

Committee on Resources

Full Committee

**Giving Back to Nature
Testimony before the House Resources Committee
by Mark Van Putten
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Mr. Chairman, Members of the Resources Committee, thank you for this opportunity to testify before you. My name is Mark Van Putten; I am here on behalf of the National Wildlife Federation, the Nation's largest conservation advocacy and education organization.

I want to congratulate the sponsors of H.R. 701, the Conservation and Reinvestment Act of 1999 (CARA) and H.R. 798, the Permanent Protection for America's Resources 2000 Act (Resources 2000) for their tremendous leadership in introducing the two bills that are now pending before this Committee. Each presents an historic opportunity to enact permanent and meaningful conservation funding that would benefit wildlife, wild places, and generations of Americans to come. Your bills, and the support they have received, suggest that at long last the Nation is ready to produce a solution to its pressing conservation funding needs.

If we are successful in passing a permanent conservation funding bill, it would be a conservation milestone comparable to the passage of landmark laws like the Clean Air and Clean Water Acts, and the original Land and Water Conservation Fund. There are considerable hurdles, budgetary and otherwise, yet to be overcome. Like you, however, we recognize that there is a rare window of opportunity to pass significant legislation.

The National Wildlife Federation (NWF) has made it our top priority to work with you to ensure that this victory is accomplished. It is our objective to have the final legislation incorporate the following five principles:

- assures permanent, dedicated funds that do not require annual Congressional appropriation;
- assures the program does not reduce or divert funds that are currently available for other conservation purposes;
- includes funding for state fish and wildlife agencies that would support conservation, recreation and education programs for a diverse array of fish and wildlife species;
- guarantees funding for the Land and Water Conservation Fund at the authorized \$900 million level and divides those funds equally between federal and state programs; and
- provides funds for coastal conservation efforts in a manner that does not create an incentive for coastal states and their local governments to support inappropriate new offshore oil and gas development and includes strong guidelines to ensure that the funds are used for the restoration and enhancement of coastal natural resources.

Though this testimony details the differences between CARA and Resources 2000, it is important to

recognize that these bills are not so far apart that reconciliation is unthinkable. Both bills direct that receipts from non-renewable oil and gas drilling off of the Outer Continental Shelf (OCS) be used for the protection and renewal of our vulnerable coasts, public lands, and wildlife resources. Moreover, both bills acknowledge the serious conservation needs that now exist and respond by providing a dramatic increase in conservation funding resources (more than \$2 billion annually). We strongly encourage the Members of this Committee to work together to ensure that there is the necessary bipartisan support to make permanent conservation funding a reality.

Overview of the Conservation Needs

Not so long ago, America's network of public lands, which includes our national parks, grasslands, forests, and wildlife refuges, was the model for and envy of the rest of the world. Over time, however, this endowment has eroded under the pressure of ill-use and over-demand. We are now learning that even the largest of these protected areas often cannot provide enough habitat for wide-ranging species like grizzly bears and bison. Nor are these protected areas impervious to the development that presses up against their borders. Some of our most fragile ecosystems, such as the Everglades, have declined to the point that challenging restoration efforts are necessary. And, there are some tremendously rich ecological systems such as the northern forests of New England and vital swamplands in the Greater Okefenokee ecosystem that face threats from future development if they do not receive protection soon.

The management of our precious wildlife resources constitutes another significant area of conservation need. Nearly all wildlife management dollars are devoted to the protection of either game species (species that are either hunted or fished) or endangered species. Yet, roughly 90% of all species are considered "nongame" species (i.e. they are not hunted or fished, nor are they classified as threatened or endangered). As the pressure on the habitat of this nongame wildlife increases, the species are left to fend for themselves. Ironically, the failure to intervene with early protective measures means that these nongame species frequently decline until they are finally listed as endangered or threatened. Funding should be dedicated to the prevention of nongame species' decline in order to avoid the more costly recovery measures that are frequently incurred once a species has been listed.

