

NATIONAL WILDLIFE REFUGE IMPROVEMENT ACT OF  
1995

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JULY 31, 1995.—Committed to the Committee of the Whole House on the State of  
the Union and ordered to be printed

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Mr. YOUNG of Alaska, from the Committee on Resources,  
submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 1675]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the bill (H.R. 1675) to amend the National Wildlife Refuge System Administration Act of 1966 to improve the management of the National Wildlife Refuge System, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

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

(a) **SHORT TITLE.**—This Act may be cited as the “National Wildlife Refuge Improvement Act of 1995”.

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

**SEC. 2. DEFINITIONS.**

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

**“SEC. 5. DEFINITIONS.**

“For purposes of this Act:

“(1) The term ‘compatible use’ means a use that will not materially interfere with or detract from the fulfillment of the purposes of a refuge or the purposes of the System specified in section 4(a)(3), as determined by sound resource management, and based on reliable scientific information.

“(2) The terms ‘conserving’, ‘conservation’, ‘manage’, ‘managing’, and ‘management’, when used with respect to fish and wildlife, mean to use, in accordance with applicable Federal and State laws, methods and procedures associated with modern scientific resource programs including protection, research, census, law enforcement, habitat management, propagation, live trapping and transplantation, and regulated taking.

“(3) The term ‘Coordination Area’ means a wildlife management area that has been previously acquired by the Federal Government and subsequently made available to a State—

“(A) by cooperative agreement between the United States Fish and Wildlife Service and the State; or

“(B) is acquired by the Federal Government and subsequently made available to a State—

“(i) by cooperative agreement between the United States Fish and Wildlife Service and the State fish and game agency pursuant to the Fish and Wildlife Coordination Act (16 U.S.C. 661–666c); or

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

“(4) The term ‘Director’ means the Director of the United States Fish and Wildlife Service.

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

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

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

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

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

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

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

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

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

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

**SEC. 3. MISSION AND PURPOSES OF THE SYSTEM.**

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

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

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

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

“(2) The overall mission of the System is to conserve and manage fish, wildlife, and plants and their habitats within the System for the benefit of present and future generations of the people of the United States.

“(3) The purposes of the System are—

“(A) to provide a national network of lands and waters designed to conserve and manage fish, wildlife, and plants and their habitats;

“(B) to conserve, manage, and where appropriate restore fish and wildlife populations, plant communities, and refuge habitats within the System;

“(C) to conserve and manage migratory birds, anadromous or interjurisdictional fish species, and marine mammals within the System;

“(D) to provide opportunities for compatible fish- and wildlife-dependent recreation, including fishing and hunting, wildlife observation, and environmental education;

“(E) to preserve, restore, and recover fish, wildlife, and plants within the System that are listed or are candidates for threatened species or endangered species under section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533) and the habitats on which these species depend; and

“(F) to fulfill as appropriate international treaty obligations of the United States with respect to fish, wildlife, and plants, and their habitats.”.

#### SEC. 4. ADMINISTRATION OF THE SYSTEM.

(a) ADMINISTRATION, GENERALLY.—Section 4(a) (16 U.S.C. 668dd(a)) (as amended by section 3 of this Act) is further amended by inserting after new paragraph (3) the following new paragraph:

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

“(A) ensure that the mission and purposes of the System described in paragraphs (2) and (3), respectively, and the purposes of each refuge are carried out, except that if a conflict exists between the purposes of a refuge and any purpose of the System, the conflict shall be resolved in a manner that first protects the purposes of the refuge, and, to the extent practicable, that also achieves the purposes of the System;

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

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

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

“(E) acquire under State law through purchase, exchange, or donation water rights that are needed for refuge purposes; and

“(F) plan, propose, and direct appropriate expansion of the System in the manner that is best designed to accomplish the purposes of the System and the purposes of each refuge and to complement efforts of States and other Federal agencies to conserve fish and wildlife and their habitats.”.

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

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

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

(3) in paragraph (2)—

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

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

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

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

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

#### SEC. 5. COMPATIBILITY STANDARDS AND PROCEDURES.

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

“(3)(A)(i) Except as provided in clause (ii), on and after the date that is 3 years after the date of the enactment of the National Wildlife Refuge Improvement Act of 1995, the Secretary shall not initiate or permit a new use of a refuge or expand, renew, or extend an existing use of a refuge, unless the Secretary has determined that the use is compatible with the purposes of the refuge and the purposes of the System specified in subsection (a)(3).

“(ii) On lands added to the System after the date of the enactment of the National Wildlife Refuge Improvement Act of 1995, any existing fish or wildlife-dependent use of a refuge, including fishing, hunting, wildlife observation, and environmental education, shall be permitted to continue on an interim basis unless the Secretary determines that the use is not compatible with the purposes of the refuge or with the purposes of the System specified in subsection (a)(3), or is otherwise inconsistent with this Act.

“(iii) The Secretary shall permit fishing and hunting on a refuge if the Secretary determines that the activities are consistent with the principles of sound fish and wildlife management, are compatible with the purposes of the refuge and the purposes of the System specified in subsection (a)(3), and are consistent with public safety. No other determinations or findings, except the determination of consistency with State laws and regulations provided for in subsection (m), are required to be made for fishing and hunting to occur. The Secretary may make the determination referred to in this paragraph for a refuge concurrently with the development of a conservation plan for the refuge under subsection (e).

“(B) Not later than 24 months after the date of the enactment of the National Wildlife Refuge Improvement Act of 1995, the Secretary shall issue final regulations establishing the process for determining a compatible use under subparagraph (A) that—

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

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

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

“(iv) require that compatibility determinations be made in writing and consider the best professional judgment of the refuge officer designated under clause (i);

“(v) provide for the expedited consideration of uses that will likely have no detrimental effect on the fulfillment of the purposes of a refuge or the purposes of the System specified in subsection (a)(3);

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

“(vii) require, after an opportunity for public comment, reevaluation of each existing use, other than those uses specified in clause (viii), when conditions under which the use is permitted change significantly or when there is significant new information regarding the effects of the use, but not less frequently than once every 4 years, to ensure that the use remains compatible with the purposes of the refuge and the purposes of the System specified in subsection (a)(3);

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

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

“(x) provide that when managed in accordance with principles of sound fish and wildlife management, fishing and hunting in a refuge are generally compatible with the conservation of fish and wildlife and plants and their habitats and with the purposes of the refuge and the purposes of the System.

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

“(A) overflights within the airspace of a refuge, except as otherwise provided by law or a memorandum of understanding with the Secretary; and

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

#### SEC. 6. REFUGE CONSERVATION PLANNING PROGRAM.

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

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

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

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

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

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

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

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

“(B) The Secretary shall prepare a comprehensive conservation plan under this subsection for each refuge within 15 years after the date of enactment of the National Wildlife Refuge Improvement Act of 1995.

“(C) The Secretary shall manage each refuge or planning unit under plans in effect on the date of enactment of the National Wildlife Refuge Improvement Act of 1995, to the extent such plans are consistent with this Act, until such plans are revised or superseded by new comprehensive conservation plans issued under this subsection.

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

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

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

“(A) the purposes of each refuge comprising the planning unit and the purposes of the System applicable to those refuges;

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

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

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

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

“(F) the opportunities for fish- and wildlife-dependent recreation, including fishing and hunting, wildlife observation, environmental education, interpretation of the resources and values of the planning unit, and other uses that may contribute to refuge management.

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

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

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

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

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

**SEC. 7. EMERGENCY POWER; STATE AUTHORITY; WATER RIGHTS; COORDINATION.**

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

“(k) Notwithstanding any other provision of this Act the Secretary may temporarily suspend, allow, or initiate any activity in a refuge in the System in the event of any emergency that constitutes an imminent danger to the health and safety of the public or any fish or wildlife population.

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

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

“(n)(1) Nothing in this Act shall—

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

“(B) affect any water right in existence on the date of enactment of the National Wildlife Refuge Improvement Act of 1995; or

“(C) affect any Federal or State law in existence on the date of the enactment of the National Wildlife Refuge Improvement Act of 1995 this Act regarding water quality or water quantity.

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

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

“(p) Contracts for leasing land authorized by Public Law 88–567 shall require that lessees comply with an integrated pest management (IPM) plan, as that term is defined in the Settlement Agreement entered in the litigation entitled Northwest Coalition for Alternatives to Pesticides et al. v. Babbitt, No. 94–6339–TC, United States District Court for the District of Oregon. Contracts for leasing such land shall not be subject to regulations or policies (including pesticide use proposals) related to the use of chemicals and pest management on lands in the System or lands administered by the Department of the Interior, that are more restrictive than the requirements of applicable State and Federal laws related to the use of chemicals and pest management practices on non-Federal lands.”.

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

**SEC. 8. STATUTORY CONSTRUCTION.**

Nothing in this Act is intended to affect—

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

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

(3) the manner in which section 810 of the Alaska National Interest Lands Conservation Act is implemented in refuges in Alaska, and the determination of compatible use as it relates to subsistence uses in these refuges.

