
BY THE COMPTROLLER GENERAL
**Report To The Chairman, Subcommittee On
Oversight And Investigations,
House Committee On Energy And Commerce**
OF THE UNITED STATES

Economic Uses Of The National Wildlife Refuge System Unlikely To Increase Significantly

Approximately 89 million acres of land are part of the National Wildlife Refuge System. This report answers a series of questions from the Chairman concerning the Department of the Interior's plans to expand economic and public use of wildlife refuges. It discusses the Department's proposals to increase the use of these lands--especially proposals to open certain refuge lands to oil and gas leasing--the potential impacts and conflicts from such uses, and certain practices involving access to wildlife refuges.

The administration has also proposed expanding the use of these lands for timber harvesting, cattle grazing, trapping, hunting, and other activities. GAO found that the expansion levels estimated by the Department are unlikely to be fully realized for several reasons relating to demand for these products and activities, other refuge priorities, and the personnel resources available to implement an expansion policy.

The report makes recommendations to the Secretary of the Interior to improve the management of the refuge system, particularly oversight of refuge oil and gas operations.



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B-212869

The Honorable John Dingell
Chairman, Subcommittee on Oversight
and Investigations
Committee on Energy and Commerce
House of Representatives

Dear Mr. Chairman:

As requested in your letter of July 26, 1983, this report examines the plans of the Department of the Interior to expand the public and economic uses of the National Wildlife Refuge System in the 48 contiguous states.

As arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from the date of the report. At that time, we will send copies to the Department, Members of Congress, and other interested parties and make copies available to others upon request.

Sincerely yours,

A handwritten signature in black ink that reads "Charles A. Bowsher".

Comptroller General
of the United States

Enclosure

COMPTROLLER GENERAL'S
REPORT TO THE CHAIRMAN, SUBCOMMITTEE
ON OVERSIGHT AND INVESTIGATIONS,
COMMITTEE ON ENERGY AND COMMERCE
HOUSE OF REPRESENTATIVES

ECONOMIC USES OF THE
NATIONAL WILDLIFE REFUGE
SYSTEM UNLIKELY TO
INCREASE SIGNIFICANTLY

D I G E S T

The National Wildlife Refuge System was established for the protection and conservation of fish and wildlife and the management of wildlife habitat. About 89 million acres of land are in this system, including approximately 13 million acres in the contiguous 48 states.

Besides wildlife activities, the system's lands have economic uses such as farming, cattle grazing, timber harvesting, and limited oil and gas production, as well as a variety of public uses including fishing, hunting, and camping. Some of these uses can be conducted in a manner that is compatible with or even beneficial to wildlife management by providing food or improving wildlife habitat. However, economic uses often involve clearing land for roads, moving heavy equipment, and increased human activity. Such activities create the potential for noise and water pollution, and the destruction of wildlife and their habitat, if they are not properly controlled.

GAO determined that in fiscal year 1983, such economic and public uses generated about \$11 million in federal revenue. Most of this revenue (about \$7 million) was received as a result of oil and gas production on 13 of the system's 418 wildlife refuges. In 1982, the Department of the Interior's Fish and Wildlife Service (FWS) proposed expanding the use of the system's lands with implementation to be completed by June 30, 1984.

In July 1983, the Chairman, Subcommittee on Oversight and Investigations, House Committee on Energy and Commerce, asked GAO to review the Interior Department's plans to expand economic and public use of these lands. The Chairman specifically requested that GAO determine how expansion decisions were reached and whether data provided by the refuges had been considered in the Department's plans. He was particularly interested in the announced efforts to increase oil and gas development in the contiguous 48 states. He also requested that GAO review FWS

policies and practices for granting access to and use of refuge lands.

In summary, GAO found that

- The Department's expansion plans for refuge lands have been part of the administration's overall effort to make more federal lands available for multiple use. But, for a variety of reasons the proposed expanded use of refuge lands is unlikely to be fully realized.
- Although various refuges have ongoing oil and gas operations, FWS has little data on the extent or nature of these activities, and thus, cannot assess their impact or the impact of increased development on wildlife.
- New oil and gas leasing on refuges, planned by the Department, has been postponed by recent congressional action, and the Secretary of the Interior has stated that he has no current plans to resume it.
- FWS' policies governing access to and use of refuge lands are not consistently applied.

ECONOMIC AND PUBLIC USE EXPANSION
EXPECTED TO BE MINIMAL

Interior's goal to make more federal lands available for multiple use motivated FWS to identify potential expansion of the use of the National Wildlife Refuge System. FWS initiated two surveys--one in 1981, the other in 1982--in which refuge managers were asked to identify potential for expansion. Input from individual refuges was adjusted and summarized at the FWS regional level and then sent to FWS headquarters where further adjustments were made.

FWS' final report, issued in March 1983, showed less potential for expansion than the refuges had originally identified. The report projected a potential increase of about \$2 million in government revenues by 1985 from an expansion of economic activities, not including oil and gas development. However, even these increases are unlikely to be realized. Managers at refuges where the increases are projected believe markets and demand for products such as timber, hay, and crops are limited.

On the basis of GAO's observations at refuges it visited, these concerns are valid because of the

low quality and small volume of products, and the remote locations of refuges. Furthermore, refuge managers are not confident that the report's projected increases can be realized because of staffing constraints and concerns about other refuge priorities. (See p. 16.)

IMPACT OF OIL AND GAS
DEVELOPMENT ON REFUGES
DIFFICULT TO MEASURE

Mitigation of potential damage to wildlife and wildlife habitat from oil and gas operations on refuges is directly related to the adequacy of refuge management oversight. GAO found, however, that FWS has very little data on the nature and extent of ongoing oil and gas operations on wildlife refuges. As a result, FWS cannot assess their impacts or judge the likely effects of increased development. FWS did assist the American Petroleum Institute in collecting some data from refuges on these activities, believing the data would be useful to FWS management. However, the data reported are incomplete because not all refuges with oil and gas activities were surveyed. They also do not reflect the impact of existing activities because managers were not asked to describe what type of damage has resulted. GAO's follow-up survey of refuge managers indicated that some damage has indeed occurred but it could not be readily measured. (See p. 23.)

In addition, because FWS has not provided guidance to refuge managers on how oil and gas operations should be conducted, practices have differed in the field. For example, some refuge managers have allowed seismic surveys (a type of preliminary oil and gas exploration) on refuges while others have not. In addition, some regions charge fees for these activities to compensate for potential damage to refuges while others do not. (See p. 28.)

CONGRESS HAS POSTPONED
OPENING OF MORE REFUGE LANDS
TO OIL AND GAS DEVELOPMENT

In response to a 1981 decision by the Interior Board of Land Appeals, Interior officials had decided to consider issuing new federal oil and gas leases on certain wildlife refuge lands. Approximately 174 lease applications covering 806,000 acres in 19 states were pending when the Congress passed legislation in November 1983 (Public Law No. 98-151, section 137) prohibiting

the Department from further processing these applications until new regulations and an environmental impact statement are prepared.

At present, FWS officials do not plan to complete the environmental analysis since the Secretary of the Interior announced in January 1984 that, at least for the time being, he would not permit new oil and gas activity on wildlife refuges, reversing the earlier decision by the Department. However, because the Secretary has not foreclosed the possibility of future development, the extent to which federal leasing on refuges will increase is uncertain. (See p. 31.)

Notwithstanding the Secretary's actions, there are already ongoing oil and gas activities on refuge lands as well as substantial privately owned mineral rights subject to future development. FWS cannot prevent this development but can oversee it to ensure that damage to the refuge does not occur. Given this situation, GAO believes FWS field staff need guidance on what they should do to oversee oil and gas activities conducted on refuges.

ACCESS POLICIES FOR THE SYSTEM'S LANDS NEED CLARIFICATION

Economic use of refuge lands is authorized through agreements, leases, or permits. FWS regulations require that access for economic use should be restricted to a specified area in accordance with the document that authorized use. The regulation is unclear because it could be interpreted to mean that access is restricted to the area where use is authorized, and travel on refuge lands outside that area is not authorized unless specified in the agreement, lease, or permit. FWS has no specific regulations on access requirements for oil and gas leases.

In practice, some FWS refuges allow individuals using refuge lands for such purposes as timber harvesting and grazing to cross other refuge lands to access these areas even though the document which authorized use does not explicitly grant such access. FWS has followed this practice because it believes economic use is beneficial to refuges, and access is implied when use is approved. In the case of oil and gas leases, however, some refuge managers require access permits while others do not. The

Bureau of Land Management, which has responsibility for issuing oil and gas leases on Interior lands, does require temporary access permits on the land it manages. The Bureau's justification is that federal oil and gas leases do not guarantee a right of access to leased lands. The need to define and control access to and from economic use areas is important because of the potential detrimental effects to wildlife and their habitat, which can result from gaining access and traveling to and from these areas.

COLLECTION OF FEES FOR PERMIT
PROCESSING COULD INCREASE REVENUES
FROM REFUGE LANDS

In addition to an unclear access policy, FWS is not consistently charging fees to recover its costs for processing rights-of-way and special use permits for recreational and other activities on refuge lands. FWS regulations require reimbursement for processing rights-of-way. GAO found instances, however, where FWS regions either waived charges or inadvertently did not charge for right-of-way processing.

In addition, statutory as well as executive branch guidance mandates recovery of the costs of services which benefit private parties. Processing special use permits for recreational and other uses can involve substantial FWS staff time. However, FWS has no uniform policy for recovering these costs. Some refuges have established fees for administering certain activities such as fishing or hunting while others have not. This has resulted in inequitable treatment of the public and lost revenues to the federal Treasury. (See p. 42.)

Finally, FWS' procedures for collecting and tracking revenues generated from refuges do not ensure that revenues are deposited in the appropriate Treasury account. FWS does not have written guidance on where money should be credited and, instead, relies on refuge managers to verify that revenues have been deposited properly. GAO found instances when revenues were not properly credited to the National Wildlife Refuge Fund, but rather were credited to other Treasury accounts. Revenues from this fund are used to pay FWS expenses from the sale of refuge resources and to pay counties in lieu of taxes for refuge property. Because revenues were not properly deposited, less money was made available for payments to counties. (See p. 45.)

RECOMMENDATIONS TO THE SECRETARY
OF THE INTERIOR

GAO recommends that the Secretary of the Interior require FWS to verify the nature and extent of existing oil and gas exploration and production activities in the National Wildlife Refuge System and evaluate their impacts on refuge lands.

In addition, to provide guidance to FWS field staff on the oversight of oil and gas activities conducted on refuges, the Secretary of the Interior should issue regulations on

- the conduct of oil and gas operations, especially seismic surveys, on refuge lands (see p. 30) and
- access requirements for federal oil and gas leases on FWS lands. (See p. 47.)

To collect appropriate revenues from existing uses of the System's lands, GAO recommends that the Secretary require FWS to

- adopt a fee system to recover, where practical, the administrative costs associated with processing permits for refuge access and use and
- improve its collection and tracking system for receipts which the refuges or regions collect to ensure that they are credited to the proper Treasury account. (See p. 47.)

GAO makes additional recommendations to the Secretary on pp. 22 and 47 concerning the Department's policy of expanding the use of, and granting access to, refuge lands.

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No agency comments were obtained on this report. However, facts presented in GAO's report were discussed with senior Department of the Interior officials. Where they had reservations or questions concerning the facts, their concerns have been addressed in this report where appropriate.

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ABBREVIATIONS

API	American Petroleum Institute
BLM	Bureau of Land Management
DOI	Department of the Interior
DSC	Denver Service Center
EIS	environmental impact statement
FWS	Fish and Wildlife Service
GAO	General Accounting Office
IBLA	Interior Board of Land Appeals
MBO	management by objective
NEPA	National Environmental Policy Act
NWR	National Wildlife Refuge
NWRS	National Wildlife Refuge System
NWRSAA	National Wildlife Refuge System Administration Act of 1966
WPA	Waterfowl Production Area

CHAPTER 1

INTRODUCTION

The National Wildlife Refuge System (NWRS) covers about 89 million acres.¹ Generally, these areas have been established for the protection and conservation of fish and wildlife and the management of wildlife habitat. The approximately 13 million acres of NWRS lands in the contiguous 48 states are located in every state except West Virginia. Thus, NWRS represents a vast and diverse class of lands with a wide variety of animal and fish populations.

President Theodore Roosevelt established the first wildlife refuge in 1903 by executive order. Other public domain land was also withdrawn for refuges throughout the early 1900's. In 1918, the Migratory Bird Treaty reemphasized the need to acquire lands for the protection of migratory birds. The Congress began to appropriate funds to purchase lands that could be used for waterfowl habitat through the Migratory Bird Conservation Act (1929).

The largest expansions of the refuge system occurred in late 1960, when 12 million acres of land in Alaska were withdrawn from the public domain for wildlife ranges, and again in 1980, when the Congress established nine new Alaskan refuges and added acreage to seven existing Alaskan refuges. Since 1961, however, most land in the contiguous NWRS has been acquired by the U.S. Fish and Wildlife Service (FWS) through purchases or donations or as mitigation from water development projects.

Until 1966, no single law governed the administration of the many federal wildlife refuges. The Congress consolidated all of these areas in the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd-668ee). Under the provisions of this act, NWRS is administered by the Secretary of the Interior through FWS. (See fig. 1.) In fiscal year 1983, approximately 21 percent of the FWS' budget was used for managing NWRS.

