

NATIONAL WILDLIFE REFUGE SYSTEM IMPROVEMENT ACT
OF 1997

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the Union and ordered to be printed

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

REPORT

[To accompany H.R. 1420]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the bill (H.R. 1420) 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 without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

The purpose of H.R. 1420 is to amend the National Wildlife Refuge System 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 the only system of Federal lands acquired and managed for the conservation of fish, wildlife, plants, and their habitat. The System has evolved into the world's most comprehensive system of lands devoted to wildlife conservation and management. President Theodore Roosevelt established the first refuge in 1903 on Florida's tiny Pelican Island to protect brown pelicans as well as egrets and herons, which were being hunted commercially for their plumes for use in the fashion industry. At the time, President Roosevelt lacked clear legal authority to establish wildlife refuges. However, during his term of office, Congress affirmed that authority, and the President went on to establish an additional 50 refuges.

During the 1930s, the Refuge System grew substantially, largely in response to concerns by hunters over the loss of waterfowl caused by a variety of factors, including wetlands loss and drought. Today, the System, administered by the United States Fish and Wildlife Service (USFWS), has grown to 509 refuges in all 50 States, and waterfowl production areas in 10 States, totaling nearly 93 million acres. Refuges range in size from the less-than-one-acre Mille Lacs National Wildlife Refuge in Minnesota, to the 19.6-million-acre Arctic National Wildlife Refuge. Waterfowl Production Areas are scattered wetlands and potholes which are acquired, often by easement, as breeding habitat for migratory birds. There are nearly 2.4 million acres in this category, located almost entirely in the States of the Upper Midwest.

While the vast majority of refuges were established administratively by the Secretary of the Interior under a variety of authorities, including the Migratory Bird Conservation Act (16 U.S.C. 715 et seq.), the Emergency Wetlands Resources Act of 1986 (16 U.S.C. 3901 et seq.), the Endangered Species Act (16 U.S.C. 1531 et seq.), the North American Wetlands Conservation Act of 1989 (16 U.S.C. 4401 et seq.), the Refuge Recreation Act of 1962 (16 U.S.C. 460k et seq.), the Fish and Wildlife Act of 1956 (16 U.S.C. 742 et seq.), and the Migratory Bird Hunting and Conservation Stamp Tax Act (16 U.S.C. 718d (c)), over 40 refuges have been created by specific Acts of Congress. It is this variety that has led to inconsistency in the management of refuges within the System.

Until 1966, there was no single Federal law that governed the administration of the various wildlife refuges that had been established. In fact, not all were called wildlife refuges. Some were known as "game ranges", "wildlife ranges", "wildlife management areas", and "waterfowl protection areas". In 1966, under the leadership of Congressman John Dingell of Michigan, Congress enacted legislation that assembled these diverse areas into a unified "National Wildlife Refuge System". The System has been managed for the last 31 years pursuant to the National Wildlife Refuge System Administration Act of 1966 (NWRSA) and other authorities. This law gives guidance to the Secretary of the Interior in the overall management of the System, places restrictions on the transfer, exchange, and other disposal of lands, and clarifies the Secretary's authority to accept donations for land acquisition. Significantly, it authorizes the Secretary of the Interior to permit any "secondary" use or activity within a refuge (which can range from birdwatching and photography to fishing and hunting to farming and oil development) only if the Secretary determines the use to be compatible with the purposes for which the refuge was established.

The System has grown considerably since 1966. At that time, there were 300 refuges totaling 28 million acres, compared to more than 500 refuges totaling more than 92 million acres today. However, in addition to the increase in the size of the System during this period, both scientific understanding of wildlife conservation, management, endangered species conservation efforts, and demands for public recreational and economic use of refuges have substantially increased. As significant and forward-thinking as the NWRSA was in establishing the System and giving guidance for

its management, the problems of the System have outpaced the System's legislative authority.

The NWRSA does not establish a mission for the System or contain any planning requirements. Thus, unlike National Parks, National Forests and Bureau of Land Management lands, the National Wildlife Refuge System remains the only major Federal public lands system without a true "organic" act, a basic statute providing a mission for the System, policy direction, and management standards for all units of the System.

The National Wildlife Refuge System Improvement Act of 1997 amends and builds upon the NWRSA in a manner that provides an organic act for the System similar to those which exist for other public lands. Its principal focus is to establish clearly the conservation mission of the System, provide clear Congressional guidance to the Secretary for management of the System, provide a mechanism for unit-specific refuge planning, and give refuge managers clear direction and procedures for making determinations regarding wildlife conservation and public uses of the System and individual refuges.

Management of refuges

Currently, the law does not include a mission 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. Management of the Refuge System has been the focus of numerous studies in the last two decades, including two General Accounting Office reports, two reports of advisory boards to the Interior Department, a report prepared by the USFWS, and several hearings by the former Committee on Merchant Marine and Fisheries, which then had jurisdiction over the Refuge System. These reports and hearings highlighted that refuges have not always been managed as a national system because of the lack of an overall mission for the System. These reports concluded that the lack of an overall mission and management procedures had allowed numerous incompatible uses to be tolerated on wildlife refuges.