**SEC. 9. NEW REFUGES.**

Notwithstanding any other provision of law, no funds may be expended from the Land and Water Conservation Fund established by Public Law 88–578, for the creation of a new refuge within the National Wildlife Refuge System without specific authorization from Congress pursuant to recommendation from the United States Fish and Wildlife Service, to create that new refuge.

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

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

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

**"SECTION 1. SHORT TITLE.**

"This Act may be cited as the 'National Wildlife Refuge System Administration Act of 1966'.";

(2) in section 4 (16 U.S.C. 668dd)—

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

(B) by inserting before the text of that section the following heading:

**"SEC. 4. NATIONAL WILDLIFE REFUGE SYSTEM.;"**

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

(4) by redesignating section 4 as section 2.

(b) CONFORMING AMENDMENT.—Section 12(f) of the Act of December 5, 1969 (83 Stat. 283) is repealed.

(c) REFERENCES.—Any reference in any law, regulation, or other document of the United States to section 4 of the National Wildlife Refuge System Administration Act of 1966 is deemed to refer to section 2 of that Act, as redesignated by subsection (a)(4) of this section.

**PURPOSE OF THE BILL**

The purpose of H.R. 1675 is to amend the National Wildlife Refuge Administration Act of 1966 to improve the management of the National Wildlife Refuge System.

**BACKGROUND AND NEED FOR LEGISLATION**

The National Wildlife Refuge System is comprised of Federal lands that have been acquired for the conservation and enhancement of fish and wildlife. Totalling about 91.7 million acres, the System provides habitat for hundreds of fish and wildlife species, including more than 165 species listed as threatened or endangered under the Endangered Species Act. In fact, 58 refuges have been established specifically to protect listed species. The Refuge System is overseen by the U.S. Fish and Wildlife Service (USFWS) of the Department of the Interior.

The first wildlife refuge was established in 1903 by President Theodore Roosevelt at Pelican Island, Florida, to protect egrets, herons, and other birds that were being killed to provide feathers for the fashion industry.

At present, the System is comprised of 504 refuges, which are located in all 50 States and five U.S. insular areas. These units range in size from the one-acre Mille Lacs National Wildlife Refuge in Minnesota, to the 19.3-million-acre Arctic National Wildlife Refuge in Alaska. In the last decade, 81 refuges and approximately 3.6 million acres have been added to the System. There are several mechanisms by which lands are placed in the System: (1) withdrawal from the public domain by Executive Order or public land order; (2) purchase or lease of fee or easements using authorities granted in several statutes (e.g. Migratory Bird Conservation Act, Refuge Recreation Act, Endangered Species Act, Fish and Wildlife Act, North American Wetlands Conservation Act); (3) establishment by Acts of Congress; (4) donations to the Federal Government; (5) cooperative agreement with, or transfer from, other government agencies; and (6) exchanges between private parties, corporate landowners, or other government agencies and USFWS.

The primary sources of funding for refuge acquisitions are annual appropriations from the Land and Water Conservation Fund, and the Migratory Bird Conservation Fund, which is funded from the purchase of annual duck stamps and refuge entrance fees.

The System also contains 50 Coordination Areas and 2.2 million acres of waterfowl production areas. Coordination Areas are administered by State fish and wildlife agencies under a cooperative agreement with USFWS. Waterfowl production areas are comprised of scattered wetlands that provide important waterfowl habitat. On March 27, 1995, the Administration proposed to transfer management of the nationwide waterfowl production lands (2.2 million acres) and the ownership of the wildlife coordination areas (300,000 acres) from the Refuge System to willing States in Fiscal Year 1997.

The Refuge System is managed primarily in accordance with two statutes enacted in the 1960's: the Refuge Recreation Act of 1962 (16 U.S.C. 460k-460k-4) and the National Wildlife Refuge System Administration of 1966 (16 U.S.C. 668dd-668ee). The Refuge Recreation Act authorizes the Secretary of the Interior to administer refuges for public recreation, provided it will not interfere with the primary purposes for which the refuge was established and funds are available to develop, operate, and maintain those activities.

The National Wildlife Refuge System Administration Act authorizes the Secretary to allow uses that the Secretary determines are compatible with the major purposes for which a refuge was established. Set forth in the laws and executive orders establishing individual refuges, those purposes range can be very narrow, such as preserving and managing the habitat for a single species, to relatively broad goals like conserving waterfowl. Currently, the law does not include a list of purposes or a definition of a "compatible use" for the Refuge System.

Refuge managers are responsible for determining, on a case-by-case basis, whether activities on refuges are compatible. According to the USFWS Refuge Manual, an activity on a refuge "may be determined to be compatible if it will not materially interfere with or detract from the purpose(s) for which the refuge was established."

Management of the Refuge System has been the focus of several studies in the last two decade, including two General Accounting Office reports, two reports of advisory boards to the Interior Department, and a report prepared by USFWS. These reports highlighted the fact that refuges are not managed as a national system because of the lack of centralized guidance from USFWS.

In 1992, several environmental groups sued Interior Secretary Manuel Lujan for authorizing secondary uses on refuges without ensuring that these uses are compatible with those refuges. In October 1993, a settlement was reached in *National Audubon Society v. Babbitt*, in which USFWS agreed to expeditiously terminate many secondary uses unless USFWS determines in writing that the use is compatible with the primary purposes of the refuge on which it occurs. In addition, the settlement agreement requires USFWS to determined whether funds are available for development and maintenance of recreational activities that are under their authority and that are not directly related to the primary purposes of the refuge.

USFWS reviewed over 5,000 secondary uses on over 500 units of the System. Wildlife observation, photography, walking and hiking, and rights-of-way occur at over 300 refuges; waterfowl hunting, big

game hunting, recreational fishing, and non-motorized boating at more than 200; and non-motorized wildlife trails, interpretive exhibits, environmental education, migratory bird hunting, small game hunting, picnicking, motorized boating, grazing, farming and research occur at more than 150. As a result of the one-year study, USFWS addressed 46 uses on 30 refuges in 1994, and plans to terminate 21 activities on 18 refuges and modify two activities on two refuges in 1995. On the 273 refuges where hunting takes place and the 263 refuges where fishing occurs, in no cases were these uses found to be incompatible. Thirty refuges are still completing their reviews. In fact, the biggest problem facing the Refuge System was nonwildlife-dependent activities such as jogging.

#### COMMITTEE ACTION

H.R. 1675 was introduced on May 18, 1995, by Congressman Don Young. The bill was referred to the Committee on Resources, and within the Committee to the Subcommittee on Fisheries, Wildlife and Oceans.

On May 25, 1995, the Subcommittee held a hearing on H.R. 1675. The Administration testified in support of comprehensive legislation for management of the National Wildlife Refuge System. Other witnesses, including representatives of the Wildlife Legislative Fund of America, Safari Club International, National Rifle Association, International Association of Fish and Wildlife Agencies, Wildlife Management Institute, endorsed the bill. In addition, Congressman John Dingell, the author of the national Wildlife Refuge System Administration Act of 1966, also submitted a statement for the hearing record in support of H.R. 1675. Representatives of the National Wildlife Refuge Association and the Wilderness Society raised objections to several provisions of H.R. 1675.

On June 27, 1995, the Subcommittee on Fisheries, Wildlife and Oceans met to markup H.R. 1675. At that time, Congressman Don Young offered an amendment in the nature of a substitute that defined the term "Coordination Area" and excluded these lands from the coverage of the bill; clarified language dealing with cooperative agreements with States and other entities; modified the provision dealing with new lands acquired for the Refuge System to ensure that existing wildlife-dependent activities, including fishing, hunting, wildlife observation, and environmental education will continue in the future unless the Secretary of the Interior finds that these uses are not compatible; restated current law on water rights; and removed the authorization of appropriations reference contained in the bill. This amendment was adopted by voice vote. The bill as amended was then approved by voice vote and ordered favorably reported to the Full Committee.

On July 12, 1995, the Full Resources Committee met to consider H.R. 1675. Congressman Don Young offered an amendment stipulating that nothing in H.R. 1675 was intended to affect subsistence rights for Alaskan Natives under the Alaska National Interest Lands Conservation Act. This amendment was adopted by voice vote.

Congressman Studds offered an amendment to clarify the language dealing with USFWS's compatibility determinations for fish-

and wildlife-dependent activities on each of our Nation's refuges. The amendment was adopted by voice vote.

Congressman Cooley offered an amendment to direct the Department of the Interior to allow leased land farmers to grow crops in the Tule Lake and Lower Klamath National Wildlife Refuges that are consistent with California and Oregon pesticide laws and the integrated pest management plan that the Department of the Interior is developing. The amendment was adopted by voice vote.

Congressman Pombo offered an amendment that provided that no funds may be expended from the land and Water Conservation Fund for the creation of a new refuge without specific authorization from Congress to create that new refuge. An amendment to the Pombo amendment was offered by Congressman Saxton to clarify that the authorization requirement would refer to the creation of a new refuge recommended to Congress by USFWS. The Saxton amendment was approved by voice vote and the Pombo amendment, as amended, was adopted by voice vote.