The threats faced by our fragile coastal ecosystems present a third category of conservation needs. America's coastal zones, which are among the most biologically rich natural systems on the continent, are facing devastating impacts such as loss of coastal wetlands and estuaries. Factors such as development, sea level rise, offshore oil and gas development and water pollution are damaging our coastal areas some almost beyond repair.

These conservation funding needs are desperately real. Each year that passes without adequate conservation funding brings a greater chance that irreplaceable natural resources will be lost forever. By directing several billion dollars annually to the cause of conservation, both of these bills would make a substantial difference in the efforts to preserve our Nation's natural heritage.

What makes these two bills so historic, however, is the fact that they would finally provide a reliable source of conservation support. Currently, conservation funding is subject to annual appropriation a highly political, sometimes fickle, and always unreliable process. As a result, conservation funding levels have fluctuated dramatically from year to year and often been dramatically reduced without much warning.

Funding at Any Cost?

The opportunities presented by these conservation funds are enticing. It is vital, however, that any conservation funding bill does not inadvertently create negative environmental impacts by encouraging more oil and gas development or other types of environmental degradation. One of the big hurdles remaining for these bills is the fact that CARA continues to contain language that directly links a state's conservation funding levels to the amount and proximity of oil and gas drilling occurring off its shores. We are heartened by the significant improvements that have been made to Title I of CARA to exclude areas currently covered by the oil and gas leasing moratoria from the revenue stream. We look forward to working with the Committee to ensure that any remaining incentives are addressed before the bill returns for mark-up.

The following testimony provides a comparison of the primary features of the two bills, evaluates them in light of NWF's five principles, and offers suggested changes to the bills.

Funding State Fish and Wildlife Conservation

State fish and wildlife agencies are responsible for the management and protection of all fish and wildlife species that inhabit their borders. Their efforts in the conservation of fish and wildlife species have yielded remarkable results including the restoration of wild turkey, elk, black bear, and striped bass populations to their native habitats. Yet funds available to these agencies do not typically reflect the broad mandate that the agencies must fill, and all too often, difficult programmatic decisions must be made based on limited budgets. Substantial new funding would provide a much-needed shot in the arm to state fish and wildlife agencies for improvements in on-the-ground management of wildlife species.

Traditionally, much of the funding for wildlife management has come from the support of sportsmen and women through excise taxes on hunting and fishing equipment and through the sale of sporting licenses. Given that hunters and anglers pour millions of dollars annually into state wildlife programs, it is not surprising that the vast majority of those funds have historically been used for the management of hunted and fished (or "game") species.

Yet roughly 90% of species, those that are not hunted or fished or federally listed as threatened or endangered (often referred to as "nongame" species), receive significantly less reliable financial support. Annual funding for all state nongame programs amounts to less than \$100 million compared to more than \$1 billion spent for state game programs. It makes sense to set aside funding dedicated to prevent the decline of wildlife species before they reach a crisis point when recovery is often more costly.

There is widespread agreement about the need to increase funding for wildlife conservation, however, there are important questions about where the money should come from and a long history of previous failed attempts to get dollars for these programs. In 1980, Congress passed the Fish and Wildlife Conservation Act, which was designed to protect the Nation's nongame wildlife resources. The law was intended to augment state wildlife programs aimed at nongame species. Unfortunately, Congress never appropriated funds for this program so the law was rendered meaningless.

The National Wildlife Federation, along with other organizations, developed the Teaming with Wildlife Initiative to address the unfulfilled promise of the Fish and Wildlife Conservation Act. The Teaming with Wildlife concept sought to garner funds for wildlife from a user fee on outdoor recreation equipment. The Teaming with Wildlife Initiative faced its own set of political obstacles and the user fee concept has yet to make it into the legislative arena. The idea of funding nongame wildlife programs, however, does appear in a modified form in these bills.

H.R. 701 (CARA)- State Fish and Wildlife Funding

H.R. 701 would automatically direct 10% of the annual OCS revenues to states to allow for the development and implementation of programs for wildlife conservation, conservation education, and wildlife associated recreation. To accomplish this, the bill creates a new subaccount under the existing Federal Aid to Wildlife Restoration Act (the Pittman-Robertson Act) for funneling these funds to the states. Based on predicted FY2000 OCS revenues, this title would provide approximately \$459 million annually to the states. States would receive their allocation based on the state's population and land area relative to other states.