In 1992, several environmental groups sued the Secretary of the Interior for authorizing secondary uses on refuges without ensuring that these uses were compatible with those refuges. In October 1993, a settlement was reached in *National Audubon Society v. Babbitt*, in which USFWS agreed to expeditiously terminate secondary uses unless it determined in writing that the uses were compatible with the primary purposes of the refuge on which they occurred. In addition, the settlement agreement required the USFWS to determine whether funds were available for development and maintenance of recreational activities, consistent with the 1962 Refuge Recreation Act.

The USFWS reviewed over 5,200 uses on over 500 units of the System. Walking, hiking, and backpacking occurred on over 130 refuges; recreational fishing on over 200 refuges; and hunting programs—including big game and waterfowl hunting—at over 220. Various combinations of wildlife observation or photography, interpretation, and environmental education occurred on over 300. A variety of non-wildlife dependent activities occurred on over one hun-

dred refuges, and include power boating, jetskiing, horseback riding, and camping. As a result of the study, USFWS has resolved compatibility issues on 40 refuges. Unresolved issues at 36 refuges are pending completion of public notification and outreach, planning, Memoranda of Understanding with other agencies, or Department of Interior Solicitor opinions. There were no cases where hunting and fishing were found incompatible, but modifications to two were necessary to assure compatibility.

The Committee agrees with these findings. Further, the Committee also finds that this review demonstrates that traditional wildlife dependent recreation has been generally compatible and has a legitimate and valuable place on System lands.

H.R. 1420 establishes that the conservation of fish, wildlife, plants and their habitats is the mission of the National Wildlife Refuge System and sets forth the policy and procedures through which the System and individual refuges are to be managed in order to fulfill that mission for the long-term benefit of the American people. H.R. 1420 requires that public use of a refuge may be allowed only where the use is compatible with the mission of the System and purpose of the individual refuge, and sets forth a standard by which the Secretary shall determine whether such uses are compatible. It establishes as the policy of the United States that wildlife-dependent recreation, when it is compatible, is a legitimate and appropriate public use of the Refuge System, through which the American public can develop an appreciation for fish and wildlife. It establishes compatible wildlife-dependent recreational uses as the priority general public uses of the Refuge System. Finally, it also requires the Secretary to prepare a comprehensive conservation plan for each refuge and specifies the topics to be addressed and procedures for the adoption of such plans.

The Committee expects that this legislation will diminish the likelihood of future litigation by providing a statutory compatibility standard, a process for making those determinations, a clear conservation mission for the System, and a planning process that will ensure greater public involvement in management decisions on refuges.

Executive order

On March 25, 1996, President William J. Clinton issued Executive Order 12996, "Management and General Public Use of the National Wildlife Refuge System". In this Executive Order, the President declared that the "mission of the National Wildlife Refuge System is to preserve a national network of lands and waters for the conservation and management of fish, wildlife, and plant resources of the United States for the benefit of present and future generations". Furthermore, the President identified four guiding principles and issued ten directives to the Secretary of the Interior on how the System should be managed in the future. The Executive Order identified opportunities for compatible wildlife-dependent recreation, habitat protection, partnerships with sportsmen, other conservation interests, and public involvement as guiding principles of the Refuge System. In particular, the President identified "compatible wildlife-dependent recreation activities involving hunting, fishing, wildlife observation, and photography, and envi-

ronmental education and interpretation as *priority general public uses* of the Refuge System” [emphasis added].

COMMITTEE ACTION

H.R. 1420 was introduced on April 23, 1997, by Congressmen Don Young (R-AK), John Dingell (D-MI), Jim Saxton (R-NJ), John Tanner (D-TN), and Randy “Duke” Cunningham (R-CA). Congressmen George Miller (D-CA), Bob Clement (D-TN), and Neil Abercrombie (D-HI) have also cosponsored the bill. The bill, which was the product of extensive negotiations between the authors, the Department of the Interior, and representatives of conservation, environmental, hunting organizations, and State fish and wildlife agencies, was referred to the Committee on Resources.

On March 6, 1997, the Subcommittee on Fisheries Conservation, Wildlife and Oceans held a hearing on the predecessor to this legislation, H.R. 511. Testimony was heard from the Honorable John S. Tanner; the Honorable Bruce Babbitt, Secretary, Department of the Interior; Mr. William P. Horn, Director of National and International Affairs and Washington Counsel, Wildlife Legislative Fund of America; Mr. R. Max Peterson, Executive Vice President, International Association of Fish and Wildlife Agencies; Ms. Susan Lamson, Director of Conservation, Wildlife and Natural Resources Division, National Rifle Association; Mr. Gary Myers, Director, Tennessee Wildlife Resources Agency; Mr. Daniel Beard, Vice President, National Audubon Society; and Mr. Roger Schlickeisen, President, Defenders of Wildlife. The Subcommittee also received testimony from the Honorable John D. Dingell. In fact, in his submitted statement, Congressman Dingell, the author of the NWRSA, noted that, “First and foremost, any Refuge reform bill must protect each of our 509 Refuges and improve their management in a manner consistent with the purposes for which we have created these Refuges and the Refuge System”.

