

Committee on Resources

Witness Testimony

Subcommittee on Fisheries Conservation, Wildlife & Oceans

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1324 Longworth HOB, 10:00 A.M.

STATEMENT OF RODGER SCHLICKEISEN

PRESIDENT, DEFENDERS OF WILDLIFE

ON

H.R. 511 - THE NATIONAL WILDLIFE REFUGE SYSTEM IMPROVEMENT ACT

AND

H.R. 512 - THE NEW WILDLIFE REFUGE AUTHORIZATION ACT

Mr. Chairman, I am Rodger Schlickeisen, President of Defenders of Wildlife. I appreciate your invitation to testify today on behalf of Defenders' nearly 200,000 members and supporters.

First, I would like to thank the Committee for its interest in the future of the National Wildlife Refuge System. Defenders of Wildlife has long believed that additional statutory direction could provide the System with greater unity of purpose, future direction and the expanded authorities needed to strengthen its ability to conserve fish, wildlife and plants. H.R. 511 attempts to tackle many of these complex issues. In particular, we support efforts in H.R. 511 to formalize the "compatibility process" used to regulate secondary uses of refuges and the recognition of the System's role in contributing to the conservation of the nation's ecosystems in its continued growth.

But make no mistake about it, Mr. Chairman, Defenders of Wildlife believes that legislation to accomplish the overarching goal of H.R. 511 -- expanding recreational activities in the National Wildlife Refuge System -- is not necessary and would fundamentally weaken the Refuge System. We strongly oppose enactment of H.R. 511 and the closely related bill H.R. 512.

Defenders of Wildlife is a national conservation organization with a long history of involvement with issues relating to the management of the National Wildlife Refuge System. In the 1970's, we published a report with recommendations for improving the management of the Refuge System and later served on a special Department of the Interior sponsored task force that developed Final Recommendations on the Management of the National Wildlife Refuge System, another report containing recommendations for major changes in refuge administration. Since then, Defenders has been involved in a wide range of administrative, legislative and judicial activities concerning the management of individual units of the Refuge System and the System as a whole.

In 1992, we released a report by the Commission on New Directions for the National Wildlife Refuge

System entitled Putting Wildlife First. That report contained recommendations of an independent, blue ribbon, panel of wildlife scientists, conservation historians, state natural resource managers, legal scholars and academics who conducted an eighteen-month review of the Refuge System. The Commission reviewed the history of the Refuge System and current management issues. Its report makes recommendations regarding the present management and future direction of the System. We believe that H.R. 511 and H.R. 512 are fundamentally inconsistent with both the history of the Refuge System and the important future conservation challenges identified by this distinguished and independent commission.

Legislation to Accomplish the Principal Goal of H.R. 511 is Not Necessary and Would Be Damaging to the National Wildlife Refuge System

Over 4,500 secondary uses are now permitted in the National Wildlife Refuge System. (A list of uses permitted by the U.S. Fish and Wildlife Service (FWS) as of 1995 is included as Exhibit I.) Providing recreational activities, in particular, is already an extremely high priority for the Refuge System. As of Fiscal Year 1995, more than 95 percent of the 92 million acres in the Refuge System were open to hunting. Hunting now occurs on over half of the 509 national wildlife refuges. Just last year President Clinton further amplified the current emphasis on recreational activities. Executive Order 12996 directs the Interior Secretary to "provide expanded opportunities" for "priority public uses" including "hunting, fishing, wildlife observation and photography, and environmental education and interpretation." Recreational activities should have an important role in the Refuge System. They should not, however, be elevated to such a priority that they are placed in direct competition with wildlife conservation for management priority and funding. When this happens the resource and recreational enthusiasts both lose.