Finally, Congressman Farr offered an amendment that stipulated that the Secretary of the Interior would not be required to allow compatible fishing and hunting activities to occur in a refuge if sufficient funds were not available for the proper management of the wildlife resource. The amendment was defeated by voice vote.

No other amendments were offered, and the bill, as amended, was then ordered favorably reported to the House of Representatives, by voice vote in the presence of a quorum.

#### SECTION-BY-SECTION ANALYSIS

##### SECTION 1. SHORT TITLE. REFERENCES

The short title of the legislation is "The National Wildlife Refuge Improvement Act of 1995." When the bill makes amendments to existing law, it is amending the National Wildlife Refuge System Administration Act of 1966.

##### SECTION 2. DEFINITIONS

This section contains definitions for terms used in the Act.

Section 5(1) defines the term "compatible use". The definition is a codification of the existing regulatory definition that USFWS has used for many years. Under this definition determinations of compatibility must be based on "reliable scientific information." This information can come from State, private and Federal sources.

Section 5(3) defines the term "Coordination Area" to mean a wildlife management area acquired by the Federal Government and made available to a State through either a cooperative agreement between USFWS and a State fish and game agency pursuant to the Fish and Wildlife Coordination Act or by long-term leases or agreements pursuant to the Bankhead-Jones Farm Tenant Act. Coordination Areas are specifically excluded from the definition of the term "refuge" in section 5(9).

Section 5(9) defines the term "refuge" as a designated area of land, water, or an interest in land or water, within the National Wildlife Refuge System. The phrase "land, water or an interest in land or water." as employed here and in section 4(a)(1) of the National Wildlife Refuge System Administration Act of 1966, is re-

stricted to ownership interests of the United States. The authority of the Secretary of the Interior under the Administration Act thus would not extend to navigable waters within refuge boundaries, the bed of which is in State ownership. Similarly, the navigational servitude of the United States is a power, not an interest in property, *United States v. Twin City Power Co.*, 350 U.S. 222, 224–225 (1956), and thus is not an “interest” within the definition. By making clear that the term “interest” is limited to property interests that demarcate particular areas, it is the Committee’s intention to facilitate the delineation of geographic areas for the exercise of authority under H.R. 1675. Intangible, non-possessory interests of the United States, such as Internal Revenue Service liens, access rights, covenants, or Federal reserved water rights, do not constitute “interests” within the meaning of the term “refuge.”

Section 5(11) defines the terms “State” and “United States” to mean the several States of the United States, Puerto Rico, American Samoa, the Virgin Islands, Guam, and the insular possessions of the United States.

Section 5(13) defines the terms “take”, “taking”, or “taken” to mean to pursue, hunt, shoot, capture, collect, or kill. The Committee intends for the term “hunting” to include the sustainable-use conservation and management of the American alligator (*Alligator mississippiensis*), including the harvest of wild alligators and the collection and propagation of wild alligator eggs, that is consistent with the State alligator conservation and management program in which the refuge is located if the State program has been approved by USFWS pursuant the Convention on International Trade in Endangered Species of Wild Fauna and Flora and the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.). The term “hunting” also includes trapping.

### SECTION 3. MISSION AND PURPOSES OF THE SYSTEM

The mission of the System is to conserve and manage fish and wildlife and their habitats found within the System for the benefit of present and future generations.

The purposes of the System are to:

Conserve, manage, and, where appropriate, restore fish, wildlife and plant populations and their habitat within the System. This includes conservation and management for migratory birds, anadromous or interjurisdictional fish species, and marine mammals found within the System. This purpose reflects that an array of strategies is necessary to achieve the purposes of individual refuges and to contribute to national conservation goals. Some lands must be preserved in their natural state, some require active manipulation, while other, degraded habitats require action to restore their function and ecological integrity. The reference to interjurisdictional fish species indicates that a purpose of the Refuge System is to conserve fish species that migrate and move among different jurisdictions. This reference is not intended to confer on USFWS any authority to regulate the taking of such species nor is it intended to modify, limit, or otherwise affect the authority of the States to manage and regulate the take of these species.

To provide opportunities for fish- and wildlife-dependent recreation. Fishing and hunting now occur on over half the refuges (and over 90% of the acreage) in the System. Nearly 30 million people visit refuges each year to observe wildlife and 50,000 students enjoy environmental education activities on refuges. Collectively, these activities provide unique outdoor experiences for millions of visitors and promote both environmental awareness and appreciation of the natural world. The Committee expects that compatible fish- and wildlife-dependent recreation shall include hunting, fishing and wildlife observation, and trapping (as authorized under Federal and State law), bird watching, nature observation, and wildlife and/or nature photography.

To preserve threatened, endangered or candidate species, and the habitats important for those species within the System. Nearly 60 refuges have been established specifically to conserve individual or groups of endangered or threatened species. System-wide refuges provide habitat for over 215 threatened or endangered species, one quarter of those on the Federal endangered species list. Refuge acquisition and management also provides an important tool to prevent the need for listing candidate species by addressing their habitat needs before they require more costly recovery action.

To fulfill international treaty obligations regarding fish, wildlife, plants and their habitats.

#### SECTION 4. ADMINISTRATION OF THE SYSTEM

This section directs the Secretary to ensure that the purposes of the refuge and the System are carried out. The purposes of the refuge are to be met first, and then the purpose of the System to the extent practicable. The Secretary must also provide for conservation of fish and wildlife and their habitat within the System; ensure effective coordination, interaction and cooperation with adjoining landowners; maintain adequate water supplies acquiring water rights through purchase, exchange or donation in accordance with State law; and expand the Refuge System in a manner which accomplishes the goals of the System and complements the efforts of other State and Federal conservation efforts.

The Secretary may enter into cooperative agreements with State fish and wildlife agencies and other entities or the management of programs on, or parts of, refuge, subject to standards established by and the overall management oversight of USFWS. On some existing refuges, State agencies cooperate with USFWS by participating in the management of specific programs, such as hunting law enforcement or other public use-related activities. State also cooperate by managing habitat on parts of individual refuges, particularly in cases where refuge lands are adjacent to or surrounded by State lands. In all these situations, USFWS retains management oversight and is ultimately responsible to ensure that allowed uses remain compatible and that habit is managed consistently with the purposes for which the refuges were established.

## SECTION 5. COMPATIBILITY STANDARDS AND PROCEDURES

This section directs the Secretary not to expand, renew, or extend any existing use unless it is determined to be compatible with the purposes of the refuge and the System; to allow existing fish or wildlife-dependent use of a refuge, including fishing, hunting, wildlife observation, and environmental education to continue unless the Secretary determines that these uses are not compatible; to permit fishing and hunting on a refuge when those activities are consistent with sound fish and wildlife management, compatible with the purposes of the refuge and the System, and consistent with public safety and to issue regulations establishing the process for determining whether a use is compatible.

The Committee intends to create a management regime of "open unless closed" for fish- and wildlife-dependent recreation on units of the Refuge System. In conjunction with language in new section 4(d)(3)(B)(x) of the National Wildlife Refuge System Administration Act, the Committee is creating a presumption that these activities are compatible and ought to be permitted to occur. This presumption may be overcome in cases where these activities are: (1) not consistent with the principles of sound fish and wildlife management; (2) not compatible with the specific purposes of the refuge unit; or (3) are inconsistent with public safety. In the absence of these factors, fish- and wildlife-dependent recreation activities should proceed.

Under current USFWS policy, as reflected in the Code of Federal Regulations, new refuge lands (with the exception of Waterfowl Production Areas) are "closed until opened." This means that all preexisting uses are terminated upon acquisition. In practice, the reopening of these lands to specific allowed uses may not occur, if at all, until refuge management planning is completed, sometimes years after acquisition. New section 4(d)(3)(A)(ii) of the National Wildlife Refuge System Administration Act will reserve this situation by providing that a fish- and wildlife-dependent use which is ongoing on lands before these lands are added to the Refuge System shall be allowed to continue on an interim basis unless the Secretary determines that the use is not compatible with refuge purposes or System purposes, or is otherwise inconsistent with this Act. The Committee encourages USFWS to evaluate ongoing uses during the land acquisition planning process and, where possible and appropriate, to complete determinations of compatibility prior to acquisition of lands. This will enhance coordination with the interested public and minimize confusion regarding future public uses on newly acquired lands.

Furthermore, since H.R. 1675 codifies the existing regulatory definition of "compatible use" that USFWS has used for many years, the Committee expects that there will be some wildlife refuges, particularly in urban areas, that may not be appropriate settings for all forms of fish- and wildlife-dependent recreation. For instance, the Committee is aware that certain refuges have been created to protect threatened and endangered species and to serve as breeding grounds for migratory waterfowl. This legislation will not alter or change the USFWS's mandate to protect those species.