This bill would fund management efforts necessary to sustain healthy populations of wildlife (e.g. gathering scientific data, monitoring species, direct management of habitat, captive breeding, relocation, etc.). Additionally, it would support recreation-associated efforts such as construction of wildlife viewing structures and clearing trails. In several places, the bill's language indicates that its intent is to benefit a "diverse array of wildlife and associated habitats, including species that are not hunted or fished." The bill does not, however, give explicit priority to nongame species.

Suggested Changes to CARA

Given the longstanding emphasis that state fish and wildlife agencies have placed on game species, the legislation should be written in a way that clearly directs states to prioritize the use of these funds for species that are not hunted or fished. Bill language that requires the states to place an increased emphasis on nongame species would help to rectify the historic imbalance that has left these programs relatively underfunded.

Additionally, although one of the bill's purposes is to "provide for public involvement in the process of development and implementation of a wildlife conservation and restoration program," it provides no clear mechanism or requirement to ensure that public participation is actually part of the process. The bill should be amended to include language that would provide for public meetings or citizen advisory committees to guide the programs that states develop with these federal funds. Strong public participation would help ensure that the concerns of nongame and other species with pressing needs are addressed.

H.R. 798 (Resources 2000)- State Fish and Wildlife Funding

Resources 2000 also provides funding to state fish and wildlife agencies for wildlife conservation, however, it uses a different approach. While CARA relies on the Pittman-Robertson Act to convey OCS revenues to states, Resources 2000 makes use of the "Fish and Wildlife Conservation Act of 1980." This Act, which was passed nearly two decades ago, recognized the lack of reliable funding for comprehensive nongame wildlife management. Unfortunately, however, no funds have ever been requested by the Executive branch, nor has Congress ever appropriated funds to this law. Resources 2000 amends this Act and redirects it to "preserve biological diversity by maintaining natural assemblages of native fish and wildlife." Over the next 5 years, the bill gradually increases funding for this program to \$350 million annually (nearly \$100 million less than CARA). Like CARA, states would receive their allocation based on its population and land area relative to other states.

Suggested Changes to Resources 2000

Channeling state fish and wildlife agency funds through the Fish and Wildlife Conservation Act, rather than the Pittman-Robertson Act could create some administrative disadvantages. The Pittman-Robertson program

has been tremendously successful for over 60 years and has a well established mechanism for ensuring that states receive the funds that they are entitled to, but also that states are accountable for their use of these funds. Because the Fish and Wildlife Conservation Act has never received any funding, it is likely to be difficult to establish the infrastructure necessary for distributing the funds and to provide reasonable oversight and accountability. NWF recommends using the proven mechanism of Pittman-Robertson.

In addition, wildlife conservation funding needs are extensive and immediate. Resources 2000 would not reach its full funding level of \$350 million per year for wildlife funding for five years. By delaying the flow of substantial funds for wildlife conservation, states will be unable to make effective, pro-active program developments for several years. We recommend that the bill be amended to provide the full level of wildlife funding from the outset. Finally, we recommend that funding levels for state fish and wildlife programs be increased by approximately \$100 million to match the higher level offered by CARA.

The Land and Water Conservation Fund

There is also a long history of unfulfilled funding for land and habitat acquisition. The Land and Water Conservation Fund (LWCF) was created by Congress in 1965 to preserve wildlife habitat and wildlands, as well as to protect our outdoor recreational resources for future generations. Like CARA and Resources 2000, LWCF is based on the idea that revenue paid into the Federal Treasury for the right to exploit off-shore oil and gas reserves (i.e. royalties from private companies that drill for oil and gas on the Outer Continental Shelf) should be used for conservation purposes. Revenue for LWCF comes primarily from OCS receipts, with some additional portion coming from the sale of surplus government property.