INTERIOR'S POLICIES TOWARD NWRS MANAGEMENT

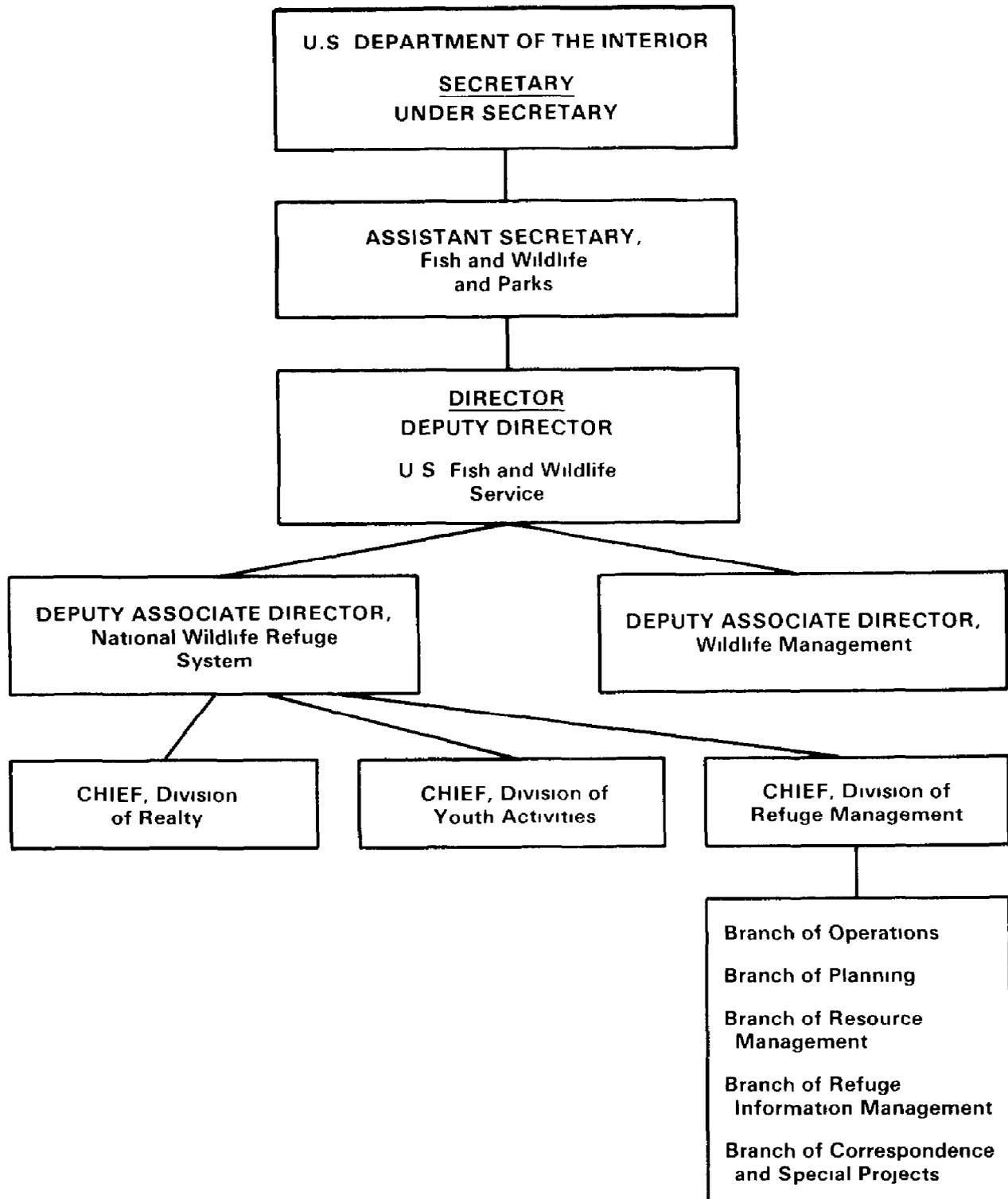
According to the FWS Refuge Manual, NWRS' mission is:

"To provide, preserve, restore and manage a national network of lands and waters sufficient in size, diversity and location to meet society's needs for areas where the widest possible spectrum of benefits associated with wildlife and wildlands is enhanced and made available."

¹As of September 30, 1983. These lands include approximately 625 units (418 national wildlife refuges, 149 waterfowl production areas (WPAs), and 58 coordination areas).

Figure 1

GENERAL ORGANIZATION OF NWRS MANAGEMENT



FWS has also established several goals for the system relating to preserving, restoring, and enhancing endangered and threatened animals and plants and migratory birds. In addition to wildlife management, FWS also manages wildlife habitat--especially forests, cropland, marsh and water, and grasslands--to support wildlife populations.

Besides wildlife-oriented activities, NWRS lands are used for a variety of other activities. In 1966, the Congress authorized the Secretary of the Interior to ". . . permit the use of any area within the System for any purpose . . . whenever he determines that such uses are compatible with the major purposes for which such areas were established" (16 U.S.C. 668dd(d)(1)). The uses of the national wildlife refuge lands include:

Economic uses

Grazing
Hay production
Farming
Timber harvesting
Surplus animal sales
Trapping
Oil and gas extraction
Concessions
Sand/gravel sales
Commercial fishing
Wild rice harvesting
Bee keeping
Building rentals
Boat moorings

Public uses

Hunting
Fishing
Trapping
Wildlife observation
Camping
Picnicking
Swimming
Boating
Waterskiing
Use of off-road vehicles

FWS distinguishes between economic uses, for which the government receives revenue or economic benefit, and public uses, which are largely recreational opportunities and are provided for the public's enjoyment or education (even though fees are sometimes collected for such activities, see ch. 6). The revenues from these uses, which were deposited in the National Wildlife Refuge Fund during the current administration, follow:

Table 1

Revenues Received from Economic
and Public Uses of NWRS^a

<u>Use</u>	<u>Fiscal year</u>		
	<u>1981</u>	<u>1982</u>	<u>1983</u>
	----- (000) -----		
Grazing	\$1,108	\$1,215	\$1,285
Haying	219	173	194
Forest products	653	813	564
Oil and gas	2,387	2,827	2,391
Sand and gravel	14	19	2
Surplus animal disposal	368	501	460
Furbearers (trapping)	236	212	89
Sale of salmonoid carcasses and eggs	20	46	14
Other (bee hives, rentals, etc.)	837	1,195	1,163
Concessions	<u>48</u>	<u>44</u>	<u>89</u>
Total	<u>\$5,890</u>	<u>\$7,045</u>	<u>\$6,251</u>

^aAs will be discussed in chapter 4, these revenues do not represent all revenues generated from wildlife refuges. Oil and gas receipts shown are only for acquired refuge lands. As shown on p. 26, we identified an additional \$4.7 million from oil and gas operations on public lands.

Source: FWS, Analysis of Receipts by Commodity, National Wildlife Refuge Fund.

Revenues collected from using refuge resources (e.g., animals, timber, hay, minerals, etc.) or leases for facilities on refuges are to be deposited in the National Wildlife Refuge Fund (16 U.S.C. 715s). The Secretary may deduct FWS expenses from the fund from selling these resources. Otherwise, the receipts are paid to counties in lieu of taxes on refuge property in that county. Because refuge revenues have generally been less than tax assessments, FWS also receives an appropriation to meet these payments (\$5.8 million in fiscal year 1984). Other revenues from refuge activities are deposited in other Treasury accounts (e.g., right-of-way charges go to the Migratory Bird Conservation Fund, see ch. 6); however, the National Wildlife Refuge Fund represents the bulk of revenues from NWRS.

OBJECTIVES, SCOPE, AND METHODOLOGY

On July 26, 1983, the Chairman, Subcommittee on Oversight and Investigations, House Committee on Energy and Commerce, asked us to answer numerous questions concerning

". . . efforts by the Department of the Interior's Fish and Wildlife Service (FWS) and the Bureau of Land Management (BLM) to expand economic and public use of public and acquired lands within the National Wildlife Refuge System." (See app. I.)

We specifically addressed the following questions during our review:

1. How was the decision to expand use of the National Wildlife Refuge System derived? (See ch. 2.)
2. What are the potential impacts of expanded economic and public use of refuges? What are the concerns of refuge managers, and how are they being taken into account? (See ch. 3.)
3. How much oil and gas activity is currently occurring on refuges? (See ch. 4.)
4. What is the origin, rationale, and legal basis for opening wildlife refuges to oil and gas leasing? (See ch. 5 and app. VI.)
5. What policies and procedures does the Fish and Wildlife Service use to grant access to refuge lands? Do private parties reimburse the government for costs from these practices? (See ch. 6.)

The scope of our examination was limited, as requested by the Chairman, to national wildlife refuges in the contiguous 48 states. We reviewed FWS documents (including raw data from 220 refuges collected in FWS surveys) and interviewed FWS staff in headquarters, the regions, and on various refuges. We conducted onsite visits to 11 federal refuges and the J. Paul Rainey Sanctuary owned by the National Audubon Society (see apps. III and IV). In addition, we met with BLM officials and representatives of the Office of Solicitor, Assistant Secretary for Land and Minerals Management, and the Assistant Secretary for Fish and Wildlife and Parks to discuss oil and gas leasing on refuges.² We contacted representatives of the oil and gas industry including the American Petroleum Institute (API); Chevron, U.S.A.; Conoco, Inc.; Shell Oil Company; Exxon; Gulf Oil; and Texaco concerning their operations on wildlife refuges. We also met with the following environmental groups to obtain their perspective on these wildlife issues: the Defenders of Wildlife, the Environmental Defense Fund, the National Audubon Society, the Wilderness Society, and the National Wildlife Federation.

²Several officials we interviewed were former Interior officials who were in positions of responsibility during this and previous administrations. In addition, several FWS officials rotated to new positions during the course of our work.

We reviewed data collected for API on oil and gas operations. (See ch. 4.) In October 1983, we conducted a telephone survey of managers at all refuges where oil and gas activities are ongoing or where lease applications have been filed to supplement this information. This survey was conducted to gather data on the opinions and experiences of these managers. Our questionnaire was pre-tested with six refuge managers to assure that refuge managers understood the questions and that the interviewers relied on the structured questions. Out of a total 100 refuges with oil and gas interests, 94 replied to our telephone survey. (See app. II. See app. V for a copy of the questionnaire used and its results.)

We and the Interior Department's Inspector General both have previously looked at issues similar to those in this report. We have issued two previous reports which relate to these issues.³ In February 1981, we recommended that the Secretary direct the U.S. Geological Survey to identify the oil and gas potential of refuges in the contiguous 48 states. We further recommended that these findings could be used to seek regulatory changes to make these lands available for leasing in a manner compatible with wildlife resources, if the Secretary determined that more lands needed to be made available for oil and gas development. In August 1981, we reported that FWS was having difficulties fulfilling its responsibilities because of priority, staffing, and funding problems.

In 1975, Interior's Inspector General reviewed administrative procedures, including fees, for economic use activities on wildlife refuges and recommended improving internal controls. A follow-up review by the Inspector General's office is scheduled for March 1984. Our work drew upon the findings and recommendations of each of these previous studies.

Except where noted, our review was conducted from August through December 1983. As requested by the Chairman, we did not obtain official comments from the Department of the Interior on a draft of this report. We did discuss the facts presented in our report with responsible Interior officials including the Deputy Assistant Secretary for Fish and Wildlife and Parks. Where they had reservations or questions concerning our facts, their concerns have been incorporated into this report where appropriate. These officials believe the data presented in our report will be helpful to FWS management. Except as noted above, this review was performed in accordance with generally accepted government auditing standards.

³Actions Needed to Increase Federal Onshore Oil and Gas Exploration and Development, EMD-81-40, Feb. 11, 1981, and National Direction Required for Effective Management of America's Fish and Wildlife, CED-81-107, Aug. 24, 1981.

CHAPTER 2

INTERIOR'S EFFORTS TO EXPAND

REFUGES' PUBLIC AND ECONOMIC USE

AND ADDRESS PROBLEMS FROM EXISTING REFUGE USES

Since 1981, the Department of the Interior has been promoting the expanded use of FWS lands as part of the administration's efforts to make more federal lands available to the public. The Chairman asked us to determine how this expanded use policy originated. He also asked us to examine two requests sent by FWS to the regions asking for an assessment of the potential for expanding the use of wildlife refuges. He further requested that we examine whether FWS' interpretation of compatible uses was consistent with the National Wildlife Refuge System Administration Act.

The Chairman also asked that we review a draft FWS report entitled "Field Station Threats and Conflicts." This report and its final July 1983 version indicate that some existing uses of NWRS have created resource problems--that is, water quality, land use, air pollution, and public use problems--which FWS is trying to address. However, because FWS placed priority on expanding use, it did not take the time to incorporate consideration of these problems into its policy.

FORMULATION OF AN EXPANDED USE POLICY AND THE RESPONSE FROM FWS REGIONS

The current administration's emphasis on expanding multiple use of NWRS originated in the management by objectives (MBOs) performance targets¹ established in 1981 for the Assistant Secretary for Fish and Wildlife and Parks. In accordance with objective VII² of these MBOs, "Promote the Appropriate Multiple Use of Lands Administered by the Fish and Wildlife Service," FWS was directed to reassess uses of FWS lands to promote compatible public and economic uses. This reassessment was to be done ". . . within existing funding and personnel capabilities."

