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Chairman McClintock, Ranking Member Hanabusa, members of the subcommittee, thank you for inviting me to testify at this hearing on an historic piece of legislation for those who hunt, fish and participate in sustainable use conservation and management of our nation's wildlife. I am testifying today on behalf of Safari Club International. I am SCI's Director of Government Affairs and Director of Litigation. For the last eighteen years, I have represented SCI in numerous cases that have revealed significant problems for hunters and others who participate in wildlife management, conservation and recreation on federal lands. The SHARE Act, if passed, will finally remedy these problems.

While the SHARE Act offers many important provisions that improve sportsmen's access and opportunities on federal lands, I will focus my testimony primarily on some of the most practical aspects of Title IV of the bill, entitled the Recreational Fishing and Hunting Heritage Opportunities Act. It is particularly here, and in Titles 12 and 14 of the SHARE Act, that the drafters included several provisions that draw on the experiences of years of unnecessary and costly litigation. These new sections will provide clarifications that could make sustainable use, management, and conservation of wildlife on federal lands far less vulnerable to future detrimental lawsuits.

Relief from Duplicative NEPA

I would like to start by discussing Section 403(c) of Title IV. This section clarifies that no action taken under Title IV or any action taken under section 4 (16 U.S.C. § 668dd) of the National Wildlife Refuge System Improvement Act (NWRSIA), would be considered "major federal action" under the National Environmental Policy Act (NEPA). This provision will relieve Bureau of Land Management (BLM) and U.S. Forest Service administrators from being forced to conduct unnecessary and duplicative environmental analyses when taking action to support and facilitate hunting, fishing and shooting on federal public lands. This statutory clarification will not provide these land managers with a wholesale exclusion from all NEPA obligations in planning for land and resource use and management. To the contrary, these individuals already fulfill NEPA requirements in the Environmental Assessments and/or Environmental Impact Statements they complete each time they prepare resource plans for the lands they administer. The language in Section 403(c) clarifies that the BLM and Forest Service do not need to conduct additional and duplicative NEPA analyses applicable specifically to the planning obligations imposed by Title IV of the SHARE Act.

In addition, Section 403(c) relieves the U.S. Fish and Wildlife Service (FWS) from duplicative NEPA requirements in the planning for National Wildlife Refuges. Those planning obligations, codified in Section 668dd of NWRSIA, require the FWS to complete a Comprehensive

Conservation Plan (CCP) every 15 years for each National Wildlife Refuge. NWRSIA explains that the CCP process that the FWS must complete for each refuge constitutes the functional equivalent of a NEPA Environmental Impact Statement. For example, much like NEPA, NWRSIA requires the agency to "ensure that the biological integrity, diversity, and environmental health of the System are maintained for the benefit of present and future generations of Americans." Congress also directed the FWS to develop CCPs so that they identify and describe "the distribution, migration patterns, and abundance of fish, wildlife, and plant populations and related habitats within the planning unit" *Id*. at (e)(2)(B); "the archeological and cultural values of the planning unit" *Id*. at (e)(2)(C); as well as "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." *Id*. at (e)(2)(E). Also like an EIS, CCP planning includes a process for "active public involvement," "public notice of the draft proposed plan," and "opportunity for public comment." *Id*. at (e)(1)(A)(2) and (e)(4)(A) and (B).

In practical terms, no purpose is served by requiring the FWS under NEPA to conduct an environmental analysis for the planning of each refuge when NWRSIA already obligates the FWS to conduct the functional equivalent for each National Wildlife Refuge as part of the CCP process. And yet, because the existing language of NWRSIA does not specifically exempt refuge planning from NEPA, several anti-hunting groups relied on that statutory ambiguity as a basis for filing the case of *Fund for Animals v. Hall*, against the FWS in 2003, challenging the FWS's failure to conduct a comprehensive EIS addressing the facilitation of hunting throughout the National Wildlife Refuge System. That lawsuit went on for eight years and caused the Service to devote countless hours of time and financial resources on unnecessary NEPA analyses. Ultimately, in 2011, when the D.C. federal district court issued its opinion in the case, the Court found that the Service had no obligation to prepare a comprehensive EIS for hunting throughout the system.

The language included in Section 403(c) of the SHARE Act would have prevented this costly, burdensome, and unnecessary lawsuit. Had the CCP process not been subject to the duplicative obligations of NEPA, the anti-hunting groups would never have been given the opportunity to bring that suit and drain the Service's resources so egregiously. As long as the duplicative NEPA obligation remains unresolved, the National Wildlife Refuge System remains vulnerable to other costly and unnecessary NEPA compliance challenges. Title IV of the SHARE Act puts an end to that vulnerability.

