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**TESTIMONY**  
**BEFORE THE HOUSE NATURAL RESOURCES SUBCOMMITTEE ON**  
**FISHERIES, WILDLIFE AND OCEANS**  
**CONCERNING THE IMPLEMENTATION OF THE**  
**1997 REFUGE IMPROVEMENT ACT**  
**October 9, 2007**

Madame Chair and Members of the Subcommittee:

My name is Evan Hirsche, president of the National Wildlife Refuge Association (NWRA). On behalf of the NWRA and its membership comprised of current and former refuge professionals, more than 140 refuge Friends organization affiliates and thousands of refuge supporters throughout the United States, thank you for the opportunity to offer comments about the implementation of the National Wildlife Refuge Improvement Act.

The NWRA strongly supports the Refuge Improvement Act of 1997 and the intent of its authors to ensure that the Refuge System is prepared to address conservation challenges in a consistent and comprehensive manner. Nevertheless, we are alarmed both by the lack of adequate funding to achieve even the most minimal guidance in the Act, and the failure by the Secretary of the Interior and U.S. Fish and Wildlife Service (FWS) to implement key provisions.

**Background**

In 1997 Congress sought to resolve ongoing challenges facing refuges that stemmed from a lack of comprehensive organic legislation providing overarching and consistent guidance for refuge management. Indeed, leading up to passage of the Act it could be said that the Refuge System was really not managed as a system, but instead as set of disparate lands and waters with differing purposes and priorities. By requiring that refuges adhere – to the extent practicable – to both their establishing purposes and an overarching Refuge System mission, a necessary level of consistency was established. While there remain management inconsistencies from one FWS region to the next, we are certainly better off today from a management perspective than prior to the Act.

The Act also established valuable mandates and guidance, including:

- A clear standard for determining the compatibility of proposed and existing public and commercial uses;
- A requirement that the long-term integrity of refuges and the System be achieved through the strategic conservation of lands and waters, including securing adequate quantities of clean water, the lifeblood of refuges;
- A requirement that the Refuge System ought to conserve a diversity of species and ensure the biological integrity of refuges;
- Establishment of the “big six” priority public uses as a way of clarifying for refuge management and the public that other uses are considered secondary in developing and

implementing management strategies;

- A requirement that refuge managers coordinate closely with private landowners and states in conserving wildlife;
- A mandate to monitor wildlife populations in an effort to better understand the habitat needs of wildlife; and
- The requirement that all non-Alaskan refuges complete a Comprehensive Conservation Plan (CCP) within 15 years of enactment.

In the following pages we will discuss how refuge management has benefited from the Act, specifically with respect to compatibility and appropriate use determinations and Comprehensive Conservation Plans. And we will discuss how funding shortfalls are limiting implementation of the Act and how a failure to implement portions of this statute will have long-term ramifications for the future.

### **How the Act has worked – Compatibility and Appropriate Use**

The Act itself has proven to be a valuable tool when it comes to establishing the compatibility and appropriateness of public and commercial uses on refuges. Refuge managers are authorized to use “sound professional judgment” to decide whether or not actions or policies that have occurred on a refuge in the past, or are proposed to occur in the future, are compatible with the purpose of the refuge or the mission of the System.

An excellent recent example of how the Act has worked in this regard stems from a legal challenge to a Comprehensive Conservation Plan (CCP) completed by Little Pend Oreille National Wildlife Refuge (NWR) in Northeastern Washington. The refuge’s final CCP concluded that the practice of granting grazing permits to ranchers was not a compatible use of the refuge. Because the permittees had grazed their cattle on the land for several decades, the refuge gave them five years to find alternative lands. When the time was up, the permittees filed a lawsuit arguing that the CCP process violated the National Environmental Policy Act and the Refuge Improvement Act.

The plaintiffs argued that the FWS did not use “sound professional judgment” as outlined in the Refuge Improvement Act when determining that livestock grazing for economic interests was largely incompatible with refuge purposes. In the court’s decision, dated August 20, 2007, Judge Edward Shea clearly agreed that the FWS complied with all aspects of the Refuge Improvement Act and that the manager had, indeed, used sound professional judgment.

