

NATIONAL WILDLIFE REFUGE REVIEW ACT OF 2013

SEPTEMBER 20, 2013.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. HASTINGS of Washington, from the Committee on Natural Resources, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 638]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 638) to amend the National Wildlife Refuge System Administration Act of 1966 to require that any new national wildlife refuge may not be established except as expressly authorized by statute, 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. 638 is to amend the National Wildlife Refuge System Administration Act of 1966 to require that any new national wildlife refuge may not be established except as expressly authorized by statute.

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, and on which compatible recreation is allowed. The U. S. Fish and Wildlife Service (FWS) manages the System in accordance with the National Wildlife Refuge System Administration Act of 1966. This law was amended and updated by the National Wildlife Refuge Improvement Act of 1997. The statutory 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.” Recreational and other uses of System lands are permitted if those uses are compatible with the mission of the System and the purposes for which the refuge was established. In fact, more than 47 million people visited one or more refuges in 2012.

The System is comprised of 150 million acres of land and waters, including 54 million acres of submerged lands in four marine national monuments. There are 561 refuges and 38 wetland management districts, which provide habitat for hundreds of fish and wildlife species. Refuges are located in all 50 States and five U.S. territories and range in size from the less than one-acre Mille Lacs National Wildlife Refuge in Minnesota, to the 19-million acre Yukon Delta Refuge in Alaska. The first wildlife refuge was established by President Theodore Roosevelt at Pelican Island, Florida, in 1903.

The current maintenance backlog for the Refuge System, which is recorded within the FWS’s Service Asset and Maintenance Management System (SAMMS), now stands at \$2.3 billion. There are 3,342 projects worth \$1 billion that are considered “mission critical” to the Refuge System. According to FWS, the term “mission critical” refers to the highest priority projects from the Refuge Operations Needs System. The Refuge Operation Need System (RONS) is a database for the operation of the National Wildlife Refuge System which includes a comprehensive inventory of projects needed to enable the System to carry out its mission. According to FWS, the current operations backlog is \$676.9 million. Together, the maintenance and operations backlog facing the National Wildlife Refuge System is approximately \$3 billion.

Under current law, FWS can administratively establish, without any input from local communities, officials, states, or Congress, a wildlife refuge regardless of its size and potential costs to taxpayers. During the past ten years, FWS has administratively created 19 new wildlife refuges, which will ultimately cost billions of dollars and add millions of acres of private property to the federal land inventory. Two of the best examples of this policy are FWS’s decision to administratively establish a 1-million acre refuge in the Flint Hills Legacy Conservation Area in Kansas and the 150,000-acre Everglades Headwater National Wildlife Refuge in Central Florida. The estimated cost of these two wildlife refuges alone is more than \$1 billion. Since 1903, 505 refuges were administratively created and 56 units were established through an Act of Congress.

Since the Congress must decide whether to appropriate money to complete the land acquisition process for these new refuges, Congress should review the merits of each project before FWS commits the taxpayers of this nation to these future expenditures. By contrast, no Administration can administratively create or expand a national park, a wilderness area, a national forest, a wild and scenic river, a national heritage area, a National Scenic and Historic Trail, a National Conservation Area, or establish or modify a unit of the Coastal Barrier Resources System without an authorization from Congress. Ironically, if FWS wants to remove property from the National Wildlife Refuge System, then an act of Congress is required.

Based on an analysis by the Congressional Research Service, there has been no legislation considered during the past 30 years that would diminish Congress' responsibility to establish, expand or reduce the size of the other federal land management units under the jurisdiction of the Bureau of Land Management, National Park Service or U.S. Forest Service. In fact, each Congress, the House Committee on Natural Resources considers dozens of bills to study the feasibility of, to establish or expand a national park and whether to add or delete land from a national forest, wilderness area, national heritage area and other federal land management units under the jurisdiction of the Department of the Interior. There is nothing unique about creating a new national wildlife refuge, and Congress should exert its oversight responsibility before and not after a national wildlife refuge is established.

The fundamental purpose of this measure is to require that any new national wildlife refuge established after January 3, 2013, must be authorized by Congress. This legislation does not affect any of the 561 refuges that have already been established nor does it prevent FWS from expanding an existing unit.