LWCF is authorized to receive \$900 million annually, however, it has rarely come even close to receiving this amount from Congress. LWCF funds are subject to annual approval by Congress and each year LWCF funding gets caught up in the political process. In general, LWCF funding has plummeted since 1979. And for the last four years, the state-side of LWCF received no funding leaving state and local governments without sufficient resources to meet community demands for accessible local recreational opportunities. Instead, these OCS receipts have been funneled back into the general treasury. It is estimated that approximately \$11 billion of OCS funds meant for LWCF have been diverted for other uses that are completely unrelated to conservation.

Although LWCF has always received less funding than was authorized, it nonetheless has provided phenomenal contributions to our Nation's land-based resources. It is responsible for the acquisition of over 7 million acres of federal parks and open space. Playgrounds, swimming pools, and scenic trails around the country are also attributable to LWCF.

Nonetheless, the demand for funds to acquire lands and recreational areas has always far outpaced the supply. Additionally, the recent lean LWCF funding years have left an enormous backlog of worthwhile projects that are awaiting funding. Both CARA and Resources 2000 go a long way towards fulfilling the original promise of the 1965 Land and Water Conservation Act.

H.R. 701 (CARA)- LWCF

CARA provides 23% of annual OCS revenues to be permanently and automatically directed to the Land and Water Conservation Fund with 42% of these funds going to the states (\$378 million), 42% to federal land acquisitions (\$378 million), and 16% for the Urban Parks and Recreation Recovery (UPARR) Act of 1978 (\$144 million). It funds UPARR using funds intended for LWCF and caps the combined total at \$900

million; this leaves both funds below their fully authorized levels.

CARA places a number of serious restrictions on how these LWCF funds may be used including: no expenditures can be made for purchases that exceed \$1 million unless they have been specifically authorized by a subsequently enacted law; 2/3 of the funds must be spent on lands east of the 100th meridian; land acquisitions must be within the exterior boundaries of existing federally managed areas (e.g. the National Forest or Park systems) or a land management unit established by an Act of Congress; and funds can not be used for condemnation purposes.

Suggested Changes to CARA

It is appropriate that this bill be amended to ensure that each of these programs reach their full level of authorized funding (\$450 million each) and that the state and federal-sides of LWCF receive equal amounts of funding. While the Urban Parks program provides worthwhile urban recreation areas, it should be kept separate and distinct from LWCF.

One of the more damaging provision in this title is the requirement that federal purchases over \$1 million be authorized by subsequently enacted law. It means that many LWCF projects will be forced to get approval through Congress and will be subject again to the often fickle political process that currently hinders the application of LWCF. This restriction should either be lifted entirely or the cap set at a much higher level (e.g. \$100 million). If this last change is not made, the benefits of permanent and automatic LWCF funding may be lost as each individual project stalls out waiting for Congressional approval.

In addition, we urge that the other restrictions on LWCF's application also be removed from this bill. The requirement that 2/3 of the funds be spent in the East is an arbitrary and illogical restriction, particularly in light of the accompanying requirement that the federal lands be acquired only in areas within the external boundaries of existing federal lands (there are far fewer tracts of federal land in the East). This latter provision would restrict the use of LWCF federal funds to only those areas that are within existing federal areas (inholdings) and could have devastating implications for the use of LWCF.

H.R. 798 (Resources 2000)- LWCF

Resources 2000 does not significantly amend the LWCF. It provides permanent and automatic appropriations, at the fully authorized level, to both the state and federal sides of LWCF (i.e. \$450 million each). Although Resources 2000 does fund the Urban Parks and Recreation Recovery Program (at \$100 million), it keeps it entirely separate from LWCF. The bill's LWCF title is free of the types of problematic and unnecessary restrictions found in CARA.