Initial request to identify potential for expansion

Since the MBO applied to all FWS lands, both fish hatcheries and wildlife refuges were expected to implement it. In 1981,

¹Interior's MBO program is a detailed plan defining steps which each Assistant Secretary must take to achieve a series of goals for the Department. The MBO program represents a contract, tracked by the Office of the Secretary, from which the Department's progress is judged.

²Now objective VI of the current MBO.

both the Acting Associate Director for Wildlife Resources and the Associate Director for Fishery Resources asked each region to identify expansion potential for a variety of economic and public uses on refuges and fish hatcheries. The response from the Associate Director for Fishery Resources showed very little expansion potential (\$54,000). According to FWS staff, most of the fisheries have either implemented these expansions or the suggested expansion is no longer valid because these facilities have been closed or transferred to the state. Therefore, the Associate Director for Fishery Resources is no longer subject to this MBO requirement.

The responses received by the Associate Director for Wildlife Resources from the regional offices likewise indicated little or no potential for expanded economic and public use. Because of anticipated budget reductions, several regions considered their current levels of economic and public uses to be appropriate and saw no potential for expansion until additional funding was provided.³ However, the FWS Deputy Director found these responses to be unsatisfactory because he believed that refuge managers had not taken "an honest look" at the possibilities. Headquarters had asked what expansion could be done that would not cost more money whereas the regions responded that expansion could not occur without spending more money.

The language of the original December 1981 request to assess expansion potential could easily have led to the type of responses which the Deputy Director labeled unsatisfactory. The request memo states in part that

"We do not believe it practical or desirable to undertake an exhaustive or elaborate analysis of expansion potential on each refuge No refuge manager should feel compelled to divert funds from another purpose in order to create additional capacity for such uses. Neither should the manager be reluctant to report no potential for expansion, if such is really the case. On some areas, reductions in specific uses may be more desirable than expansions"

We found the regions' responses to be in keeping with the tone of the request. The former Chief, Division of Refuge Management, considered the request to be low keyed and did not expect many responses.

Second request to identify potential

A second survey request was sent to the regions on July 27, 1982. This request listed suggestions for refuge managers to

³Several regions relied on their area offices to identify potential for expansion. Whether refuges were consulted is unclear, except in Region 5.

consider for potential expansion which the Deputy Director described to us as existing uses "already judged to be compatible" for refuges. This list included: grazing, haying, farming, timber harvesting, trapping, concessions, wind-powered and hydro-electric generation, hunting guides, commercial fishing, retriever dog training, Christmas tree cutting, firewood gathering, and guided interpretive tours.⁴ The regional responses to this request were found acceptable and were incorporated into FWS' March 1983 report, Potential Expansion of Compatible Economic and Public Uses on National Wildlife Refuges. (See ch. 3.)

The current MBO calls for implementation of identified expansions to be completed by June 30, 1984. Progress data presented to the Secretary in January 1984, however, showed an increase in the number of refuges reporting certain economic and public uses but a decline in revenues during fiscal year 1983.

According to both the former Deputy Associate Director for NWRS⁵ and the Deputy Director of FWS, the objective of expanding economic and public uses of refuges is to make them available to more people. While FWS' goal was not specifically to increase revenues through expansion, consideration was given to uses which would save refuge-personnel expenses.

THE COMPATIBILITY TEST: DECISION
LEFT TO THE SECRETARY'S DISCRETION

The Chairman asked us to evaluate whether the Department has correctly interpreted compatibility in allowing nonwildlife uses of refuges. By law, refuge land usage can only be approved if it is ". . . compatible with the major purposes for which such areas were established." The Congress did not define compatible uses in its consideration of the National Wildlife Refuge System Administration Act of 1966. Rather, the question of compatibility has been left to the Secretary, through FWS, to decide. The compatibility determination is the primary protection against detrimental uses of NWRS lands.

In our survey of 94 refuge managers, we asked how much flexibility they have been given to determine that an activity is incompatible with refuge purposes. About 88 percent felt they had been given at least a moderate amount of flexibility. About 91 percent also felt that some economic use would be compatible with

⁴Certain of these uses have been incorporated into FWS' traditional habitat management program because they have been demonstrated to be beneficial to wildlife. For example, farming, grazing, timber harvesting, and trapping are activities which may directly support wildlife management objectives by providing food supplies and minimizing undesirable species.

⁵The Deputy Associate Director for NWRS was appointed FWS' Associate Director for Federal Assistance on October 13, 1983.

the purposes of their refuges. However, as the degree of detriment to a refuge from the activity increased, managers tended to consider the use to be more incompatible.

Several environmental groups criticize the current administration's approach to compatibility largely because a manager must prove that a use is incompatible to refuse it. In past administrations, according to these groups, uses had to be proven compatible--any detriment to a refuge would have been considered incompatible and would have caused an activity to be rejected. For example, in 1979, the former Assistant Secretary for Fish and Wildlife and Parks stated that practices such as grazing, timber harvesting, and farming

" . . . are employed for the benefit of and are not harmful to wildlife and wildlife habitat Without exception, any economic uses of the NWRS must be demonstrably compatible with Service objectives to preserve, protect, and enhance wildlife habitat."
[Emphasis added.]

A somewhat different approach has been used under the current administration. In May 1983, FWS issued guidance to the regions on the processing of oil and gas lease applications. This memo contained a discussion of compatibility that would allow some adverse impacts " . . . but only those that can be mitigated or reversed via restoration or rehabilitation of habitat." Specifically, oil and gas leasing was to be considered compatible if stipulations could be used to reduce potential conflicts and if the activity would result " . . . in no significant adverse impact in the present and the lack of irreversible effect in the future."

Given that the legislation does not define compatibility, both of these approaches to compatibility would be within the Secretary's discretion. (See legal opinion, app. VI.) Even under the current administration's approach, both the FWS Deputy Director and the Assistant Secretary for Fish and Wildlife and Parks emphasized to us that the compatibility test will be very important and has always been discussed in considering more uses of refuge lands.

Compatibility determinations
are made on a case-by-case basis

The determination of whether or not an activity is compatible is made on a case-by-case basis for each proposed use on a refuge. The refuge manager will generally recommend whether a use is compatible or not. For some decisions, however, this recommendation is then reviewed by the regions and headquarters before final approval.

The amount of effort required for a compatibility determination varies. Some uses require extensive onsite analyses while others can be evaluated quickly from refuge plans or analysis provided from other FWS groups without a detailed report. Managers

are expected to use the refuge's master plan and management plan⁶ to determine whether an activity conflicts with refuge objectives. However, many of these plans are outdated. At the 11 refuges we visited, 4 had no master plans, 6 had old plans (written in the 1960's), and 1 was being developed.

According to FWS headquarters, only 86 refuges out of 418 actually have master plans; 3 other plans are scheduled for completion this fiscal year. Only six of the completed plans have been done under FWS' current (since 1980) planning system. According to FWS staff, regional approaches to planning have varied, and completion of plans has depended on available funding. As a result, the FWS policy to use master plans to guide refuge managers' decisions is more a goal than a reality.

EXISTING RESOURCE PROBLEMS IN NWRS FROM PUBLIC AND ECONOMIC USE

At the same time that the Assistant Secretary for Fish and Wildlife and Parks had an MBO to promote multiple use of FWS lands, another MBO required him "to identify threats to and potential conflicts" on FWS lands. FWS sent a questionnaire to the field in October 1981 asking each wildlife refuge and fish hatchery to identify the status, location, and plans to address specific resource problems, that is, water quality, land use, air quality, and public use problems. This survey was completed in March 1982.

August 1982 draft report on potential conflicts

The results of this questionnaire were compiled in a draft report in August 1982 entitled "Field Station Threats and Conflicts." This draft study concluded that

". . . essentially all refuges, hatcheries and research centers of the FWS are experiencing resource threats and conflicts, which are in many cases causing demonstrable damage."

The draft contained 6,956 specific examples of problems or potential conflicts refuges were experiencing. Of the 1,561 land use threats reported, 534, or 34 percent, were directly related to certain economic and public uses, namely hunting, fishing, trapping, grazing, haying, timber harvesting, and oil and gas extraction. Another 1,436 threats such as vandalism, littering,

⁶These plans are the outputs of the NWRS planning system. A refuge master plan establishes the objectives and long-range management strategies for the refuge. The management plan defines how and to what extent objectives will be met, over a multi-year period. Management planning is an extension of or step down from master planning.

wildlife disturbance, and theft were solely attributed to public use. Refuges reported that these threats had had impacts on migratory birds and waterfowl, general scenic qualities, the health and safety of employees and the public, wetland habitat, air and water quality, buildings, and utility systems. (The survey data did not provide an assessment of the seriousness of these impacts.) The remaining approximately 4,000 threats were to refuge water quality and quantity, air pollution, aesthetics, exotic wildlife, and facility operations.

July 1983 final report on
these problems

A final version of this report entitled Fish and Wildlife Service Resource Problems was issued in July 1983. According to the Chief, Division of Refuge Management, several changes were made to the final report because (1) FWS needed to identify what actions could be taken to address these problems and (2) the draft had too much detail and would have resulted in a final report of several hundred pages. Although the report itself shows that 68 percent of the problems had been documented by refuge managers, our discussions with FWS management indicated that headquarters believed that many statements represented refuge managers' opinions and were unsupported. As a result, management tended to discount the significance of the data, and the report's findings have not been used to evaluate the appropriateness of expanding levels of use.

Our analysis of the final Resource Problems report indicates that while its format, length, and emphasis changed, some of the same summary data were presented in both reports. Several key points, however, were omitted from the final report. For example:

- The final report does not discuss whether individual refuge management plans were addressing these conflicts. Each manager was asked whether the identified threat was being addressed in refuge plans. Forty-three percent replied that the threats were not addressed in the management plans for these areas.
- The report omitted all specific examples of damage to individual refuges.
- Discussion of the specific causes of the problems and any reference to FWS difficulty in handling these causes were also omitted.

Moreover, a major part of the final report is devoted to a discussion of FWS' efforts to address these problems through funding of maintenance, construction, and rehabilitation projects. The final report concludes that the Department is supporting initiatives to solve many of the identified problems, but "Congressional support is needed if the Service is to solve many of the problems identified in the survey."

According to FWS officials, the impetus for an evaluation of FWS' problems was the National Park Service's success in publishing a similar report and receiving increased funding. FWS hoped to likewise get more money than it officially requested by describing problems facing the refuges.

When does multiple use
become a resource problem?

FWS faces the challenge of correcting problems caused by current levels of refuge use identified in the 1983 Resource Problems report, while increasing the public's use of refuge lands.

As evidenced by the FWS Resource Problems report, current "compatible" uses are indeed creating conflicts for NWRS. The Assistant Secretary for Fish and Wildlife and Parks recognizes that public use problems will have to be addressed where they exist. However, he does not see closing refuges to the public as a solution. The FWS Deputy Director believes proper management can minimize these bad effects. Management continues to believe that FWS lands must be made available for multiple use.

Refuge managers we surveyed believe that they are inadequately staffed to expand public or economic use. They believe that additional staff would be needed, especially outdoor recreation planners and biologists, to implement an expanded use policy. At the refuges we visited, new funding was being directed at road and facility repair, but was not targeted for staffing.

The Chief, Division of Refuge Management said that the government-wide reduction in staff ceilings has affected FWS. Whereas appropriations for refuge operations and maintenance look good, restrictions on hiring may be more of a problem for refuge managers. He described the outlook for FWS as one where staffing demands are greater than the imposed personnel ceilings. To assist in meeting these needs, FWS could use volunteers. However, our visits to refuges indicated that many refuges do not have access to this type of assistance often because of remote locations or little interest on the part of volunteers.

CONCLUSIONS

The Interior Department's goal of opening federal lands to the public has presented new challenges to FWS to preserve and protect wildlife while, at the same time, accommodating expanded or new uses on wildlife refuges. The need to meet the Assistant Secretary's performance targets for expanding use of these lands has been a FWS priority. FWS conducted two surveys of refuge managers to identify potential expansion because its initial 1981 survey identified little or no potential for increased use.

However, FWS management has discounted the significance of other data on ongoing threats to refuges, which indicates that expansion could create more problems for refuges. According to

these FWS data, public and economic uses of wildlife refuges are already creating problems. FWS is attempting to correct these problems through improved maintenance, construction, and rehabilitation projects. Refuge managers, on the other hand, believe increased staffing would be needed to properly implement an expanded use policy.

The requirement that an activity be compatible with a refuge's purposes governs whether a use will be allowed on a particular refuge. As such, the compatibility determination is the primary protection against detrimental uses of NWRS lands. The Congress left the determination of compatibility to the Secretary of the Interior, without defining what the criteria for compatible use should be. Therefore, we believe the approach taken by FWS to compatibility is within the Secretary's discretion.

CHAPTER 3

POTENTIAL CHANGES IN ECONOMIC AND PUBLIC

USE OF NATIONAL WILDLIFE REFUGES

EXPECTED TO BE MINIMAL

In response to the Assistant Secretary's MBO to promote multiple use of FWS lands, FWS required wildlife refuge managers to (1) determine ways to expand economic and public uses and (2) estimate the level of these potential increases. The refuges responded through the FWS regions, which adjusted and summarized responses, and sent the results to FWS' Washington, D.C., headquarters. Headquarters compiled and developed a report, issued in March 1983, from the summaries. In its final report, FWS projected a potential total increase of at least \$2 million in future government revenues from an expansion of economic activities, excluding oil and gas development.

