

105TH CONGRESS
1ST SESSION

H. R. 1420

IN THE SENATE OF THE UNITED STATES

JUNE 4, 1997

Received

AN ACT

To amend the National Wildlife Refuge System Administration Act of 1966 to improve the management of the National Wildlife Refuge System, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE; REFERENCES.**

2 (a) **SHORT TITLE.**—This Act may be cited as the
3 “National Wildlife Refuge System Improvement Act of
4 1997”.

5 (b) **REFERENCES.**—Whenever in this Act an amend-
6 ment or repeal is expressed in terms of an amendment
7 to, or repeal of, a section or other provision, the reference
8 shall be considered to be made to a section or provision
9 of the National Wildlife Refuge System Administration
10 Act of 1966 (16 U.S.C. 668dd et seq.).

11 **SEC. 2. FINDINGS.**

12 The Congress finds the following:

13 (1) The National Wildlife Refuge System is
14 comprised of over 92,000,000 acres of Federal lands
15 that have been incorporated within 509 individual
16 units located in all 50 States and the territories of
17 the United States.

18 (2) The System was created to conserve fish,
19 wildlife, and plants and their habitats and this con-
20 servation mission has been facilitated by providing
21 Americans opportunities to participate in compatible
22 wildlife-dependent recreation, including fishing and
23 hunting, on System lands and to better appreciate
24 the value of and need for fish and wildlife conserva-
25 tion.

1 (3) The System serves a pivotal role in the con-
2 servation of migratory birds, anadromous and inter-
3 jurisdictional fish, marine mammals, endangered and
4 threatened species, and the habitats on which these
5 species depend.

6 (4) The System assists in the fulfillment of im-
7 portant international treaty obligations of the Unit-
8 ed States with regard to fish, wildlife, and plants
9 and their habitats.

10 (5) The System includes lands purchased not
11 only through the use of tax dollars but also through
12 the proceeds from sales of Duck Stamps and na-
13 tional wildlife refuge entrance fees. It is a System
14 that is financially supported by those benefiting
15 from and utilizing it.

16 (6) When managed in accordance with prin-
17 ciples of sound fish and wildlife management and
18 administration, fishing, hunting, wildlife observation,
19 and environmental education in national wildlife ref-
20 uges have been and are expected to continue to be
21 generally compatible uses.

22 (7) On March 25, 1996, the President issued
23 Executive Order 12996, which recognized “compat-
24 ible wildlife-dependent recreational uses involving
25 hunting, fishing, wildlife observation and photog-

1 raphy, and environmental education and interpreta-
2 tion as priority public uses of the Refuge System”.

3 (8) Executive Order 12996 is a positive step
4 and serves as the foundation for the permanent stat-
5 utory changes made by this Act.

6 **SEC. 3. DEFINITIONS.**

7 (a) IN GENERAL.—Section 5 (16 U.S.C. 668ee) is
8 amended to read as follows:

9 **“SEC. 5. DEFINITIONS.**

10 “For purposes of this Act:

11 “(1) The term ‘compatible use’ means a use of
12 a refuge that, in the sound professional judgment of
13 the Director, will not materially interfere with or de-
14 tract from the fulfillment of the mission of the Sys-
15 tem or the purposes of the refuge.

16 “(2) The terms ‘wildlife-dependent recreation’
17 and ‘wildlife-dependent recreational use’ mean a use
18 of a refuge involving hunting, fishing, wildlife obser-
19 vation and photography, or environmental education
20 and interpretation.

21 “(3) The term ‘sound professional judgment’
22 means a finding, determination, or decision that is
23 consistent with principles of sound fish and wildlife
24 management and administration, available science

1 and resources, and adherence to the requirements of
2 this Act and other applicable laws.

3 “(4) The terms ‘conserving’, ‘conservation’,
4 ‘manage’, ‘managing’, and ‘management’, mean to
5 sustain and, where appropriate, restore and enhance,
6 healthy populations of fish, wildlife, and plants uti-
7 lizing, in accordance with applicable Federal and
8 State laws, methods and procedures associated with
9 modern scientific resource programs. Such methods
10 and procedures include, consistent with the provi-
11 sions of this Act, protection, research, census, law
12 enforcement, habitat management, propagation, live
13 trapping and transplantation, and regulated taking.