COMMITTEE ACTION

H.R. 638 was introduced on February 13, 2013, by Congressman John Fleming (R-LA). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on Fisheries, Wildlife, Oceans and Insular Affairs. On April 25, 2013, the Subcommittee held a hearing on the bill. On July 24, 2013, the full Natural Resources Committee met to consider the bill. The Subcommittee on Fisheries, Wildlife, Oceans and Insular Affairs was discharged by unanimous consent. No amendments were offered, and the bill was adopted and ordered favorably reported to the House of Representatives by a roll call vote of 22 to 12, as follows:

Committee on Natural Resources

U.S. House of Representatives

113th Congress

Date: July 24, 2013

Recorded Vote #: 1

Meeting on / Amendment on: H.R. 638 - To adopt and favorably report the bill to the House, Agreed to by a vote of 22 yeas and 12 nays

MEMBERS	Yes	No	Pres	MEMBERS	Yes	No	Pres
Mr. Hastings, WA, Chairman	X			Mr. Duncan of SC	X		
<i>Mr. Defazio, OR, Ranking</i>		X		<i>Mr. Cardenas, CA</i>			
Mr. Young, AK	X			Mr. Tipton, CO	X		
<i>Mr. Faleomavaega, AS</i>				<i>Mr. Horsford, NV</i>			
Mr. Gohmert, TX				Mr. Gosar, AZ	X		
<i>Mr. Pallone, NJ</i>				<i>Mr. Huffman, CA</i>		X	
Mr. Bishop, UT	X			Mr. Labrador, ID			
<i>Mrs. Napolitano, CA</i>		X		<i>Mr. Ruiz, CA</i>		X	
Mr. Lamborn, CO	X			Mr. Southerland, FL	X		
<i>Mr. Holt, NJ</i>				<i>Ms. Shea-Porter, NH</i>			
Mr. Wittman, VA	X			Mr. Flores, TX	X		
<i>Mr. Grijalva, AZ</i>		X		<i>Mr. Lowenthal, CA</i>		X	
Mr. Broun, GA	X			Mr. Runyan, NJ	X		
<i>Ms. Bordallo, GU</i>		X		<i>Mr. Garcia, FL</i>		X	
Mr. Fleming, LA	X			Mr. Amodei, NV	X		
<i>Mr. Costa, CA</i>				<i>Mr. Cartwright, PA</i>		X	
Mr. McClintock, CA	X			Mr. Mullin, OK	X		
<i>Mr. Sablan, CNMI</i>				Mr. Stewart, UT	X		
Mr. Thompson, PA	X			Mr. Daines, MT			
<i>Ms. Tsongas, MA</i>		X		Mr. Cramer, ND			
Ms. Lummis, WY	X			Mr. LaMalfa, CA	X		
<i>Mr. Pierluisi, PR</i>		X		Mr. Smith, MO	X		
Mr. Benishek, MI	X			<i>Vacancy</i>			
<i>Ms. Hanabusa, HI</i>		X					
				TOTALS	22	12	

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

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

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(2)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

H.R. 638—National Wildlife Refuge Review Act of 2013

H.R. 638 would prohibit the Secretary of the Interior from establishing new national wildlife refuges unless those refuges are expressly authorized by law. Based on information provided by the U.S. Fish and Wildlife Service (USFWS), CBO estimates that implementing the bill would have no impact on the federal budget. Enacting the legislation would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

Under current law, USFWS has the authority to identify potential sites, perform environmental assessments, and establish boundaries for new national wildlife refuges. The agency can formally establish new refuges by acquiring lands within the proposed boundaries. Under the bill, USFWS could only establish new national wildlife refuges if those refuges are expressly authorized by law. CBO expects that any appropriated funds that would have been spent to acquire lands to establish new refuges under current law would be spent to acquire lands within existing refuges under the bill; therefore, we estimate that implementing the bill would have no impact on discretionary spending.

In addition, USFWS has the authority, under current law, to spend a portion of the proceeds from the sale of duck stamps, without further appropriation, to acquire lands within the national wildlife refuge system. The agency can use those funds to purchase lands to formally establish new wildlife refuges. Under the bill, proceeds from the sale of duck stamps could not be used for that purpose. CBO expects that any such funds that would have been spent to acquire lands to establish new refuges under current law also would be spent by USFWS to acquire lands within existing refuges under the bill; therefore, we estimate that enacting H.R. 638 would not affect direct spending.

H.R. 638 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

The CBO staff contact for this estimate is Jeff LaFave. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

2. Section 308(a) of Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures. Based on information provided by the U.S. Fish and Wildlife Service, CBO estimates that implementing the bill would have no impact on the federal budget.

3. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to amend the National Wildlife Refuge System Administration Act of 1966 to require that any new national wildlife refuge may not be established except as expressly authorized by statute.

EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

COMPLIANCE WITH H. RES. 5

Directed Rule Making. The Chairman does not believe that this bill directs any executive branch official to conduct any specific rule-making proceedings.

Duplication of Existing Programs. This bill does not establish or reauthorize a program of the federal government known to be duplicative of another program. Such program was not included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139 or identified in the most recent Catalog of Federal Domestic Assistance published pursuant to the Federal Program Information Act (Public Law 95-220, as amended by Public Law 98-169) as relating to other programs.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

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

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) 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 (new matter is printed in *italic* and 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 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 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; and

(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 within the System for compatible wildlife-dependent recreational uses;

(J) ensure that priority general public uses of the System 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; and

(N) monitor the status and trends of fish, wildlife, and plants in each refuge.

