

Testimony of Jorge P. Gutierrez Jr.  
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Before the Subcommittee on Fisheries, Wildlife, Oceans  
and Insular Affairs on Natural Resources,  
U.S. House of Representatives

Oversight Hearing  
"Florida Everglades Restoration: What are the Priorities"  
1324 Longworth House Office Building  
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Chairman Fleming and members of the Subcommittee on Fisheries, Wildlife, Oceans and Insular Affairs, I sincerely thank you for the opportunity to present written as well as live testimony at your oversight hearing.

I am testifying today as the President of the Everglades Coordinating Council ("ECC"), a consortium of South Florida sportsmen & conservation organizations involved in a plethora of issues related to the Everglades ecosystem, from its headwaters in the Northern Kissimmee Valley of Florida where a new national wildlife refuge has being proposed, all the way south to the reefs in the Florida Keys.

ECC is a non-profit NGO whose sportsmen delegates have for over four decades worked with state, federal, and county governments and other NGOs, to address crucial issues, including: ecosystem restoration (or lack thereof), natural resource policy, commonsense land and water bodies management, non-motorized & motorized access to and enjoyment of federal and state public lands, off-road vehicle access and use, hunting and game management, protected & imperiled species management, transportation planning, exotic species eradication, land acquisition as well as sovereign land issues. We were working on Everglades issues before it was popular and a growth industry for Florida.

I am a native of South Florida where I have lived over the past 36 years. As a civil trial attorney with the law firm of Freedland Russo, P.L. in Weston, Florida, I currently reside and work within a short drive from the Everglades where I recreate year round.

**I. Views of the ECC on the Establishment of a Proposed Everglades Headwaters National Wildlife Refuge and Conservation Area**

Without question, the proposed Everglades Headwaters Refuge will have a huge effect on the current and future traditional cultural activities and recreation in this extensive area that comprises the heartland of Florida.

While the ECC is first and foremost a conservation organization, due to the history of the

U.S. Fish & Wildlife Service ("FWS") in Florida, it's clear to ECC that a Refuge would hinder current access and create more obstacles to recreational opportunities while creating unnecessary burdens both locally on Floridians and nationally on all Americans. Moreover, given the rural nature of this area, ECC believes that development is not a short term possibility and the threat of development many decades down the road is not a viable reason at this time to make a drastic \$700,000,000 sacrifice for phase one of a four phase project given the current economics of our country.

In viewing the Draft Land Protection Plan and Environmental Assessment for the Proposed Establishment of the Everglades Headwaters National Wildlife Refuge and Conservation Area ("LPP"), it is clear that a cursory review makes the conservationist in me wonder about a number of things. First and foremost is the grandiosity of the \$700,000,000 project and the costs with just getting this project off the ground. As reflected on page 33 of the LPP, the estimated one-time operating costs are jaw dropping including the posting of boundary signs at \$875 per mile and the construction of boardwalks at \$1.4 Million per mile. Those numbers in and of itself make even the non-sportsman & average taxpaying citizen who will never use the area cringe. That kind of money can be better used to fund and operate current areas, clear the 3.4 billion dollar federal operations and maintenance backlog on existing federal properties and create more access in places where there is none or even better yet, provide monetary resources to the State of Florida which is in a much better position to use it locally without bureaucratic red tape and years of analysis, planning and meetings to figure out how to best use Florida rural land.

ECC has always been disheartened when local decisions are left to folks thousands of miles away with little to no real knowledge of traditional uses and recreation. You would not take advice on Alaskan winter recreation from a native Floridian who has never been in the snow, so the same logic should apply to the Everglades. The local sportsmen and state agencies are in a much better position to evaluate uses, access, recreation and protection of the resource. A few days long fact-finding trip into the Glades does not give someone the necessary and adequate experience to dictate policy and use for decades down the road.

## **II. History of Permitting Wildlife Dependent Recreation in National Wildlife Refuges in Florida**

In Florida, there have already been ample opportunities of all kinds to evaluate access for sportsmen on national wildlife refuges. Without question, here in Florida the FWS has been extremely restrictive when compared to the more access-friendly Florida Fish & Wildlife Conservation Commission.

As an example, at Merritt Island National Wildlife Refuge, there are limitations on access in several different ways: 1) time and day restrictions (no afternoon hunting, certain days of the week etc.); 2) elimination of and/or limitations on the use of mechanical

conveyances within the refuge (no airboats or certain motors); and 3) only small sections the refuge open to hunting. This example is repeated at all the Florida refuges where duck hunting is allowed including the Arthur Marshall Loxahatchee NWR and Ten Thousand Islands NWR. A great majority do not permit hunting at all.