Coastal Conservation

It is hard to overstate the devastating environmental impacts of OCS drilling impacts that result from the initial exploration and development of the platforms; from the production, transportation, and refining of oil and gas; and ultimately, from our own consumption of OCS petroleum. Unfortunately, the lion's share of these impacts are borne by America's coastal zones, which rank among the most biologically rich and economically significant natural systems on the continent. These coastal zones are home to over half the Nation's population, play a critical role in absorbing flooding and blunting storms, provide important spawning habitat for commercially valuable fisheries, and harbor a disproportionate fraction of rare and endangered wildlife. Unquestionably, our Nation's important coastal resources face a variety of threats from

sources other than offshore oil and gas drilling, including pollution and development of coastal wetlands.

Coastal conservation efforts have been underway for decades, however, they have failed to address the significance of the threats in a systematic or comprehensive way. If properly crafted, CARA and Resources 2000 could help mitigate the damage to the environment that is created by offshore oil and gas development and other coastal threats.

H.R. 701 (CARA)- Coastal Conservation

CARA provides 27% of annual OCS revenues (approximately \$1.24 billion) to 35 coastal states (including the Great Lakes states) for use in the following areas: air and water quality; fish, wildlife, wetlands, and coastal restoration; and onshore infrastructure and public service needs. This enormous pot of money is divided among the states using a formula based 50% on the state's proximity to OCS drilling, 25% on its population and 25% on its shoreline miles. The bill does stipulate that revenue from areas currently covered by a drilling moratoria would not go toward CARA, however, it does not address the incentives problem for new drilling that might occur in areas outside the moratoria.

Suggested Changes to CARA

CARA should be amended to restrict the use of "coastal impact assistance" funds so that they are not used to subsidize environmentally harmful infrastructure development. Instead, these funds should be directed to projects that ameliorate the environmental impacts of OCS oil and gas development. Rather than subsidizing unwise development, the bill should require a demonstration that each impact assistance project will benefit the natural environment and will be consistent with the Clean Water Act, the Coastal Zone Management Act, and other federal environmental laws. Further, the majority of these funds ought to be used for direct coastal conservation purposes. Priority should be given to uses of the funds that directly offset the impact of OCS drilling, protect and enhance fish and wildlife habitat, and support the repurchase of OCS leases.

Additionally, the proposal still contains features that create a financial and political incentive for coastal states to accept inappropriate offshore oil and gas development. The allocation of OCS leasing revenues to coastal states and their local governments is based on a formula that includes and rewards increased production. In order to ensure that our nation's coastal zones are properly managed, allocation of funds to coastal states should not be tied to new leasing, exploration, production, or geographic proximity to such activities. Alternatively, allocation of state shares of coastal impact assistance should be set at the time the bill is passed (i.e. fixed at the rate of current production levels) or based on an average production level over the last 20 years. Funds generated from future leasing that occurs in areas currently excluded from the funding revenue stream (i.e. areas currently covered by the moratoria area) should be set aside in a "catastrophic response account" to be used for emergency costs associated with oil and gas accidents such as the recent tanker spill that occurred in Coos Bay, Oregon.

H.R. 798 (Resources 2000)- Coastal Conservation

Like CARA, Resources 2000 contains a funding program that addresses coastal conservation. Resources 2000, however, places more of an emphasis on ocean species and marine ecosystems than CARA. Resources 2000 has no provision that serves as a "coastal impact assistance" fund to mitigate the impact of OCS drilling. Instead, Resources 2000 provides \$300 million (phased in over a five year process) that is divided with 2/3 going to 35 coastal states for ocean fish and wildlife conservation and 1/3 going to the Commerce Department to support competitive grants for living marine resource conservation.

Notably, funding for this program is completely de-linked from OCS production levels and the proximity of drilling sites to a particular state. Instead, states receive their allocations using a formula that is based 2/3 on population and 1/3 on shoreline miles. Moreover, the revenue source for all of the titles in Resources 2000 is limited to OCS revenues from currently producing leases in the Gulf of Mexico (as of January 1, 1999).