Another example of how the Compatibility standard has successfully thwarted harmful uses occurred at Sabine NWR in Louisiana. In this case, commercial alligator egg harvesters sought access to the refuge. Refuge managers argued that under the Act commercial uses must contribute to the mission of the System and that approving such a harvest would violate the law. Despite strong political pressure to allow the activity, refuge managers, backed by the regional office, were able to use the Act to shield them from what they viewed as an incompatible activity.

Since the law is only ten years old, there is little case law interpreting its provisions, most notably the Compatibility standard. Yet these decisions send a strong signal to refuge managers nationwide that they stand on powerful legal ground when making compatibility determinations.

Much can also be said for the Appropriate Use policy that stems from the Act. In some cases, there are proposed activities that are clearly incompatible with a refuge's purpose and mission. In those cases, the Improvement Act allows a manager to make a quick decision without having to conduct a full compatibility determination. For instance, recently the refuge manager at the Minnesota Valley NWR was asked by a local minister for permission to conduct Sunday services at the refuge's Visitors Center. Because of this policy, the manager was able to make a quick determination that this action would not further the goals or mission of the refuge and deemed it an inappropriate use.

### **Comprehensive Conservation Plans**

One of the most far-reaching mandates in the Refuge Improvement Act was the call for the preparation a Comprehensive Conservation Plan for every refuge within 15 years of the date of enactment. To date, more than 250 plans have been completed. This planning exercise identifies and defines the purposes for each refuge and includes a clear and concise plan for how the refuge will be managed based on sound science and public input and review.

Prior to the passage of the Improvement Act few refuges were operated according to an established management plan. Those that were - fewer than 10% - had refuge managers who developed "Master Plans" that sought to establish a clear set of refuge objectives. However, these plans lacked the weight of law to protect them from any future challenges. The Improvement Act does allow for a plan to be changed or updated as needed, stating that the "*Secretary shall manage the refuge or planning unit in a manner consistent with the plans and shall revise the plan at any time if the Secretary determines that conditions that affect the refuge or planning unit have changed significantly.*" The Act does not give anyone the latitude to alter the plan without a compelling reason.

The outline regarding how a CCP should be developed and what it should include is in itself a monumental piece of guidance. The Act clearly lays out what must be covered in the final CCP, including the identification and description of

- the purposes of each refuge;
- the distribution, migration patterns and abundance of fish, wildlife and plant populations;
- the archaeological and cultural values;
- the significant problems that may adversely affect the populations and habitats of fish, wildlife, and plants and the actions necessary to correct or mitigate such problems; and
- the opportunities for compatible wildlife-dependent recreational uses.

This outline ensures necessary System-wide consistency of information included in all CCPs.

A particularly valuable aspect of the CCP process requires proactively reaching out to the public. Specifically, "*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.*" While the purpose of this language is to ensure adjacent landowners and the general public are allowed opportunities to comment on CCPs, it has an added benefit of simply connecting refuges to their communities and providing an opportunity to explain to the public the value of these special places. These public forums allow refuge managers to explain not only the mission and purpose of their individual refuge, but to talk about the broader conservation mission of the

National Wildlife Refuge System and how the System fits into the nation's land management network.

In some cases, these public forums are contentious and refuge managers are challenged to explain why certain uses will not be allowed. For example, the CCP process at the Upper Mississippi River Wildlife and Fish Refuge, where 3.7 million people recreate annually, represented an enormous challenge in terms of addressing the needs of almost countless interests. Refuge Project Leader Don Hultman and his team began outreach in 2002. Four years, 46 public meetings, 80 government get-togethers, one possible lawsuit and 800 pages later, the Upper Mississippi River National Wildlife and Fish Refuge CCP is complete. While not everyone who uses this vast 261-mile-long refuge is happy with the result, those who wanted to voice their opinion were able to do so, and the Act has been upheld. This is a far cry from an agency that could make decisions largely in a vacuum prior to the passage of the Improvement Act. In fact, the Act clearly stipulates that 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.”*

The Act also calls for the Director to *“coordinate the development of the conservation plan or revision with relevant State conservation plans for fish and wildlife and their habitats.”* Prior to 1997, there was some coordination between refuge managers and state agencies on management decisions; however, this was the exception, not the rule. Now, refuge managers routinely consult with state wildlife agencies regarding management decisions, especially with the completion of the State Wildlife Action Plans in October of 2005. CCPs and these state plans will help to guide future management of America's most biologically important habitats.