14 “(5) The term ‘Coordination Area’ means a
15 wildlife management area that is made available to
16 a State—

17 “(A) by cooperative agreement between the
18 United States Fish and Wildlife Service and a
19 State agency having control over wildlife re-
20 sources pursuant to section 4 of the Fish and
21 Wildlife Coordination Act (16 U.S.C. 664); or

22 “(B) by long-term leases or agreements
23 pursuant to title III of the Bankhead-Jones
24 Farm Tenant Act (50 Stat. 525; 7 U.S.C. 1010
25 et seq.).

1 “(6) The term ‘Director’ means the Director of
2 the United States Fish and Wildlife Service or a
3 designee of that Director.

4 “(7) The terms ‘fish’, ‘wildlife’, and ‘fish and
5 wildlife’ mean any wild member of the animal king-
6 dom whether alive or dead, and regardless of wheth-
7 er the member was bred, hatched, or born in cap-
8 tivity, including a part, product, egg, or offspring of
9 the member.

10 “(8) The term ‘person’ means any individual,
11 partnership, corporation, or association.

12 “(9) The term ‘plant’ means any member of the
13 plant kingdom in a wild, unconfined state, including
14 any plant community, seed, root, or other part of a
15 plant.

16 “(10) The terms ‘purposes of the refuge’ and
17 ‘purposes of each refuge’ mean the purposes speci-
18 fied in or derived from the law, proclamation, execu-
19 tive order, agreement, public land order, donation
20 document, or administrative memorandum establish-
21 ing, authorizing, or expanding a refuge, refuge unit,
22 or refuge subunit.

23 “(11) The term ‘refuge’ means a designated
24 area of land, water, or an interest in land or water

1 within the System, but does not include Coordina-
2 tion Areas.

3 “(12) The term ‘Secretary’ means the Secretary
4 of the Interior.

5 “(13) The terms ‘State’ and ‘United States’
6 mean the several States of the United States, Puerto
7 Rico, American Samoa, the Virgin Islands, Guam,
8 and the territories and possessions of the United
9 States.

10 “(14) The term ‘System’ means the National
11 Wildlife Refuge System designated under section
12 4(a)(1).

13 “(15) The terms ‘take’, ‘taking’, and ‘taken’
14 mean to pursue, hunt, shoot, capture, collect, or kill,
15 or to attempt to pursue, hunt, shoot, capture, col-
16 lect, or kill.”.

17 (b) CONFORMING AMENDMENT.—Section 4 (16
18 U.S.C. 668dd) is amended by striking “Secretary of the
19 Interior” each place it appears and inserting “Secretary”.

20 **SEC. 4. MISSION OF THE SYSTEM.**

21 Section 4(a) (16 U.S.C. 668dd(a)) is amended—

22 (1) by redesignating paragraphs (2) and (3) as
23 paragraphs (5) and (6), respectively;

1 (2) in clause (i) of paragraph (6) (as so redesignig-
2 nated), by striking “paragraph (2)” and inserting
3 “paragraph (5)”; and

4 (3) by inserting after paragraph (1) the follow-
5 ing new paragraph:

6 “(2) The mission of the System is to administer a
7 national network of lands and waters for the conservation,
8 management, and where appropriate, restoration of the
9 fish, wildlife, and plant resources and their habitats within
10 the United States for the benefit of present and future
11 generations of Americans.”.