The fact that this "open unless closed" approach is built into H.R. 1675 does not mean that limited financial and personnel resources must always be directed toward maintenance or enhancement of these activities. Fish- and wildlife-dependent recreation has not been made a paramount purpose in which it must be the last activity to be restricted as a result of budget limitations.

As mentioned earlier in this report, USFWS recently completed a comprehensive review of uses on the System. That thorough review identified only a relative handful of problems. It is expected that most of this work can and will be used to satisfy the requirements of this provision. This recognition of USFWS's existing work product can help to avoid costly duplication of effort and facilitate expeditious compliance with the new requirement.

The Committee also intends that for compatibility determinations, USFWS shall use any exiting information and data generated by the State agency possessing primary authority for fish and wildlife, or any other State or Federal agency that has relevant data. The Committee neither expects nor intends that the Secretary or the refuge manager independently generate data on which to base compatibility determinations, unless this data or information does not exist.

Overflights within the airspace of a refuge and actions of Federal agencies, other than USFWS, which have primary jurisdiction over the refuge lands are not subject to compatibility determinations.

#### SECTION 6. REFUGE CONSERVATION PLANNING PROGRAM

Under this section, the Secretary must prepare a conservation plan for each refuge. A public comment period must be held on the draft conservation plan, and the plans must be reviewed every 15 years. Units are to be managed under existing plans until new plans are written. Activities consistent with H.R. 1675 may occur before existing plans are revised or new plans prepared.

Plans must identify and describe: (1) the purposes of the refuge; (2) the fish, wildlife and plant populations, their habitats, and the archaeological and cultural values found on the refuge; (3) significant problems that may adversely affect wildlife populations and habitats and ways to correct or mitigate those problems; (4) areas suitable for administrative sites or visitor facilities; and (5) opportunities for fish- and wildlife-dependent recreation.

The Secretary must ensure adequate public involvement in the preparation of plans.

#### SECTION 7. EMERGENCY POWERS; STATE AUTHORITY; WATER RIGHTS; AND COORDINATION

The Secretary may temporarily suspend, allow or initiate any activity in the event of an emergency. In addition, nothing in H.R. 1675 allows the Secretary to regulate hunting or fishing outside the System, affects the fish and wildlife management authority of the States, or creates a reserved water right for the United States. Nothing in H.R. 1675 diminishes or affects the ability to join the United States in the adjudication of rights to the use of water pursuant to the McCarran Act.

New section 4(p) of the National Wildlife Refuge System Administration Act is a provision that requires that the Department of

the Interior cease applying its pesticide policy to lands leased for farming within the Tule Lake and Lower Klamath National Wildlife Refuges under the 1964 Kuchel Act (43 U.S.C. 695k-695r). The Kuchel Act dedicated these 22,000 acres, originally ceded to the Federal Government by the States of Oregon and California for homesteads and development of the Klamath Reclamation Project, to the joint purposes of farming by lease and refuge habitat.

Despite an impeccable record on the part of leased land farmers managing pests through pesticide use, the Department of the Interior began to apply its general pesticide policy to these lands in 1993. The pesticide policy restricts farmers' use of essential Environmental Protection Agency-approved pesticides, in many cases leaving them without any alternative means to combat very harmful pests. Understandably, farmers of these lands fear the potential complete loss of much of the \$16 million annual crop production.

The provision adopted by the Committee suspends application of the Department's pesticide policy to the leased lands. It requires that lessees comply with California and Oregon pesticide laws and an integrated pest management plan (IPM) the Department is developing through an independent contractor. In contrast to the Department's pesticide policy, the IPM plan will not leave farmers without protection from harmful pests but rather will allow them to use the least environmentally hazardous method of combating pests. The Committee expects that the IPM plan will not deviate significantly from the University of California's guidelines for IPM, which serves as the national model. The bill reflects the intention of the Committee that farmers on leased refuge lands not be subject to more restrictive regulation than the adjacent private lands.

#### SECTION 8. STATUTORY CONSTRUCTION

Section 8 provides a savings clause to maintain the status quo for the protection of Alaskan Native subsistence uses in Alaska, as set forth in the Alaska National Interest Lands Conservation Act (ANILCA). ANILCA contains several provisions for subsistence uses of wildlife refuges in Alaska: (1) a priority for subsistence uses over other uses on public lands in Alaska (sections 801 through 809 and sections 811 through 816); (2) a designation of subsistence uses as a purpose of almost every refuge in Alaska (sections 302 and 303); and (3) a set of procedures and standards to be followed regarding any activity that would affect refuge lands (section 810).

The savings clause in H.R. 1675 is designed to ensure that these protections are not altered in any manner by clarifying Congressional intent that the bill should not have any effect on subsistence rights in Alaska. Subsection 1 addresses the subsistence priority set forth explicitly in section 804 of ANILCA and in the refuge purposes in sections 302 and 303 of ANILCA. It is a general disclaimer stating that the bill will not affect the subsistence use preference in Alaska as set forth in ANILCA, including, but not limited to, Titles III and VIII of that Act. However, because the definition and jurisdiction provisions of H.R. 1675 do not directly address either Titles III or VIII of ANILCA, subsection 2 of section 8 of H.R. 1675 does so. In addition, H.R. 1675's procedural mechanisms for evaluating compatibility of refuge uses also do not mention ANILCA; therefore, subsection 3 of section 8 addresses those procedures.

Subsection 2 sets forth Congressional intent that the bill will not affect the interpretation of the definitions set forth in section 102 of ANILCA. H.R. 1675 is not intended to implicate the scope of State or Federal jurisdiction over subsistence uses in Alaska, or any assertion of subsistence uses in the Federal courts. The Committee does not intend H.R. 1675 to be used to support any claims raised in Federal or State court on subsistence issues, including but not limited to whether "public lands" include the navigational servitude or Coordination Areas. Instead, H.R. 1675 should not in any way affect subsistence uses on Alaskan refuge lands as set forth in ANILCA.

Subsection 3 is intended to ensure that the evaluation of prospective and current uses under H.R. 1675 not affect the manner in which prospective uses of refuge lands are evaluated under section 810 of ANILCA. The Committee intends, therefore, that this bill should not provide a basis for granting or denying a use on refuge lands in Alaska that would not otherwise have been granted or denied under section 810 of ANILCA.

#### SECTION 9. NEW REFUGES

This section stipulates that no funds may be expended from the Land and Water Conservation Fund (LWCF) for the creation of a new refuge within the National Wildlife Refuge System without specific authorization from Congress pursuant to a recommendation from USFWS to create that new refuge.

The Committee is aware that some \$1.027 billion in taxpayer money has been appropriated from the Land and Water Conservation Fund to acquire lands that became additions to existing refuge units or entirely new wildlife refuges. This is a substantial amount of money being spent by the USFWS with no input from Congress. The Committee believes it is appropriate for Congress to review the recommendations of USFWS and, if it so chooses, to legislatively authorize the creation of any new wildlife refuges in the future when those lands are acquired through the use of the LWCF.

Under current law, LWCF can be used to acquire any area authorized for the National Wildlife Refuge System. Under 16 U.S.C. 4601-9, USFWS is able to use LWCF appropriations for any "preacquisitions work in instances where authorization is imminent and where substantial monetary savings could be realized." Under this authority, USFWS establishes boundaries, conditions, and restrictions for proposed wildlife refuges where "authorization is imminent." As mentioned earlier in this report, USFWS has authority to establish wildlife refuges on its own administrative authority. The effect is that proposed wildlife refuges become authorized wildlife refuges despite the fact that USFWS does not necessarily acquire all of the property within the refuge boundary at the time the wildlife refuge is officially established. This may result an infringement of private property rights of the landowners who fall within the refuge boundary whose property has not been acquired at the time refuge is established.

Once USFWS sets boundaries and restrictions for a wildlife refuge, as LWCF money comes in, property is purchased within those boundaries only from "willing sellers." Meanwhile, private property owners who own land inside the boundary of a new refuge are

forced to live with the restrictions until they become a “willing seller”. Private property owners become willing sellers only because there are, in most cases, no other interested buyers. Moreover, the sale of private property occurs only when USFWS has enough money to purchase the property, whose value may have been decreased by inclusion in a proposed refuge boundary. By requiring Congressional authorization before USFWS can engage in any “preacquisition activity,” H.R. 1675 will ensure that a willing seller is just that—someone who willingly sells their property to the Federal Government.

It also must be noted that this provision only affects new refuge units recommended after the date of enactment, does not alter or change the process of expending money from the Migratory Bird Conservation Account, and this authorization requirement is consistent with Federal law that has been used for decades to create new parks, water projects, and wild and scenic rivers.

#### SECTION 10. REORGANIZATIONAL TECHNICAL AMENDMENTS

This section makes several reorganizational and technical changes to the National Wildlife Refuge System Administration Act of 1966.

#### COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

With respect to the requirements of clause 2(l)(3) of rule XI of the Rules of the House of Representatives, and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the Committee on Resources’ oversight findings and recommendations are reflected in the body of this report.

#### INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that the enactment of H.R. 1675 will have no significant inflationary impact on prices and costs in the operation of the national economy.