(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 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.

(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 (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.

(6) *The Secretary may not establish any national wildlife refuge except as expressly authorized by a law enacted after January 3, 2013.*

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

(1) 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) Accept donations of funds and to use such funds to acquire or manage lands or interests therein.

(3) 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, to enter into cooperative agreements with State fish and wildlife agencies for the management of programs on a refuge.

(5) Issue regulations to carry out this Act.

(c) No person shall 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.

(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 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 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 recreational 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 the National Wildlife Refuge System Improvement Act of 1997 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, reevaluation of each existing use, other than those uses specified in clause (viii), if conditions under which the use is permitted change significantly or if 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, except that, in the case of any use authorized for a period longer than 10 years (such as an electric utility right-of-way), the reevaluation required by this clause shall examine compliance with the terms and conditions of the authorization, not examine the authorization itself;

(viii) require, after an opportunity for public comment, reevaluation of each compatible wildlife-dependent recreational use when conditions under which the use is permitted change significantly or if 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, whichever is earlier; 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 a refuge or a portion of a 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 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 recreational uses.

(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 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, owners of adjacent or potentially affected land, local governments, and any

other affected persons, and 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.

(f) PENALTIES.—

(1) KNOWING VIOLATIONS.—Any person who knowingly 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.

(2) OTHER VIOLATIONS.—Any person who otherwise violates or fails to comply with any of the provisions of this Act (including a regulation issued under this Act) shall be fined under title 18, United States Code, or imprisoned not more than 180 days, or both.

(g) Any person authorized by the Secretary 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.

(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.

(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 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.

(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 that are 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, and 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.).

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DISSENTING VIEWS

H.R. 638 passed out of committee without a single Democratic Member voting for its passage. This bill would harm the environment and limit opportunities for hunting, fishing, and other outdoor recreation. Further, H.R. 638 would ensure that the creation of any new National Wildlife Refuge would be based on politics, not science. For these reasons, we oppose this legislation.

The National Wildlife Refuge System is the world's most comprehensive network of land and water devoted solely to wildlife conservation and management. The System, operated by the U.S. Fish and Wildlife Service (FWS), contains 561 Refuges and 38 Wetland Management Districts covering more than 150 million acres of land and water throughout the United States and its territories and an additional 214 million acres encompassed by the four Pacific National Marine Monuments. The Refuge System provides hunting, fishing, and wildlife watching opportunities for about 44 million visitors each year. The most recent data from the U.S. Fish and Wildlife Service estimated that the Refuge System generates \$1.7 billion in annual sales for local communities, creating nearly 27,000 U.S. jobs and \$543 million in employment income, and contributing more than \$185 million in tax revenue. Every dollar invested in the Refuge System by the federal government returns an average of \$4 to local communities.

Republican President Theodore Roosevelt created the first National Wildlife Refuge in 1903. In 1966, Congress passed the National Wildlife Refuge System Administration Act, which formally established a unified system of National Wildlife Refuges. Subsequently, Congress passed the National Wildlife Refuge System Administration Improvement Act of 1997 to provide a unifying mission for the Refuge System to manage it first and foremost as "*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.*" The Improvement Act designated six priority wildlife-dependent recreational uses: hunting, fishing, wildlife observation, photography, environmental education, and interpretation. The House passed the Improvement Act by a vote of 407 to 1.

In essence, the National Wildlife Refuge System is a bank of natural capital for the American people. The more principal we have in this bank, the more interest we all accrue. That means more outdoor recreation opportunities, more resilience to climate change and natural disasters, and more potential for discovery of natural products and processes that can aid agriculture, improve industry, and cure disease. Unfortunately, H.R. 638 would make it more difficult for us to add natural capital to this bank. By amending the Refuge System Administration Act to prohibit the Secretary of the

Interior from establishing any National Wildlife Refuge except those selected by Congress, this legislation would eliminate the authority to add to the Refuge System that the Executive Branch has had since the Presidency of Teddy Roosevelt. Removing the ability of FWS to prioritize conservation based on science and a well-established public input process would severely retard our progress toward conserving our limited store of biodiversity and wildlife habitat for the benefit of future generations of Americans. Not surprisingly, the Obama Administration opposed the bill during subcommittee consideration on April 25, 2013.

Allowing FWS to establish new Refuges without waiting for additional, project-specific legislative authority is critical to allow responsive and adaptive action to protect ecologically significant systems as new threats from encroaching development or changing environmental conditions arise. Only about 60 units have been created, in part or whole, by special legislation. Contrary to the claims of the majority that National Wildlife Refuges are created on a whim with little opportunity for public input, establishing a Refuge administratively requires exhaustive scientific and economic analysis, a formal public comment period, and buy-in from surrounding communities and affected landowners. In addition, FWS purchases land only from willing sellers. H.R. 638 is a step backwards for natural resources conservation and local economies, and we do not support its passage.

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