The problems are not limited to just duck hunting, but other types of hunting and users in general including such things as hiking or picnicking as well. In fact FWS has refused to allow real access on the Florida Panther National Wildlife Refuge just north of Alligator Alley in Collier County although allowed by law. FWS has removed off-road vehicles for hunting in the Picayune Strand State Forest restoration project. In the Everglades, as this committee is fully aware, we have exotic pythons running rampant with a 16-foot snake just this past week being found with a 75-pound deer inside. This too is the result of having no access to large areas of federal land.

History is indeed a greatest indicator of future FWS actions on the Headwaters refuge. Currently only 6 of the 28 national wildlife refuges in Florida provide for any type of hunting (as reflected on the FWS' current websites for their Florida Refuges). One thing is certain...of the few that do, access and recreation is heavily limited in the ways you can access it (i.e. limited areas open within the refuge, limited mechanical conveyances, restrictions on days and times of use as well as onerous regulations and restrictions on use which make it difficult if not impossible to really recreate on the area). Access to a small portion of a refuge is not real access.

When looked at as a group, it is startling how restrictive FWS is when compared to state wildlife lands. The following is a list of all Florida National Wildlife Refuges under the control direction or authority of FWS:

- Archie Carr National Wildlife Refuge (No Hunting)
- Arthur Marshall/Loxahatchee Wildlife Refuge (Limited/Restricted Opportunities)
- Caloosahatchee National Wildlife Refuge (No Hunting)
- Cedar Keys National Wildlife Refuge (No Hunting)
- Chassahowitzka National Wildlife Refuge (No Hunting)
- Crocodile Lake National Wildlife Refuge (No Hunting)
- Crystal River National Wildlife Refuge (No Hunting)
- Egmont Key National Wildlife Refuge (No Hunting)
- Florida Panther National Wildlife Refuge (No Hunting)
- Great White Heron National Wildlife Refuge (No Hunting)
- Hobe Sound National Wildlife Refuge (No Hunting)
- Island Bay National Wildlife Refuge (No Hunting)
- J.N. "Ding" Darling National Wildlife Refuge (No Hunting)
- Key West National Wildlife Refuge (No Hunting)
- Lake Wales Ridge National Wildlife Refuge (No Hunting)
- Lake Woodruff National Wildlife Refuge (No Hunting)

Lower Suwannee National Wildlife Refuge (Limited/Restricted Opportunities)  
Matlacha Pass National Wildlife Refuge (No Hunting)  
Merritt Island National Wildlife Refuge (Limited/Restricted Opportunities)  
National Key Deer Refuge (No Hunting)  
Passage Key National Wildlife Refuge (No Hunting)  
Pelican Island National Wildlife Refuge (No Hunting)  
Pine Island National Wildlife Refuge (No Hunting)  
Pinellas National Wildlife Refuge (No Hunting)  
St. Johns National Wildlife Refuge (No Hunting)  
St. Marks National Wildlife Refuge (Limited/Restricted Opportunities)  
St. Vincent National Wildlife Refuge (Limited/Restricted Opportunities)  
Ten Thousand Islands National Wildlife Refuge (Limited/Restricted Opportunities)

These numbers don't lie and basically establish a rate of openness for sportsmen recreation at just over 20%. The fact remains that these are real and current historical figures for Florida where this latest refuge (the 29th) is being proposed. While ECC has been told that this ratio is not the case in other parts of the country, given the fact that this refuge will be in Florida, history is just not on their side. Moreover, as we know local staffs at these refuges are transitory which means that even if flexible and workable access was ever arrived at, the threat of litigation by extreme environmental groups or the installation/appointment of less sportsman-friendly local leadership can take away any gains in access arrived at during their tenure. A long list of gentlemen agreements in Florida (i.e. Picayune Strand etc) where access was initially agreed to which was later taken away through federal intervention or decisions made elsewhere only leaves the ECC with no other option than to support the position of minimal or no federal involvement with very few exceptions. We have been harmed too many times in the past to trust federal agencies again with such a large piece of land in the heart of Florida. Given that history, there should not be a 29th National Wildlife Refuge in Florida until a drastic change occurs here in Florida. Until FWS decides to show goodwill and change its method of operating refuges in Florida, the ECC is against adding yet another refuge to this long list of areas which continue to deprive Floridians with access for traditional recreation.

**III. There are few, if any, real assurances from FWS to convince the ECC that Hunting and Public Access will be ensured within the Proposed Everglades Headwaters National Wildlife Refuge & Conservation Area in the future.**

Under the 1997 Refuge Improvement Act, existing compatible wildlife dependent recreational uses (i.e. hunting etc) shall continue on an interim basis pending the completion of the comprehensive conservation plan for a new refuge. Thus any lands which become part of the refuge would continue be recreated or used in the same manner upon creation, however it would not *ensure* that it would stay open since that determination gets made in the CCP, subject to NEPA and is also subject to funding

limitations. Things such as how the land is used, what practices are used and such simple issues as hunting leases which generate revenue, could be limited, eliminated or affected by such things as NEPA, the Endangered Species Act and other regulation.

