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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 that would provide 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 a 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. It gives refuge managers the ability to make a decision regarding actions or policies that have occurred on a refuge in the past, or are proposed to occur on a refuge in the future and deem them compatible or incompatible with the purpose of the refuge or the mission of the System, according to the manager’s “sound professional judgment.”

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. In August 2007, the Refuge Improvement Act was upheld in a strong decision regarding the determination within the CCP that livestock grazing for economic interests was incompatible with the refuge’s mission. The 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 when the FWS made this decision, they did not use “sound professional judgment” as outlined in the Refuge Improvement Act when they determined that livestock grazing 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.

Yet another strong 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 a harmful activity.

Because 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 are on powerful legal grounds 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 are clearly not compatible with a refuge's purpose and mission. In those cases, the Improvement Act allows that a manager to make a quick decision without having to conduct a compatibility determination. For instance, recently the refuge manager at the Minnesota Valley NWR was asked by a local minister 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 in 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 gives a clear and concise plan as to 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 had plans on how they would manage their refuge. The few that did - fewer than 10% - created "Master Plans" that sought to establish a clear set of refuge objectives. However, because they were not bound by law to be followed by future managers, the succeeding refuge manager could reverse the decision and create their own master plan without consulting with the public or indeed other land managers.

The Improvement Act does indeed allow for a plan to be changed or updated as needed, but it states 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 a manager the latitude to alter the plan on a whim.

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 each refuge must

have in its final plan including identifying and describing the following: 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 all CCPs contain the same information creating system-wide consistency in planning.

A particularly valuable aspect of this process calls 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 is allowed an opportunity to comment on CCPs, it has an added benefit of simply connecting refuges to their communities and providing an opportunity to articulate to the public the value of these special places. These public forums give the opportunity for refuge managers to explain not only the mission and purpose of their individual refuge, but to talk about the much broader conservation picture of the entire National Wildlife Refuge System and how this system fits into the nation’s land management complex.

In some cases, these public forums are contentious and refuge managers face a difficult time explaining why certain uses are not compatible or able to continue on a refuge. For example, the CCP process at the Upper Mississippi River Wildlife and Fish Refuge represented an enormous challenge in terms of addressing the needs of 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. And while not everyone who uses this vast 261-mile refuge, where 3.7 million people recreate annually, is happy with the result, everyone who wanted to voice their opinion was given the opportunity 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 passage of the State Wildlife Action Plans in October of 2005. CCPs and these state plans are the basis for future management of the majority of America’s wildlife heritage.

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 in our view 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 go unstaffed, an alarming number go without a biologist, and the FWS is effectively projecting a 20% decline in staffing under current funding projections. The reality is that human beings are what make conservation possible on refuges and without them, and in the face of myriad threats such as climate change, refuges simply can’t achieve their mission and purposes. A look at the recently released workforce management plans by each FWS region gives a glimpse of what biological programs are being lost simply because there are no funds available to maintain them.

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 actually 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 absurd to expect them to carry the water for refuges.

Funding for the System did see gradual increases leading up to the Centennial of the system in 2003 (\$391 million in FY2004) but since then has been flat or declining. 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 actually 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 actually implement *all or most* the mandates in the Act, the System would need at least \$765 million annually by 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.

Failure to Connect 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 people are becoming more urbanized and removed from

natural ecosystems, the ability to give 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 a dedicated Visitors Services staffer. Presently, these positions currently only account for about 5% of the overall workforce.

Refuges are local, within an hour's drive of every major metropolitan city. And because they are local, communities identify themselves with their refuge. Support groups, or Friends, exist at approximately 250 refuges nationwide and with the support of 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 some going completely unstaffed, the ability for FWS or even Friends to reach out to their community has diminished and in some cases gone away entirely.

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 State, 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.

Several factors are to blame that do not rest solely on the FWS or Secretary of Interior's shoulders, including opposition to approving land acquisition dollars by previous Congressional leaders. Nevertheless, the Administration has failed to request adequate funding in recent years, and internal decisions to centralize the real estate appraisal system at the Interior Department has made the process so cumbersome, properties have been lost to bureaucratic red tape. This issue in itself could be the subject of an oversight hearing.

And even though some could argue that 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 Duck Stamp. For instance, in September 2007, the Government Accountability Office (GAO) issued a new report showing that at the current pace of acquisitions, the FWS is unlikely to meet it's habitat protection goals for migratory birds. The GAO did an exhaustive study of the 64-million acre Prairie Pothole Region which provides breeding grounds for over 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. The National Wildlife Refuge Association (NWRA) launched its “Beyond the Boundaries” initiative in 2005 having realized that most refuges outside Alaska face encroachment and loss of vital habitat on private lands proximate to refuges that jeopardize their conservation values. In order to secure the biological integrity of refuges, resources must be made available to work closely with private land-owners, 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, which are vital to the mission of most National Wildlife Refuges. In fact, because of staffing shortages, water needs at many refuges, particularly in the East are unknown. In the words of one refuge professional, we are looking at a “slow motion car crash” as portions of refuges are drying up and they don’t know why.

At Desert NWR, outside Las Vegas, NV, the refuge and its springs are dependent upon the aquifer that lies beneath the ground that is being siphoned of to support the rapidly growing city. A small water monitoring structure is all that exists to tell the Service if outside influences are sucking the aquifer dry. Unfortunately, scientists predict that by the time effects are measured, it will be impossible to reverse them in time to save the biota those springs have been supporting for about the last 3 million years.

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.

Accordingly, we ask this Committee to commission an independent evaluation of what is needed in terms of funding 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 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 Refuge Improvement Act of 1997.