bird Conservancy staff on the Farallon NWR insures wildlife protection and safety?

PRBO Conservation Science, founded as Point Reyes Bird Observatory in 1969, is a scientific organization that employees highly trained and skilled scientists and field technicians to conduct research and long term monitoring on birds and marine ecosystem functions. They have partnerships with many federal and state agencies to collect biological data and implement projects that benefit wildlife. Specifically, on the Farallon Islands under the terms our Cooperative Agreement, PRBO is required to: 1) staff the island 365 days per year, 2) monitor seabird/marine mammal population sizes and breeding, 3) implement safety and fire plans, 4) provide protective services for wildlife, promptly notifying the USFWS of any violation or infringement of Refuge regulations; 5) supervise/escort visitors under Special Use Permits (for example, media), so that they don't crush nesting burrows, flush seabirds or pinnipeds, or otherwise disturb wildlife; 6) organize the volunteer Farallon (boat) Patrol to deliver provisions and equipment to the island; 7) perform other caretaking duties such as preventative maintenance of equipment/facilities and invasive weed control.

Some specific examples of how PRBO staff has insured wildlife protection are:

- PRBO maintains a human presence on the island that deters trespassers and minimizes wildlife disturbance. PRBO island staff routinely hail boaters or pilots that approach the island too closely and are in danger of scaring wildlife.
- PRBO staff documents and reports violations of USFWS regulations and the California Fish and Game Code to appropriate enforcement personnel.
- PRBO collects biological data that the USFWS relies on to implement management programs that protect wildlife, and allows us to assess the effectiveness of our management actions.
- PRBO research on the Farallon Islands has contributed to the establishment of 3 National Marine Sanctuaries, a state law protecting California's great white sharks, and fishing regulations to protect seabirds.
- PRBO shares Farallon data through numerous scientific publications, and with National Marine Fisheries Service, Gulf of the Farallones National Marine Sanctuary, University of California, and other institutions involved in developing policies and implementing actions to understand and conserve marine resources.
- PRBO reports observations of oiled wildlife to the Oil Spill Prevention and Response Division of CA Department of Fish and Game. This has resulted in the discovery and cleanup of sunken, leaking vessels such as the SS Luckenbach in 2002, and apprehension of parties responsible for oil spills.

In addition, the following are specific examples of how PRBO staff insures human safety on Farallon NWR:

- PRBO reports malfunctions, and troubleshoots, and repairs navigational lights at the U.S. Coast Guard maintained automated lighthouse on Southeast Farallon Island, contributing to general maritime safety. They also report vessels in distress to USCG Search and Rescue office.
- PRBO collects Farallon Island weather data four times daily and sends it to the National Weather Service where it is used in marine and coastal weather forecasting.
- PRBO communicates current weather and sea conditions daily to fishermen and other boaters planning boat trips offshore, enhancing public boater safety.
- PRBO staff are trained to operate the Refuge's boat, which transfers people (including Refuge staff, contractors, Special Use Permittees) from the transit vessel to the island via the crane and personnel lifting device. This is a difficult task that requires specialized training and experience in reading/evaluating dynamic sea and weather conditions.
- PRBO staff escort Special Use Permittees around the island, ensuring that they avoid terrain or paths which are treacherous, and keep a safe distance from wildlife (e.g., elephant seals) which look "friendly" but can be inflict injury.

6. For what purposes does UC Berkeley require "email" communications from the Farallons, and how frequently are UC Berkeley personnel on Southeast Farallon?

UC Berkeley Seismology Lab has two small instruments on Southeast Farallon Island (SEFI) which are part of a worldwide earthquake prediction and warning system. (SEFI is a critical location for this seismographic equipment because it is situated on the Pacific Plate.) The wireless data link that transmits seismographic information from SEFI to the mainland also has e-mail capabilities. Although e-mail communication is not required by UC Berkeley, it was installed with their data link as a way to reduce the frequency that UC Berkeley personnel would need to visit

SEFI to fix problems. E-mail facilitates field station personnel being able to maintain, operate and troubleshoot the seismographic equipment. UC Berkeley personnel visit SEFI on average about once every other year for a stay of 1 or 2 days. Visits are authorized by Special Use Permit (SUP) after UC Berkeley submits a request (with sufficient justification) in writing. The e-mail is also an important communication link between FWS Refuge personnel on the mainland and personnel stationed at this remote island field station, and is considered essential to safe operations.

7. Are you aware of any examples where radio antennas, cell phones, or emails have adversely affected the seabird populations on the Farallon NWR? If there are examples, what were the impacts? If that is the case, why then are these transmissions still taking place?