12 **SEC. 5. ADMINISTRATION OF THE SYSTEM.**

13 (a) ADMINISTRATION GENERALLY.—Section 4(a) (16
14 U.S.C. 668dd(a)), as amended by section 4 of this Act,
15 is further amended by inserting after new paragraph (2)
16 the following new paragraphs:

17 “(3) With respect to the System, it is the policy of
18 the United States that—

19 “(A) each refuge shall be managed to fulfill the
20 mission of the System, as well as the specific pur-
21 poses for which that refuge was established;

22 “(B) compatible wildlife-dependent recreation is
23 a legitimate and appropriate general public use of
24 the System, directly related to the mission of the
25 System and the purposes of many refuges, and

1 which generally fosters refuge management and
2 through which the American public can develop an
3 appreciation for fish and wildlife;

4 “(C) compatible wildlife-dependent recreational
5 uses are the priority general public uses of the Sys-
6 tem and shall receive priority consideration in refuge
7 planning and management; and

8 “(D) when the Secretary determines that a pro-
9 posed wildlife-dependent recreational use is a com-
10 patible use within a refuge, that activity should be
11 facilitated, subject to such restrictions or regulations
12 as may be necessary, reasonable, and appropriate.

13 “(4) In administering the System, the Secretary
14 shall—

15 “(A) provide for the conservation of fish, wild-
16 life, and plants, and their habitats within the Sys-
17 tem;

18 “(B) ensure that the biological integrity, diver-
19 sity, and environmental health of the System are
20 maintained for the benefit of present and future
21 generations of Americans;

22 “(C) plan and direct the continued growth of
23 the System in a manner that is best designed to ac-
24 complish the mission of the System, to contribute to
25 the conservation of the ecosystems of the United

1 States, to complement efforts of States and other
2 Federal agencies to conserve fish and wildlife and
3 their habitats, and to increase support for the Sys-
4 tem and participation from conservation partners
5 and the public;

6 “(D) ensure that the mission of the System de-
7 scribed in paragraph (2) and the purposes of each
8 refuge are carried out, except that if a conflict exists
9 between the purposes of a refuge and the mission of
10 the System, the conflict shall be resolved in a man-
11 ner that first protects the purposes of the refuge,
12 and, to the extent practicable, that also achieves the
13 mission of the System;

14 “(E) ensure effective coordination, interaction,
15 and cooperation with owners of land adjoining ref-
16 uges and the fish and wildlife agency of the States
17 in which the units of the System are located;

18 “(F) assist in the maintenance of adequate
19 water quantity and water quality to fulfill the mis-
20 sion of the System and the purposes of each refuge;

21 “(G) acquire, under State law, water rights that
22 are needed for refuge purposes;

23 “(H) recognize compatible wildlife-dependent
24 recreational uses as the priority general public uses

1 of the System through which the American public
2 can develop an appreciation for fish and wildlife;

3 “(I) ensure that opportunities are provided
4 within the System for compatible wildlife-dependent
5 recreational uses;

6 “(J) ensure that priority general public uses of
7 the System receive enhanced consideration over
8 other general public uses in planning and manage-
9 ment within the System;

10 “(K) provide increased opportunities for fami-
11 lies to experience compatible wildlife-dependent
12 recreation, particularly opportunities for parents and
13 their children to safely engage in traditional outdoor
14 activities, such as fishing and hunting;

15 “(L) continue, consistent with existing laws and
16 interagency agreements, authorized or permitted
17 uses of units of the System by other Federal agen-
18 cies, including those necessary to facilitate military
19 preparedness; and

20 “(M) ensure timely and effective cooperation
21 and collaboration with Federal agencies and State
22 fish and wildlife agencies during the course of ac-
23 quiring and managing refuges.”.

24 (b) POWERS.—Section 4(b) (16 U.S.C. 668dd(b)) is
25 amended—

1 (1) in the matter preceding paragraph (1) by
2 striking “authorized—” and inserting “authorized to
3 take the following actions:”;

4 (2) in paragraph (1) by striking “to enter” and
5 inserting “Enter”;

6 (3) in paragraph (2)—

7 (A) by striking “to accept” and inserting
8 “Accept”; and

9 (B) by striking “, and” and inserting a pe-
10 riod;

11 (4) in paragraph (3) by striking “to acquire”
12 and inserting “Acquire”; and

13 (5) by adding at the end the following new
14 paragraphs:

15 “(4) Subject to standards established by and
16 the overall management oversight of the Director,
17 and consistent with standards established by this
18 Act, to enter into cooperative agreements with State
19 fish and wildlife agencies for the management of
20 programs on a refuge.

