

House Natural Resources Subcommittee on Fisheries, Wildlife and Oceans
Oversight Hearing on "Implementation of the National Wildlife Refuge
Improvement Act: Has the Promise Been Fulfilled?"

By

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October 9, 2007

Thank you, Mr. Chairman, for the opportunity to share the perspectives of the 50 State Fish and Wildlife agencies on the implementation of the National Wildlife Refuge System Improvement Act of 1997 (NWRISA or Improvement Act). I am John Frampton, Director of the South Carolina Department of Natural Resources, and Chair of the Executive Committee of the Association of Fish and Wildlife Agencies. As you know, all 50 states are members of the Association.

In short, Mr. Chairman, we conclude that, yes, the promise of the Act has significantly been fulfilled. The Act has truly met its goals as organic legislation for the National Wildlife Refuge System, directing the Fish and Wildlife Service to manage the System to ensure the sustainability of fish and wildlife, and where compatible, appropriately allow for the use and enjoyment of those resources by our citizens. While funding inadequacies constrain meeting the full potential of the Act, the U.S. Fish and Wildlife Service commitment to its statutory obligations under the Act remains solid and unwavering. The State Fish and Wildlife agencies sincerely appreciate the Services' engagement of our agencies in all aspects of implementing the Act and are committed to working with the Service to identify the role of the System in addressing new challenges such as climate change.

The Association of Fish and Wildlife Agencies promotes and facilitates sound fish and wildlife management and conservation, and is the collective voice of North America's fish and wildlife agencies. The Association provides its member agencies and their senior staff with coordination services that range from migratory birds, fish, habitat, and invasive species, to conservation education, leadership development, and international relations. The Association represents its state fish and wildlife agency members on Capitol Hill and before the Administration on key conservation and management policies, and works to ensure that all fish and wildlife entities work collaboratively on the most important issues. The Association also provides management and technical assistance to both new and current fish and wildlife leaders.

The Association and the 50 individual State fish and wildlife agencies have a long-standing interest and involvement in the National Wildlife Refuge System, and its contribution to fish, wildlife and habitat conservation. We were instrumental in deliberations leading to the passage of the Improvement Act and in assisting in the drafting of its implementing policies. Hunting, fishing and other wildlife dependent recreational uses on National Wildlife Refuges are deeply valued by hunters, anglers and outdoor enthusiasts because of the tremendous opportunities refuges provide, especially in areas where public lands are limited. As you are aware, the sale of duck stamps, purchased by sportsmen and sportswomen, has historically provided the bulk of the funding for acquisition of refuges across the nation.

As you know, Mr. Chairman, the National Wildlife Refuge System has a long history of important contributions to the conservation of our nation's fish and wildlife. The Refuge System has grown enormously over the past century and, today, our National Wildlife Refuges support some of the best fish and wildlife habitats in the country, as well as outstanding hunting and fishing opportunities. Refuges are important to local communities for wildlife-dependent recreation. Through the Improvement Act, Congress recognized that these recreational activities promote effective refuge management and help the American public develop an appreciation for fish and wildlife. The Association and State fish and wildlife agencies are strongly committed to working cooperatively with the Service on managing the Refuge System.

In my state, the South Carolina Department of Natural Resources (SCDNR) and the USFWS have enjoyed a long-standing and successful relationship in managing wildlife resources and providing compatible wildlife dependent recreational programs that cross both state and federal properties. This relationship began evolving decades ago when both agencies realized that the management of wildlife resources needed to be addressed at an ecosystem level. An even stronger partnership developed in 1989 with the initiation of the ACE Basin Focus Area Project, a cooperative habitat conservation project involving public, private and corporate partners. This partnership quickly led to the establishment of a new wildlife refuge in the ACE Basin Focus Area and is known today as the Ernest F. Hollings ACE Basin National Wildlife Refuge. With the passage of the Improvement Act, SCDNR and the USFWS have worked cooperatively with nonprofit organizations in the Focus Area to protect over 170,000 acres of coastal habitat through fee simple acquisition and donated conservation easements. And, as a result of the passage of the Improvement Act, we have strengthened cooperative agreements that allow for equipment exchange and staff assistance on management activities. We now coordinate many hunt schedules to prevent overlap of specialty hunts such as those conducted for the mobility impaired. Staff with the SCDNR is actively participating in the development of the Comprehensive Conservation Plans for all eight refuges in South Carolina and are extremely excited about the future opportunities to partner with the USFWS on implementation of these plans to produce on-the-ground habitat improvements and enhanced public recreation. We believe that working cooperatively, sharing our resources and talents, we can accomplish what no single entity could even envision.