#### COST OF THE LEGISLATION

Clause 7(a) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out H.R. 1675. However, clause 7(d) of that Rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974.

#### COMPLIANCE WITH HOUSE RULE XI

1. With respect to the requirement of clause 2(l)(3)(B) of rule XI of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, H.R. 1675 does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

2. With respect to the requirement of clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, the Committee has received no report of oversight findings and recommendations from the Committee on Government Reform and Oversight on the subject of H.R. 1675.

3. With respect to the requirement of clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 1675 from the Director of the Congressional Budget Office.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, July 21, 1995.*

Hon. DON YOUNG,  
*Chairman, Committee on Resources,  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 1675, the National Wildlife Refuge Improvement Act of 1995, as ordered reported by the House Committee on Resources on July 12, 1994. Assuming appropriation of the necessary sums, CBO estimates that the federal government would spend \$10 million over the next 15 years to implement this bill. H.R. 1675 would not affect direct spending or receipts; therefore, pay-as-you-go procedures would not apply.

H.R. 1675 would amend the National Wildlife Refuge System Act of 1966 to further define the mission and purposes of the National Wildlife Refuge System (NWRS). The bill would require the U.S. Fish and Wildlife Service (USFWS) to ensure that these purposes are carried out at all refuges and that all allowed uses of refuge lands are compatible with them. Over the next fifteen years, the USFWS would be required to promulgate a comprehensive conservation plan for each refuge or related complex of refuges (referred to in the bill as "planning units"). The bill also would require a revision of the plans every fifteen years thereafter. This provision would accelerate the USFWS's existing process for developing and reviewing conservation plans.

The USFWS currently spends about \$1.2 million per year to prepare or revise conservation plans at 262 NWRS units. Based on information from the USFWS and assuming appropriation of the necessary amounts, CBO estimates that accelerating the planning process to comply with H.R. 1675 would increase staff expenses by about \$750,000 per year for the next fifteen years. All other activities mandated by the bill would have no additional budgetary effect because they are either already underway or will be undertaken within existing USFWS authority.

Enacting this legislation would have no impact on the budgets of state or local governments.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Gary Brown.

Sincerely,

JUNE E. O'NEILL, *Director.*

## DEPARTMENTAL REPORTS

The Committee has received no departmental reports on H.R. 1675.

## CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

**ACT OF OCTOBER 15, 1966**

(SECTIONS 4 AND 5 ARE ALSO KNOWN AS THE NATIONAL WILDLIFE REFUGE SYSTEM ADMINISTRATION ACT OF 1966)

AN ACT To provide for the conservation, protection, and propagation of native species of fish and wildlife, including migratory birds, that are threatened with extinction; to consolidate the authorities relating to the administration by the Secretary of the Interior of the National Wildlife Refuge System; and for other purposes

**SECTION 1. SHORT TITLE.**

*This Act may be cited as the "National Wildlife Refuge System Administration Act of 1966".*

**SEC. 2. NATIONAL WILDLIFE REFUGE SYSTEM.**

**[SEC. 4.]** (a)(1) For the purpose of consolidating the authorities relating to the various categories of areas that are administered by the Secretary [of the Interior] for the conservation of fish and wildlife, including species that are threatened with extinction, all lands, waters, and interests therein administered by the Secretary as wildlife refuges, areas for the protection and conservation of fish and wildlife that are threatened with extinction, wildlife ranges, game ranges, wildlife management areas, or waterfowl production areas are hereby designated as the "National Wildlife Refuge System" (referred to herein as the "System"), which shall be subject to the provisions of this section, and shall be administered by the Secretary through the United States Fish and Wildlife Service. With respect to refuge lands in the State of Alaska, those programs relating to the management of resources for which any other agency of the Federal Government exercises administrative responsibility through cooperative agreement shall remain in effect, subject to the direct supervision of the United States Fish and Wildlife Service, as long as such agency agrees to exercise such responsibility.

(2) *The overall mission of the System is to conserve and manage fish, wildlife, and plants and their habitats within the System for the benefit of present and future generations of the people of the United States.*

(3) *The purposes of the System are—*

(A) *to provide a national network of lands and waters designed to conserve and manage fish, wildlife, and plants and their habitats;*

(B) *to conserve, manage, and where appropriate restore fish and wildlife populations, plant communities, and refuge habitats within the System;*

(C) to conserve and manage migratory birds, anadromous or interjurisdictional fish species, and marine mammals within the System;

(D) to provide opportunities for compatible fish- and wildlife-dependent recreation, including fishing and hunting, wildlife observation, and environmental education;

(E) to preserve, restore, and recover fish, wildlife, and plants within the System that are listed or are candidates for threatened species or endangered species under section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533) and the habitats on which these species depend; and

(F) to fulfill as appropriate international treaty obligations of the United States with respect to fish, wildlife, and plants, and their habitats.

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

(A) ensure that the mission and purposes of the System described in paragraphs (2) and (3), respectively, and the purposes of each refuge are carried out, except that if a conflict exists between the purposes of a refuge and any purpose of the System, the conflict shall be resolved in a manner that first protects the purposes of the refuge, and, to the extent practicable, that also achieves the purposes of the System;

(B) provide for conservation of fish and wildlife and their habitats within the System;

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

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

(E) acquire under State law through purchase, exchange, or donation water rights that are needed for refuge purposes; and

(F) plan, propose, and direct appropriate expansion of the System in the manner that is best designed to accomplish the purposes of the System and the purposes of each refuge and to complement efforts of States and other Federal agencies to conserve fish and wildlife and their habitats.

[(2)] (5) No acquired lands which are or become a part of the System may be transferred or otherwise disposed of under any provision of law (except by exchange pursuant to subsection (b)(3) of this section) unless—

(A) the Secretary [of the Interior] determines with the approval of the Migratory Bird Conservation Commission that such lands are no longer needed for the purposes for which the System was established; and

(B) such lands are transferred or otherwise disposed of for an amount not less than—

(i) the acquisition costs of such lands, in the case of lands of the System which were purchased by the United States with funds from the migratory bird conservation fund, or fair market value, whichever is greater; or

(ii) the fair market value of such lands (as determined by the Secretary as of the date of the transfer or disposal),

in the case of lands of the System which were donated to the System.

The Secretary shall pay into the migratory bird conservation fund the aggregate amount of the proceeds of any transfer or disposal referred to in the preceding sentence.

[(3)] (6) Each area which is included within the System on January 1, 1975, or thereafter, and which was or is—

(A) designated as an area within such System by law, Executive order, or secretarial order; or

(B) so included by public land withdrawal, donation, purchase, exchange, or pursuant to a cooperative agreement with any State or local government, any Federal department or agency, or any other governmental entity,

shall continue to be a part of the System until otherwise specified by Act of Congress, except that nothing in this paragraph shall be construed as precluding—

(i) the transfer or disposal of acquired lands within any such area pursuant to paragraph [(2)] (5) of this subsection;

(ii) the exchange of lands within any such area pursuant to subsection (b)(3) of this section; or

(iii) the disposal of any lands within any such area pursuant to the terms of any cooperative agreement referred to in subparagraph (B) of this paragraph.

(b) In administering the System, the Secretary is [authorized—] *authorized to take the following actions:*

(1) [to enter] *Enter* into contracts with any person or public or private agency through negotiation for the provision of public accommodations when, and in such locations, and to the extent that the Secretary determines will not be inconsistent with the primary purpose for which the affected area was established.

(2) [to accept] *Accept* donations of funds and to use such funds to acquire or manage lands or interests therein[, and].

(3) [to acquire] *Acquire* lands or interests therein by exchange (A) for acquired lands or public lands, or for interests in acquired or public lands, under his jurisdiction which he finds to be suitable for disposition, or (B) for the right to remove, in accordance with such terms and conditions as he may prescribe, products from the acquired or public lands within the System. The values of the properties so exchanged either shall be approximately equal, or if they are not approximately equal the values shall be equalized by the payment of cash to the grantor or to the Secretary as the circumstances require.

(4) *Subject to standards established by and the overall management oversight of the Director, enter into cooperative agreements with State fish and wildlife agencies and other entities for the management of programs on, or parts of, a refuge.*

(c) No person shall knowingly disturb, injure, cut, burn, remove, destroy, or possess any real or personal property of the United States, including natural growth, in any area of the System; or take or possess any fish, bird, mammal, or other wild vertebrate or invertebrate animals or part or nest or egg thereof within any such area; or enter, use, or otherwise occupy any such area for any purpose; unless such activities are performed by persons authorized to

manage such area, or unless such activities are permitted either under subsection (d) of this section or by express provision of the law, proclamation, Executive order, or public land order establishing the area, or amendment thereof: *Provided*, That the United States mining and mineral leasing laws shall continue to apply to any lands within the System to the same extent they apply prior to the effective date of this Act unless subsequently withdrawn under other authority of law. With the exception of endangered species and threatened species listed by the Secretary pursuant to section 4 of the Endangered Species Act of 1973 in States wherein a cooperative agreement does not exist pursuant to section 6(c) of that Act, nothing in this Act shall be construed to authorize the Secretary to control or regulate hunting or fishing of resident fish and wildlife on lands not within the system. The regulations permitting hunting and fishing of resident fish and wildlife within the System shall be, to the extent practicable, consistent with State fish and wildlife laws and regulations. [The provisions of this Act shall not be construed as affecting the authority, jurisdiction, or responsibility of the several States to manage, control, or regulate fish and resident wildlife under State law or regulations in any area within the System.]