21 “(5) Issue regulations to carry out this Act.”.

22 **SEC. 6. COMPATIBILITY STANDARDS AND PROCEDURES.**

23 Section 4(d) (16 U.S.C. 668dd(d)) is amended by
24 adding at the end the following new paragraphs:

1 “(3)(A)(i) Except as provided in clause (iv), the Sec-
2 retary shall not initiate or permit a new use of a refuge
3 or expand, renew, or extend an existing use of a refuge,
4 unless the Secretary has determined that the use is a com-
5 patible use and that the use is not inconsistent with public
6 safety. The Secretary may make the determinations re-
7 ferred to in this paragraph for a refuge concurrently with
8 development of a conservation plan under subsection (e).

9 “(ii) On lands added to the System after March 25,
10 1996, the Secretary shall identify, prior to acquisition,
11 withdrawal, transfer, reclassification, or donation of any
12 such lands, existing compatible wildlife-dependent rec-
13 reational uses that the Secretary determines shall be per-
14 mitted to continue on an interim basis pending completion
15 of the comprehensive conservation plan for the refuge.

16 “(iii) Wildlife-dependent recreational uses may be au-
17 thorized on a refuge when they are compatible and not
18 inconsistent with public safety. Except for consideration
19 of consistency with State laws and regulations as provided
20 for in subsection (m), no other determinations or findings
21 are required to be made by the refuge official under this
22 Act or the Refuge Recreation Act for wildlife-dependent
23 recreation to occur.

24 “(iv) Compatibility determinations in existence on the
25 date of enactment of the National Wildlife Refuge System

1 Improvement Act of 1997 shall remain in effect until and
2 unless modified.

3 “(B) Not later than 24 months after the date of the
4 enactment of the National Wildlife Refuge System Im-
5 provement Act of 1997, the Secretary shall issue final reg-
6 ulations establishing the process for determining under
7 subparagraph (A) whether a use of a refuge is a compat-
8 ible use. These regulations shall—

9 “(i) designate the refuge official responsible for
10 making initial compatibility determinations;

11 “(ii) require an estimate of the timeframe, loca-
12 tion, manner, and purpose of each use;

13 “(iii) identify the effects of each use on refuge
14 resources and purposes of each refuge;

15 “(iv) require that compatibility determinations
16 be made in writing;

17 “(v) provide for the expedited consideration of
18 uses that will likely have no detrimental effect on
19 the fulfillment of the purposes of a refuge or the
20 mission of the System;

21 “(vi) provide for the elimination or modification
22 of any use as expeditiously as practicable after a de-
23 termination is made that the use is not a compatible
24 use;

1 “(vii) require, after an opportunity for public
2 comment, reevaluation of each existing use, other
3 than those uses specified in clause (viii), if condi-
4 tions under which the use is permitted change sig-
5 nificantly or if there is significant new information
6 regarding the effects of the use, but not less fre-
7 quently than once every 10 years, to ensure that the
8 use remains a compatible use;

9 “(viii) require, after an opportunity for public
10 comment, reevaluation of each compatible wildlife-
11 dependent recreational use when conditions under
12 which the use is permitted change significantly or if
13 there is significant new information regarding the
14 effects of the use, but not less frequently than in
15 conjunction with each preparation or revision of a
16 conservation plan under subsection (e) or at least
17 every 15 years, whichever is earlier; and

18 “(ix) provide an opportunity for public review
19 and comment on each evaluation of a use, unless an
20 opportunity for public review and comment on the
21 evaluation of the use has already been provided dur-
22 ing the development or revision of a conservation
23 plan for the refuge under subsection (e) or has oth-
24 erwise been provided during routine, periodic deter-

1 minations of compatibility for wildlife-dependent rec-
2 reational uses.

3 “(4) The provisions of this Act relating to determina-
4 tions of the compatibility of a use shall not apply to—

5 “(A) overflights above a refuge; and

6 “(B) activities authorized, funded, or conducted
7 by a Federal agency (other than the United States
8 Fish and Wildlife Service) which has primary juris-
9 diction over a refuge or a portion of a refuge, if the
10 management of those activities is in accordance with
11 a memorandum of understanding between the Sec-
12 retary or the Director and the head of the Federal
13 agency with primary jurisdiction over the refuge gov-
14 erning the use of the refuge.”.

