

**TESTIMONY OF DANIEL M. ASHE, ASSISTANT DIRECTOR
FOR REFUGES AND WILDLIFE, U.S. FISH AND WILDLIFE SERVICE,
DEPARTMENT OF THE INTERIOR, BEFORE THE HOUSE
RESOURCES SUBCOMMITTEE ON FISHERIES CONSERVATION,
WILDLIFE, AND OCEANS**

On

**H.R. 4070, To Direct the Secretary of the Interior to Correct a Map
Relating to the Coastal Barrier Resources System Unit P31,
Located Near the City of Mexico Beach, Florida;**

**H.R. 3118, To Direct the Secretary of the Interior to Issue Regulations
Under The Migratory Bird Treaty Act That Authorize
States to Establish Hunting Seasons for Double-Crested
Cormorants; and**

H.R. 4318, To Establish the Red River National Wildlife Refuge.

MAY 11, 2000

Good morning, Mr. Chairman. I am Daniel M. Ashe, the Assistant Director for Refuges and Wildlife for the U.S. Fish and Wildlife Service. I appreciate the opportunity to testify on the three fish and wildlife bills being considered this morning.

H.R. 4070, To Direct the Secretary of the Interior to Correct a Map Relating to the Coastal Barrier Resources System Unit P31, Located Near the City of Mexico Beach, Florida

The first bill I will discuss is H.R. 4070, a bill directing the Secretary of the Interior to make technical corrections to P-31, a unit of the Coastal Barrier Resources System (the System). For the reasons explained below, we would not oppose legislation to address this specific situation and will work with the Committee to appropriately adjust the boundary of P-31. In addition, we would like to present our position regarding a possible future change to NC-01, which includes land owned by the National Audubon Society. I will begin with H.R. 4070.

H.R. 4070, introduced by Representatives Boyd and Scarborough, addresses System Unit P-31, otherwise known as St. Andrew Complex near Panama City, Florida. The purpose of the legislation is to modify parts of the current boundary of P-31 to reflect the original boundary enacted by Congress in 1982.

The System was first established in 1982 by the Coastal Barrier Resources Act. Through implementation of the Act, Congress sought to minimize the potential loss of human life, reduce wasteful expenditures of Federal revenues, and protect fish and wildlife and their habitats. It is important to note that the coastal barrier legislation does not prevent or regulate development in the unstable, high-risk areas which comprise the System. The Act only restricts Federal agencies from spending taxpayers' money to subsidize development. Therefore, individuals who choose to live and invest in these hazard-prone areas will bear the full cost of that risk, instead of passing that cost on to the American taxpayers.

The Act directed the Secretary of the Interior to prepare and submit a report to what was then the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Environment and Public Works of the Senate containing recommendations for additions to, or deletions from, the System. In 1988, pursuant to this directive, the Department published a *Report to Congress: Coastal Barrier Resources System*. This report reviewed the System that was designated in 1982 and offered recommendations to delete and add areas. Unit P-31 had been designated part of the System in 1982 and was, therefore, reviewed in the 1988 Report.

In the 1988 Report, the standard convention was to illustrate recommended changes to the System with a solid line on the maps included in the report. Existing boundaries, where no change was recommended, were depicted with a dotted line on the maps included in the report. In the report, the Department used a dotted line to depict the area of P-31 in question, which indicated that the Department was recommending that the boundary of this area remain unchanged. In fact, however, the boundary delineated in the report was different from the boundary enacted in 1982. The modified boundary delineated in the report excluded some undeveloped lands from the depiction of the unit and included others.

Because the map was incorrectly labeled, it did not provide notice to the property owners or Congress that certain portions of P-31 would be changed if the map were adopted. Similarly, the text accompanying the map did not describe the changes in the line. Congress subsequently adopted the map of P-31 that included some additional undeveloped lands and excluded others. Congress provided a one year period to adjust unit boundaries if discrepancies were noted. No comments on this section of P-31 were received. Once Congress adopted the P-31 map, the new boundaries became controlling.

Normally, when reviewing requests to modify an existing System unit, the Service considers the development status of the unit when it was included in the System by Congress. The first step in analyzing development status is to examine the number of structures in place at the time the area was included in the System. If the density of the entire unit's developable land exceeds 1 unit per 5 acres, the unit is considered developed. If the density threshold is not met, the Service then examines the level of infrastructure present. A full complement of infrastructure includes water supply, wastewater disposal, electricity, and paved roads. If all were available when the unit was included in the System, the unit is considered developed.