The Chairman asked us to examine the refuge and regional responses, the final 1983 report, and FWS plans to implement these expanded uses. We found that the final FWS report's projections are not realistic. Our discussions with headquarters' officials, regions, and refuge managers indicated that very little expansion is likely or possible (1) because refuges must primarily protect wildlife and their habitat and (2) because refuge products are unlikely to be needed in local markets. Furthermore, any development of federally owned oil and gas resources is unlikely in the immediate future because of the Secretary's recent announcement that he does not intend to issue new oil and gas leases on refuges. (See ch. 5.)

FWS CANNOT SUBSTANTIATE ITS FIGURES ON EXPANDED USE

The Chairman asked us whether the Department had given consideration to the impact of an expanded use policy on refuges. We could not determine whether refuges would be adversely affected by this expansion because FWS does not know which refuges are expected to increase specific activities. FWS cannot validate the figures presented in its March 1983 report on potential economic and public use expansion. The report, a compilation of regional summaries, has no back-up figures, and there is no way to trace and validate its findings.

The information for the report was requested in a July 27, 1982, memorandum to the regions, stating FWS was ". . . placing considerable emphasis on increasing economic and public use activities on [Fish and Wildlife] Service lands." All potential increases had to meet the conditions of compatibility, and no increase in either funds or staffing. (See ch. 2 for a discussion of the origin of this request.)

The memorandum required that each refuge manager assess the potential for expanding economic and public uses, and respond directly to the appropriate regional office. Each region was required to send FWS headquarters a summary of its refuges' expansion potential.

Refuge responses

Refuge managers filled out an economic and public use report showing the uses and dollars generated for fiscal year 1981, and their estimate of new or expansion potential. Some refuges identified specialized uses that were due to the type of refuge, its geographic location, physical boundaries, primary objectives, and size. Specialized uses were varied but included beehive keeping, Christmas tree sales, scrap sales, archery, dog training, and horseback riding. Our report concentrates on oil and gas activities and electrical generation, and the four most common economic uses reported in fiscal year 1981: timber harvesting, farming, grazing, and hay production.¹ These uses represented 91 percent of the 1981 revenues from refuge lands.

Despite the variety of potential expansions identified, most refuge managers did not demonstrate that they could expand these major economic uses. Of 381 wildlife refuges in the contiguous 48 states, only 116, or 30 percent showed any potential expansion in the uses we examined. Many qualified their responses. Of the 116 that showed potential, 53, or 46 percent, added an explanation as to why the expansion could not or should not be done. Most of the comments were that the activity was not possible with current funding or staffing, or that the local community had no demand or market for the increased use. The following summary identifies refuge managers' concerns:

<u>Concern</u>	<u>Times mentioned</u>
Lack of resources (staffing/funding)	39
No current market or demand	25
Improvements needed before expansion possible	17
Use incompatible with refuge purpose	12
Expanded use quality poor or not profitable	6
Increases not annual--one time, occasional, or far into future	5
Expansion of one use will decrease another	2
Limited access to refuge hinders expansion	2
Potential less than reported	<u>2</u>
Total	<u>110</u>

¹We reviewed data from all refuges that submitted economic and public use information (220), and made additional inquiries (135) of refuges that did not report. Thus, responses from over 90 percent of refuges in the contiguous 48 states have been included in our evaluation.

Our observations at the refuges we visited support the limited market outlook for refuge products since: (1) most refuge lands are of marginal value for haying and farming, thereby producing poor quality crops, (2) refuges are remotely located and do not serve large metropolitan markets, and (3) only small areas on refuges are subject to development so that, except for oil and gas, small local producers--rather than large commercial enterprises--tend to apply for economic use permits. In some cases, refuge managers have been unable to find anyone interested in developing the refuge's resources.

Regional summaries

The regional summaries were based on the economic and public use reports of the refuges. Basically, the regions used the numbers given to them, except for the uses qualified by refuge managers' comments. Where it seemed apparent that the refuge could not increase use, the regions generally omitted the response.²

The regions used the refuge responses as work sheets to develop their summaries, and often made changes directly on the refuge's economic and public use report. Most of these changes were to public uses, and more were decreased than increased. Of the 58 changes we identified, 43 related to public use, and 26 of these were decreases. However, the regions made a few significant economic use increases directly to the refuge manager's reports. Two of these changes added hydro-electric generation potential. The refuge managers involved told us they were not informed that changes had been made to their submissions.

Instructions from FWS were general and did not provide specific guidance as to which uses a particular refuge should include in its estimate of potential. Also, no guidance was given to the regions as to how to present the data or what to adjust. This resulted in regions treating responses differently. Some refuge responses were completely omitted, while others were adjusted. Omissions included expanded uses which would (1) require an environmental assessment, (2) lack demand, and (3) occur only intermittently, when the use would benefit the refuge (e.g., some refuges identified timber harvesting as an activity that could be done every 4 or 5 years to maintain forest growth).

A comparison of refuge responses and the regional summaries of the responses shows that, except for timber harvesting, regional summaries identified less future revenue potential than did the individual refuges. The overall reduction was about \$670,000. A higher figure was reported for timber harvesting because the regional summaries erroneously included \$141,000 as an increase which a refuge had shown as actual harvesting for fiscal year 1981.

²Only Region 3 submitted the data to headquarters unchanged.

Table 2

Potential Revenues from
Expanded Uses Identified by Refuges
and FWS Regions

<u>Use</u>	<u>Revenues</u>	
	<u>Refuges</u>	<u>Regional summaries</u>
Oil and gas extraction	\$ 550,000	\$ b
Grazing	314,722	252,958
Timber harvesting	1,464,877	1,593,500
Farming	223,850	82,300
Haying	152,818	107,824
Comparison of totals	<u>\$2,706,267^a</u>	<u>\$2,036,582^a</u>

^aThese totals reflect all future revenues rather than annual increases.

^bUnknown.

Source: FWS, August 1982 refuges' responses and regional summaries

The regions attempted to show what was reasonably obtainable based on the data available. For example, in oil and gas production potential, the regions could not develop good projections from the few refuges reporting so they reported the economic value as "unknown." Only three refuges had responded that an increase in oil and gas production was possible.

Headquarters compilation

The Chairman asked us to review headquarters' compilation of the final 1983 report on economic and public use, with particular emphasis on the proposals for expanding oil and gas leasing and electric power generation. FWS headquarters aggregated the regional figures and published them in the March 1983 report Potential Expansion of Compatible Economic and Public Uses on National Wildlife Refuges. The March 1983 report agrees with the regional summaries of oil and gas extraction, timber harvesting, and haying. The report differs from the regions on grazing and farming, and in the specific numbers used throughout the report's narrative.

A comparison of potential government revenues from the regional summaries and the final report follows. Overall, the difference was about \$22,000. The difference between the refuges' responses (table 2) and the final report's total figure was \$690,000 less (including the omission of \$550,000 in oil and gas extraction) for these five economic uses.

Table 3

Potential Revenues From
Expanded Uses Identified
by FWS Regions and Headquarters

<u>Use</u>	<u>Revenues</u>	
	<u>Regions</u>	<u>March 1983 report</u>
Oil and gas extraction	\$ unknown	\$ b
Grazing	252,958	136,134
Timber harvesting	1,593,500	1,600,000 ^c
Farming	82,300	172,000
Haying	107,824	107,824
Comparison of totals	<u>\$2,036,582^a</u>	<u>\$2,015,958^a</u>

^aThese figures represent all future revenues rather than annual increases.

^bUnknown.

^cRounded.

Source: FWS, August 1982 regional summaries and final report, Potential Expansion of Compatible Economic and Public Uses on National Wildlife Refuges

The support for the final report cannot be readily validated, and the report's figures cannot be traced back to regional summaries. Headquarters has no summary or backup sheets. Since the refuges reported to the regions, headquarters cannot determine what specific refuges make up any part of the totals reported. For example, in the narrative of the oil section of the report, headquarters stated that "In FY 1981, 11 stations in three regions had oil and gas production The total value of the oil and gas produced on all refuges is unknown but likely runs into millions of dollars." Since it could not identify all existing production, FWS headquarters did not know how much increased production was possible, or where it would be produced, but felt the potential was substantial.

The FWS Chief, Branch of Planning, said that headquarters listed the potential increase in oil and gas extraction as unknown because FWS has no way to estimate future production since many operators are developing private party mineral rights. This official believes that as long as an outside party has control over minerals and the amount of oil and gas produced, no projections can be made. In fact, such private operations do not produce federal revenues and should not have been considered as part of any potential increase.

Other parts of the report's narrative also cannot be substantiated. The March 1983 report narrative states that 40 refuges reported (to the regions) potential for increased grazing, while 6

identified a decrease. Headquarters cannot identify these refuges and cannot trace the statement back to the regions. According to headquarters, records supporting these numbers have not been retained.

The March 1983 report claims ". . . 17 stations have identified wind or hydropower electrical generation . . ." From the refuge responses, we identified 23 refuges that reported a potential increase in electrical generation. The regional summaries showed 29. Thus, neither the refuges', regions', or headquarters' figures agree or are verifiable. We visited four refuges with identified electric generation potential and found that (1) generation would solely be for the refuge's use, (2) development of the sites depended on power company or community involvement, and (3) no actual plans have been developed for these projects.

Reporting errors occurred from the refuges to the regions and from the regions to headquarters. Headquarters used the regional figures, but made errors in compilation, with the result that all major economic use figures in the March 1983 report were incorrect, except hay production. (Although individual use figures differ, total potential economic increases reported by headquarters do approximate the total regional summaries, with the major difference being approximately \$90,000 more reported in farming and \$90,000 less in grazing.)

IMPLEMENTATION OF POLICY HAS NOT BEEN UNIFORM

The Chairman requested that we evaluate FWS directions for implementing an expanded use policy. These directions were not uniformly communicated to refuge managers. Both Interior management and refuge staff believe new or expanded economic and public use resulting from this policy will be minimal.

On April 1, 1983, FWS sent out a memorandum to the regions giving guidelines for implementing the reported expansion. Two basic criteria of the guidelines were that increases must be compatible with refuge objectives, and that increases must be accommodated within existing funding and staffing. The former Deputy Associate Director for NWRS and the Chief, Division of Refuge Management, said the April 1, 1983, guidelines allow a decrease in economic activity if current levels are detrimental to a refuge.

Specific guidelines in the memo for both economic and public use limited some further expansions. For example, timber harvesting and grazing activities were to be consistent with sound wildlife management practices. Timber harvesting could be deferred where no market existed or where refuge sales would unfairly jeopardize private sales. Farming and haying were to be developed only when sufficient demand existed. Farming was limited further to crops having direct wildlife value.

For nonwildlife-oriented activities (recreational uses such as picnicking, camping, etc.), the guidelines stated that an

increase was expected, even though FWS' policy was to discourage such recreational uses. We were told an increasing population plus a renewed interest by the public in wilderness-type areas will cause this additional use.

The regions disseminated headquarters' guidelines in various ways, including instructional meetings, site visits, or simply forwarding copies of the memorandum. Generally, the message to the refuge manager was to do what was realistically possible. Regional instructions were low-keyed, basically because of the belief that not many economic or public use increases would meet the two criteria.

Not all refuges received instructions. Two regions did not send out written instructions, and one region sent copies of the headquarters' guidelines only to selected refuges. Approximately 20 percent of the refuge managers we surveyed could not recall the guidelines or any discussion of them.

Results of policy implementation

Officials at FWS, including the Assistant Secretary for Fish and Wildlife and Parks, expect very few major increases in activities. The Assistant Secretary, answering congressional inquiries in 1982 concerning the proposal to expand economic and public uses, said

" . . . we recognize that many refuges will have few and in some instances no opportunities to increase use. We expect very few major increases in activities, mainly small increases here and there."

Likewise, the Director, Fish and Wildlife Service, in a 1983 memorandum to the Secretary of the Interior, emphasized that several years of depressed timber markets had led to a backlog of timber on refuge lands, and that opening these lands could lead to charges of unfair competition from private timber companies. He also pointed out that some refuge hay production was of low quality and would only be marketable during drought periods.

The refuge reports themselves confirm that increases will be minimal. Many refuges (265 out of the 381 refuges) did not estimate any economic increases, and of the refuges that showed a possible increase, many managers also had adverse comments and were not encouraging an increase. Of the 11 federal refuges we visited, only 1 saw a possibility of a significant increase in one area--grazing.

Finally, a comparison of the revenues generated from fiscal year 1981 through fiscal year 1983 (see table 1, p. 4) shows that total revenues--including the uses we examined of oil and gas production, grazing, hay production, timber harvesting, and farming--have decreased from fiscal year 1982 to fiscal year 1983 to a level that is only 1 percent higher than when the policy began in 1981.

CONCLUSIONS

FWS has projected that at least \$2 million in federal revenues, excluding oil and gas revenues, could be realized from an expansion of the economic uses of wildlife refuges. FWS regions and refuges, however, are not aggressively pursuing the expansion policy for the use of NWRS lands because of conflicts between refuge priorities and a lack of demand for refuge products. Also, as discussed in chapter 2, refuge managers believe additional manpower would be needed to properly implement an expansion policy. As a result, increases are likely to be minimal.

Given the potential conflicts from implementing the Assistant Secretary's MBO to expand uses in light of the resource problems identified from existing uses (see ch. 2), the Department should link its goals of expanding uses of refuge lands and resolving problems on refuges. Priority should be given to correcting existing problems before new uses are initiated at individual refuges.