The birdstrike hazard of communication towers and antennas is a national, well-documented bird conservation concern. The U.S. Fish and Wildlife Service (USFWS) estimates at least five million birds and as many as 50 million birds are killed annually in collisions with communications towers in the U.S. Birds die when they collide with towers, their guy wires and related structures, and the ground. A recent report that summarized 149 papers dealing with this birdstrike hazard over the last 50 years found that 230 species of birds have been documented as being killed in collisions with antennas and communication towers—they included both land and water birds[3].

We are aware of no studies documenting the effect of antennas on seabirds specifically. However, personnel stationed on Southeast Farallon Island (SEFI) have witnessed many incidents of seabirds colliding with objects, including poles, antennas, wires, buildings and other structures. The "impacts" that have resulted include: 1) immediate death of the individual bird from the collision; 2) the bird being stunned or disoriented, falling to the ground and falling prey to predatory gulls which nest on the island; or; 3) bird is temporarily stunned and disoriented, but is able to resume flight and return to its nesting burrow. The nocturnal, smaller seabirds such as auklets and storm-petrels are most prone to collisions. They return to the island to feed their young (which live in underground burrows or crevices) under the cover of darkness to avoid predation by gulls. They have evolved in an environment free of manmade objects, and are either unable to see, or are not able to avoid such objects.

Since SEFI was added to the Farallon NWR in 1969, the Refuge has been working to eliminate the number of human structures on the island to the extent practicable, and as funding permits. As noted in the response to Question #3 above, we plan to eliminate 3 radio antennas this year. In 1998 we converted to solar power, which eliminated the need for approximately 1,000 feet of pipe. In 2002 and 2003 we worked with the U.S. Coast Guard to remove several hundred additional feet of unneeded water piping, a concrete containment berm which was a bird entrapment hazard, and a large wooden boom. During the 1980s and 1990s numerous buildings, light poles, wires, and other objects left over from previous human occupation have been removed. We cover all windows at night because we have observed that nocturnal seabirds collide with lighted windows.

We have chosen not to eliminate the remaining antennas because they provide communications essential to human safety, such as our radio and phone system, and the seismographic equipment, but we have tried to reduce their impact on wildlife as much as possible. As mentioned in the response to Question 3, antennas are co-located on the same poles, and with other structures so that their profile is reduced to the greatest extent possible. The birdstrike issue will be re-evaluated during the CCP process and we will consider removing additional antennas or other infrastructure.

8. Are the Farallon Islands so fragile and unique that the Fish and Wildlife Service has contemplated banning all human activity and presence on the Islands?

We have considered this possibility, both for wildlife protection and budgetary purposes. Based on concerns for impacts due to uncontrolled trespass without a human presence as well as the need to monitor the status of seabird nesting colonies and to manage nesting habitat, we chose not to ban all human activity on the Farallon NWR. However, this management alternative may receive more formal consideration during the CCP process, which is currently in the preliminary planning stages.

9. In your professional judgment, is the Farallon NWR more fragile and environmentally sensitive than the Galapagos Islands that received 90,533 human visits in 2003 and has built a commercial infrastructure including visitor accommodations.

Yes. The nesting seabird populations on the Farallon Islands are more sensitive to human disturbance because of several factors. First, the land area of the Galapagos Islands is much larger, and the seabird nesting density is much less, so that visitors can be managed to avoid areas where sensitive wildlife would be disturbed. The Farallon Islands total 211 acres and support 300,000 nesting seabirds (amounting to 1,422 birds per acre). The Galapagos Island total roughly 2 million acres (8000 km2) and support an estimated 750,000 nesting seabirds (0.42 birds per acre). The Farallon Islands are 3,000 times more densely populated with nesting seabirds than the Galapagos. In the Galapagos, many areas of land are unoccupied by nesting seabirds, making it possible for humans to access the islands without getting too close to nesting colonies and causing disturbance. This is not the case on the Farallon Islands.

Secondly, there are behavior differences between the seabird species nesting on the Galapagos and those nesting on the Farallon Islands. Boobies, tropicbirds, and albatross that nest on the Galapagos are very tolerant of humans approaching closely on foot. In contrast, the murres, cormorants and puffins that nest on the Farallons are frightened from their nests—usually an entire colony en masse—if a human walks near their nest. When the birds flush, their eggs are exposed to predatory gulls, or roll away and are subsequently abandoned by the birds when they return.