On April 30, 1997, the Full Committee on Resources met to consider H.R. 1420. There were no amendments and the Committee ordered the bill favorably reported to the House of Representatives by voice vote.

SECTION-BY-SECTION ANALYSIS

SECTION 1. SHORT TITLE; REFERENCES

The short title of the legislation is “The National Wildlife Refuge System Improvement Act of 1997”. When the bill makes amendments to existing law, it is amending the National Wildlife Refuge System Administration Act of 1966.

SECTION 2. FINDINGS

This Section includes a series of Congressional findings which recognize that the National Wildlife Refuge System is:

- comprised of 92 million acres of Federal lands incorporated within 509 individual units in all 50 States and territories;
- designed to conserve fish, wildlife, and plants and their habitats and that the mission of the System has been facilitated by

providing Americans opportunities to participate in compatible wildlife-dependent recreation;

pivotal in the conservation of migratory birds, anadromous and interjurisdictional fish, marine mammals, endangered and threatened species, and their habitats;

to assist in the fulfillment of international treaty obligations; given substantial financial support by those benefiting from and utilizing it;

available for the enjoyment of the American people when managed in accordance with the principles of sound fish and wildlife management and administration;

the focus of the President's Executive Order of March 15, 1996, that recognized "compatible wildlife-dependent recreational uses involving hunting, fishing, wildlife observation and photography, and environmental education and interpretation as priority public uses of the Refuge System";

and finds that fishing, hunting, wildlife observation and photography, and environmental education and interpretation in Refuges have been, and are expected to continue to be, generally compatible uses.

SECTION 3. DEFINITIONS

This Section amends Section 5 of the NWRSA to provide definitions for terms used in H.R. 1420. Several key definitions are discussed below.

New Section 5(1) defines the term "compatible use". The standard here is the same as the definition that the USFWS has used for over a decade. It specifies that these are uses that do not have a tangible adverse impact on Refuge System resources.

New Section 5(2) defines "wildlife-dependent recreation" and "wildlife-dependent recreational use" as a use involving hunting, fishing, wildlife observation and photography, or environmental education and interpretation.

New Section 5(3) defines the term "sound professional judgment" as the collection of findings, determinations and decisions that support compatibility determinations. Such determinations are inherently complex and will require the manager to consider principles of sound fish and wildlife management and administration, available science and resources, and compliance with applicable laws. Implicit within this definition is that financial resources, personnel and infrastructure be available to manage permitted activities. The Committee expects the USFWS to be energetic and creative in seeking such resources, including partnerships with the States, local communities and private and nonprofit groups. The Committee also expects the USFWS to make reasonable efforts to ensure that lack of funding is not an obstacle to permitting otherwise compatible wildlife-dependent recreational uses.

In the exercise of sound professional judgment, the refuge manager considers the biological resources and, based upon available science, whether they can sustain reasonable public use. The manager must then use principles of sound fish and wildlife management and administration in considering and designing a program of public use. The manager may need to balance between or among competing uses by moving uses in time and space to reduce or

eliminate conflict or, if absolutely necessary, disallow one or more uses. As discussed above, the manager must then determine if available resources (funding, personnel, facilities and other infrastructure) are adequate to support the proposed use in a manner that will not materially interfere with or detract from fulfillment of the System mission or refuge purpose.

The Committee is aware of concerns that the definition of sound professional judgment confers such a level of discretion that compatibility determinations might be held to be unreviewable as an agency action "committed to agency discretion by law" within the meaning of the Administrative Procedure Act (APA, 5 U.S.C. 701). Section 6 of H.R. 1420 provides detailed standards and procedures to be followed in making compatibility determinations and, thus, while discretion resides in refuge officials, there is clearly law to apply so as to permit judicial review if other conditions of reviewability under the APA are met.

New Section 5(4) defines the terms "conserving", "conservation", "manage", "managing", and "management" to mean sustaining and, where appropriate, restoring and enhancing healthy populations of fish, wildlife, and plants by utilizing methods and procedures associated with modern scientific resource programs. The Committee understands that the list of methods in this definition is not inclusive and that any or all of these methods may be inappropriate in certain situations. One of the listed methods and procedures, "regulated taking" encompasses management tools such as hunting, trapping and fishing.

New Section 5(5) defines the term "Coordination Area" to mean a wildlife management area which has been acquired by the Federal Government and was made available to a State through either a cooperative agreement between the USFWS and a State fish and wildlife agency pursuant to Section 4 of the Fish and Wildlife Coordination Act, or by long-term leases or agreements pursuant to the Bankhead-Jones Farm Tenant Act, a Depression-era Act designed to reclaim abandoned and eroded farmland.

Coordination Areas have been well managed by the States under State laws and regulations, in many cases for decades. However, they are part of the Refuge System. They are specifically excluded from the definition of the term "refuge" in new Section 5(11) so as not to require every State management decision to be approved by the USFWS through the processes established by H.R. 1420.