RECOMMENDATION TO THE SECRETARY OF THE INTERIOR

We recommend that the Secretary of the Interior resolve the conflicting goals of (1) promoting the multiple use of refuge lands and (2) resolving resource problems on refuges. In doing so, we believe that any expansion of existing uses should be weighed carefully against any uncorrected existing problems and an individual refuge's capability to manage new or expanded uses.

CHAPTER 4

IMPACT OF OIL AND GAS DEVELOPMENT

IN NWRS DIFFICULT TO MEASURE

FWS has little data on the location and effects of ongoing oil and gas activities in the NWRS. FWS cooperated with API to obtain more data on these operations. The Chairman asked us to review the API survey of oil and gas activities, particularly to determine what problems have been experienced on refuges.

The data collected for API do not fully describe the effects of oil and gas development. For example, API concluded that oil and gas operations have had little or no adverse effect on wildlife on most refuges and WPAs. Our analysis, on the other hand, indicated that refuge managers believe oil operations have sometimes caused serious damage to refuges; but these impacts are difficult to measure.

FWS ASSISTED API WITH SURVEY TO IDENTIFY EXISTING OIL AND GAS ACTIVITY

In October 1983, API issued a research study entitled, Survey of Oil and Gas Activities on Federal Wildlife Refuges and Waterfowl Production Areas. The report concluded that ". . . petroleum operations have had little or no significant adverse impact on wildlife . . ." However, the report's data were not systematically collected and do not cover all refuges with oil and gas activity, and some conclusions are based on inferred data.

API initiated its survey to look at the extent and effects of oil and gas operations on refuge lands as part of a continuing API program examining energy development on federal lands, both on-shore and offshore. Since API felt little data were available on the impacts of refuge development,¹ API sought to get data that would assist in the debate on wildlife refuges. API staff developed a questionnaire for the refuges. API then approached FWS to obtain its approval for what API was planning to do.

FWS management felt that the data API was collecting would be helpful to FWS. At the same time, FWS officials recognized that API needed FWS to sanction the survey and obtain refuge managers' cooperation. According to the former Deputy Associate Director for NWRS, there was a "mutual benefit" in assisting API. Thus, FWS agreed to have the regional offices distribute and collect the questionnaires. API also asked for FWS headquarters' comments on

¹In fact, however, FWS had provided data to API in April 1981 on existing operations and offered to assist in gathering more specific information in the future.

the draft questionnaire before its distribution. However, API did not pretest the questionnaire to determine whether refuge managers understood the questions.²

The FWS Branch of Planning provided comments on the questionnaire to API. Basically, FWS headquarters' staff tried to clarify the questions and obtain additional information on time spent by FWS staff-monitoring operations. FWS specifically added or changed 6 of the 20 questions in the survey. On February 13, 1983, the former Deputy Associate Director for NWRS sent a memorandum to regional directors requesting their full cooperation with the API survey. The memorandum stated that:

"The information will be of particular use to the Service as we continue to evaluate our position with respect to Federal oil and gas leasing of Service lands."

The Chairman's office asked us to determine how and at what cost the survey was conducted. Each region distributed the API questionnaire differently. Two regions sent all refuges a questionnaire; the other four regions in the contiguous 48 states tried to identify areas that were producing oil or gas and distributed surveys to them. None of the regions followed up to assure that affected refuges submitted responses. (We have determined that 23 percent of the applicable refuges were not contacted, see p. 27.) The regions generally distributed the survey by mail, and the refuges returned the responses to headquarters by mail. The cost to the taxpayer of FWS efforts cannot be determined because the regions did not maintain such records. However, costs would include stafftime, ranging from several hours to several weeks in some cases, and the use of federal mailing privileges.

FWS headquarters received the completed questionnaires around April 1983. FWS has no immediate plans to analyze and respond to the API data because of other priorities. However, FWS distributed the survey results to refuges in the field to show managers the types of problems being encountered from oil and gas activity.

Results of the API survey

In October 1983, API issued its final report. Its conclusions reflect very positively on the compatibility of oil and gas activities with refuge purposes.

". . . under appropriate institutional conditions, oil and gas activities can be, and generally have been

²Pretests are preliminary testings of questionnaires with a small sample of the population to evaluate whether questions have been correctly formulated and are comprehensible to the survey audience.

conducted without detracting from the primary purposes of the refuges and WPAs."

API defined oil and gas activities to include pipelines; seismic activities; access roads; land restoration; and exploratory, producing, or abandoned wells. Seventy-five refuges and WPAs responded to the survey; however, 13 of these had experienced no oil and gas activity so API eliminated their responses. Of the 19 WPAs responding, the same manager completed 18 responses--few of which actually differed. API counted each of these responses separately, somewhat skewing their survey results by overemphasizing his concerns.

The API survey showed that the most frequently occurring incidents relating to oil and gas operations on refuges were:

- litter or solid waste,
- fuel tank failures,
- impoundment failures (impoundments are pits usually used for storing the salt water produced with oil and gas), and
- permit violations.

API's data showed that modification or loss of wildlife habitat, wildlife disturbance, aesthetic impacts, and pollution have resulted from these oil and gas operations. However, refuge managers did not always describe how much disturbance or other impacts had occurred. API reached the conclusion that petroleum-related incidents have had no appreciable impact on wildlife or environment. However, API never asked whether the incidents had had specific impacts. Rather, API inferred this response from answers to the question ". . . how many incidents have occurred in or adjacent to the refuge?" Because only 32 percent of those responding reported incidents, API concluded that their impacts had not been significant.

Weaknesses in the questionnaire's design affected the survey's results. Most of the questions asked for narrative responses, which API then attempted to quantify to present in the final report. Interpreting each refuge manager's response involved subjective judgment on the part of API staff. As a result, in some cases the report overstates the views of managers who had qualified their responses to questions, especially regarding refuge rehabilitation and habitat enhancement.

API's data show that refuge managers actually know very little about who owns leases on refuges or who the operating companies are. Since most activity involves private mineral rights, FWS has maintained little control over or knowledge of these operations.

EXISTING OIL AND GAS OPERATIONS
IN NWRS

Oil and gas activities are not a new issue for wildlife refuges. Several refuges have ongoing drilling and production operations largely because their mineral rights were reserved by private or state owners when FWS acquired the lands for a refuge or because they have been leased to prevent drainage of federal oil or gas. Such activities are likely to continue on refuges. Because oil and gas activities have not been a FWS concern, however, minimal records have been maintained on the nature, extent, and whereabouts of existing operations. In addition, the FWS refuge manual which contains "All official statements of policy related primarily to the Refuge System," as well as guidelines, procedures, and methods of operation does not contain a section governing the management of oil and gas operations. (FWS had drafted such a chapter, but has no current plans to finalize and issue it, because the Secretary has postponed new leasing. (See ch. 5.)

In 1981, FWS gathered informal data from the regions on oil, gas, oil shale, coal, and mining activities on refuges. These data showed 39 units with oil and gas operations: 34 refuges and 5 WPAs. In the summer of 1982, FWS briefed the Under Secretary stating that 56 refuges or WPAs had oil and gas activity: 11 where the government owned the minerals and 45 where private parties owned the minerals. FWS has repeatedly used this same figure of 56 or "about 50": in the March 1983 economic use report (see ch. 3), in the June 1983 FWS Fact Sheet entitled "Oil and Gas Leasing on National Wildlife Refuges," in discussions with us, and most recently in the congressional confirmation and other hearings with the new Secretary.

FWS cannot provide support for these figures to show which 56 refuges have activity demonstrating that FWS has no means to monitor and exercise effective oversight over these operations. According to FWS staff, no list of the refuges has been maintained because the information came from an informal telephone survey of knowledgeable individuals in the regions. FWS is starting to computerize and centralize its mineral ownership records, which should assist in identifying where private parties are developing their rights.

Revenues from oil and gas
operations on NWRS lands

The Chairman asked us what revenues are currently obtained from oil and gas activities. On the basis of Minerals Management Service and FWS records, we calculate that oil and gas operations on wildlife refuges generate about \$7 million annually. In fiscal year 1983, approximately \$2.4 million from oil and gas operations on acquired NWRS lands was deposited in the National Wildlife Refuge Fund. Royalties from production on Delta National Wildlife Refuge (NWR), Louisiana, accounted for 91 percent of these acquired land revenues. Another \$4.7 million was collected from

activities on public domain NWRS lands and deposited in the General Treasury (largely from Alaskan oil royalties).³

Revenues received from oil and gas activities do not directly benefit or return to the refuges. Revenues deposited in the General Treasury from public domain lands must be shared with the states under the provisions of the Mineral Leasing Act of 1920 (30 U.S.C. 191). Revenues from acquired lands, like other monies in the National Wildlife Refuge Fund, by law, are repaid to the refuge only to the extent that the refuge incurred expenses for the sale of the oil and gas. The remaining Fund receipts go toward payments to counties in lieu of taxes on refuge property. Since most oil and gas revenues are royalty collections which involve no FWS expense, refuges do not receive a share in these revenues.

Several refuge managers have suggested that returning funds to the refuges could assist in mitigating and studying the effects of oil and gas operations, thereby increasing their willingness to accept such activities on refuges. The National Audubon Society, for example, collects about \$1 million annually from gas production on the J. Paul Rainey Sanctuary in Louisiana. This money is used to pay the Sanctuary's operating expenses and build special wildlife nesting areas. The Audubon Society also requires companies to construct water control dikes at their own expense to prevent marsh loss from the dredging of canals for well sites.

IMPACT OF EXISTING OPERATIONS ON REFUGES

Because API's data are the most recent, FWS staff suggested that they most accurately represent oil and gas development occurring on refuges. Moreover, FWS has attempted to use the API data to verify its statistics that 56 refuges have known oil and gas operations.

To clarify some of the responses to API's questions and further evaluate the impact of oil and gas activity on refuges, we conducted a follow-up telephone survey covering 94 refuges or WPAs. Through FWS 1981 data on existing operations and conversations with these refuge managers, we identified 11 additional refuges and 6 WPAs not surveyed by API where oil and gas exploration or development activity has occurred. (Other refuges which have pipelines within their boundaries would also fit the API definition of oil and gas activity.) To avoid duplication, we eliminated responses from managers who had more than one refuge but who voiced the same opinions on the issues. We specifically asked questions relating to the seriousness and damage from petroleum-related incidents on refuges. (See app. V.)

³Since this revenue is not deposited in the National Wildlife Refuge Fund, it was not included in ch. 1 revenue tables.

We found that 74 percent of the 35 managers reporting incidents believed that they had been somewhat serious. The most frequent type of damage reported was habitat disturbance; 56 percent of the managers reported at least moderately serious damage to wildlife. Refuge managers generally rely on the oil companies to correct any damage because FWS does not have resources to deal with these incidents.

Managers also responded that they had experienced a variety of problems with oil companies, especially contractors and small companies. These problems included carelessness (68 percent), noncompliance with lease provisions (61 percent), and companies that were unaware of requirements for using the refuge (52 percent).

In addition, when all refuge managers where activity is ongoing or interest has been expressed in leasing were questioned, refuge managers ranked exploratory drilling, production, and pipelines as the most threatening types of oil and gas activities. Overall, however, more than half (57 percent) of those responding felt that oil and gas activities were at least somewhat compatible with the purposes of the refuge.

Five of the 11 federal refuges we visited have ongoing oil and gas production. The quality and impact of the industry operations varied depending upon the company involved and age of the facilities. For example, on the basis of a history of high-quality operations on the refuge with one major oil company, Aransas NWR in Texas has allowed other companies to use its lands for storage facilities for operations unrelated to the refuge.

Since several of these refuges have had oil and gas activities for over 30 years, the impacts of these older operations are almost impossible to measure. At Delta NWR in Louisiana, for example, the refuge is experiencing significant marsh loss and intrusion of salt water into fresh water ponds. Canals from oil industry operations have contributed to this deterioration, but other projects to control the flow of the neighboring Mississippi River are likewise responsible. Data are not available to determine what the area was like before oil and gas operations, thus, FWS cannot measure their direct effects.

FWS has not researched the effects of oil and gas development on NWRS and has no actual field studies from which to draw conclusions about the compatibility of refuges with oil and gas operations. According to API's data, nine refuges have done baseline environmental studies or wildlife surveys for specific activities. However, FWS plans little research in this area, especially on a system-wide basis.

Seismic exploration has occurred on numerous refuges

Although only a limited number of refuges have been identified as having federal oil and gas leasing, many refuges have had

seismic surveys.⁴ Such testing is done early in the oil and gas exploration phase to determine the location of potential resources. Most refuge seismic surveys involve two methods to locate potential oil and gas deposits: either detonating explosive charges which are placed specific distances apart, or vibrating the ground. FWS has no regulations, however, governing the conduct of and payment for seismic surveys.

Because FWS has not established a policy toward seismic testing, practices in the field differ, and revenues have been lost. Some FWS refuge managers consider seismic surveys a pre-leasing activity and have rejected applications, stating that NWRS is not available for leasing or that seismic surveys would be incompatible with refuge objectives. Other managers have found such surveys to be acceptable. FWS Region 2 customarily charges for such surveys where private minerals are involved; Regions 4 and 6, on the other hand, do not charge for these same surveys on refuge lands with private mineral rights. Some of the difference in charging fees comes from a February 1982 Regional Solicitor's Opinion which is being interpreted differently by regional staff. The revenue collected for seismic surveys can be significant. For example, Region 2 collected almost \$115,000 for seismic surveys during fiscal years 1982 and 1983 as payment for potential damage to the surface. Seismic testing can create some minor surface disturbance and may disrupt some wildlife activities. For example, refuge managers have reported wildlife disturbance, road damage, and wildfires resulting from seismic activities.