H.R. 511 contains various provisions which collectively would cause a dramatic and historic shift in the Refuge System away from wildlife conservation and toward increased public use. The bill would take the Refuge System away from the conservation focus that has guided the System since its establishment by Teddy Roosevelt ninety-four years ago. Wildlife refuges are fundamentally different from other federal land systems, such as national parks and forests. Wildlife conservation always has been the System's principal focus. Over the years, numerous statutes, such as the 1962 Refuge Recreation Act and the 1966 National Wildlife Refuge System Administration Act, have reaffirmed the fundamental principle that recreational uses are important but secondary to wildlife conservation on federal refuges. We believe that the cumulative effect of various provisions in H.R. 511 would fundamentally change this relationship.

H.R. 511 undermines the Refuge System in four principal respects.

1. The bill severely weakens the FWS's current statutory authority to regulate certain recreational uses and codifies the existing weak administrative standard used to regulate all uses.
2. The bill makes certain recreational uses co-equal with wildlife conservation as purposes of the National Wildlife Refuge System.
3. In this time of tight federal budgets, the bill would cause the FWS to devote increased agency resources and staff to recreational uses, which would come ultimately at the expense of wildlife conservation programs.
4. As the National Wildlife Refuge System moves into the 21st Century, H.R. 511 focusses the System on providing additional recreational activities while ignoring increasingly important management challenges relating to biological diversity.

Regulation of Recreational Uses

H.R. 511 impairs FWS's ability to regulate certain recreational activities on national wildlife refuges in several specific respects:

Section 3 of the bill defines key terms such as "conserving" and "manage" to include live trapping and regulated taking (hunting and fishing). Since these terms are used throughout the purposes section (4) of the bill, and that section is the basis for determining whether or not to permit a particular use, **these definitions would frustrate efforts to effectively regulate hunting, fishing and trapping.**

Section 4(D) makes providing opportunities for "compatible" fish and wildlife dependent recreation a System purpose. This is problematic because the definition section (3) makes these activities synonymous with words used throughout the purposes section (4). Since compatibility is measured, in part, against System purposes, the definition section **makes the standard for review circular.** Moreover, in section 3, compatibility is defined in terms of consistency with either System purposes or individual refuge purposes. Due to the circularity problem detailed above, all the recreational activities specified in the bill could be determined compatible per se.

Compounding this circularity problem, Section 6 contains a provision that creates a presumption that specified recreational uses are "generally compatible."

Section 6 also contains a provision that **gives special and preferential treatment to hunting and fishing on national wildlife refuges by essentially subjecting these uses to a different and weaker standard than any other category of secondary use.**

The provision stands on its head the FWS's existing discretionary authority to permit these uses and virtually mandates that they be allowed. Under this provision, these activities effectively must be allowed unless they can be proved to be: 1) incompatible (which is nearly impossible under the process established in the bill); 2) inconsistent with the principles of sound wildlife management; or 3) inconsistent with public safety.

Language in Section 8(a) states that hunting and fishing are only to be allowed after the review process specified in the bill has been followed. As noted above, however, **this process makes it virtually impossible for the FWS to ever find these activities incompatible.**

Section 5 defines a "compatible use" as one that "will not materially interfere with or detract from" the purposes of a refuge or the mission and purposes of the System. Since the controlling phrase is stated as an "either-or," the practical effect of this language is to **enshrine the existing weak administrative "materially interfere" definition as the statutory basis for determining the compatibility of all secondary uses.**

Effectively conserving wildlife in the midst of increasing demand for use of national wildlife refuges has been a longstanding challenge for refuge managers. Over the past 30 years a seemingly endless stream of reports by government agencies and private organizations has repeatedly expressed concern over excessive use of refuges. (A summary of some of those studies prepared by The Wilderness Society is included as Exhibit II.) In 1989, for example, the U.S. General Accounting Office (GAO) issued

National Wildlife Refuges: Continuing Problems with Incompatible Uses Call for Bold Action. The GAO report, based on confidential questionnaires sent to 444 refuge managers and responses from 428 managers,

revealed that 59 percent of the national wildlife refuges suffered from harmful uses that adversely affect the ability of refuge managers to manage for the wildlife purposes for which their refuge was created.