(d)(1) The Secretary is authorized, under such regulations as he may prescribe, to—

(A) permit the use of any area within the System for any purpose, including but not limited to hunting, fishing, public recreation and accommodations, and access whenever he determines that such uses are compatible with the major purposes for which such areas were established: *Provided*, That not to exceed 40 per centum at any one time of any area that has been, or hereafter may be acquired, reserved, or set apart as an inviolate sanctuary for migratory birds, under any law, proclamation, Executive order, or public land order may be administered by the Secretary as an area within which the taking of migratory game birds may be permitted under such regulations as he may prescribe unless the Secretary finds that the taking of any species of migratory game birds in more than 40 percent of such area would be beneficial to the species; and

(B) permit the use of, or grant easements in, over, across, upon, through, or under any areas within the System for purposes such as but not necessarily limited to, powerlines, telephone lines, canals, ditches, pipelines, and roads, including the construction, operation, and maintenance thereof, whenever he determines that such uses are compatible with the purposes for which these areas are established.

(2) Notwithstanding any other provision of law, the Secretary [of the Interior] may not grant to any Federal, State, or local agency or to any private individual or organization any right-of-way, easement, or reservation in, over, across, through, or under any area within the system in connection with any use permitted by him under paragraph (1)(B) of this subsection unless the grantee pays to the Secretary, at the option of the Secretary, either (A) in lump sum the fair market value (determined by the Secretary as of the date of conveyance to the grantee) of the right-of-way, easement, or reservation; or (B) annually in advance the fair market rental

value (determined by the Secretary) of the right-of-way, easement, or reservation. If any Federal, State, or local agency is exempted from such payment by any other provision of Federal law, such agency shall otherwise compensate the Secretary by any other means agreeable to the Secretary, including, but not limited to, making other land available or the loan of equipment or personnel; except that (A) any such compensation shall relate to, and be consistent with, the objectives of the National Wildlife Refuge System, and (B) the Secretary may waive such requirement for compensation if he finds such requirement impracticable or unnecessary. All sums received by the Secretary [of the Interior] pursuant to this paragraph shall, after payment of any necessary expenses incurred by him in administering this paragraph, be deposited into the Migratory Bird Conservation Fund and shall be available to carry out the provisions for land acquisition of the Migratory Bird Conservation Act (16 U.S.C. 715 et seq.) and the Migratory Bird Hunting Stamp Act (16 U.S.C. 718 et seq.).

*(3)(A)(i) Except as provided in clause (ii), on and after the date that is 3 years after the date of the enactment of the National Wildlife Refuge Improvement Act of 1995, the Secretary shall not initiate or permit a new use of a refuge or expand, renew, or extend an existing use of a refuge, unless the Secretary has determined that the use is compatible with the purposes of the refuge and the purposes of the System specified in subsection (a)(3).*

*(ii) On lands added to the System after the date of the enactment of the National Wildlife Refuge Improvement Act of 1995, any existing fish or wildlife-dependent use of a refuge, including fishing, hunting, wildlife observation, and environmental education, shall be permitted to continue on an interim basis unless the Secretary determines that the use is not compatible with the purposes of the refuge or with the purposes of the System specified in subsection (a)(3), or is otherwise inconsistent with this Act.*

*(iii) The Secretary shall permit fishing and hunting on a refuge if the Secretary determines that the activities are consistent with the principles of sound fish and wildlife management, are compatible with the purposes of the refuge and the purposes of the System specified in subsection (a)(3), and are consistent with public safety. No other determinations or findings, except the determination of consistency with State laws and regulations provided for in subsection (m), are required to be made for fishing and hunting to occur. The Secretary may make the determination referred to in this paragraph for a refuge concurrently with the development of a conservation plan for the refuge under subsection (e).*

*(B) Not later than 24 months after the date of the enactment of the National Wildlife Refuge Improvement Act of 1995, the Secretary shall issue final regulations establishing the process for determining a compatible use under subparagraph (A) that—*

*(i) designate the refuge officer responsible for making initial compatibility determinations;*

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

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

(iv) require that compatibility determinations be made in writing and consider the best professional judgment of the refuge officer designated under clause (i);

(v) provide for the expedited consideration of uses that will likely have no detrimental effect on the fulfillment of the purposes of a refuge or the purposes of the System specified in subsection (a)(3);

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

(vii) require, after an opportunity for public comment, reevaluation of each existing use, other than those uses specified in clause (viii), when conditions under which the use is permitted change significantly or when there is significant new information regarding the effects of the use, but not less frequently than once every 4 years, to ensure that the use remains compatible with the purposes of the refuge and the purposes of the System specified in subsection (a)(3);

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

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

(x) provide that when managed in accordance with principles of sound fish and wildlife management, fishing and hunting in a refuge are generally compatible with the conservation of fish and wildlife and plants and their habitats and with the purposes of the refuge and the purposes of the System.

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

(A) overflights within the airspace of a refuge, except as otherwise provided by law or a memorandum of understanding with the Secretary; and

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

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

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

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

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

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

(B) The Secretary shall prepare a comprehensive conservation plan under this subsection for each refuge within 15 years after the date of enactment of the National Wildlife Refuge Improvement Act of 1995.

(C) The Secretary shall manage each refuge or planning unit under plans in effect on the date of enactment of the National Wildlife Refuge Improvement Act of 1995, to the extent such plans are consistent with this Act, until such plans are revised or superseded by new comprehensive conservation plans issued under this subsection.

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

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

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

(A) the purposes of each refuge comprising the planning unit and the purposes of the System applicable to those refuges;

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

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

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

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

(F) the opportunities for fish- and wildlife-dependent recreation, including fishing and hunting, wildlife observation, environmental education, interpretation of the resources and values of the planning unit, and other uses that may contribute to refuge management.

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

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

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

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

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

**[(e)]** *(f) Any person who violates or fails to comply with any of the provisions of this Act or any regulations issued thereunder shall be fined under title 18, United States Code, or imprisoned for not more than 1 year, or both.*

**[(f)]** *(g) Any person authorized by the Secretary [of the Interior] to enforce the provisions of this Act or any regulations issued thereunder, may, without a warrant, arrest any person violating this Act or regulations in his presence or view, and may execute any warrant or other process issued by an officer or court of competent jurisdiction to enforce the provisions of this Act or regulations, and may with a search warrant search for and seize any property, fish, bird, mammal, or other wild vertebrate or invertebrate animals or part or nest or egg thereof, taken or possessed in violation of this Act or the regulations issued thereunder. Any property, fish, bird, mammal, or other wild vertebrate or invertebrate animals or part or egg thereof seized with or without a search warrant shall be held by such person or by a United States marshal, and upon conviction, shall be forfeited to the United States and disposed of by the Secretary, in accordance with law. The Director of the United States Fish and Wildlife Service is authorized to utilize by agreement, with or without reimbursement, the personnel and services of any other Federal or State agency for purposes of enhancing the enforcement of this Act.*

**[(g)]** *(h) Regulations applicable to areas of the System that are in effect on the date of enactment of this Act shall continue in effect until modified or rescinded.*

**[(h)]** *(i) Nothing in this section shall be construed to amend, repeal, or otherwise modify the provision of the Act of September 28, 1962 (76 Stat. 653; 16 U.S.C. 460K-460K-4) which authorizes the Secretary [of the Interior] to administer the areas within the System for public recreation. The provisions of this section relating to*

recreation shall be administered in accordance with the provisions of said Act.

**[(i)]** *(j)* Nothing in this Act shall constitute an express or implied claim or denial on the part of the Federal Government as to exemption from State water laws.

*(k)* Notwithstanding any other provision of this Act the Secretary may temporarily suspend, allow, or initiate any activity in a refuge in the System in the event of any emergency that constitutes an imminent danger to the health and safety of the public or any fish or wildlife population.

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

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

*(n)(1)* Nothing in this Act shall—

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

*(B)* affect any water right in existence on the date of enactment of the National Wildlife Refuge Improvement Act of 1995; or

*(C)* affect any Federal or State law in existence on the date of the enactment of the National Wildlife Refuge Improvement Act of 1995 this Act regarding water quality or water quantity.

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

*(o)* Coordination with State fish and wildlife agency personnel or with personnel of other affected State agencies pursuant to this Act shall not be subject to the Federal Advisory Committee Act.