As it pertains to this Refuge, its absolutely possible and even more probable that while these lands remain open initially, after a conservation plan is created these areas will be off limits to many individuals not only because of ecological concerns but more likely due to funding. It is well documented that even if the money was found to establish the refuge, monies to operate it would be needed and if no such monies were allocated, a great portion of the property would be closed and locked to everyone. Not even a picnic could occur as such is the case with Lake Wales Ridge National Wildlife Refuge.

Again looking at history, we Floridians know that when FWS took over the Picayune Strand millions of dollars were put into the pot of money use to purchase the property. As a result FWS later forced the Florida Department of Forestry to force the traditional buggies from the area thus eliminating traditional and cultural activities that had taken place there for generations. When the Ten Thousand Islands NWR was established, Federal officials vowed to have traditional uses continue as is, yet within months refuge staff eliminated the most traditional of activities in the area, commercial fishing.

Loxahatchee NWR was yet another property where assurances were made that access would be maintained and opportunities would flourish. Unfortunately, the opposite took place and exotic plants took over 1/2 of the 160,000 acres which later had to be removed using contractors at a high cost to the taxpayer. As was the case with other refuges, traditional uses such as airboating were immediately eliminated with the stroke of a pen, yet they recently placed a "virtual" airboat ride in the visitor center. Certain areas were closed to any access whatsoever and more restrictions were put in place, i.e. outboard motors only. Just within the past 18 months, myself working with other sportsmen groups have attempted to work with the local administration to improve access and have been vehemently shot down by staff year after year. It is this take it or leave it type of behavior that causes such an opposition to yet another refuge when the local staff has such control to prevent any reasonable accommodation or change. This goes completely against the open and sportsman friendly attitude of the state wildlife agency, Florida Fish & Wildlife Conservation Commission, which is more hands-on and open to hearing from stakeholders when making its decisions. It is not unusual for federal agency decisions to be made outside of the area being affected. Federal staff in Denver, Atlanta, D.C. or elsewhere should not be making decisions on Florida-based areas. The locals always know best.

FWS is a sister agency of the National Park Service and also falls under the umbrella of the Department of the Interior. Assurances only go so far. No better example of that is the Big Cypress National Preserve where I was appointed last year to serve on its ORV advisory committee. We are now in the 4th decade of the Preserve's existence and the addition lands are nowhere closer to being open. Recent litigation by environmental

groups only further strengthens the ECC's position that Federal involvement only prolongs the opening of these areas as a result of increasing federal control and oversight and the properties falling under the auspices of NEPA etc. These lands can be enjoyed more quickly and with less governmental red tape when in private hands or in the hands of the state agency which is receptive and more adaptable to changing times or environmental conditions etc without the burdensome federal regulations and associated processes.

In sum, there are no assurances whatsoever that hunting and public access will continue once a refuge is established. The shining example of this is the Lake Wales Ridge NWR in Highlands County, Florida on Highway 98. This refuge right in the middle of this proposed larger and grandiose refuge serves as the best example of what can surely occur if this Headwaters refuge gets any further along...land that was once open is now closed. As the Lake Wales Refuge's very own website<sup>1</sup> indicates, it is closed to public use. In fact the website states "There is no public access". No hiking, camping, or bird watching etc. A casual drive by the area will show you plenty of FWS signage, high fences and a locked gate. This is a small refuge of a few thousand acres which when compared to the 150,000 acres of proposed refuge is a nullity but yet if the FWS can't even open this small parcel and/or obtain funding for staff at this location, how can the people of Florida reasonably believe that the FWS will be able to adequately manage and operate a bigger and more costly project and have better access than what they have now?

By their own admission, even if the properties were acquired by the FWS, there would have to be additional funding sources for staff and maintenance. In essence, the property could be acquired and placed under Federal Control, but left locked and closed due to lack of funding for staff, equipment and other necessary items. Moreover, we already know there is already an enormous maintenance backlog for existing federal properties nationwide and as a result this would fall at the end of the long list of priorities.