### **Funding Shortfalls Undermine Implementation**

Without question, the Refuge Improvement Act has provided innumerable benefits to the Refuge System. Yet, without adequate funding to implement the sweeping mandates, the Act is being seriously undermined and many key provisions are not being implemented as a result.

Specifically, it is impossible to expect that the *“biological integrity, diversity, and environmental health of the System are maintained,”* when many refuges are understaffed, fully half of the 548 refuges lack a biologist and the FWS is anticipating a 20% decline in staffing under current funding projections.

The reality is that in the face of myriad threats such as climate change human beings are what make conservation possible on refuges, and without them refuges simply can't achieve their mission and purposes. A look at the recently released workforce management plans by each FWS region offers a glimpse of what biological programs are being lost simply due to lack of funds.

For example, at the Potomac River Refuges in Northern Virginia, there are no wildlife surveys and no active habitat management; the refuge manager explains that he is “hoping for the best,” for the eagles, herons and hundreds of bird species that inhabit the 3-refuge complex. Hoping for the best can't be what the architects of the Refuge Improvement Act had intended.

The threat of climate change means that every refuge in the nation should have at the least a wildlife biologist who can scientifically monitor trends and help establish adaptive regimes to ensure the long-term conservation of species. In essence, we have 548 natural laboratories where inventory and monitoring could yield quantifiable data in helping manage Refuge System resources.

Yet, at the Wallkill NWR in New Jersey, an intern who is assisted by volunteers – namely the President of the Friends group and her 11-year-old daughter – does the only biological work on the refuge. While we are humbled by the commitment of volunteers at refuges, who currently contribute 20% of the System's workload, it's unreasonable to expect them to fill the growing gap in services.

As staffing has diminished, so too has law enforcement. Crime and vandalism have increased on many refuges leaving current refuge law enforcement unable to cope with the rise. Prostitution at the Potomac River Refuge Complex, marijuana at the Minnesota Valley, Cedar Keys and Lower Suwannee refuges, and lewd behavior at Wheeler NWR in Alabama are just a few of many examples. At the San Luis Refuge Complex in California, funding shortages have meant replacing a law enforcement officer with a dog. At the Forsythe NWR on the New Jersey shore, only one law enforcement officer patrols the beaches of one of the most densely populated areas in our nation. National wildlife refuges are not immune from any type of crime committed in the United States. Without adequate funding for law enforcement, criminals will seek refuges as places to do business.

Funding for the System did gradually increase leading up to the Centennial of the System in 2003 (\$391 million in FY2004) but since then has declined. In fact, the System needs at minimum an increase of \$16 million annually just to keep pace with the rising costs of operations. To return to the levels appropriated in FY04, and give refuge managers a chance to implement *some* of the mandates in the Improvement Act, funding for FY08 would have to be \$451 million – the amount passed in the FY08 House Interior Appropriations bill. To fully fund the System and allow managers the ability to implement *all or most* of the Act's mandates, the System would need at least \$765 million annually based on estimates developed by the Cooperative Alliance for Refuge Enhancement. Given the scope of what was mandated in the Act under Section 5, the Administration of the System, the FWS is simply unable to comply with many important requirements.

### **Losing a Connection to People**

The current funding crisis further exacerbates the FWS' ability to provide "*increased opportunities for families to experience compatible wildlife-dependent recreation*" [Section (5)(a)(4)(K)] and opportunities to educate children and families about our natural world. At a time when Americans are becoming more urbanized and removed from natural ecosystems, the ability to offer people meaningful experiences in nature must be made a higher priority. One of the most important ways FWS reaches out to families and local communities is through dedicated Visitors Services staffers at refuges. Presently, these positions account for only about 5% of the overall refuge workforce.

Refuges are local, within an hour's drive of every major metropolitan city, and have the potential to offer exceptional opportunities for wildlife-dependent recreation and education. Support groups, or Friends, exist at approximately 250 refuges nationwide and with assistance from FWS, are conducting environmental education programs and outreach to local communities, fulfilling yet another mandate of the Improvement Act. However, with staffing slashed at most refuges and many going completely unstaffed, the ability for FWS or even Friends to reach out to their community has diminished and in some cases disappeared entirely. At the Minnesota Valley NWR, an urban refuge located adjacent to the Mall of America near the Twin Cities, funding shortfalls have limited their ability to reach out to tens of thousands of inner city schoolchildren and, as a result, they've witnessed a 13% drop in Environmental Education program participation over the past year.