*(p)* Contracts for leasing land authorized by Public Law 88-567 shall require that lessees comply with an integrated pest management (IPM) plan, as that term is defined in the Settlement Agreement entered in the litigation entitled *Northwest Coalition for Alternatives to Pesticides et al v. Babbit*, No. 94-6339-TC, United States District Court for the District of Oregon. Contracts for leasing such land shall not be subject to regulations or policies (including pesticides use proposals) related to the use of chemicals and pest management on lands in the System or lands administered by the Department of the Interior, that are more restrictive than the requirements of applicable State and Federal laws related to the use of chemicals and pest management practices on non-Federal lands.

**[SEC. 5. (a)** The term “person” as used in this Act means any individual, partnership, corporation, or association.

**[(b)]** The terms “take” or “taking” or “taken” as used in this Act mean to pursue, hunt, shoot, capture, collect, kill, or attempt to pursue, hunt, shoot, capture, collect, or kill.

**[(c)]** The terms “State” and the “United States” as used in this Act mean the several States of the United States, the Common-

wealth of Puerto Rico, American Samoa, the Virgin Islands, and Guam.]

**SEC. 5. DEFINITIONS.**

*For purpose of this Act:*

(1) The term “compatible use” means a use that will not materially interfere with or detract from the fulfillment of the purposes of a refuge or the purposes of the System specified in section 4(a)(3), as determined by sound resource management, and based on reliable scientific information.

(2) The terms “conserving”, “conservation”, “manage”, “managing”, and “management”, when used with respect to fish and wildlife, mean to use, in accordance with applicable Federal and State laws, methods and procedures associated with modern scientific resource programs including protection, research, census, law enforcement, habitat management, propagation, live trapping and transplantation and regulated taking.

(3) The term “Coordination Area” means a wildlife management area that has been previously acquired by the Federal Government and subsequently made available to a State—

(A) by cooperative agreement between the United States Fish and Wildlife Service and the State; or

(B) is acquired by the Federal Government and subsequently made available to a State—

(i) by cooperative agreement between the United States Fish and Wildlife Service and the State fish and game agency pursuant to the Fish and Wildlife Coordination Act (16 U.S.C. 661-666c); or

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

(4) The term “Director” means the Director of the United States Fish and Wildlife Service.

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

(6) The term “person” means any individual, partnership, corporation or association.

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

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

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

(10) The term “Secretary” means the Secretary of the Interior.

(11) The terms “State” and “United States” mean the several States of the United States, Puerto Rico, American Samoa, the

*Virgin Islands, Guam, and the insular possessions of the United States.*

(12) *The term "System" means the National Wildlife Refuge System designated under section 4(a)(1).*

(13) *The terms "take", "taking", or "taken" mean to pursue, hunt, shoot, capture, collect, or kill, or to attempt to pursue, hunt, shoot, capture, collect, or kill.*

【SEC. 6. Section 4(b) of the Act of March 16, 1934 (48 Stat. 451), as amended (16 U.S.C. 718d(b)), is further amended by changing the colon after the word "areas" to a period and striking the provisos, which relate to hunting at certain wildlife refuges and which are now covered by section 4 of this Act.

【SEC. 7. (a) Sections 4 and 12 of the Migratory Bird Conservation Act (45 Stat. 1222), as amended (16 U.S.C. 715c and 715k), are further amended by deleting the word "game" wherever it appears.

【(b) Section 10 of the Migratory Bird Conservation Act (45 Stat. 1224), as amended (16 U.S.C. 715i), which relates to the administration of certain wildlife refuges, is amended to read as follows:

【"SEC. 10. (a) Areas of lands, waters, or interests therein acquired or reserved pursuant to this Act shall, unless otherwise provided by law, be administered by the Secretary of the Interior under rules and regulations prescribed by him to conserve and protect migratory birds in accordance with treaty obligations with Mexico and Canada, and other species of wildlife found thereon, including species that are threatened with extinction, and to restore or develop adequate wildlife habitat.

【"(b) In administering such areas, the Secretary is authorized to manage timber, range, and agricultural crops; to manage other species of animals, including but not limited to fenced range animals, with the objectives of perpetuating, distributing, and utilizing the resources; and to enter into agreements with public and private agencies."

【(c) Section 11 of the Migratory Bird Conservation Act (45 Stat. 1224) (16 U.S.C. 715j) is amended by striking the period at the end thereof and adding the following: "(39 Stat. 1702) and the treaty between the United States and the United Mexican States for the protection of migratory birds and game mammals concluded February 7, 1936 (50 Stat. 1311)."

【(d) Sections 13 and 14 of the Migratory Bird Conservation Act (45 Stat. 1225), as amended (16 U.S.C. 715l and 715m), which provide for the enforcement of said Act and for penalties for violations thereof and which are covered by section 4 of this Act, are repealed.

【SEC. 8. (a) Sections 302 and 303 of title III of the Act of June 15, 1935 (49 Stat. 382), as amended (16 U.S.C. 715d-1 and 715d-2), which authorize exchanges at wildlife refuges and which are covered by section 4 of this Act, are repealed.

【(b) The last sentence of section 401(a) of the Act of June 15, 1935 (49 Stat. 383), as amended (16 U.S.C. 715s), is amended by inserting after the term "wildlife refuges", the following: "lands acquired or reserved for the protection and conservation of fish and wildlife that are threatened with extinction,".

【SEC. 9. The first clause in section 1 of the Act of September 28, 1962 (76 Stat. 653), is amended by deleting the words "national

wildlife refuges, games ranges," and inserting therein "areas within the National Wildlife Refuge System,".

【SEC. 10. (a) The first sentence in section 1 of the Act of August 22, 1957 (71 Stat. 412; 16 U.S.C. 696), is amended to read as follows:

【“SEC. 1. In order to protect and preserve in the national interest the key deer and other wildlife resources in the Florida Keys, the Secretary of the Interior is authorized to acquire by purchase, lease, exchange, and donations, including the use of donated funds, such lands or interests therein in townships 65 and 66 south, ranges 28, 29, and 30 east, Monroe County, Florida, as he shall find to be suitable for the conservation and management of the said key deer and other wildlife: *Provided*, That no lands within a one thousand-foot zone adjacent to either side of United States Highway Numbered 1 in Monroe County shall be acquired for the Key Deer National Wildlife Refuge by condemnation. The Secretary, in the exercise of his exchange authority, may accept title to any non-Federal property in townships 65 and 66 south, ranges 28, 29, and 30 east, Monroe County, Florida, and in exchange therefor convey to the grantor of such property any federally owned property in the State of Florida under his jurisdiction which he classifies as suitable for exchange or other disposal. The values of the properties so exchanged either shall be approximately equal, or if they are not approximately equal the values shall be equalized by the payment of cash to the grantor or to the Secretary as the circumstances require.”

【(b) Section 3 of such Act of August 22, 1957 (16 U.S.C. 696b), is amended by striking out the second and third sentences and inserting in lieu thereof the following: “The Secretary shall not utilize more than \$2,035,000 from appropriated funds for the acquisition of land and interests in land for the purposes of this Act.”】

**SECTION 12 OF THE ACT OF DECEMBER 5, 1969**

AN ACT To prevent the importation of endangered species of fish or wildlife into the United States: to prevent the interstate shipment of reptiles, amphibians, and other wildlife taken contrary to State law: and for other purposes

SEC. 12. (a) \* \* \*

\* \* \* \* \*

【(f) The provisions of sections 4 and 5 of the Act of October 15, 1966 (80 Stat. 929; 16 U.S.C. 668dd-668ee), as amended, shall hereinafter be cited as the “National Wildlife Refuge System Administration Act of 1966”.】

DISSENTING VIEWS OF HON. GEORGE MILLER, HON.  
GERRY E. STUDDS, HON. SAM FARR, HON. NEIL ABER-  
CROMBIE, AND HON. SAM GEJDENSON

This bill has a number of important goals, including the establishment of a mission and purposes of the National Wildlife Refuge System (the System), and the assignment of clear duties of the Secretary of the Interior in administering the System. We support these goals. In addition, a number of improvements were made to the bill before and after Subcommittee markup. However, by elevating wildlife-dependent recreational uses of refuges to purposes of the System, and by limiting the ability of the Fish and Wildlife Service (the Service) to fully and objectively evaluate the suitability of these activities on individual refuges, the bill moves the System away from its original and fundamental purpose.

Since the establishment of the first national wildlife refuge at Pelican Island, Florida, in 1903, the fundamental purpose of the System has been the conservation of fish, wildlife, and their habitat. We recognize that as the country has become more urbanized, public lands, such as wildlife refuges, have become increasingly important in providing outdoor recreational opportunities for the public. The 1962 Refuge Recreation Act and the National Wildlife Refuge System Administration Act of 1966 (the Refuge Administration Act) allow the use of wildlife refuges for a variety of public recreational activities, where these activities are determined to be appropriate and compatible with the purposes of the refuge. We strongly support this practice and we acknowledge that sportsmen and sportswomen are among the strongest supporters of the System. However, to maintain the value of these lands for fish and wildlife conservation, there must be a clear standard of compatibility and an objective process for determining compatibility. We have concerns with both of these aspects of the bill.