15 **SEC. 7. REFUGE CONSERVATION PLANNING PROGRAM.**

16 (a) IN GENERAL.—Section 4 (16 U.S.C. 668dd) is
17 amended—

18 (1) by redesignating subsections (e) through (i)
19 as subsections (f) through (j), respectively; and

20 (2) by inserting after subsection (d) the follow-
21 ing new subsection:

22 “(e)(1)(A) Except with respect to refuge lands in
23 Alaska (which shall be governed by the refuge planning
24 provisions of the Alaska National Interest Lands Con-

1 servation Act (16 U.S.C. 3101 et seq.)), the Secretary
2 shall—

3 “(i) propose a comprehensive conservation plan
4 for each refuge or related complex of refuges (re-
5 ferred to in this subsection as a ‘planning unit’) in
6 the System;

7 “(ii) publish a notice of opportunity for public
8 comment in the Federal Register on each proposed
9 conservation plan;

10 “(iii) issue a final conservation plan for each
11 planning unit consistent with the provisions of this
12 Act and, to the extent practicable, consistent with
13 fish and wildlife conservation plans of the State in
14 which the refuge is located; and

15 “(iv) not less frequently than 15 years after the
16 date of issuance of a conservation plan under clause
17 (iii) and every 15 years thereafter, revise the con-
18 servation plan as may be necessary.

19 “(B) The Secretary shall prepare a comprehensive
20 conservation plan under this subsection for each refuge
21 within 15 years after the date of enactment of the Na-
22 tional Wildlife Refuge System Improvement Act of 1997.

23 “(C) The Secretary shall manage each refuge or plan-
24 ning unit under plans in effect on the date of enactment
25 of the National Wildlife Refuge System Improvement Act

1 of 1997, to the extent such plans are consistent with this
2 Act, until such plans are revised or superseded by new
3 comprehensive conservation plans issued under this sub-
4 section.

5 “(D) Uses or activities consistent with this Act may
6 occur on any refuge or planning unit before existing plans
7 are revised or new comprehensive conservation plans are
8 issued under this subsection.

9 “(E) Upon completion of a comprehensive conserva-
10 tion plan under this subsection for a refuge or planning
11 unit, the Secretary shall manage the refuge or planning
12 unit in a manner consistent with the plan and shall revise
13 the plan at any time if the Secretary determines that con-
14 ditions that affect the refuge or planning unit have
15 changed significantly.

16 “(2) In developing each comprehensive conservation
17 plan under this subsection for a planning unit, the Sec-
18 retary, acting through the Director, shall identify and de-
19 scribe—

20 “(A) the purposes of each refuge comprising
21 the planning unit;

22 “(B) the distribution, migration patterns, and
23 abundance of fish, wildlife, and plant populations
24 and related habitats within the planning unit;

1 “(C) the archaeological and cultural values of
2 the planning unit;

3 “(D) such areas within the planning unit that
4 are suitable for use as administrative sites or visitor
5 facilities;

6 “(E) significant problems that may adversely
7 affect the populations and habitats of fish, wildlife,
8 and plants within the planning unit and the actions
9 necessary to correct or mitigate such problems; and

10 “(F) opportunities for compatible wildlife-de-
11 pendent recreational uses.

12 “(3) In preparing each comprehensive conservation
13 plan under this subsection, and any revision to such a
14 plan, the Secretary, acting through the Director, shall, to
15 the maximum extent practicable and consistent with this
16 Act—

17 “(A) consult with adjoining Federal, State,
18 local, and private landowners and affected State con-
19 servation agencies; and

20 “(B) coordinate the development of the con-
21 servation plan or revision with relevant State con-
22 servation plans for fish and wildlife and their habi-
23 tats.