Absent other equitable or compelling circumstances, if an area is considered undeveloped, the Service does not support legislation to remove the area. P-31 did not meet the threshold for undeveloped or have a full complement of infrastructure development in 1982 when the Act was enacted, nor in 1990 when the Act was reauthorized. To our knowledge, P-31 still meets the definition of an undeveloped coastal barrier today.

However, the Service recognizes that in the 1988 Report to Congress some boundary changes made to the unit were not explicitly described, either in the accompanying map or text of the Report. This meant that neither the property owner nor Congress was provided with adequate notice of the boundary changes reflected in the revised map for P-31. Therefore, because of the equities associated with this specific situation, the Service would not oppose legislation to

modify the boundary of P-31 to reflect Congress' intent in 1982. We are prepared to work with the Committee and Congressmen Boyd and Scarborough to adjust the boundary of P-31 appropriately.

Next, I would like to offer the Service's position on a possible future legislative change to NC-01, which includes the National Audubon Society's Pine Island Sanctuary. The Coastal Barrier Improvement Act of 1990 established NC-01P, a predecessor to the current NC-01. The 1990 Act, in addition to expanding the System, for the first time designated "otherwise protected areas," or OPAs. This category of land gives additional protection to coastal barrier lands held for conservation purposes, such as parks, wildlife refuges, and bird sanctuaries. Federal flood insurance is prohibited in OPAs.

On October 23, 1992, Congress modified NC-01P to include an area owned by the National Audubon Society and associated aquatic habitat totaling approximately 5,221 acres in size. The modification also *excluded* some privately owned lands not owned by the National Audubon Society. The unit was changed from an OPA to NC-01, a full System unit. System units face more prohibitions on Federal spending for development and disaster relief than OPAs.

We later found that the adjusted boundary of NC-01 runs through two parcels of privately owned land not owned by the National Audubon Society. The effect of this boundary location is that one landowner currently cannot obtain Federal flood insurance. To help remedy this situation, the Service is working with the National Audubon Society and Dare and Currituck Counties in North Carolina to correctly depict the National Audubon Society's Pine Island Sanctuary on a map. When this process is completed, the Service will support a legislative change to modify the boundary of NC-01 to exclude privately owned land outside of Pine Island Sanctuary.

Mr. Chairman, the Department will continue to work with Congress to ensure that the Coastal Barrier Resources System is accurate in its boundary descriptions, thereby ensuring fairness to adjacent landowners. The Service looks forward to working with this Committee and Congress to administer the Coastal Barrier Resources Act in a manner that protects lives and natural resources along the coasts of the United States.

H.R. 3118, To Direct the Secretary of the Interior to Issue Regulations Under The Migratory Bird Treaty Act That Authorize States to Establish Hunting Seasons for Double-Crested Cormorants

The next bill, H.R. 3118, would require the Service to issue regulations authorizing the States to establish hunting seasons for double-crested cormorants. The Service does not oppose the idea of establishing a hunting season on double-crested cormorants. However, we do not have adequate information to determine that a hunting season would be the best option for dealing with an overabundance of cormorants, or that hunting would alleviate the problems that cormorants have been accused of causing. For these reasons and as explained more fully below, we believe that consideration of H.R. 3118 is premature.

The Migratory Bird Treaty Act, which implements international treaties between the United States and other countries for the protection of migratory birds, authorizes the U.S. Fish and Wildlife Service on behalf of the Secretary of the Interior to manage migratory birds. The Act makes it illegal to take, kill, or possess migratory birds except as authorized. The double-crested

cormorant, a species native to the 48 contiguous United States and Alaska, was officially included under the authority of the Migratory Bird Treaty, as amended, in 1972.

Double-crested cormorants have been increasing steadily since the mid-1970s, at which time they were at their lowest population levels in history. The recovery and expansion of the double-crested cormorant is due to a combination of the following social and biological factors:

- (1) a ban on DDT was enacted in 1972;
- (2) major changes in fish species composition (most notably in the Great Lakes) which led to an abundance of the forage species preferred by cormorants;
- (3) rapid growth of the commercial aquaculture industry provided a reliable food supply; and
- (4) artificial reservoirs were created for flood control and subsequently stocked with fish to create sport fishing opportunities for the public.

This increase in double-crested cormorants, particularly in the eastern United States, has led to growing concern about the impacts of double-crested cormorants on resources of value to humans. For example, in the late 1980s, aquaculturists reported that cormorants were eating significant numbers of commercially valuable fish stocks. In the early to mid-1990s, the Service started hearing from sport anglers who were convinced that cormorants were responsible for reductions in the availability of sport and forage fish.