#### **IV. Establishing a National Wildlife Refuge will not further the goal of restoring the Everglades.**

The short and succinct answer to this question is that it will not. Currently there are a number of properties being used efficiently to restore the Everglades. The Stormwater Treatment Areas are one of the best examples of combining the restoration of the Everglades while allowing access to user groups for bird watching, hunting and recreation. Other areas such as the District's enormous reservoirs along US 27 in Western Palm Beach County lie dormant due to a combination of reasons, one of which being finances. The South Florida Water Management District is one of the largest entities working on restoration while under great financial constraints due to state of

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<sup>1</sup> <http://www.fws.gov/refuges/profiles/index.cfm?id=41577>

the current economy. There are in fact other federal agencies already involved in conservation easements such as the U.S. Department of Agriculture. Why not improve the mechanisms in place rather than just trying something new that is more costly and may not help matters much.

Based on the FWS' own environmental assessment as reflected on page 261, Headwaters and its \$700,000.00 cost will only provide "*small water quality benefits* by the protection of 50,000 acres of land, and the 100,000-acre conservation easements".

#### **V. Local Communities and the Services provided to Citizens will be hurt by the Proposed Refuge**

Without question, the local counties affected by this proposed refuge will lose tax revenue. Congress will ultimately decide how and if they will be reimbursed. In fact the House Natural Resources Subcommittee on Natural Parks, Forests and Public Lands recently looked at this very issue on October 14, 2011 during an oversight hearing entitled Payments in Lieu of Taxes (PILT).

With the land falling into federal control, there is an absolute loss of tax revenue for these Florida counties and municipalities within the refuge area. This is not speculation or conjecture but rather fact. Vital program such as road construction, schools and law enforcement are affected. When the Picayune Strand and Ten Thousand Islands in South Florida (Adjacent to Big Cypress National Preserve) were taken over by the Federal government, Collier County lost valuable tax revenue. To date, the federal government has not fulfilled its promise to reimburse the county for lost revenue. This was many years ago and is only a small example of what will occur with this much larger endeavor. While this may have fallen by the wayside in earlier years due to the real estate boom and high property tax collections, in today's economic climate this loss hurts and will continue to hurt for years to come.

#### **VI. Florida is a Better Partner**

The Florida Fish & Wildlife Conservation Commission ("FWC") is a much better steward of these lands as they are local and know the areas. In fact, while FWS has gone as far as suggesting to leave the land management and recreation components of the refuge to the state wildlife agency, Federal law as currently written creates too many obstacles and constraints for a workable partnership to take place. Changes to the National Wildlife Refuge Improvement Act would be necessary in order for this to work otherwise federal rules and oversight would counteract any real progress and access created through the work of the state agency and its staff.

FWC already does a great job on more than 34 million acres of Florida public and private land including 5.8 million acres of wildlife management areas. As the agency responsible for one of the largest public-hunting systems in the country, it provides better access,

facilities and more recreational opportunities than the FWS could ever dream of or hope to provide, even under the best of circumstances.

Sportsmen and Gladesmen (a traditional culture recognized by a study commissioned by the United States Army Corps of Engineers in association with the Comprehensive Everglades Restoration Plan (CERP)) in South Florida have been partners with FWC for years. It is disheartening that to date FWS has totally disregarded the Gladesmen culture and not even mentioned this community in any of its documents to date.

## **VII. Sportsmen Should Be Part of the Solution**

First and foremost, sportsmen are conservationists and stewards of the land. You cannot lock a gate and prevent access in the name of conservation or preservation. Without access, exotics flourish and problems go unnoticed for decades such as melaleuca did in Loxahatchee NWR before millions of dollars were spent to control/eradicate it and why exotic snakes like Burmese and African Rock Pythons are all over the Everglades.

This committee needs to take strong stance once and for all to eliminate the dysfunction and stop the decades-long management plans, the disregard for congressional mandates and timelines, and the inclusion of Wilderness sustainability assessments in projects whose purpose is clearly stated including uses that would be prohibited under Wilderness. Sportsmen are ready, willing and able to help in this regard and will help craft whatever fixes are needed so things move quickly and areas are opened up for recreational users sooner than later.

Without a doubt, sportsmen as well as other recreational users know and love these areas and are the best individuals to tackle conservation issues head on, but in a responsible way that allows for conservation, access and use by all stakeholders to be symbiotic.

## **VIII. Conclusion**

I thank you again for the invitation to travel to Washington once again to address this committee. The sportsmen of South Florida are the original conservationists who worked to establish Big Cypress National Preserve decades ago. Years later we are still fighting for reasonable access to this national treasure. The proposed refuge at this time is just an extra and possibly unnecessary piece of this large puzzle and the goals of Everglades restoration can be completed without this costly \$700,000,000 endeavor. The resources of the Federal Government would be better served by concentrating on opening more of the federal lands we already have here in Florida and improving them across the board rather than putting even more lands under Federal control and continuing to limit access. ECC is encouraged by the work of this committee and looks forward to helping each of you in the years to come.