Marine mammals such as the Galapagos fur seal have evolved without land predators, do not recognize humans as a threat, and hence are very approachable. One of the Farallon breeding marine mammal species, the northern elephant seal, is fairly tolerant of humans. However, the majority of marine mammals on the Farallon Islands, including the threatened Steller's sea lion, stampede quickly into the water in response to human activity, sometimes crushing small pups in the way.

10. In Director Williams' response of November 18, 2004, he indicated that there are a number of existing structures in the Farallon NWR including office/lab, powerhouse, carpenter's shop, living quarters, north landing boathouse, and others. Could you please provide me pictures of these structures, or a diagram of where they are located?

We hope this letter is responsive to all your concerns. If you have questions or need clarification, please contact me at (916) 414-6464.

Photo 1: Looking toward northat Southeast Farallon Island. Lighthouse on top of hill, and pictured from left to right on the Marine Terrace: Living Quarters, Office/Lab, Powerhouse

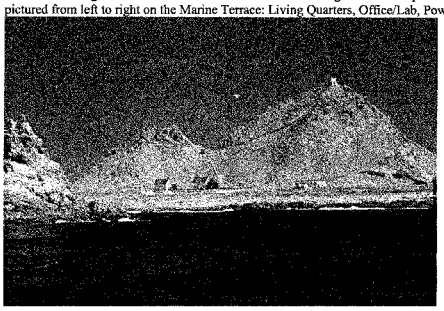


Photo 2: North Landing Boathouse (wooden boom has been removed since photo)

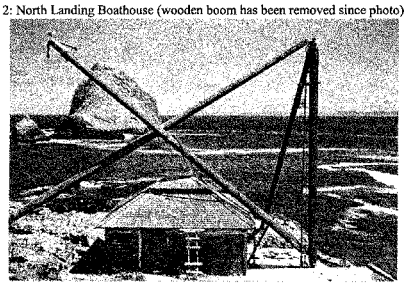


Photo 3. Carpenter's Shop. Numbers refer to antennas described on Table 1

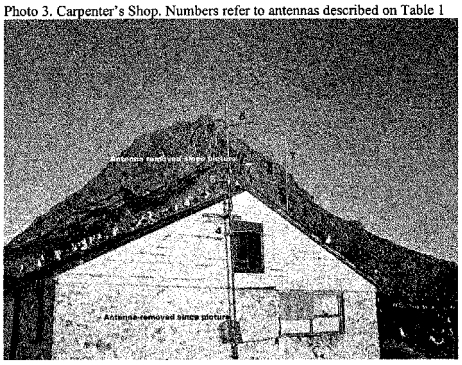
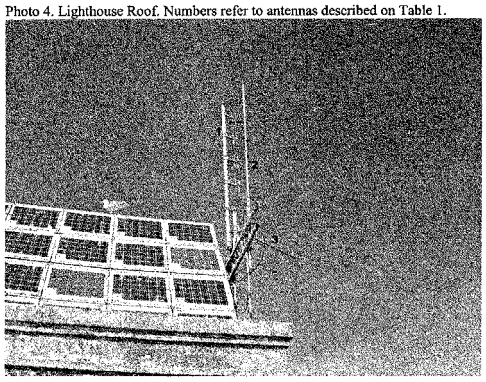


Photo 4. Lighthouse Roof. Numbers refer to antennas described on Table 1.



References & Citations:

[1] Personal communication with Roy Lowe, Project Leader of Oregon Coast National Wildlife Refuge Complex, on March 7, 2005.

[2] Personal communication with Kevin Ryan, Project Leader of Washington Maritime National Wildlife Refuge Complex, on March 7 and March 28, 2005.

[3] Shire, G.G., K. Brown, G. Winegrad. 2000. Communication Towers: A Deadly Hazard to Birds. Document on Internet: http://www.abcbirds.org/policy/towerkillweb.PDF

The following information submitted for the record has been retained in the Committee's official files:

- Catherwood, Leslie, Wildlife Refuge Program Associate, The Wilderness Society, Testimony submitted for the record;
- Garcia, Frank S. Gonzalez, President, Puerto Rican Ornithological Society, Letter Submitted for the record;
- McLaughlin, Eileen, Project Director, Wildlife Stewards, Letter submitted for the record;
- Schaffner, Fred C., Lajas, Puerto Rico, Letter submitted for the record; and
- Schmieder, Robert W. Letter submitted for the record.

Mr. GILCHREST. Thank you all very much. And we will be submitting follow-up questions from both sides. Thank you very much. The hearing is adjourned.

[Whereupon, at 1:13 p.m., the Subcommittee was adjourned.]

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