Following the GAO report, the FWS appointed a Compatibility Task Group to conduct interviews with the managers of wildlife refuges and Waterfowl Production Areas. The Task Group's 1990 report, Secondary Uses Occurring on National Wildlife Refuges, surveyed 478 units of the Refuge System, and found that 63 percent of the refuges had harmful uses. The FWS report identified Florida's "Ding" Darling National Wildlife Refuge as having the greatest number of incompatible uses. Most of the incompatible uses at "Ding" Darling were attributed to levels of public use exceeding the carrying capacity of the resource. Wildlife observation and wildlife tour routes were identified as two of the incompatible uses at this refuge.

Today, the concerns raised in the GAO and FWS reports have been, or are being, brought under control. However, the long history of the reports demonstrates that widespread secondary use problems have a predictable habit of again taking root after a major reform effort. Thus, a familiar cycle exists in the management of refuge: In

response to widespread problems, FWS places greater emphasis on controlling incompatible uses and on and on. This "fixed-broken" cycle has repeated itself over and over again in recent decades.

H.R. 511 undermines FWS' ability to effectively regulate secondary uses in two general ways. First, it would effectively establish a separate and weaker compatibility standard for certain types of recreational activities. Second, it would codify the existing but weak administrative definition of what constitutes a compatible use. Report after report has shown that, depending upon the circumstances, any type of use can be incompatible. All uses, including ones that are "wildlife dependent," should be held to the same effective regulatory standard.

Purposes of the National Wildlife Refuge System

H.R. 511 makes certain recreational uses co-equal with the conservation purposes of the National Wildlife Refuge System.

Section 4(D) makes providing opportunities for "compatible" fish and wildlife dependent recreation a System purpose.

The bill establishes, for the first time ever, a set of system-wide purposes for the National Wildlife Refuge System. The importance of Congress establishing System purposes should not be overlooked. H.R. 511 would define in statute an identity for the only network of federal lands dedicated to wildlife conservation. The System purposes articulated in section 4 constitute the essence of the so-called "organic acts" that have long provided the basic management philosophy for our national parks, forests and Bureau of Land Management areas.

While various types of recreational activities and environmental education can, and should, play an important role in the Refuge System, such uses should not be afforded equal status with the System's various wildlife conservation purposes. Since the inception of the Refuge System, a clear distinction has always existed between "purposes" and "uses." That distinction must continue.

Allocation of Agency Resources and Staff

H.R. 511 gives certain recreational uses a leg up in the competition for increasingly scarce agency resources and staff and could lead the FWS to spend a disproportionate share of its resources on administering public use programs instead of conserving waterfowl, migratory birds, endangered species and other important elements of the nation's biological diversity.

A provision in Section 6 states that "no other determinations or findings, except the consistency with State laws and regulations provided in subsection (m), are required to be made for fishing and hunting to occur." This language could easily be interpreted as implicitly repealing an existing requirement, contained in the 1962 Refuge Recreation Act, that the FWS must find that funding is available to administer public use programs before those programs are permitted.

Chronic funding shortfalls for the Refuge System led Defenders of Wildlife and other groups to join together in 1995 to form the Cooperative Alliance for Refuge Enhancement (CARE). CARE works to educate the American public and Congress about the need for greater federal funding for the Refuge System. Testifying on behalf of CARE earlier this week, the Wildlife Management Institute told the House Interior Appropriations Subcommittee that management programs to help recover endangered, threatened and candidate species, restore habitats and address resource threats are left unaccomplished on an increasing number of refuges. Another important but unmet resource conservation priority, I might add, relates to inventorying and monitoring the status and trends of fish, wildlife and plants in each refuge. As an active member of CARE, Defenders has supported the current federal resource allocation. This allocation places strong emphasis on providing recreational opportunities while assuring that this emphasis does not overshadow the need for important programs which directly benefit species and habitat. This balance must not be tipped in favor of public use over conservation.