The definition is intended to apply to existing areas, as set forth in "Table 5" of the document "Annual Report of Lands under Control of the U.S. Fish and Wildlife Service", dated September 30, 1996, or any future areas which may be created by transfer of lands acquired by a Federal project to a State under Section 4 of the Fish and Wildlife Coordination Act. It is not intended to allow any present or future National Wildlife Refuges to be transferred to State control by their redesignation as a Coordination Area.

New Section 5(10) defines "purposes of the refuge" and "purposes of each refuge" as the purpose specified in or derived from the law or any of a number of specified documents which establish, authorize or expand a refuge. This includes acquisition purposes in cases where land at a refuge has been acquired under authority other than the establishing authority.

New Section 5(11) defines the term “refuge” as a designated area of land, water, or an interest in land or water within the System. The USFWS has consistently interpreted this language, used in Title 16 of the United States Code, to refer to lands, waters, or interests in land or waters owned by the United States. The Committee concurs that the language refers to property interests of the United States, including partial interests less than fee, such as easements.

New Section 5(15) defines the terms “take”, “taking”, or “taken” to mean to pursue, hunt, shoot, capture, collect, or kill, or to attempt such actions. This is similar to the definition of this term found in other Federal conservation laws.

SECTION 4. MISSION OF THE SYSTEM

Section 4 establishes an overall mission for the System. A common thread running through many of the hearings and reports on operation and management of the System referenced previously was that the National Wildlife Refuge System has been managed more as a collection of disparate units than as a true system. Until now, Congress has never set forth a mission for the Refuge System.

This sentiment was expressed nearly 30 years ago by the National Wildlife Refuge System Advisory Board on Wildlife Management appointed by Secretary of the Interior Stewart L. Udall. In 1968, the Advisory Board wrote, “What is still lacking is a clear statement of policy or philosophy as to what the National Wildlife Refuge System should be and what are the logical tenets of its future development.”

Section 4 of the legislation is designed to remedy this shortcoming by establishing an over-arching mission statement for the National Wildlife Refuge System to guide overall management of the System and to supplement the purposes for which individual refuges have been established.

The mission of the System is to “administer a national network of lands and waters for the conservation, management and, where appropriate, restoration of the fish, wildlife and plant resources and their habitats within the United States for the benefit of present and future generations of Americans”. National Wildlife Refuges are often important components of the ecosystems in which they are located and contribute significantly to the conservation of those ecosystems. Nonetheless, they cannot fulfill the mission set forth in this Section unless they are consistently directed and managed as a national system. This includes managing a series of refuges in a coordinated manner to meet the life-cycle needs of migrating species, providing habitat for threatened or endangered species, or representing the various habitats that provide for the conservation of the Nation’s wildlife resources.

Additionally, States have broad trustee responsibilities for fish and resident wildlife within their borders, and have statutory responsibility for the conservation of those resources. Accordingly, this Act elsewhere requires that, to the extent practicable, the USFWS should seek opportunities to coordinate the management of National Wildlife Refuges with the management of fish and wildlife resources generally by the State or States in which the refuges are

located. Such coordination will also help ensure that the System mission is broadly served.

SECTION 5. ADMINISTRATION OF THE SYSTEM

Section 5 amends the NWRSA to establish national policy in several areas relating to administration of the System. First, it is clearly stated that each refuge shall be managed to fulfill both the mission of the System and the individual refuge purposes. This policy serves to underscore that the fundamental mission of our Refuge System is wildlife conservation: wildlife and wildlife conservation must come first. As characterized in the Department of the Interior Leopold Report, the Refuge System should stand as a monument to the science and practice of wildlife management. This policy section further recognizes that wildlife-dependent recreational uses, when determined to be compatible, are appropriate and legitimate uses of the System. Because priority uses like hunting, fishing, wildlife observation and environmental education are dependent upon healthy wildlife populations, they are directly related to the mission of the System and the purposes of many refuges. If our refuges and the Refuge System are managed well, then these priority uses will, in turn, prosper into the future. Further, it is the policy of the United States that where a proposed wildlife-dependent use is determined to be compatible on an individual refuge, the activity should be facilitated.

The term "facilitated" was deliberately chosen to represent a strong sense of encouragement, but not a requirement, that ways be sought to permit wildlife-dependent uses to occur if they are compatible. As Secretary Babbitt stated during the negotiations leading to H.R. 1420: "The law will be whispering in the manager's ear that she or he should look for ways to permit the use if the compatibility requirement can be met." By the same token, however, the Committee recognizes that there will be occasions when, based on sound professional judgment, the manager will determine that such uses will be found to be incompatible and cannot be authorized.

For example, consider a hypothetical situation wherein a manager determines that a bird-watching program could be conducted in accordance with principles of sound fish and wildlife management and administration, but that the program is incompatible because adequate financial resources are not available to design, operate, and maintain the use so as to prevent trespassing on sensitive nesting areas and adjacent private lands. It is the Committee's expectation in this case that the manager would take reasonable steps to obtain outside assistance from States and other conservation interests before determining that the activity is incompatible.