24 “(4)(A) In accordance with subparagraph (B), the
25 Secretary shall develop and implement a process to ensure

1 an opportunity for active public involvement in the prepa-
2 ration and revision of comprehensive conservation plans
3 under this subsection. At a minimum, the Secretary shall
4 require that publication of any final plan shall include a
5 summary of the comments made by States, owners of ad-
6 jacent or potentially affected land, local governments, and
7 any other affected persons, and a statement of the dispo-
8 sition of concerns expressed in those comments.

9 “(B) Prior to the adoption of each comprehensive
10 conservation plan under this subsection, the Secretary
11 shall issue public notice of the draft proposed plan, make
12 copies of the plan available at the affected field and re-
13 gional offices of the United States Fish and Wildlife Serv-
14 ice, and provide opportunity for public comment.”.

15 **SEC. 8. EMERGENCY POWER; STATE AUTHORITY; WATER**
16 **RIGHTS; COORDINATION.**

17 (a) IN GENERAL.—Section 4 (16 U.S.C. 668dd) is
18 further amended by adding at the end the following new
19 subsections:

20 “(k) Notwithstanding any other provision of this Act,
21 the Secretary may temporarily suspend, allow, or initiate
22 any activity in a refuge in the System if the Secretary
23 determines it is necessary to protect the health and safety
24 of the public or any fish or wildlife population.

1 “(l) Nothing in this Act shall be construed to author-
2 ize the Secretary to control or regulate hunting or fishing
3 of fish and resident wildlife on lands or waters that are
4 not within the System.

5 “(m) Nothing in this Act shall be construed as affect-
6 ing the authority, jurisdiction, or responsibility of the sev-
7 eral States to manage, control, or regulate fish and resi-
8 dent wildlife under State law or regulations in any area
9 within the System. Regulations permitting hunting or fish-
10 ing of fish and resident wildlife within the System shall
11 be, to the extent practicable, consistent with State fish and
12 wildlife laws, regulations, and management plans.

13 “(n)(1) Nothing in this Act shall—

14 “(A) create a reserved water right, express or
15 implied, in the United States for any purpose;

16 “(B) affect any water right in existence on the
17 date of enactment of the National Wildlife Refuge
18 System Improvement Act of 1997; or

19 “(C) affect any Federal or State law in exist-
20 ence on the date of the enactment of the National
21 Wildlife Refuge System Improvement Act of 1997
22 regarding water quality or water quantity.

23 “(2) Nothing in this Act shall diminish or affect the
24 ability to join the United States in the adjudication of

1 rights to the use of water pursuant to the McCarran Act
2 (43 U.S.C. 666).

3 “(o) Coordination with State fish and wildlife agency
4 personnel or with personnel of other affected State agen-
5 cies pursuant to this Act shall not be subject to the Fed-
6 eral Advisory Committee Act (5 U.S.C. App.).”.

7 (b) CONFORMING AMENDMENT.—Section 4(c) (16
8 U.S.C. 668dd(c)) is amended by striking the last sentence.

9 **SEC. 9. STATUTORY CONSTRUCTION WITH RESPECT TO**
10 **ALASKA.**

11 (a) IN GENERAL.—Nothing in this Act is intended
12 to affect—

13 (1) the provisions for subsistence uses in Alaska
14 set forth in the Alaska National Interest Lands Con-
15 servation Act (Public Law 96–487), including those
16 in titles III and VIII of that Act;

17 (2) the provisions of section 102 of the Alaska
18 National Interest Lands Conservation Act, the juris-
19 diction over subsistence uses in Alaska, or any asser-
20 tion of subsistence uses in Alaska in the Federal
21 courts; and

22 (3) the manner in which section 810 of the
23 Alaska National Interest Lands Conservation Act is
24 implemented in national wildlife refuges in Alaska.

1 (b) CONFLICTS OF LAWS.—If any conflict arises be-
2 tween any provision of this Act and any provision of the
3 Alaska National Interest Lands Conservation Act, then
4 the provision in the Alaska National Interest Lands Con-
5 servation Act shall prevail.

Passed the House of Representatives June 3, 1997.

Attest:

ROBIN H. CARLE,

Clerk.