CONCLUSIONS

FWS does not have adequate data to effectively monitor and control existing oil and gas operations on refuge lands. FWS cooperated with industry to obtain additional data. However, the data were not systematically collected and, therefore, are not complete. FWS could not provide us with support for its own statistics on ongoing oil and gas operations.

FWS largely completed its refuge manual in March 1982. However, a chapter on the management of oil and gas operations has not yet been issued. FWS does not plan to issue this chapter because the new Secretary has postponed any new federal oil and gas leasing on refuges. However, oil and gas activities are ongoing on various refuges. Furthermore, since private parties will continue to develop their mineral rights on refuges, guidance should be available to refuge managers in overseeing these operations.

Guidance on oil and gas policies also could correct a difference in the treatment of seismic applicants by the field.

⁴Seismic surveys are a type of geophysical exploration that maps subsurface geologic structures having the potential to hold fuel deposits.

Generally, FWS allows some seismic exploration on refuge lands, and damage has resulted from the operations. No FWS regulations, however, govern this activity and provide for mitigation. FWS is losing revenues because it has not adopted a uniform policy toward seismic exploration. Formalizing policy guidance on seismic and other oil and gas activities would assist FWS staff to make decisions on exploration activity, oil and gas leases, and other development questions. It would also allow industry to anticipate what FWS procedures and requirements are likely to be and might alleviate the difficulties refuges have experienced with small companies.

RECOMMENDATIONS TO THE SECRETARY
OF THE INTERIOR

We recommend that the Secretary of the Interior issue regulations concerning the conduct of oil and gas operations, especially seismic surveys, on NWRS lands, and require the Director, FWS, to

- verify the nature and extent of oil and gas exploration and production activities in the National Wildlife Refuge System and evaluate their impacts on refuge lands, and
- issue a chapter of the Refuge Manual concerning oversight of oil and gas operations to provide guidance for refuge managers.

CHAPTER 5

INCREASED OIL AND GAS LEASING

WOULD REPRESENT MOST SIGNIFICANT CHANGE FOR NWRS

BUT HAS BEEN POSTPONED BY CONGRESS

Oil and gas development has not been widespread on NWRS lands. The current administration, in response to a 1981 decision of the Interior Board of Land Appeals (IBLA), agreed to consider oil and gas leasing on wildlife refuge lands not withdrawn for the protection of all species of wildlife. This decision supported the administration's approach of making public lands available for energy development. The Chairman asked us to review the decisions which led to this policy to determine

- where the policy originated,
- why it was developed, and
- what its objectives were.

He also wanted to know what other proposals to expand leasing were under consideration.

In November 1983, the Congress passed legislation requiring that the Department promulgate new regulations and prepare an environmental impact statement (EIS) before any lease offers are processed. The Department has decided, however, that such an evaluation is unnecessary since the new Secretary of the Interior, in January 1984, indicated that he would not permit leasing on wildlife refuges.

Currently, BLM, the federal oil and gas leasing agency, is holding about 832 lease applications for 2.4 million acres of NWRS lands. Approval of these applications would have represented a significant increase in federally leased NWRS lands.

EVENTS WHICH LED TO INTERIOR'S CONSIDERATION OF LEASING REFUGE LANDS

From 1981 to July 1983, Interior officials' thinking changed several times on the issue of whether wildlife refuge lands should be opened to oil and gas leasing. The most extreme change in position occurred at FWS, where leasing was initially opposed. FWS later recommended that all refuge lands be made available for leasing subject to compatibility findings. The key to the Departmental position to allow consideration of leasing was the administration's philosophy, as supported by the Assistant Secretary for Fish and Wildlife and Parks and the Assistant Secretary for Land and Minerals Management, to make more public lands available for energy development.

Revising BLM's oil and gas
leasing regulations

Interior officials spent 2 years revising the Department's regulations on oil and gas leasing. In the summer of 1981, BLM circulated draft regulations on oil and gas leasing (43 CFR 3100) which proposed the opening of all refuges to oil and gas leasing. According to BLM officials, this language was considered too radical by management. As a result, in October 1981 the proposed draft language was changed to state that refuge lands would not be available for leasing except for drainage.

However, an IBLA decision on September 1, 1981, began to have an effect on Departmental thinking while the new regulations were undergoing review. IBLA, acting on an appeal of an Idaho BLM decision from Esdras K. Hartley and the Impel Energy Corporation, found that the existing regulation¹ ". . . only precludes leasing lands withdrawn for the protection of all species of wildlife within a particular area."

This decision caught FWS by surprise since FWS' past position had been that all refuge lands were closed to oil and gas leasing under the regulation. Now, according to IBLA, refuges were only closed if the lands had been specifically withdrawn for all species of wildlife. This decision affected about 1.8 million acres of acquired lands in the contiguous 48 states as well as public domain refuges which were not withdrawn to protect all wildlife. (We have identified about 800,000 acres of these lands, on the basis of an evaluation of withdrawal orders for only 20 refuges.) As BLM sent lease applications to FWS for processing, regional FWS staff raised concerns about the need for headquarters' policy guidance on whether or not lease applications should be accepted.

On March 3, 1982, the Acting FWS Director asked the Solicitor's office for advice on the IBLA decision and its effect on oil and gas leasing. FWS felt that IBLA's conclusion may have been in error. The Solicitor's office prepared a draft memo

¹The language of the existing regulation at that time (43 CFR 3101.3-3(a)(1)) read:

"No offers for oil and gas leases covering wildlife refuge lands will be accepted . . . except [lands subject to drainage]."

Wildlife refuge lands are defined in part (a) of the regulation as

". . . those embraced in a withdrawal of public domain and acquired lands of the United States for the protection of all species of wildlife within a particular area."

in May 1982, which was never signed.² One of the options in the draft opinion, however, was that BLM's leasing regulations be clarified to overrule the IBLA decision. (Although the opinion was never issued, this advice was orally given to BLM by the former Associate Solicitor for Energy and Resources.)

This, in effect, was what FWS attempted to do. The FWS Director asked BLM to clarify the status of leasing on refuges. On June 30, 1982, BLM published draft regulations for public comment which stated that,

"Lands within the contiguous 48 states that are in the National Wildlife Refuge System are not available for leasing . . ."

except for drainage and well-spacing requirements.³ BLM received 22 comments on this section of the rulemaking: 7 comments did not take a position, 2 comments favored the closing of lands, and 13 comments were against the rulemaking largely because the Congress itself had not closed refuges to leasing in the 1966 NWRS Administration Act. Eleven of the 13 comments against the draft regulations came from the oil industry.

FWS did not comment on the proposed rulemaking until December 1982. During the interim period, FWS was discussing what institutional changes would be required to comply with the IBLA decision. In an August 1982 memo to the Assistant Secretary, Land and Water Resources,⁴ the FWS Director requested an extension of the comment period so that FWS could make policy decisions and plans consistent with the IBLA decision:

". . . it is obvious that to support the BLM regulations as proposed would be supporting the 'closed' refuge concept, which is inconsistent with the IBLA decision."

Thus by August 1982, FWS no longer supported the regulatory language closing refuges for which it had originally argued.

²The Solicitor's Office informed us that the draft opinion wrongly emphasized the distinction between withdrawals and acquired lands, and was erroneous.

³According to BLM, some lease holders on lands adjacent to refuges have been unable to drill because they lack sufficient acreage to meet state requirements for spacing between wells. This exception was proposed to assist these private individuals while at the same time not allowing any surface occupancy or drilling on the refuge lands.

⁴On December 22, 1983, as part of personnel changes within the Department of the Interior, this official's position was retitled Assistant Secretary for Land and Minerals Management.

Several events during the summer of 1982 contributed to this change of views. First, the Assistant Secretary for Fish and Wildlife and Parks and the Assistant Secretary for Land and Minerals Management met to resolve the issue of leasing NWRS lands.⁵ The Assistant Secretary for Fish and Wildlife and Parks felt that closing refuges was more restrictive than what the Department's policy should be. He saw no reason not to allow leasing on refuges since oil and gas activity are already occurring on numerous refuges. The Assistant Secretary for Land and Minerals Management deferred to his wishes as the responsible policy official, and told us that he informed BLM staff that the Assistant Secretary wanted the regulations to open refuges to oil and gas leasing. This decision was not based on a discussion of either the need for or potential revenue from these resources.

Second, in July 1982, the Chief, Division of Refuge Management was replaced. The former chief believed refuges should remain closed and had requested that the issue be resolved. The new chief told us that he "saw it as an accomplished fact that nonwithdrawn acquired lands were interpreted to be open to leasing." Moreover, he believes the Congress has had multiple opportunities to close refuges to leasing, but chose to leave them open. According to the former Deputy Associate Director for NWRS and other FWS staff, FWS staff were caught in a change in policy decision by the administration, which took some time to be recognized within FWS.

In December 1982, the Director transmitted FWS' comments on the proposed rulemaking to the Assistant Secretary for Land and Minerals Management. (The Assistant Secretary's office has no record of receiving these comments and, thus, never sent them to BLM for the public record on the rulemaking.) The comments requested that oil and gas leasing be consistent throughout NWRS.⁶ Therefore, FWS recommended that NWRS lands be made available for leasing wherever FWS determined that leasing was compatible with the land's purposes.

A series of discussions was then held with BLM, FWS, and the Solicitor's office staff to resolve the language of the final rulemaking. The Solicitor's office staff advised FWS that its proposal would be a major federal action, and would require an

⁵The timing of this discussion is approximate. Neither of the Assistant Secretaries or their Deputies nor representatives of the Solicitor's office, BLM, or FWS could recall exactly when the decision was reached to consider leasing refuges. According to these officials, no records of these discussions have been maintained.

⁶The Alaska National Interest Lands Conservation Act (ANILCA) allows oil and gas leasing on Alaskan wildlife refuges as long as it is compatible with the purposes of the refuge (Public Law 96-487, section 304 (b)).

EIS and new public comment period. BLM did not want to delay its entire rulemaking until this process could be resolved. The compromise decision was to revert to the existing language of the regulations which IBLA had interpreted as opening some refuges to leasing. Opening the entire refuge system was deferred for future action. BLM staff then drafted the final regulatory language, identical to the old regulations, with some changes to clarify the status of Alaskan refuge lands.

The final July 1983 rulemaking
on oil and gas leasing and the
continuing resolution

The final rulemaking package was sent to the Office of Management and Budget in April 1983. In anticipation of its publication, FWS began to instruct its staff on how lease applications were to be handled. On May 12, 1983, the acting FWS Director sent a memo to each region describing the Department's process for federal oil and gas activities and FWS responsibilities under this process. In June 1983, a meeting of FWS staff was held in Denver to discuss these procedures. On July 19, BLM issued a new instruction memorandum to allow processing of ". . . lease offers received on acquired, nonwithdrawn National Wildlife Refuge System (NWRS) lands in the conterminous U.S. . . ." All of these actions were taken prior to publication of the final 43 CFR 3100 rulemaking on July 22, 1983.

The preamble to the final regulations reads in part:

"The Department of the Interior is continuing to examine oil and gas leasing on National Wildlife Refuge System lands. Until a thorough review of the Department's leasing policy is completed, the Department will make no substantive change in existing regulations covering such lands. In the future, should the Department make any changes in its policy on National Wildlife Refuge System lands, the public will be afforded an opportunity to comment on the proposed changes."

Thus, the Interior Department maintained that the July 1983 regulations made no change in Interior policy.

In August 1983, four environmental groups challenged the Department's actions in two separate lawsuits.⁷ These lawsuits were subsequently settled because the Congress acted to stop the further processing of lease applications, the relief which the environmental groups had sought. (See app. VI for a further discussion of the basis for these lawsuits.)

⁷Environmental Defense Fund, Inc., v. Watt, CN-83-2507, U.S. District Court for the District of Columbia, and National Wildlife Federation v. Watt, CN-83-2511, U.S. District Court for the District of Columbia.

The fiscal year 1984 continuing resolution (Public Law No. 98-151) contained a provision requiring the Secretary to (1) promulgate revisions to existing regulations to authorize leasing of refuge lands, (2) hold a public hearing on these revisions, and (3) prepare an EIS. The Department was prohibited from processing any lease applications until this action was completed. The supplemental appropriation (Public Law 98-181) subsequently authorized \$500,000 to complete this evaluation.

FWS had expected to complete the EIS in approximately 15 to 18 months or spring 1985. However, on January 31, 1984, the Secretary notified the Chairmen of the House and Senate Appropriations Subcommittees on Interior that the Department had no current plans to allow oil and gas leasing on refuges. Therefore, funds for the mandated environmental analysis were considered unnecessary. The Secretary further notified these committees that he would be proposing other uses for these funds in the near future. FWS is currently awaiting approval to reprogram this money for use in completing a study on the Arctic National Wildlife Refuge, mandated by the Alaska National Interest Lands Conservation Act (Public Law 96-487, sec. 1002).

The Secretary's letters to the Congress and subsequent testimony have not, however, foreclosed the possibility of future oil and development on refuges. When asked for how long he would promise not to open refuges to drilling, the Secretary replied that he has no way of knowing whether the moratorium would continue for his entire term of office or not.

Intraagency communications on leasing policy

Closer communication between BLM, FWS, and the Office of the Solicitor will be needed to promulgate any new rulemaking effectively. Intraagency communications problems among Interior Department officials, especially FWS, on the question of whether refuge lands were available for leasing delayed acceptance of the administration's policy toward refuge leasing.