### **Failure to Act**

Although funding shortfalls have limited the ability of the FWS to fully implement the Act, there has also been a failure on the part of the Department of the Interior and FWS to implement other aspects of the Refuge Improvement Act. Two of the most egregious examples relate to the mandates that call for strategic growth of the System and acquiring water rights.

Under Section 5, the Administration of the System, the Act states that the Secretary shall, "*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.*" Since the passage of the Act, 39 refuges have been added to the System, mostly directed by Congress. However, vital habitats all over our nation, many within acquisition boundaries of refuges, have been lost to developers and other buyers before FWS has been able to acquire the land.

Not all the blame rests solely on the shoulders of the FWS or Secretary of the Interior; previous Congressional leaders have opposed dollars for land acquisition. However, the Administration has failed to request adequate funding in recent years, and properties have been lost to bureaucratic red tape as internal decisions to centralize the real estate appraisal system at the Interior Department has made the acquisition process increasingly cumbersome. This issue in itself could be the subject of an oversight hearing.

Although the System has grown in recent years, we are only scratching at the surface of opportunity in terms of both purchasing lands from willing sellers and securing conservation easements through successful programs like Partners for Fish and Wildlife and the Federal Migratory Bird Hunting and Conservation Stamp. For instance, in September 2007, the Government Accountability Office (GAO) conducted an exhaustive study of the 64-million acre Prairie Pothole Region that provides breeding grounds for more than 60% of migratory bird species in the United States. To sustain bird populations in the region, the FWS has a goal to protect an additional 12 million acres of "high priority" habitat – at risk lands which could support a high number of breeding duck pairs per square mile. At the current rate of acquisition, it will take the Service 150 years to acquire this additional 12 million acres.

Adding to the challenge, the FWS's private lands programs, which are critical to the health of the System in terms of conserving important habitats beyond refuge boundaries, are managed by different divisions depending on the region, with varying levels of consistency. In 2005 the National Wildlife Refuge Association launched its "Beyond the Boundaries" initiative in 2005 in recognition that encroachment and loss of vital habitat on private lands proximate to refuges is jeopardizing refuge conservation values. In order to secure the biological integrity of refuges, resources must be made available to work closely with private landowners, the states and other federal agencies as we seek to conserve migratory wildlife and diverse habitat types.

The Act also states the Secretary shall, "*acquire, under State law, water rights that are needed for refuge purposes.*" Unfortunately, in many instances the Service has not acquired these rights vital to the mission of most National Wildlife Refuges. In fact, due to staffing shortages, water needs are unknown at many refuges, particularly in the East. In the words of one refuge professional, we are looking at a "slow motion car crash" as portions of refuges are drying up from causes left unknown and unstudied.

Southern Nevada is ground zero when it comes to water issues. The four refuges found within the Desert NWR complex near Las Vegas are all dependent on springs that bubble to the surface from an underground aquifer. The Devil's Hole pupfish, the Moapa Dace and many other endemic species, found nowhere else on Earth, are dependent upon this water in the desert environment. However, the very water upon which these species depend is threatened by the unquenchable thirst of the city of Las Vegas. By the time monitors show an adverse effect on water levels, it could be too late.

### **Conclusion**

The National Wildlife Refuge Association strongly supports the Refuge Improvement Act of 1997 and the intent of its authors to ensure that the Refuge System is prepared to address conservation challenges in a consistent and comprehensive manner. Nevertheless, as outlined in our testimony we are alarmed both by the lack of adequate funding to achieve even the most minimal guidance in the Act, and the failure by the Secretary of the Interior to implement key provisions as required by the Act.

Accordingly, we ask this Committee to commission an independent evaluation of what is needed in terms of funding and authority to comply with the Refuge Improvement Act. By the estimates of the Cooperative Alliance for Refuge Enhancement, based on information from the FWS, the National Wildlife Refuge System needs at minimum \$765 million annually to operate at full capacity. However, even this number may be too small. Refuges are a cornerstone of conservation in America; if we are to protect our nation's wildlife heritage, funding must be allocated to successfully carry out the Refuge Improvement Act of 1997.