No Obligation to Consider Limiting Hunting on Federal Lands Just Because Similar Opportunities May be Present on Non-federal Lands

Section 403(c) of the SHARE Act addresses another planning problem highlighted by useless and harmful litigation. Under Section 403(c)(3), BLM and Forest Service land managers, when they are planning for the facilitation of hunting, shooting, or fishing on federal public lands, need not consider the availability of similar activities on adjacent or nearby public or private lands ***unless*** the combination or coordination of the activities on state or private and federal lands would enhance the recreational opportunities. This clause very clearly prevents the BLM and/or the Forest Service from closing or refusing to open lands to hunting, shooting or fishing, simply because users can find similar opportunities on non-federal lands.

As a Nation, we must encourage all Americans, and in particular young people and urban residents, to increase their participation in wildlife-oriented recreation, including hunting, shooting and fishing. Section 403(c) removes statutory and regulatory obstacles that inhibit federal agencies from providing access and opportunities simply because other non-federal areas are open to such activities.

The drafters of Title IV included the language of Section 403(c)(3) to respond to *Meister v. U.S. Department of Agriculture*, a case filed by an individual who wanted to shut down hunting in portions of the Huron-Manistee Forest in Michigan. This person claimed that the Forest Service could not allow hunting because it duplicated similar opportunities on state lands. At the time, the Forest Service had regulations in effect that required forest managers to conduct planning for the facilitation of outdoor recreational opportunities by taking into account similar activities on adjacent or nearby state or private lands. Although these particular regulations have since been replaced, the potential for the Forest Service or BLM to create similar regulations or to be held to similar obligations remains a threat to those whose hunting, shooting and fishing on federal public lands could be the subject of a legal challenge by another anti-hunter or anti-hunting group. Section 403(c)(3) provides needed clarity on this issue.

Clarification of Wilderness Act "Within and Supplemental To" Language

Section 403(e) of Title IV of the SHARE Act provides an important clarification for what some perceive as a statutory ambiguity in the language of the Wilderness Act. Section 403(e) clarifies that the Wilderness Act's discussions of Wilderness purposes being "within and supplemental to" the purposes of the underlying federal land unit means that the head of each federal agency must implement the Wilderness purposes of a land unit to facilitate, and/or enhance, and not to impede, the underlying purposes of the unit.

Technically, the existing language of the Wilderness Act is clear. Nevertheless, federal agencies and members of the public are not interpreting the phrase "within and supplemental to" in accordance with its plain meaning. Anti-hunting groups, wilderness proponents and some agency personnel have promoted exactly the opposite of what Congress intended. Instead of observing the priority of the underlying purposes of the land unit, these groups and individuals have worked to make wilderness values the priority concern of areas designated as Wilderness. Section 403(e) of the SHARE Act, if enacted, would reassert Congress' original intent and would thwart efforts to make the underlying purposes of a land unit secondary to Wilderness purposes.

The language in Section 403(e) of the SHARE Act results from a lawsuit, *Wilderness Watch v. U.S. Fish and Wildlife Service*, filed in 2007. The plaintiffs challenged the legality of two water developments that provided important water for desert bighorn sheep on the Kofa National Wildlife Refuge in Arizona. The area that became the Kofa National Wildlife Refuge was established by Executive Order in 1939 for the specific purpose of desert bighorn sheep recovery. The refuge's population of bighorn sheep served as a seed population for the restoration of desert bighorn sheep throughout the West. Despite the stated purpose of the area and the importance of the sheep population on the refuge, wilderness advocates sued to have the water developments removed because they existed partially in an area designated as Wilderness. The plaintiffs were more concerned about the intrusion of the water development apparatus than they were about the sheep the water developments helped conserve. Their arguments for

removal of the water developments were based, in part, on the erroneous premise that the Wilderness purposes of the areas designated as Wilderness within the Kofa National Wildlife Refuge implicitly superseded the underlying conservation purposes of the refuge area.

Section 403(e) of Title IV the SHARE Act should prevent such lawsuits and would clarify Congress' intent that the conservation mandates of federal land cannot be overridden if and when that area is designated as Wilderness. Section 403(e), if adopted, will restore the balance of priorities between Wilderness purposes and the underlying mandates imposed by the laws intended to protect wildlife, hunters, shooters and anglers.

Use of Volunteers from the Hunting Community to Manage Wildlife Populations

Section 404 of Title IV of the SHARE Act reinforces a practical and efficient management tool available to all federal land management agencies for use in wildlife population control. Section 404 directs federal land managers to consider the use of volunteers from the hunting community when addressing wildlife population reductions, including reductions on National Park Service (NPS) lands and other lands where hunting may not be authorized. Such reductions are often necessary, especially where hunting is not allowed, to reduce harm to other resources by the overpopulated species. Section 402(3)(B) of Title IV makes clear that the use of hunters in this capacity does not constitute "hunting." This will help avoid any conflict with existing statutes that prohibit hunting on certain federal lands.

Many state and federal land managers welcome hunters as volunteer sharpshooters to help the agencies reduce wild ungulate and other wildlife overpopulations. Instead of spending financial resources on private companies or agency personnel, these state and federal managers recognize that the hunting community is qualified to assist with culling and can carry out the project safely and efficiently.