FWS was not involved throughout the BLM rulemaking process. FWS was not provided an opportunity to comment before the draft rulemaking. Thus, while FWS officials were seeking assurances that new BLM regulations would not allow leasing, BLM had already decided months earlier to propose regulations to close all refuge lands to leasing.

Likewise, FWS was not aware of the September 1981 IBLA decision until several months afterwards. The IBLA decision by regulation is distributed to affected parties, however, because BLM was the action agency; IBLA's distribution of the Hartley opinion did not include copies to FWS. The issue was brought to headquarters' attention by field FWS personnel who had been informed of the decision by state BLM staff.

FWS also did not keep legal counsel involved in its decisions. FWS headquarters initially sought guidance from the Office of Solicitor on IBLA's interpretation and the proposed rulemaking to clarify their position. FWS sent memos to the field and published a "Fact Sheet" based on its understanding of the question. These documents were never reviewed by the Office of the Solicitor and they misstate the Department's position that IBLA did not change Interior's leasing policy.

According to the Office of Solicitor, the office's involvement in an issue depends on the individual manager. In these cases, the FWS Division of Refuge Management acted independently which, according to the Solicitor's office, is not unusual for FWS, but contributed to staff and public confusion.

OTHER PROPOSALS TO OPEN NWRS LANDS TO LEASING WERE NOT ACTIVELY BEING CONSIDERED

Both the July 1983 final rulemaking and the March 1983 FWS report on economic uses stated that the Department was further considering leasing NWRS lands. We have identified only one proposal, concerning leases to meet technical drilling requirements, which BLM was considering, but chose not to pursue in light of the litigation against the Secretary.

According to BLM staff, the preamble language in the final oil- and gas-leasing rulemaking reflects their understanding of the bureau's agreement to defer consideration of further changes, including opening the entire NWRS, until 1 year after the final regulations. When BLM approached FWS informally last summer on the issue, FWS responded that there was no interest in reopening the issue at this time. Both the Assistant Secretary for Fish and Wildlife and Parks and the Assistant Secretary for Land and Minerals Management agreed that no other proposals are currently under consideration in their offices.

After the final regulations were issued, however, BLM did consider amending them to allow leasing on NWRS lands to meet well spacing or unitization requirements. This proposal had been part of the June 1982 draft regulations published for comment, but had been omitted from the final version. No drilling would be authorized under these "paper leases." BLM staff originally believed these changes would have minimal impact and could simply be issued in a final rulemaking. However, by October 1983, BLM decided that such an action would be a major change and thus, would have to be repropoed. No action is planned to reopen this issue at this time.

STATUS OF OIL AND GAS LEASE APPLICATIONS

The Chairman asked us to determine whether pending lease applications were properly filed or would have to be refiled. In light of Congress' and the Secretary's action, the status of these

applications is unclear. As of late September 1983, 832 lease applications had been filed for 2.4 million acres of NWRS lands. Most of the lands applied for, however, are in Alaska. In the contiguous 48 states, 174 lease applications for 805,828 acres in 19 states have been received. Several refuge managers consider the applications to be highly speculative since no oil and gas activity are currently occurring in the vicinity of their refuges. Twenty-one of these applications were recommended for rejection prior to Congress' action.

Forty-one of the applications were filed before the September 1981 IBLA decision. The oldest applications are in North Dakota (handled by BLM's Montana office), where one has been pending since 1978 and two from 1980. Several regions had begun to process the lease applications prior to Congress' action. For example, in Region 6, a prototype environmental study was being prepared for Quivira NWR, Kansas, to determine what areas would be acceptable for leasing under what specific stipulations.

The Department has suspended all processing of these lease applications. On November 16, 1983, the Assistant Secretary for Land and Minerals Management instructed BLM to suspend all pending lease applications and to return any new lease applications received to the applicant. BLM was also requested to assist FWS in developing an EIS and new rulemaking.

The Secretary's announced intention not to complete an EIS and new rulemaking leaves the status of these applications in limbo. Under the provisions of the continuing resolution, the Department cannot expend any funds to process any of the pending applications, so their suspension would continue indefinitely. (See app. VI.) Furthermore, the Secretary has declined to say for how long he would continue this moratorium on oil and gas activity in refuges.

CONCLUSIONS

Further Departmental consideration of oil and gas lease applications on refuges has been postponed by congressional action and the plans of the new Secretary. Prior to this congressional action, FWS was beginning to process pending applications on approximately 806,000 acres of refuge lands in the contiguous 48 states.

The Department's original decision to consider oil and gas leasing on refuges was not based on a consideration of energy conservation, energy demand, or potential revenues. Rather, a 1981 IBLA decision provided the administration with an opportunity to consider leasing certain NWRS lands. Given their goal of making federal lands available for energy development, Interior officials decided that opening wildlife refuges to oil and gas leasing, where compatible with refuge purposes, was acceptable.

The magnitude of the impact of increasing oil and gas development on refuges is impossible to determine without (1) firm

knowledge of the impact of existing operations (see ch. 4) and (2) substantial industry input including drilling plans and estimated oil and gas resource data. FWS' assessment that it is impossible to predict potential revenue increases (see ch. 3) is correct because of the highly speculative nature of many lease applications and the private minerals underlying many refuges.

CHAPTER 6

ACCESS AND FEE POLICIES FOR THE NWRS VARY

The Chairman requested that we examine FWS policies and practices for granting access to refuge lands. By law, the Secretary of the Interior may allow access to NWRS lands whenever it is compatible with refuge purposes. FWS has specific regulations for granting rights-of-way where the long-term use of an area for pipelines, powerlines, or roads may be required. However, FWS regulations governing temporary access to refuges for economic use privileges are unclear.

In addition, FWS is not always charging fees to recover administrative costs incurred in processing rights-of-way and permits for economic or public use. According to law and Departmental policy, the administrative costs of processing such permits for private parties are reimbursable. However, FWS is not always collecting fees to recover its administrative costs and does not have a consistent policy on what fees should be collected. Furthermore, for those revenues received, the FWS collection and tracking system does not ensure that funds are credited to the proper accounts.

STATUTORY AND REGULATORY REQUIREMENTS FOR ACCESS AND USE

Title 16 of the U.S. Code authorizes the Secretary of the Interior to promulgate regulations allowing access to and use of any area within NWRS for any purpose as long as it is compatible with the major purposes for which the area was established.¹ Uses cited in the statute include such activities as hunting, fishing, public recreation, and accommodations.

The Secretary of the Interior can also allow the construction and operation of powerlines, telephone lines, canals, ditches, pipelines, and roads on refuges. The applicants in these instances must obtain a right-of-way or easement from the Secretary and pay the Secretary the appropriate fair market value.² The Secretary has the discretion to waive the requirement for fair market value compensation under certain circumstances for a state, federal, or local agency if he finds such a requirement impractical or unnecessary. In addition, FWS regulations require that application and monitoring fees be assessed on rights-of-way to reimburse FWS for administrative costs in

¹16 U.S.C. 668dd(d).

²Fair market value is generally considered to be the amount for which a property would be sold by a knowledgeable owner willing but not obligated to sell to a knowledgeable purchaser who desires but is not obligated to buy.

processing the applications and monitoring the authorized activities on the refuge (50 CFR 29.21-2).

Generally, a right-of-way grants a real property right to use and alter the landscape through construction of a facility such as a road, powerline, pipeline, or building. Such uses are usually for a relatively long period of time, for example, 10 to 50 years.

FWS regulations (50 CFR Part 26) also generally require that a permit be issued for any person entering a refuge, except when such person (1) enters refuge headquarters, (2) is accompanied by refuge personnel, (3) needs to use an emergency shelter, (4) uses a public road or trail, or (5) is granted an economic use permit which specifies access requirements.

ACCESS REGULATIONS FOR ECONOMIC USE PRIVILEGES ARE UNCLFAR

FWS regulations require that access to refuges for economic use purposes be limited. Specifically, these regulations state that:

"Access to and travel upon a national wildlife refuge by a person granted economic use privileges on that national wildlife refuge should be restricted to a specified area in accordance with the provisions of their agreement, lease, or permit." [Emphasis added.]

The regulations could be interpreted to restrict access to the privileged area and not allow access to or travel on lands outside the area unless specified in the permit. Despite the lack of clarity in FWS regulations, refuge managers' practice has been to allow access across areas not specified in permits because economic use is considered beneficial to a refuge, and access is considered to be an implied right of the permittee. In addition, at the refuges we visited, the FWS economic use permits we reviewed generally did not include any access provisions to lands outside the permit area. The Refuge Manual requires a use permit to contain a description of the area to be occupied or used but does not require a description of travel routes to that area. However, we believe that the inclusion of specific access provisions in FWS permits or leases could serve as a useful management control mechanism.

Although not covered by specific FWS regulations, FWS management has assumed that the traditional unrestricted access allowed persons with other economic use privileges also applies to those with federal oil and gas leases. At the five refuges we visited with federal oil and gas activity, federal oil and gas lessees were not consistently issued permits for access to their leases. In addition, we found that oil and gas leases do not include provisions guaranteeing access. However, officials at BLM--which issues all oil and gas leases for Interior--maintain that a federal oil and gas lease does not grant any right of access. Consequently, BLM requires lessees on the lands, where it is responsible for managing the right of access, to obtain a temporary use permit. The access

as well as the use can have potentially detrimental effects on wildlife and their habitat. Therefore, we believe that FWS, as the grantor of access on its land, should also prescribe that access should be specifically assessed and restricted as appropriate, either as a lease provision or in a separate permit.

Those parties who retained the mineral rights at the time the federal government acquired their land to create a wildlife refuge retain the right of access to their interests. FWS regulations require those retaining outstanding mineral rights to (1) conduct any activities in such a manner as to prevent, to the greatest extent practicable, damage or contamination to the lands, waters, facilities, or vegetation on the refuge and (2) minimize any interference with the operation of the refuge or disturbance to wildlife. FWS officials told us they try to "negotiate" the access route with the holder of the outstanding right to minimize damages to the refuge environment. They said they generally receive full cooperation from parties wishing to exercise these rights. Our review shows that, on the basis of refuges we visited and the practices in Regions 2 and 6, permits are not always issued for this access.

FEES FOR ACCESS AND USE
ARE NOT CONSISTENTLY CHARGED

FWS is not always charging fees to recover administrative costs incurred in processing rights-of-way, permits for economic use, and authorizations for recreational use, even though law and Departmental policy require that such a fee be charged.

Cost recovery requirements

Long-standing government-wide legislation and implementing directives mandate full-cost recovery for activities which provide special services to private parties. The cornerstone of this cost recovery policy is the Independent Offices Appropriation Act (31 U.S.C. 9701) which states,

"It is the sense of Congress that each service or thing of value provided by an agency . . . to a person . . . is to be self-sustaining to the extent possible."

Office of Management and Budget Circular A-25, dated September 23, 1959, states,

"Where a service (or privilege) provides special benefits to an identifiable recipient above and beyond those which accrue to the public at large, a charge should be imposed to recover the full cost to the Federal Government of rendering that service."

Using the Appropriation Act, other federal statutes, and circular A-25 as its authority, Interior established a department-wide requirement for full-cost recovery, applicable to FWS, in its

Financial Management Manual Part 346--Cost Recovery. The manual is dated May 13, 1982, and states,

"Departmental policy requires (unless otherwise prohibited or limited by statute or other authority) that a charge, which recovers the bureau or office costs, be imposed for services which provide special benefits or privileges to an identifiable non-Federal recipient above and beyond those which accrue to the public at large."

This definition of services could cover FWS rights-of-way, economic use permits, and other special use permits for certain recreational activities.³

Rights-of-way practices

As discussed earlier, FWS is required to charge a fair market value fee and a processing fee for rights-of-way on refuges. During fiscal years 1982 and 1983, FWS processed 90 rights-of-way where fair market value compensation and processing fees totaling \$1,089,762 were collected. In addition, annual fair market value rental fees of \$20,389 were received on 16 other rights-of-way permits.⁴ In our review of FWS records in Regions 2 and 6,⁵ we found FWS issued 13 rights-of-way in North Dakota, 1 in New Mexico, and 1 in Texas to state or local governmental agencies during the 2 years. The FWS Regional Directors in each case waived the fair market value compensation as allowed by regulation.

In cases where a fair market value compensation was calculated, we did not analyze the adequacy of FWS analyses used to determine the amount of fair market value compensation due the government for rights-of-way in these regions. We noted, however, that FWS generally took into account the comparable compensation paid for projects on nearby lands. Consequently, some comparability calculations were either nominal (e.g., \$1) or zero while others were higher. In addition, although not specifically addressed by law, any anticipated benefits to the government from

³The Interior manual allows bureaus to exempt activities from cost recovery under certain circumstances if written standards and documentation justifying an exemption have been established by the bureau.

⁴The law provides for fair market value fees to be paid either in a lump sum or as an annual rental.

⁵These regions were the only ones we evaluated in depth. Region 2 (Albuquerque, New Mexico) covers the states of Arizona, New Mexico, Oklahoma, and Texas. Region 6 (Denver, Colorado) includes the states of Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming.

the rights-of-way were deducted from fair market value compensations during FWS analyses. For example, if a refuge manager determined that building a road might have some mutual benefit to a refuge, the cost of constructing the road would be deducted from the right-of-way charge.