Considering the available biological information, the Service has initiated a number of research, investigative, and management actions in response to concerns about double-crested cormorants. Most have been undertaken in close cooperation with other Federal agencies (notably the Biological Resources Division of the U.S. Geological Survey and the Wildlife Services Division of the U.S. Department of Agriculture's Animal and Plant Health Inspection Service) and State fish and wildlife agencies. These actions have been undertaken to assure that we understand the nature and magnitude of the problem.

Recent cormorant work has consisted of surveys to monitor the size of double-crested cormorant populations and their trends. We have also funded several research studies designed to document cormorant food habits and to assess their impacts on sport fish populations.

A management action that directly responds to damages caused by cormorants is the issuance of depredation permits. Since the mid-1980s, the Service has issued depredation permits whenever individuals or State management agencies have documented problems caused by cormorant depredation. The Service issues depredation permits to take cormorants that are causing economic impacts, private property damage, or impacting wildlife and plant species of management concern (for example, species that are State or Federally listed, are rare or sensitive, or are the subject of restoration efforts).

In response to scientific studies published in 1995 confirming that double-crested cormorants

were having measurable economic impacts on commercial aquaculture stocks, the Service implemented a depredation order in 1998. The depredation order allows commercial freshwater aquaculture facilities and State-owned fish hatcheries in 13 major aquaculture-producing States to take immediate action, without need of a Federal permit, to prevent losses of fish to cormorants. Operators of these facilities may kill unlimited numbers of double-crested cormorants when found committing depredations on fish stocks. That depredation order remains in effect.

It was not until the late 1990s that evidence became available from the New York State Department of Environmental Conservation suggesting that double-crested cormorants could, in some circumstances, have measurable impacts on sportfish populations, other waterbirds or plants. In the Spring of 1999, the Service issued a depredation permit to that State authorizing the oiling of all eggs in a major breeding colony in eastern Lake Ontario. A similar permit was issued to the State of Vermont to initiate control actions at breeding colonies in Lake Champlain.

In our most recent action to date, the Service has initiated development of a national management plan for double-crested cormorants. As a precursor to the management plan, the Service will prepare an Environmental Impact Statement (EIS), as required by the National Environmental Policy Act. The public is being fully engaged in the decision-making process. The goal of the EIS is to consider the impacts of increasing double-crested cormorant populations on specific human activities and other natural resources, to examine various management options, and to evaluate the environmental consequences of these management options. One management option being considered in the EIS is a hunting season on double-crested cormorants. The idea of hunting cormorants has been raised through the current public scoping process. Therefore, through the EIS process the Service will consider this alternative as we determine the most appropriate means to manage double-crested cormorants. Significant questions remain concerning the feasibility and appropriateness of various options for dealing with an overabundance of cormorants and alleviating the problems that they have been accused of causing. We believe that this will provide the best opportunity for exploring the utility and feasibility of a hunting season as an alternative for managing cormorant populations.

H.R. 4318, To Establish the Red River National Wildlife Refuge

I will now turn to H.R. 4318, to establish the Red River National Wildlife Refuge in Louisiana. We greatly appreciate the support shown by Representative McCrery and many residents of Louisiana for this refuge proposal, but the Secretary of the Interior would recommend that the President veto this bill if it were presented to him in its current form.

The Red River is an historic migration corridor for migratory birds that use the Central and Mississippi Flyways on their journeys to the Gulf Coast and points beyond. The Fish and Wildlife Service manages 19 national wildlife refuges in Louisiana, but none are located in this part of the state.

Historically, the Red River Valley was forested with bottomland hardwoods, cypress sloughs, and shrub swamps. After the Louisiana Purchase in 1803, early settlers began to clear these areas for farms and homesteads. This clearing rate was rapidly accelerated in the 1960s and

1970s with the rise in soybean prices. For the last three decades, the Red River Valley was utilized extensively for agricultural production. The river itself was subject to extreme fluctuations and was usually very turbid. Wildlife and fisheries habitat was generally poor compared to other parts of the state.

Water quality has improved and with the seasonal retention of water levels, a rich diversity of aquatic plants has developed. Increased water levels in the river also improved adjacent habitats. Flooded timber and farm fields with wet, depressional areas are now more common. Habitat restoration programs such as the Service's Partners for Fish and Wildlife and USDA's Wetlands Reserve Program are creating valuable new wildlife habitat with the reforestation of prior converted wetlands in the Red River Valley. Changes in agricultural practices have resulted in an increase in rice production and additional migratory bird habitat.

With improved habitat conditions, waterfowl numbers and diversity have increased significantly. Waterfowl hunting is extremely popular as evidenced by the number of hunting blinds along the river. Species range from divers such as scaup, ringneck, redhead, and canvasback to traditional puddle ducks like mallard and teal.