Suggested Changes to Resources 2000

The devastating impacts that offshore oil and gas drilling can have on a state's coastlines are substantial. States like Louisiana are losing their coastal wetlands and beaches at an alarming rate because of the associated impacts of the offshore oil and gas production and transportation processes. It is appropriate that at least some portion of the revenue derived from the significant impacts of OCS drilling should be used to mitigate its impacts. A coastal impact assistance component should be added to Resources 2000 and can be designed in a way that does not link the revenue directly to the amount or proximity of drilling occurring off a state's shore.

Additionally, Resources 2000 has limited the "qualifying OCS revenues" to those that are occurring under currently operating leases. As a result, when these leases stop producing oil, the accompanying revenue will be gone and the law will essentially sunset itself. While cognizant of the risk of using any funds from new oil and gas drilling for fear of creating additional incentives to drill, there are alternative ways of eliminating the incentives issue without jeopardizing long-term funding. For instance, the bill could be amended to allow funds generated from future leasing that occurs in areas currently excluded from the funding revenue stream (i.e. areas currently not in production) to be set aside in a "catastrophic response account" to be used for emergency costs associated with oil and gas accidents such as the recent tanker spill that occurred in Coos Bay, Oregon.

H.R. 701 (CARA)- Endangered Species

CARA includes a provision that establishes a Habitat Reserve Program within the Department of Interior for private landowner assistance. The provision allows the Secretary to enter into agreements with private landowners and the relevant state agencies to enroll lands, on a voluntary basis, for the protection of endangered species in exchange for incentives payments. The provision provides no guidance as to what types of lands should be enrolled in this Habitat Reserve Program, nor does it indicate what the obligations of the landowners are under these plans (except for a requirement that the plans last at least 5 years). Furthermore, the provision includes a disclaimer that the amount received under this program shall in no way affect the amount received under other federal incentives programs.

Although this provision appears in Section 205 of the bill, the LWCF title, it is unclear whether there is actually any money allocated to the program and if so, where it is supposed to come from.

Suggested Changes to CARA

This provision should be tightened up considerably if it is to be left in the bill. A clear funding source, and amount of funds, needs to be designated. It is inappropriate to draw endangered species funds from LWCF the two issues have historically been kept separate for fear that endangered species' needs would overwhelm LWCF and steer it away from its intended course.

The purpose of the Habitat Reserve Program needs to be clarified. What are the obligations of the landowners? It needs to be made clear that these landowners are engaging in activities above and beyond

the existing requirements of the Endangered Species Act. As it currently stands, this program could be used to pay people to comply with their existing obligations under the law. While it is appropriate to allow landowners to continue to receive payments for their conservation activities under other incentives programs, such as the Conservation Reserve Program, they should not be paid twice for the same set of activities. This program should fund activities that the landowner would not otherwise be doing under these other types of agreements. Finally, a monitoring and review process is necessary to ensure that the landowner really is carrying out the conservation activities for which the government is paying.

H.R. 798 (Resources 2000)- Endangered Species

Resources 2000 creates a dedicated source of funding (\$100 million annually) to create an incentives program for private landowners who are contributing to the recovery of endangered and threatened species (as well as the habitat upon which they depend). The U.S. Fish and Wildlife Service and National Marine Fisheries Service (the two agencies responsible for implementing the Endangered Species Act) would use the funds to provide grants to landowners who enter into "recovery agreements" that contribute to the recovery of the species in ways that go beyond the existing obligations under the law. These recovery agreements must have clear goals and be periodically reviewed to evaluate whether the goals are being met. Priority would be given to small landowners and farmers.

Increased outreach to landowners is desperately needed to ensure the continued survival of many endangered species that are found primarily on private lands. These proposed "recovery agreements" would provide beneficial incentives to encourage landowners, who might otherwise be uninterested, to contribute to the recovery of species.

Conclusion

The conservation needs for state fish and wildlife management, as well as for coastal and land conservation programs are tremendous. And the threats to these resources loom larger the longer it takes us to act. CARA and Resources 2000 have the potential to make a lasting, historic contribution to the conservation cause.

We look forward to working with the sponsors of these bills to ensure that the two proposals are merged in a way that brings out the best in both of them and allows the final piece of legislation to have the broad base of support necessary to ensure passage into law.