The Improvement Act, completed after years of bipartisan discussion and deliberation, truly represents a benchmark in the history of the Refuge System. It established a statutory mission of the Refuge System to administer a national network of lands and waters for the conservation, management and, where appropriate, restoration of fish and wildlife and their habitats. With the Improvement Act, Congress reaffirmed that National Wildlife Refuges are for fish and wildlife conservation first, clearly setting them apart from other federal public lands. In addition, Congress directed the Service that compatible wildlife dependent recreational uses are the priority general public uses of the Refuge System and shall receive priority consideration in refuge planning and management. No less important is Congress' direction to the Service to effectively coordinate management of fish and wildlife within the Refuge System with the states.

Mr. Chairman, the Improvement Act, and its legislative history, is replete with explicit Congressional direction to the Secretary of the Interior (and thus the USFWS) regarding management of the System, its mission, appropriate public use, and coordination with the State fish and wildlife agencies.

The mission of the NWR System is articulated in law as:

“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”.

The law goes on to further articulate that 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.”

The law defines “wildlife dependent recreation” and “wildlife dependent recreational use” to mean “...a use of a refuge involving hunting, fishing, wildlife observation and photography, or environmental education and interpretation”. These activities have become popularly known in the jargon as “the big 6”. Clearly Congress intended the Secretary to facilitate these “big 6” activities as long as they were compatible. As the Committee Report (House Report 105-106) further amplifies:

“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 manger’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.”

And, with respect to the issue of budget shortfalls and facilitation of the “big 6” uses, the Committee Report contemplated this circumstance and provide this direction:

“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.”

The law further directs that the Secretary shall, in administering the System,”... ensure effective coordination, interaction, and cooperation with the fish and wildlife agency of the State in which the units of the System are located.” And, Congress further directed that the Secretary, in preparing a comprehensive conservation plan for each refuge, do so not only consistent with the NWRSA, but ” ... to the extent practicable, consistent with fish and wildlife conservation plans of the state in which the refuge is located...” Finally, Congress exempted coordination with State Fish and Wildlife Agency personnel pursuant to the NWRSA from the application of the Federal Advisory Committee Act. We conclude that this is very clear statutory direction that management of the System be done in close cooperation with the state fish and wildlife agencies.

Finally, I would direct your attention to USFWS Directors Order No. 148 (issued Dec. 23, 2002 and extended until July 1, 2009 entitled “Coordination and Cooperative Work with State Fish and Wildlife Agency Representatives on Management of the National Wildlife Refuge System”. It says, in part:

“Sec. 4 What is the Services policy on coordination with the States?

- a) Effective conservation of fish, wildlife, plants and their habitats depends on the professional relationship between managers at the State and Federal level. The Service acknowledges the unique expertise and role of State fish and wildlife agencies in the management of fish and wildlife.
- b) Both the Service and the State fish and wildlife agencies have authorities and responsibilities for management of fish and wildlife on national wildlife refuges as described in 43 CFR 24. Consistent with the National Wildlife Refuge System Administration Act, as amended by the National Wildlife Refuge System Improvement Act, the Director of the Service will interact, coordinate, cooperate, and collaborate with the State fish and wildlife agencies in a timely and effective manner on the acquisition and management of national wildlife refuges. Under the Administration Act and 43 CFR 24 , the Director as the Secretary’s designee will ensure that National Wildlife Refuge System regulations and management plans are, to the extent practicable, consistent with State laws, regulations, and management plans. We charge refuge managers, as the designated representatives of the Director at the local level, with carrying out these directives. We will provide State fish and wildlife agencies timely and meaningful opportunities to participate in the development and implementation of programs conducted under this policy. This opportunity will most commonly occur through State fish and wildlife agency representation on the comprehensive conservation plan (CCP) planning teams; however, we will provide other opportunities for the State fish and wildlife agencies to participate in the development and implementation of program changes that would be made outside of the CCP