Wading birds and shorebirds are numerous on sandbars, shallow flooded fields, and mudflats. Neotropical migratory birds like purple martins feed in great numbers over the river. Over 350 different species of birds use the Red River at various times of the year including endangered species such as the bald eagle and the least tern which nests on sand bars in the river.

Currently, fisheries resources in the Red River are excellent. The flooded timber, oxbow lakes and sloughs provide seasonal reproductive and nursery habitat. Bass fishing has become so popular and productive that several major fishing tournaments are held on the Red River annually. In addition to species such as largemouth bass, crappie, bream, and catfish, big river species such as paddle fish and sturgeon also inhabit the Red River.

Along with hunting and fishing, the proposed refuge would also have potential for research, bird watching, nature photography, wildlife interpretation, and environmental education. Because of its proximity to Shreveport, Bossier City, and Natchitoches, school groups and visitors would have easy access to the refuge. We believe there are opportunities to partner with local communities, state and federal agencies to promote ecotourism, such as birding festivals, which would increase public awareness of our wildlife resources and provide economic benefits to local businesses and governments.

Our concerns with the bill are threefold. First, Section 3(b)(6) makes outdoor recreational and educational activities purposes of this new refuge. The Service strongly supports compatible wildlife-dependent recreation within the refuge system. They are legitimate and appropriate uses of many refuges, but they should not be confused with the wildlife conservation purposes of a refuge. Outdoor recreational and educational activities are uses of the refuge which must be determined to be compatible with the refuge purposes. This principle was clearly established by Congress in the National Wildlife Refuge System Improvement Act of 1997.

Section 5(b) of the bill provides that the Secretary may acquire land for the refuge only by donation, exchange, or purchase from a willing seller. The Service has a policy and a history of acquiring from willing sellers. We have not used adverse condemnation for over 11 years, and

infrequently before then, but the authority of eminent domain is an inherent governmental power which needs to be available in the event we are faced with a situation that requires use of this tool. Mr. Chairman, this is an important principle, and the President vetoed H.R. 2909, prohibiting use of condemnation at the Silvio O. Conte National Wildlife Refuge, in the 104th Congress over this very issue.

I want to emphasize that we have no plans to utilize the power of eminent domain at the Red River refuge. Our record of applying this authority is one of extreme conservatism, and we are proud of that record.

Another significant problem we have, Mr. Chairman, is with section 6 of the bill, which provides that the creation of the refuge shall not affect continued development, operation, maintenance, improvement or expansion of commercial or recreational navigation on the Red River Waterway or railroads, interstate highways or bridges within or adjacent to the refuge. The creation of refuges do not normally result in conflicts over these types of activities.

However, this proposed language would put the Service in an unacceptable position, where we would be unable to protect the wildlife of the refuge or otherwise carry out our statutory mission if there were conflicts caused by the potentially serious environmental and operational effects of such projects. For instance, navigation and transportation projects can result in major alterations in hydrology, which can degrade or destroy wetlands and interfere with the operation of water control facilities which would be an integral component of a refuge like that proposed here. The provisions in section 6 would remove our ability to protect the public interest in this refuge.

Mr. Chairman, many units of the National Wildlife Refuge System exist and operate in relative harmony with water resource and transportation projects. But conflicts do occur, and we need to have the tools and the authority to protect these important resources. If the resources of the Red River Valley are significant enough to merit inclusion in America's refuge system, then they are significant enough to warrant the same protections we give refuges elsewhere.

Our concerns are magnified because the Red River Valley landscape is extremely altered, making this an extremely expensive refuge proposal. The lands in question are primarily drained and irrigated farmland and would be expensive to acquire, costing perhaps \$40-\$60 million. Restoration of the lands would also entail significant investment, perhaps \$15-\$20 million. We estimate that construction and facility development would cost approximately \$5-\$7 million, and the annual operating and maintenance costs would be \$3-5 million, requiring a staff of about 25 people. This significant investment would detract from our ability to meet the needs of other refuges within the state and region. The Committee is well aware of our severe operations and maintenance backlogs.

In summary, because of the provisions of this bill which elevate recreational and educational uses to refuge purposes, inappropriately restrict the use of condemnation, and condition our authority to protect and manage the refuge, the Secretary of the Interior would recommend that the President veto the bill. These objections are more significant given the high cost of establishing and operating this proposed refuge. The American public would be making a substantial investment in this refuge, but the bill does not convey the necessary authority to protect and manage that investment. We are willing to work with the Committee to address these concerns, recognizing that the refuge, if authorized, would have to compete with other

elements of the Refuge System for funding through the budget and appropriations process.

This concludes my formal statement. I would be pleased to answer any questions you might have.