We do not take issue with the bill's definition of a "compatible use". It is the same definition used by the Service's wildlife managers in the field. The problem in translating this administrative definition into a legislative definition is that the Service does not consider fish- and wildlife-dependent recreational activities, including hunting and fishing, to be "purposes of the System". By making the provision of "compatible fish- and wildlife-dependent recreational activities" one of the purposes of the System, the Committee has made the definition circular. In other words, how does a wildlife manager decide whether or not an activity is compatible if one standard for compatibility is not interfering with the fulfillment of the purposes of the System and that activity, if compatible, has been established by legislation to be a purpose of the System?

Section 5 of the bill establishes standards and procedures for determining the compatibility of activities on national wildlife refuges. This section inserts several new provisions into the 1966 Ref-

uge Administration Act that create a bias in favor of allowing hunting and fishing activities on refuges. We agree with the statement in the new clause 3(B)(x) that, when managed in accordance with the “principles of sound fish and wildlife management”, fishing and hunting in a refuge are generally compatible with fish and wildlife conservation, but this clause goes on to establish a presumption of compatibility with the purposes of a refuge and of the System. The new clause 3(A)(iii) requires the Secretary to permit fishing and hunting on a refuge if those activities are: consistent with the principles of sound fish and wildlife management; compatible with the purposes of the refuge and of the System; and consistent with public safety. The combined effect of these provisions is to presume fulfillment of one of the criteria of clause (iii) and to create a new criterion—consistency with sound principles of fish and wildlife management, which is not defined in the bill.

By requiring no additional determinations or findings, clause (iii) overturns the 1962 Refuge Recreation Act, which permits recreational activities on wildlife refuges only when funds are available for the proper management of these activities. It is difficult to imagine that it would be consistent with sound fish and wildlife management to permit fishing and hunting without adequate funding for proper supervision of the program. While we concur with language in the accompanying report clarifying the Committee’s intent on this point, we believe the Committee’s intent would have been made more clearly by including a requirement for adequate funding in the bill.

New clauses 3(B) (vii) and (viii) establish the maximum intervals between compatibility reviews for activities on wildlife refuges. While the bill requires all other activities to be reviewed at least every 4 years for compatibility, it would allow up to 15 years to elapse between reviews of the compatibility of fish and wildlife-dependent recreational uses. Not knowing the administrative burden or the management considerations involved, we do not presume to know what the appropriate interval between compatibility reviews should be. However, from a wildlife management standpoint alone, it would seem that activities directly involving wildlife, particularly those that involve taking fish and wildlife, should be reviewed for compatibility at least as often as activities that do not directly affect wildlife populations. Setting a longer maximum interval between compatibility reviews for fish- and wildlife-dependent uses could allow activities detrimental to the conservation purposes of a refuge or of the System to continue unchecked for many years.

Lastly, two amendments adopted at full Committee markup of H.R. 1675 will severely impede the Service’s ability to fulfill its responsibilities within the System. An amendment offered by Mr. Cooley prohibits the Service from imposing restrictions designed to protect fish and wildlife in the Tule Lake and Lower Klamath National Wildlife Refuges from harmful effects of pesticides.

The Kuchel Act, which authorizes the Secretary of the Interior to lease lands for farming within these refuges, states that:

. . . [refuge] lands shall be administered by the Secretary of Interior for the major purpose of waterfowl management, but with full consideration to optimum agricultural use that is consistent therewith . . .

To fulfill its primary responsibility for waterfowl management in these refuges, the service has imposed restrictions on the use of pesticides on leased lands within the refuges in response to documented harm to wildlife from pesticide exposure in the Klamath Basin. These restrictions are consistent with an agency-wide policy on pest management. By exempting lessees from any regulations or policies that are more restrictive than other federal or state laws related to the use of pesticides, which are based primarily on human health and safety considerations, the Cooley amendment ignores the special responsibilities of the Service to manage waterfowl in the Klamath Basin refuges.

The Cooley amendment does not confine itself to problems specific to the Klamath Basin refuges. It also amended the definition of "purposes of the refuge" to include "uses specified or authorized in or derived from" the law or administrative instrument establishing any refuge. All uses of refuges are allowed, either directly or indirectly, pursuant to such authorities. The bill clearly distinguishes between a "compatible use" and a "purpose of the refuge" by defining them separately. The Cooley amendment blurs the distinction between these two terms. As a result, the Service will be unable to impose legitimate restrictions on secondary uses of refuges because they will be indistinguishable from purposes of a refuge in the eyes of the law.

An amendment offered by Mr. Pombo fundamentally alters the way that national wildlife refuges are established. It would require specific authorization by Congress of any new refuges established using amounts appropriated from the Land and Water Conservation Fund. Currently, refuges may either be established administratively by the Service or by legislation. Of the more than 500 refuges that comprise the System, only 16 have been specifically established by legislation.

The primary use of Land and Water Conservation Fund monies by the Service is for acquisition of wetlands and endangered species habitat. All current acquisitions using Land and Water Conservation Fund monies are for fair market value for willing sellers. Although the Service has condemnation authority, it has not acquired any property through condemnation since 1988, and has no plans to do so in the future. Debate continues on how best to protect endangered species habitat and private property rights. Regardless of one's position on these issues, fee title acquisition of wetlands and endangered species habitat remains the most effective means of protecting these kinds of habitat, and is the least burdensome to landowners. It is inconsistent with support of private property rights to raise additional obstacles to these activities.

GEORGE MILLER.  
SAM FARR.  
SAM GEJDENSON.  
GERRY STUDDS.  
NEIL ABERCROMBIE.



## A P P E N D I X

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON RESOURCES,  
*Washington, DC, July 14, 1995.*

Hon. PAT ROBERTS,  
*Chairman, Committee on Agriculture, Longworth House Office  
Building, Washington, DC.*

DEAR MR. CHAIRMAN: On July 12, 1995, the Committee on Resources reported out H.R. 1675, the National Wildlife Refuge Improvement Act of 1995. During that markup, Congressman Wes Cooley successfully offered an amendment which touches on the subject of pesticide use in the Lower Klamath and Tule Lake National Wildlife Refuges. I have enclosed a copy of the amendment.

Knowing that the Committee on Agriculture has jurisdiction over the Federal Insecticide, Fungicide, and Rodenticide Act and the application of pesticides, I would appreciate your willingness to waive the Committee's right to a sequential referral of H.R. 1675 based on the language of the amendment. Of course, I would support your request to the Speaker to be named as a conferee on this provision if a conference is called on the bill.

H.R. 1675 is a bill which has bipartisan support and will greatly enhance the Nations' ability to manage and conserve fish and wildlife resources, including endangered species, on the 504 refuges in the National Wildlife Refuge System. Once again, I appreciate your cooperation in these jurisdictional issues and would be happy to include this letter and your response in the report on H.R. 1675.

Sincerely,

DON YOUNG, *Chairman.*

Enclosure.

### AMENDMENTS TO THE COMMITTEE PRINT OFFERED BY MR. COOLEY

Page 3, beginning at line 20, strike "specified in or derived from" and insert "and uses specified or authorized in or derived from".

Page 16, line 9, insert after "problems" the following: "consistent with the purposes of each refuge comprising the planning unit".

Page 19, strike the close quotation marks and the second period at line 9, and after line 9 insert the following new subsection:

"(p) Contracts for leasing land authorized by Public Law 88-567 shall require that lessees comply with an integrated pest management (IPM) plan, as that term is de-

fined in the Settlement Agreement entered in the litigation entitled Northwest Coalition for Alternatives to Pesticides et al v. Babbitt, No. 94-6339-TC, United States District Court for the District of Oregon. Contracts for leasing such land shall not be subject to regulations or policies (including pesticide use proposals) related to the use of chemicals and pest management on lands in the System or lands administered by the Department of the Interior, that are more restrictive than the requirements of applicable State and Federal laws related to the use of chemicals and pest management practices on non-Federal lands.”.

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON AGRICULTURE,  
*Washington, DC, July 17, 1995.*

Hon. DON YOUNG,  
*Chairman, Committee on Resources, Longworth House Office Building, Washington, DC.*

DEAR MR. CHAIRMAN: Thank you for your letter regarding H.R. 1675, the National Wildlife Refuge Improvement Act of 1995.

I agree that the Committee on Agriculture has a jurisdictional interest in the amendment adopted by the Committee regarding the use of chemicals and other pesticide control measures on two National Wildlife Refuges located in Oregon and California. Knowing of your interest in moving H.R. 1675 to a vote before the House of Representatives as quickly as possible, I will agree to forego a sequential referral of the bill, but without prejudice to any similar provision which may be offered to other Resource Committee bills in the future. Also, should this legislation go to a House-Senate conference, the Committee on Agriculture reserves the right to request to be included as conferees on any provisions within this Committee's jurisdiction. I also ask that you include this response in your Committee report on the bill.

I look forward to working with you on this measure and congratulate you on your legislation.

Sincerely,

PAT ROBERTS, *Chairman.*

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