It seems evident that the FWS has taken to heart Congress' direction regarding this cooperation. The Service has comprehensively engaged the State fish and wildlife agencies in the development and review of regulations implementing the Improvement Act. While the state fish and wildlife agencies and the Service have not always agreed on certain implementing policy, we have been able to arrive at consensus in the majority of circumstances. This benefits not only the fish, wildlife and habitat resources supported by Refuges, but also the public that we all serve.

Let me reflect a bit on the development of Comprehensive Conservation Plans (CCPs) for the refuge lands in the System. As we advocated during the legislative drafting, and as the law reflects, the Service should take maximum advantage of state developed plans and strategies for species and habitats to inform the development of CCPs. The utility of this approach is even more evident with the recent completion by every state fish and wildlife agency of its State Wildlife Action plan for species in need of conservation; and the initiation of Joint Partnerships under the National Fish Habitat Initiative. In addition to these strategies, the states have all developed state-wide goals, plans and objectives for many additional species, and for wildlife – dependent recreational opportunities. Refuges under the NWR System can and do play integral roles in meeting state-wide goals and objectives for species, habitats, and wildlife – dependent recreational use opportunities. Continued close and meaningful cooperation between the Fish and Wildlife Service and the respective state fish and wildlife agency will ensure the development of a CCP in the most thorough, efficient and effective way.

With respect to the System maintenance and growth in light of budget shortfalls, cooperation with the State fish and wildlife agencies can result in better ameliorating the results of budget shortfalls, but states need to be engaged early by the Service. Both the FWS and State fish and wildlife agencies have authorities and responsibilities for managing fish and wildlife on NWRs. A collective discussion between the FWS and the State fish and wildlife agency can reflect on which respective agencies have what capability and resources to continue effective administration of the individual refuge to meet both its mission and its contribution to the conservation objectives of the State fish and wildlife agency. State fish and wildlife agencies likely will want to assist (or continue to assist) in administration of certain programs as hunting and fishing but many will likely need some provision of federal funding or at least a cost-sharing of some type. Otherwise, this could become an unfunded mandate to the states.

Second, we are concerned that the Service's practice (in response to budget shortfalls) of putting Refuges into "preservation" status mean no public activities, including the "big 6" mandated by Congress, will be allowed. There needs to be clear direction from the USFWS Director that the provision of these 6 activities are priority public uses and all other uses are secondary to them. Let me reiterate again that we have no argument that the conservation mission of the System is pre-eminent and that the FWS, in cooperation with the State fish and wildlife agencies, is obligated to fulfill that mission. But, it is eminently clear that the "big 6" are the priority public uses and Congress has directed the Service to facilitate those uses.

You asked for our perspectives on the issue of climate change and border security vis-à-vis the Refuge System. We believe that response to climate change with respect to remediation of impacts to fish, wildlife and their habitats, needs to be applied comprehensively at the landscape level. The effects of climate change will obviously be pervasive across the landscape, and so must the response be comprehensive. The Refuge System, and all public lands, will be a key aspect of our response through their utility as habitat reservoirs and linkages, and should be incorporated into state adaptation strategies that are just now being developed by several states. It is clear that Congress will need to make significant additional funds available to both federal and state natural resource and land management agencies to respond to climate change.

With respect to border security, the Association strongly suggests that funds be made available from the Department of Homeland Security to the U.S. Fish and Wildlife Service to support its role in national security endeavors. While we acknowledge the role that Refuge staff can play in interdicting illegal entry into the country, the USFWS can not and should not be burdened with the cost supporting that national security task. Additionally, Congress should appropriate to the Fish and Wildlife Service additional funds to protect the integrity of the habitat in those border NWRs where physical security improvements may affect those habitats.

Thank you for the opportunity to share our perspectives and I would be pleased to address any questions.