The use of volunteers from the hunting community for wildlife management, even on National Parks, is already legal. The Tenth Circuit Court of Appeals, in *WildEarth Guardians v. National Park Service*, made that determination in response to a legal challenge to a volunteer-as-agents program implemented by the NPS and the State of Colorado for the reduction of the elk population in Rocky Mountain National Park. Consequently, the SHARE Act is not strictly necessary to clarify the legality of the process.

Despite the confirmed legality of the use of volunteers from the hunting community, the federal agencies, and in particular the NPS, have been slow to utilize volunteers on most federal lands, including National Parks, throughout the country. Only three programs involving volunteers as agents currently operate at Rocky Mountain National Park in Colorado, Theodore Roosevelt National Park in North Dakota and Wind Cave National Park in South Dakota. In past planning for population reductions in many other National Parks, the NPS has rejected the use of volunteers as costly, inefficient and dangerous—although the NPS itself recently released a study that acknowledged that the use of volunteers for population reduction on NPS lands is cost-effective, efficient and safe.

Section 404 of Title IV of the SHARE Act provides additional support for such programs by making it necessary for federal land managers to consider the use of volunteers as agents in such

planning. It also prevents federal land managers from rejecting the use of volunteers without the concurrence of the appropriate state wildlife management agency. With this additional statutory support, any preconceived notions against the use of volunteers should give way to rational, science-based consideration of the use of volunteers as a viable, safe, economical, and efficient management tool. In addition, these provisions cement the states' important role in the decision-making over the management of wildlife on federal lands within state boundaries.

Authorizing the Importation of Polar Bears Legally Harvested Prior to the Threatened Listing in 2008

Other titles within the SHARE Act also provide solutions to problems that were the subject of prolonged litigation. Title 12, for example, authorizes the importation of approximately 40 polar bears that were legally harvested in Canada before the date that the FWS adopted a rule listing polar bears as a threatened species and instituted a ban on the importation of polar bears. Several polar bears never made it into the U.S. because a federal district court judge in California required the FWS to make the threatened listing effective immediately, instead of after the statutorily required 30-day implementation period. Had the listing been effective 30 days later, the hunters could have legally imported most or all of these bears prior to the importation ban.

Section 1202's authorization of the importation of those already harvested bears poses no threat to the existing Canada polar bear populations or the species as a whole, which remain at historically high population levels. In fact, the FWS has recognized that hunting polar bears from six approved populations benefits the conservation of the species by generating much needed revenue for the local communities that coexist with the bears and are instrumental to its conservation. In addition, the importation of these 40 plus polar bears will benefit the species, because a provision in the Marine Mammal Protection Act requires each polar bear importer to pay a $1,000 fee that can be used only for polar bear conservation and research. As a result, Title 12 will generate about $40,000 for polar bear research and conservation.

SCI makes one suggestion to improve Title 12. We recommend that Section 1202 not be limited only to individuals who submitted their import permit applications prior to May 15, 2008. Some polar bear hunters who legally harvested their polar bears prior to the listing may not have applied for import permits prior to May 15, 2008. The FWS allows, but does not require, hunters to apply before their trip. Requiring that the hunters have applied prior to May 15, 2008 serves no purpose. Those hunters should be entitled to the same treatment as other hunters who benefit from Title 12 of the SHARE Act.

Recognizing and Rewarding Those Who Recovered Western Great Lakes Wolves

To conclude my testimony, I would like to address how Title 14 of the SHARE Act puts an end to the FWS's, states' and hunting community's struggle to delist the wolves of the Western Great Lakes. Despite being recovered for over a decade, seemingly endless court battles have ping-ponged the Western Great Lakes wolf population back and forth from listed to delisted status. The significant conservation and management efforts of the states of Michigan, Minnesota and Wisconsin, and of the communities that have dealt with this predator population, have resulted in a population that meets all of its recovery plan goals and no longer qualifies as an endangered species. Last month a U.S. Circuit Court in D.C. issued a ruling reversing the delisting of the population based on perceived legal infirmities in the delisting rule. The court did acknowledge

that the FWS's inability to delist the population undermines and discourages the conservation efforts of states and the public.

Title 14 directs the FWS to reinstate the rule to delist the Western Great Lakes wolf population. Congress successfully used this same mechanism to finally resolve the delisting of the wolves of Montana and Idaho. That law withstood a constitutional challenge from the same groups who have repeatedly gone to court to undermine gray wolf delisting. Title 14 will take wolf recovery and delisting out of the hands of the courts and will return wolf management and conservation to the states, where they belong.

Mr. Chairman and Members of the Subcommittee, thank you for this opportunity to discuss the genesis and benefits of several practical elements of the SHARE Act. These are but a small fraction of the many components of the Act that will provide new opportunities and protections for hunters, shooters and anglers. I urge you to support and adopt the SHARE Act, and SCI stands ready to assist you in this effort.