Another example might be the situation which occurs at Blackwater National Wildlife Refuge in Maryland. This refuge is managed, in support of broad regional conservation goals, as a non-hunted resting and feeding grounds for migratory birds. The refuge is surrounded by private and other public lands that are extensively hunted within the region. To manage this refuge to allow waterfowl hunting may be inconsistent with principles of sound

fish and wildlife management and, in such circumstances, may not be permitted.

Section 5 also provides a set of affirmative stewardship responsibilities for the Secretary with respect to the Refuge System. It requires the Secretary to ensure that the mission of the System and the purposes of the individual refuges are carried out, to ensure that opportunities are provided for the compatible priority public uses identified above, and that such uses receive enhanced consideration over other uses in planning and management. It also requires the Secretary to provide enhanced opportunities for families to experience compatible wildlife-dependent recreation, and to protect the System and individual refuges from threats to their biological integrity, diversity and environmental health.

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; assist in maintaining adequate quantity and quality of water supplies to support the System mission and refuge purposes; and plan the expansion of the Refuge System in a manner which accomplishes the goals of the System and complements the efforts of other State and Federal conservation efforts.

New paragraph (4)(F) of Section 4(a) of the NWRSA directs the Secretary to assist in the maintenance of adequate quantities and quality of water to fulfill the mission of the System and the needs of each refuge. In doing so, the provision imposes a new, more specific, obligation on the Secretary. It does not, however, expand or diminish existing authority with respect to water or water rights. Therefore, in meeting the obligation imposed by new paragraph (4)(F), the Secretary must rely on existing authority, such as the authority to: acquire water rights with appropriated funds; improve the operations of Federal agencies with respect to the identification and protection of relevant water rights; purchase water; and participate in State water rights adjudications to perfect and defend relevant water rights.

New paragraph (4)(L) provides that the Secretary shall continue, consistent with existing laws and interagency agreements, authorized or permitted uses of refuges by other Federal agencies. The term "existing laws and interagency agreements" means applicable laws in force at any given time and agreements consistent with those laws. It does not grant permanence to all agreements existing as of enactment. Virtually all such agreements were either entered into based on specific provisions of other laws, or were made by the USFWS under the authority of the NWRSA after a determination of compatibility. Inasmuch as this Act codifies the current agency standard for compatibility, there should be few, if any, changes to current agency uses of Refuge System lands resulting from enactment of this provision.

Section 5(b) of H.R. 1420 also authorizes the Secretary to enter into cooperative agreements with State fish and wildlife agencies for the management of programs on a refuge, subject to standards established by, and the overall management oversight of, the USFWS. On some existing refuges, State agencies cooperate with the USFWS by participating in the management of specific programs, such as hunting law enforcement or other public use-related

activities. States also manage habitat on parts of individual refuges, particularly in cases where refuge lands are adjacent to or surrounded by State lands. In all these situations, the USFWS retains management oversight and is ultimately responsible to ensure that allowed uses remain compatible and that habitat is managed consistently with the purposes for which the refuges were established.

SECTION 6. COMPATIBILITY STANDARDS AND PROCEDURES

Section 6 provides the standards and procedures for determining the compatibility of uses of a refuge with the purposes of the refuge and the mission of the System. This Section provides for regulations governing compatibility determinations and requires that the Secretary issue final regulations pursuant to the new requirements within two years of H.R. 1420's enactment. After that time, all new uses of a refuge and all expansions, renewals, and extensions of existing uses must be determined to be compatible pursuant to these regulations. Compatibility determinations can be made concurrently with the development of the refuge comprehensive conservation plan. Compatibility determinations must be made in writing, and must identify the anticipated effects of the proposed use on refuge resources. Provision is made for expedited consideration of uses likely to have no detrimental effect. Incompatible uses are to be eliminated or modified as expeditiously as possible. Uses are to be reevaluated when significant changes in conditions occur or significant new information exists and at least every 10 years for non-wildlife-dependent uses and at least once every 15 years for wildlife-dependent uses.

Opportunity for public review and comment on individual compatibility determinations must be provided, unless such opportunities were adequately provided for during public involvement associated with the development or revision of a refuge conservation plan.

Compatibility does not apply to overflights within the airspace of a refuge, nor to the actions of Federal agencies other than USFWS, which have primary jurisdiction over refuge lands, when those activities are provided for in the agreement which established the refuge. This later provision recognizes that the System includes many "overlay" refuges, over which an agency other than the USFWS holds primary jurisdiction.

Since the 1966 Act, the Secretary has been required, before permitting any use of a refuge, to determine that such use is compatible with the purposes for which the refuge was established. However, hearings on related legislation in recent years have made it clear that this requirement was often not consistently or rigorously applied. The Committee has heard concerns from a number of witnesses in recent years that a major reason for this problem was the lack of a clear standard or formal process to evaluate compatibility.

Section 6 of H.R. 1420 addresses this problem by requiring formal written determinations of compatibility. This Section is designed to increase the opportunity for public review and comment regarding compatibility determinations. The Section requires the Secretary of the Interior to promulgate regulations to govern determinations of compatibility. The Secretary is prohibited from allow-

ing a new use or expanding, renewing or extending an existing use unless the Secretary makes an affirmative finding that the use is compatible.