Preparing the National Wildlife System for the Challenges of the 21st Century

Apart from inappropriately boosting the role of recreation in the National Wildlife Refuge System, H.R. 511 fails to recognize long overdue conservation needs relating to management of the System for species diversity. Refuge management legislation sponsored in the 103rd Congress by Sen. Bob Graham and Rep. Sam Gibbons stated explicitly that conserving biological diversity was one of purposes of the Refuge System. There is a strong international scientific consensus that depletion of biodiversity through the loss of species and natural habitat is one of the world's most serious environmental problems. The 1992 Putting Wildlife First report pointed out that any serious effort to protect biodiversity must start with the national wildlife refuges, the only system of federal lands for which protecting species and habitat is its top priority. The urgency of placing greater emphasis on biological diversity was further amplified by a 1995 Defenders of Wildlife study entitled Endangered Ecosystems: A Status Report on America's Vanishing Habitat and Wildlife. The scientific study found that natural ecosystems throughout the nation are in serious decline, especially those in Florida, California and Hawaii.

In articulating a set of purposes for the Refuge System, a careful balance must be struck between FWS's obligation to manage for traditional so-called "trust species" and the Refuge System's need to help conserve the diversity of this nation's fish, wildlife and plants. The absence of species diversity language in the purposes section of H.R. 511 is likely to discourage the FWS from even making biological diversity an important consideration in the management of federal refuges. As the nation approaches the 21st Century, this is simply unacceptable for the only network of federal lands established to conserve fish and wildlife.

H.R. 512: Discouraging the Establishment of New Refuges

Several recent reports, including Putting Wildlife First and the Endangered Ecosystems report, underscore the importance of acquiring and protecting representative portions of unique habitat types before they are lost forever. Unfortunately, H.R. 512 would erect a substantial new road block to habitat acquisitions that may be needed to improve the Refuge System. H.R. 512 requires a separate Congressional authorization, in addition to the already required appropriation law, before any Land Water Conservation Funds can be used for the establishment of a new refuge. The bill is identical to a committee amendment offered by Rep. Richard Pombo that added the provision to refuge management legislation considered in the 104th Congress (H.R. 1675). H.R. 512 would severely constrain FWS's ability to purchase quickly important habitat offered by willing sellers.

Even under the existing acquisition process, landowners are routinely told by the FWS that they must wait at least one and one-half to two years for Congress to appropriate funds. This delay has already proven unacceptable to some willing sellers. In Vermilion Parish, Louisiana, for example, FWS has apparently lost the opportunity to establish a new 7,700 acre refuge to protect wetlands and migratory birds and other species because the owners of the 5,000 acre Latanier Bayou tract could not wait for federal funds to become available. Lengthening an already long wait will only serve to further discourage willing sellers and exacerbate FWS's difficulties in acquiring land for new refuges. Requiring that Congress enact a separate law could effectively stymie the protection of biologically-important and imperilled wildlife habitat through the establishment of new refuges.

Does the Refuge System Need New Legislation?

Proponents of H.R. 511 point out there is no statutory list of purposes for the National Wildlife Refuge System, and no statutory definition of what constitutes a "compatible" use of a refuge, and that the refuges are not managed as a national system. If these were the primary goals of H.R. 511 Defenders of Wildlife could be a ready supporter. Indeed, Defenders and other conservation groups earlier urged Congress to enact the National Wildlife Refuge System Management and Policy Act, a bill sponsored by Senator Bob Graham. Unfortunately, the primary thrust of H.R. 511 is to inappropriately and unnecessarily elevate recreation at the expense of wildlife conservation. Defenders of Wildlife understands that Representative George Miller has, or will shortly, introduced refuge management legislation entitled the "Theodore Roosevelt Wildlife Legacy Act of 1997." We have reviewed a draft of this bill and believe that it accomplishes management objectives vital to the functioning of the National Wildlife Refuge System in the 21st Century without threatening the integrity of the System. The Theodore Roosevelt Wildlife Legacy Act provides a constructive approach that we urge the Committee to consider as an alternative to H.R. 511.

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We urge the Committee to support the Theodore Roosevelt Wildlife Legacy Act as a balanced and sensible alternative to the step backward that H.R. 511 and H.R. 512 represent.

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