As mentioned earlier in this report, USFWS three years ago completed a comprehensive review of uses on the System. This thorough review identified relatively few problems and affirmed that the overwhelming number of existing uses of refuge lands are compatible. These compatibility determinations are expressly recognized and shall be relied upon until or unless modified by the USFWS. This recognition of the USFWS's existing work product can help to avoid costly duplication of effort and facilitate expeditious compliance with the new requirement.

The Secretary is not required to independently generate data on which to base compatibility determinations. The Committee intends that for new compatibility determinations, the USFWS shall consider any existing information and data generated by the State agency possessing primary authority for fish and wildlife, or any other State or Federal agency or any other source of relevant data.

Section 6 also codifies agency action to remedy a problem which previously accompanied refuge land acquisition. Until last year, USFWS policy provided that new refuge lands (with the exception of Waterfowl Production Areas) were closed to all uses until decisions were made to open them. This meant that all preexisting uses were terminated upon acquisition. In practice, the reopening of these lands many times did not occur until refuge management planning was completed, sometimes years after acquisition.

New paragraph (3)(A)(ii) of NWRSA Section 4(d) will address this concern by stipulating that on lands added to the System after March 25, 1996, the Secretary shall identify, prior to acquisition, withdrawal, transfer, reclassification, or donation of any such lands, existing compatible wildlife-dependent uses that the Secretary determines shall be permitted to continue on an interim basis pending completion of a comprehensive conservation plan for the refuge. The Committee believes that this new policy will help to restore the public's confidence in the land acquisition process and will lead to a smoother process of acquiring additional acreage for the System in the future.

New paragraph (3)(A)(iii) clarifies a provision of the Refuge Recreation Act of 1962 that requires that before any recreational use that is not directly related to the primary purposes and functions of the refuge is permitted, the Secretary make a finding that funds are available to administer and manage the use. In the future, no such determination is required to be made for wildlife-dependent recreational uses. However, this does not mean that limited financial and personnel resources must be directed toward maintenance or enhancement of these activities. As noted previously, one element of "sound professional judgment" which must be exercised in making a compatibility determination is the availability of resources. This facet of sound professional judgment is intended to allow the manager to consider whether adequate financial, personnel, law enforcement, and infrastructure exists or can be provided in some manner by the USFWS or its partners to properly manage a public use.

New paragraph (3)(B)(v) requires the Secretary, in the new regulations, to develop a process for expeditious consideration of uses that are likely to be compatible. This paragraph is intended to reduce the administrative burden on the refuge manager for those uses that are likely to be found to be compatible, such as many instances of wildlife-dependent recreation or the routine maintenance of certain types of existing facilities such as power lines. There are numerous existing rights-of-way on National Wildlife Refuge System lands for roads, oil and gas pipelines, electrical transmission, communication facilities, and other utilities. The Committee does not intend for this Act to in any way change, restrict, or eliminate these existing rights-of-way, whether established by easement or permit, or to grant the USFWS any authority that does not already exist to do so. The Secretary need not seek public comment for each expedited determination under this provision if an adequate opportunity for public comment had been provided on the specific use previously, or on a use that may be subject to this provision during the planning process and the required reevaluations. However, prior to each such determination, public notice must be given and the written determination must be subject to public inspection.

Pursuant to Section 4(d) of the NWRSA, a determination of compatibility must be made by the USFWS prior to permitting an activity to occur, but a determination of compatibility does not require that a particular proposed use be permitted. This legislation does not change that provision. Determinations on whether to allow otherwise compatible uses are based on System mission, policy, refuge purposes, availability of resources to manage the use, possible conflicts with other uses, public safety, and other administrative factors. If a refuge manager has other valid reasons for not permitting a use on the refuge, a determination of compatibility does not require the use to be allowed. As referenced earlier, the manager should "facilitate" wildlife-dependent recreational uses which have been determined to be compatible.

New paragraph (3)(A)(iv) provides that all compatibility determinations in effect on the date of enactment of this Act shall remain in effect until and unless modified. Inasmuch as the current NWRSA requirement that all uses be compatible is not revised by H.R. 1420, any decisions on uses during the period between enactment of H.R. 1420 and the implementation of the new regulations would be made under the existing standards and process.

SECTION 7. 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 at least every 15 years. Units are to be managed under existing plans until new plans are written. Activities consistent with H.R. 1420 and, until new regulations are issued, those found compatible under current procedures, may be allowed 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.

This Section requires the development of comprehensive conservation plans for each refuge or related complex of refuges. The National Park Service, U.S. Forest Service, and Bureau of Land Management conduct comprehensive planning of their lands pursuant to the organic legislation governing those agencies. The USFWS has prepared both System plans and individual refuge plans in the past, but the effort has been largely sporadic.

Many individual refuges have developed comprehensive refuge plans, either pursuant to the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 et seq.), an agency directive, or by statute. This Section requires the development of conservation plans for all refuges and related complexes of refuges within 15 years of enactment of H.R. 1420 and every 15 years thereafter.

In developing a schedule for preparing or revising individual refuge plans, the USFWS should defer until the end of the planning cycle plans for refuges which have recently completed comprehensive planning efforts, unless conservation or management needs require expedited action.

SECTION 8. EMERGENCY POWER; PRESIDENTIAL EXEMPTION: STATE AUTHORITY; WATER RIGHTS; COORDINATION

This Section allows the Secretary to temporarily suspend, allow or initiate any activity in a refuge if the Secretary determines it is necessary to protect the health and safety of the public or any fish and wildlife populations, and includes three saving clauses providing that H.R. 1420:

does not expand or diminish the Secretary's authority to regulate hunting or fishing on lands or waters not within the System;

does not expand or diminish the authority, jurisdiction or responsibility of States to manage, control or regulate fish and resident wildlife under State law or regulations within the Refuge System;

does not create a reserved water right for the United States, affect any water right, affect any Federal or State law regarding water quality or water quantity in existence on the date of enactment nor does it affect the ability to join the United States in the adjudication of rights to the use of water pursuant to the McCarran Act.

Finally, Section 8 provides that consultation with State agency personnel pursuant to H.R. 1420 is not subject to the Federal Advisory Committee Act.

SECTION 9. STATUTORY CONSTRUCTION

Section 9 provides a saving clause to maintain the status quo for the protection of subsistence uses in Alaska, as set forth in the Alaska National Interest Lands Conservation Act (ANILCA), and for the provisions of ANILCA generally.

The saving clause in H.R. 1420 is designed to ensure that these provisions are not altered in any manner by clarifying Congressional intent that the bill should not have any effect on subsistence rights in Alaska. If any conflict arises between any provision of H.R. 1420 and any provision of ANILCA, then the provision in ANILCA shall prevail.

The Committee does not intend H.R. 1420 to be used to support any claims raised in Federal or State court on subsistence issues.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

With respect to the requirements of clause 2(1)(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.

CONSTITUTIONAL AUTHORITY STATEMENT

Article IV, Section 3, of the Constitution of the United States grants Congress the authority to enact H.R. 1420.

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. 1420. 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(1)(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. 1420 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(1)(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. 1420.

3. With respect to the requirement of clause 2(1)(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. 1420 from the Director of the Congressional Budget Office.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

U.S. CONGRESS,
 CONGRESSIONAL BUDGET OFFICE,
 Washington, DC, May 9, 1997.

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

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1420, the National Wildlife Refuge System Improvement Act of 1997.

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

Sincerely,

JUNE E. O'NEILL, *Director*.

Enclosure.

H.R. 1420—NATIONAL WILDLIFE REFUGE SYSTEM IMPROVEMENT
 ACT OF 1997

CBO estimates that implementing H.R. 1420 would have no effect on the federal budget because the government is already carrying out activities similar to those mandated by the bill. The bill would not affect direct spending or receipts; therefore pay-as-you-go procedures would not apply. H.R. 1420 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act of 1995 and would impose no costs on state, local, or tribal governments.

H.R. 1420 would amend the National Wildlife Refuge System Administration Act of 1966. In addition to creating a mission for the National Wildlife Refuge System (NWRS), the bill also would codify Executive Order 12996, recognizing compatible wildlife-dependent recreation as an appropriate general public use of system lands. The bill defines the term "wildlife-dependent recreation" to mean hunting, fishing, wildlife observation, and similar uses and gives such activities priority consideration in refuge planning and management. Finally, H.R. 1420 would require the U.S. Fish and Wildlife Service (USFWS) to promulgate comprehensive conservation plans for each refuge or refuge complex (referred to in the bill as "planning units") within 15 years of the bill's enactment. Such plans would be revised every 15 years.

Enactment of this bill would not affect the federal budget because the USFWS is already in the process of preparing comprehensive plans for the more than 250 planning areas of the NWRS. For fiscal year 1997, about \$2.6 million was appropriated for this purpose, an annual funding level sufficient to enable the agency to prepare and revise all plans within 15 years or less. The President's 1998 budget request for comprehensive planning is nearly \$4.6 million. The requested funding increase of about \$2 million would allow the USFWS to accelerate the planning process, so that all plans could be completed by 2006 if annual funding is provided at the higher level. This estimate is based on information provided by the USFWS.

The CBO contact for this estimate is Deborah Reis. The estimate was approved by Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

COMPLIANCE WITH PUBLIC LAW 104-4

H.R. 1420 contains no unfunded mandates.

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):

**NATIONAL WILDLIFE REFUGE SYSTEM
ADMINISTRATION ACT OF 1966**

* * * * *

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

(3) *With respect to the System, it is the policy of the United States of America that—*

(A) *each refuge shall be managed to fulfill the mission of the System, as well as the specific purposes for which that refuge was established;*

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

(C) compatible wildlife-dependent recreational uses are the priority general public uses of the System and shall receive priority consideration in refuge planning and management;

(D) when the Secretary determines that a proposed wildlife-dependent recreational use is a compatible use within a refuge, that activity should be facilitated, subject to such restrictions or regulations as may be necessary, reasonable and appropriate.

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

(A) provide for the conservation of fish, wildlife, and plants, and their habitats within the System;

(B) ensure that the biological integrity, diversity, and environmental health of the System are maintained for the benefit of present and future generations of Americans;

(C) plan and direct the continued growth of the System in a manner that is best designed to accomplish the mission of the System, to contribute to the conservation of the ecosystems of the United States, to complement efforts of States and other Federal agencies to conserve fish and wildlife and their habitats and to increase support for the System and participation from conservation partners and the public;

(D) ensure that the mission of the System described in paragraph (2) and the purposes of each refuge are carried out, except that if a conflict exists between the purposes of a refuge and the mission 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 mission of the System;

(E) 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;

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

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

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

(I) ensure that opportunities are provided for compatible wildlife-dependent recreational activities within the System;

(J) ensure that priority general public uses receive enhanced consideration over other general public uses in planning and management within the System;

(K) provide increased opportunities for families to experience compatible wildlife-dependent recreation, particularly opportunities for parents and their children to safely engage in traditional outdoor activities, such as fishing and hunting;

(L) continue, consistent with existing laws and interagency agreements, authorized or permitted uses of units of the System by other Federal agencies, including those necessary to facilitate military preparedness;

(M) ensure timely and effective cooperation and collaboration with Federal agencies and State fish and wildlife agencies during the course of acquiring and managing refuges.

[(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, and consistent with standards established by this Act, enter into cooperative agreements with State fish and wildlife agencies for the management of programs on 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) * * *

(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 (iv), 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 a compatible use and that the use is not inconsistent with public safety. The Secretary may make the determinations referred to in this paragraph for a refuge concurrently with development of a conservation plan under subsection (e).*

(ii) *On lands added to the System after March 25, 1996, the Secretary shall identify, prior to acquisition, withdrawal, transfer, reclassification, or donation of any such lands, existing compatible wildlife-dependent uses that the Secretary determines shall be permitted to continue on an interim basis pending completion of the comprehensive conservation plan for the refuge.*

(iii) *Wildlife-dependent recreational uses may be authorized on a refuge when they are compatible and not inconsistent with public safety. Except for consideration of consistency with State laws and regulations as provided for in subsection (m), no other determinations or findings are required to be made by the refuge official under this Act or the Refuge Recreation Act for wildlife-dependent recreation to occur.*

(iv) *Compatibility determinations in existence on the date of enactment of this Act shall remain in effect until and unless modified.*

(B) *Not later than 24 months after the date of the enactment of the National Wildlife Refuge System Improvement Act of 1997, the Secretary shall issue final regulations establishing the process for determining under subparagraph (A) whether a use of a refuge is a compatible use. These regulations shall—*

(i) *designate the refuge official 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;*

(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 mission of the System;*

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

(vii) require, after an opportunity for public comment, re-evaluation 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 10 years, to ensure that the use remains a compatible use;

(viii) require, after an opportunity for public comment, re-evaluation of each compatible 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; and

(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 wildlife-dependent recreational uses.

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

(A) overflights above a refuge; 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.

(5) Overflights above a refuge may be governed by any memorandum of understanding entered into by the Secretary that applies to 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 System Improvement Act of 1997.

(C) The Secretary shall manage each refuge or planning unit under plans in effect on the date of enactment of the National Wildlife Refuge System Improvement Act of 1997, 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;

(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; and

(F) opportunities for compatible wildlife-dependent recreation.

(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 par-

ties, 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 if the Secretary determines it is necessary to protect 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 System Improvement Act of 1997; or

(C) affect any Federal or State law in existence on the date of the enactment of the National Wildlife Refuge System Improvement Act of 1997 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 (5 U.S.C. App.).

【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 Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, and Guam.】

SEC. 5. DEFINITIONS.

For purposes of this Act:

(1) The term “compatible use” means a use that, in the sound professional judgment of the Director, will not materially interfere with or detract from the fulfillment of the mission of the System or the purposes of a refuge.

(2) The terms “wildlife-dependent recreation” and “wildlife-dependent recreational use” mean a use of a refuge involving hunting, fishing, wildlife observation and photography, or environmental education and interpretation.

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

(4) The terms “conserving”, “conservation”, “manage”, “managing”, and “management”, mean to sustain and, where appropriate, restore and enhance, healthy populations of fish, wildlife, and plants utilizing, in accordance with applicable Federal and State laws, methods and procedures associated with modern scientific resource programs. Such methods and procedures include, consistent with the provisions of this Act, protection, research, census, law enforcement, habitat management, propagation, live trapping and transplantation, and regulated taking.

(5) The term “Coordination Area” means a wildlife management area that is made available to a State—

(A) by cooperative agreement between the United States Fish and Wildlife Service and the State fish and game agency pursuant to section 4 of the Fish and Wildlife Coordination Act (16 U.S.C. 664); or

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

(6) The term “Director” means the Director of the United States Fish and Wildlife Service or his designee.

(7) 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.

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

(9) 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.

(10) The terms “purposes of the refuge” and “purposes of each refuge” mean the purposes specified 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.

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

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

(13) 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.

(14) The term “System” means the National Wildlife Refuge System designated under section 4(a)(1).

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

* * * * *