Processing fees are not always collected for rights-of-way. Region 6 consistently charged a \$50 application fee and/or a \$20 monitoring fee for rights-of-way. Region 2 did not assess application and monitoring fees on 10 of 69 right-of-way applications in fiscal years 1982 and 1983. Several of these applications involved access to private mineral rights for which Region 2 does not charge. Others involved some mutual benefit to FWS so no fee was charged. In one case, neither the fair market value charge of \$17,500 nor a processing fee was charged because of an oversight on the part of FWS staff.

Economic use permits

Applicants for economic use permits are not assessed a fee to cover the cost of processing the permits. Although processing many of these permits, primarily those issued by refuge managers, involves little administrative costs, some additional costs are also not recovered. For example, the cost of conducting comparability studies to set fees for FWS grazing based on fees charged cattle grazers on other lands is not charged to the applicant. Additional FWS monitoring costs, such as inspecting the grazing operations and counting heads of cattle, are not recovered, although FWS officials believe the fees charged per month for grazing take these costs into account. (As noted in app. IV for C.M. Russell Refuge, FWS grazing fees are already less than comparable local rates.)

Recreational use permits

In addition, some refuges charge for public or recreational use of the refuge while others do not. Of the refuges we visited, one refuge collected over \$21,000 in recreation fees in fiscal year 1983⁶ while other refuges charged nothing for recreational uses of the land such as fishing.

Some administrative time spent authorizing recreational use can be substantial. For example, several refuges hold a lottery to award a limited number of hunting permits. As many as 4,000 applications have been received at one refuge for 200 permits. The cost of conducting the lottery and of informing those who did and did not win is not recovered in any filing fees for these permits.

⁶According to federal regulations, bureaus of the Department of the Interior shall charge for recreational use of ". . . any specialized site, facility, equipment or service related to outdoor recreation . . ." if the facility meets certain standards (36 CFR 71.3(b)).

FWS views on cost recovery

The FWS Chief, Branch of Operations told us processing fees should be assessed if administrative costs are significant. However, he could not define for us what "significant costs" would be. He said FWS has never documented actual processing costs incurred on special use permits. The 11 refuge managers we visited had no documentation on the processing time they spent, but their time estimates ranged from 1 hour per permit up to 2-1/2 staff years for all special use permits issued annually. (The number of permits issued varies depending upon public use at each refuge, see app. IV.)

Some refuge managers do not favor having a fee system to recoup administrative costs because they believe (1) it would impose a new clerical or administrative burden on their refuge staff or (2) it would be difficult to enforce without additional resources. We believe that FWS management would need to address whether additional staffing should be provided to administer and enforce a fee system. However, the existing system is inequitable to those individuals being charged a fee and does not produce as much revenue as could be earned from refuges, without expanding any new uses. Moreover, a standard fee structure would alleviate the burden of recording and collecting separate reimbursable costs on each permit issued at a refuge to recover the exact costs of processing each permit. (Interior's policy allows costs to be recovered either through a set fee based on sampling or an individually calculated charge.)

COLLECTION AND TRACKING SYSTEM FOR REVENUES COULD BE IMPROVED

FWS does not have an effective tracking system to ensure that revenues collected from uses of refuges are credited to the proper Treasury account. By law, FWS is required to deposit revenues collected from use of the resources of NWRS lands in the National Wildlife Refuge Fund. Revenues generated from rights-of-way are to be deposited in the Migratory Bird Conservation Fund. The FWS Denver Service Center (DSC) is responsible for collecting and accounting for these receipts.

Revenues collected on 6 of 62 permits from Region 2,⁷ in the last 2 fiscal years were deposited into the wrong Treasury accounts. We found the FWS DSC deposited about \$11,000 in receipts from seismic survey permits and rights-of-way in the wrong accounts. As an indication that this may be happening to other region's receipts, we also noted about \$3,000 in concessionaire revenues collected from a refuge we visited in Region 4 which DSC did not credit to the National Wildlife Refuge Fund. Because revenues have been deposited in the wrong accounts, less money has

⁷DSC did not encounter similar problems with Region 6 given its limited volume of permits (12 in past 2 fiscal years).

been made available to the National Wildlife Refuge Fund for payments to counties in lieu of taxes.

FWS does not have an adequate system of ensuring that refuge revenues are credited to the proper account. Upon collecting the revenues, the refuge manager either sends the applicant's check with a collection transmittal sheet to the DSC or to the appropriate regional office, which then sends it to the service center. DSC personnel who code the revenue for entry into the Treasury account told us they must rely on the information provided by the refuge manager or regional office to decide the proper disposition of the revenues. If the information provided is sketchy, DSC deposits the funds in what it considers the appropriate account, sending information on its decision back to the refuge. DSC personnel assume the refuge manager will notify DSC if the wrong account was credited. However, we learned from refuge personnel that they generally verify only the amount and not the account credited. No other verification of the deposits occurs in Denver.

A DSC official told us that although the regions have provided some fiscal training to refuge personnel on the processing of these revenues, there is no FWS or Department of the Interior manual or guidance that describes where different receipts should be deposited. He told us that DSC uses a U.S. Treasury manual containing treasury account symbols and a brief definition of each to code the revenues for deposit.

Headquarters officials confirmed that miscoding of deposits is not a new FWS problem. Headquarters has tried unsuccessfully to define FWS accounts and determine where money is being sent. In its 1975 Inspector General's report, Interior recognized that receipts were not being reconciled between the regions and refuges. FWS hoped that consolidating these collection activities at DSC would alleviate these problems.

CONCLUSIONS

In practice, FWS has allowed unrestricted access to refuge lands to persons with an economic use privilege, even if the individual needs to cross lands not under lease or agreement. Because the law allows the Secretary discretion to permit access to refuges under whatever regulations he may prescribe and the existing FWS regulations state that access should be restricted, FWS should require specific access provisions in its leases or permits for economic use on refuges. Such provisions could also serve as a management control mechanism to help refuge managers mitigate the potential environmental impacts of travel across refuge lands. Should FWS believe that modifying its permits to address access would be unduly burdensome, then a regulatory revision to specify under what circumstances access without a permit will be allowed may be warranted.

Since FWS has traditionally allowed unrestricted access to persons with an economic use privilege, FWS management assumes that the same access should be granted to federal oil and gas

lessees. BLM, which issues oil and gas leases for Interior, requires lessees on the lands it manages to obtain access permits. Similar requirements by FWS would help to assure that the potential affects of access on wildlife and their habitat are considered.

FWS is not consistently charging fees to recover its administrative costs in processing use permits, even though (1) stafftime spent in such activities may be significant in certain cases and (2) the Department's cost recovery policy requires collecting such fees, unless an agency can justify an exemption. FWS needs a system to ensure that reimbursable costs are collected. While we recognize that such a system may be burdensome to some refuges with little economic or recreational use, we believe a more uniform fee system should be examined.

At the same time, however, FWS does not have an effective tracking system to guarantee that revenues collected are credited to the appropriate treasury accounts. We believe FWS should improve its collection and tracking system so that funds are properly credited to the National Wildlife Refuge Fund when sale or disposition of resources or products from NWRS lands occur. The improvements should include consistent coding and verification procedures for the Denver Service Center, including written guidance on where monies are to be deposited.

RECOMMENDATIONS TO THE
SECRETARY OF THE INTERIOR

We recommend that the Secretary of the Interior:

- Revise FWS regulations on refuge access to specify under what circumstances access will be granted to oil and gas lessees and other economic users, requiring FWS to specify access provisions in either the lease, permit, or agreement for economic use of a refuge.
- Require FWS to develop a fee system to recover, where practical, the administrative costs associated with processing permits for refuge access and use.
- Require FWS to improve its collection and tracking system for receipts which the refuges or regions collect. Such a system should include written guidance on where receipts should be deposited, a central coding procedure, and verification of these codes at the Denver Service Center.

NINETY-EIGHTH CONGRESS

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CHIEF COUNSEL/STAFF DIRECTOR

U.S. House of Representatives
Subcommittee on Oversight and Investigations
of the
Committee on Energy and Commerce
Washington, D.C. 20515

July 26, 1983

Honorable Charles A. Bowshe
Comptroller General
General Accounting Office
441 G Street, N. W.
Washington, D. C. 20548

Dear Mr. Bowshe:

The Committee on Energy and Commerce, in general, and this Subcommittee, in particular, are concerned about the conservation of energy resources, efforts to carry out meaningful energy conservation policies and practices, efforts to explore and produce fossil fuels wherever located, actions to generate and market power, including the siting of generation facilities, such as small hydro facilities, and the environmental impacts and constraints of such exploration and development.

In furtherance of this concern, we request that your agency promptly initiate an investigation into the efforts by the Department of the Interior's Fish and Wildlife Service (FWS) and the Bureau of Land Management (BLM) to expand economic and public use of public and acquired lands within the National Wildlife Refuge System, particularly energy development, the status of those efforts, their legality, the impact of those efforts on the Refuge System, the need for such a policy, the manpower and other resources to control such uses effectively, and other matters, including recent BLM regulations opening these FWS areas to oil and gas leasing. We are particularly interested in learning the origins of this expanded public use policy, why it was developed, the consideration given to its impact on refuges, and the consideration given to its impact on energy conservation and the energy glut. Is the objective to achieve more revenues? If so, why? What revenues are now obtained annually?

Some of the particular areas of concern are as follows:

1. A July 27, 1982 memorandum (copy enclosed) to the Regional Directors of the FWS states that a Management by Objective (MBO) document issued in the fall of 1981 called for a reassessment of uses of FWS lands to "Promote Compatible Economic and Public Uses Within Existing Funding and Personnel Capabilities". Each region was to "identify expansion potential". The response, however, "was not satisfactory". We request that you obtain, for the GAO and the Subcommittee, the

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MBO, the request to the regions, and the responses, and that the GAO examine the responses and determine why they were not satisfactory.

2. The same memorandum calls for a further reassessment and provides that "the conditions of compatibility and no increase in funds or manpower must still be met". Some of the types of expanded uses are: grazing, haying, farming, timber harvest, trapping, oil and gas extraction, small hydro-electric generation, concessions, etc. The FWS Deputy Director calls for "innovation and creativity" and states:

We need to receive from each region a summary of expansion potential for each type of economic and public use that occurred in fiscal year 1981. The 1981 output reports should be used for this purpose. We will then be able to relate the level of potential expansion directly with the level of use that occurred in fiscal year 1981. The introduction of new uses should be considered when appropriate. We do not want refuge by refuge displays of these data, only regional summaries. However, you should maintain your refuge by refuge data for future reference.

This effort requires detailed analysis of expansion potential on each refuge. Each refuge manager should have a sufficient grasp of the capacity of his/her area(s), the existing overt demand for additional economic and public uses, the degree to which those uses are compatible with the purposes of the refuge, and the capabilities of the station budget and manpower resources to provide a reasonably accurate assessment of the potential for expanding economic and public uses at each station.

To assist you we have included a form that should be used to collect the information on each refuge. Refuges should respond directly to the Regional Office. A summary form for each region should then be provided to the Washington Office, Division of Refuge Management.

We request that you also review and obtain these responses, paying particular attention to those that call for any expansion and the basis for that expansion, as well as any cautions raised by refuge or regional personnel. The review should include a review of refuge data. In this regard, we are concerned that decisions in Washington were apparently made based on summary replies from the regions and not based on even a sampling of

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individual refuge data. Your review should also consider the enclosed FWS report of August 1982 entitled "Field Station Threats and Conflicts" and the enclosed April 1, 1983 memorandum (without enclosures) to the regions asking them "to begin implementation".

We are also interested in knowing how these expanded uses can be carried out without any increase in funds or manpower and your evaluation of this FWS directive.

3. Enclosed is a February 13, 1983 FWS memorandum and a February 1983 letter from the American Petroleum Institute (API). Both documents refer to an API survey of oil and gas activities on refuges. We request that the GAO examination include a review of this survey, including its development and purpose, the replies to the survey, the use made of the survey, and other pertinent data. We are particularly interested in learning why this survey was initiated and why it was conducted by the API, rather than the FWS. We also understand that the API survey showed some current problems in the oil and gas operations on refuge areas. Please identify those problems and the actions planned or taken to correct them.

Also enclosed is a March 1983 report on "Potential Expansion of Compatible Economic and Public Uses on National Wildlife Refuges" which says:

The total value of the oil and gas produced on all refuges is unknown but likely runs into millions of dollars. Lacking information on the size and accessibility of Federal oil and gas reserves beneath refuges, it is impossible to predict potential revenue increases; however the Service is proposing to increase the number of areas open to gas and oil leasing.

* * * *

In FY 1981, the Aransas Refuge, Matagorda submit, generated 20,000 kwh of electricity for station use, worth \$10,000 in savings to the government. Seventeen stations have identified wind or hydropower electrical generation possibilities on their lands. Development of these potential sites depends entirely on private sector interest. No estimates are possible on potential generating capacities or revenues.

Please examine the FWS proposals to "increase the number of areas open to gas and oil leasing", including the status thereof, and the areas identified for electric generation possibilities.

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4. Enclosed are several memoranda dated December 17, 1982, January 25, 1983, January 31, 1983 and May 13, 1983 concerning BLM policies and regulations governing oil and gas leasing on Federal lands. The BLM regulations apparently are based on an Interim Board of Land Appeals decision and would open up more FWS areas for leasing. The regulations are now final. We understand that some decisions concerning expansion have been deferred. Please identify those decisions and the issues they raise. The GAO should review and advise us if the Board's decision deserves the wide application that it is being cited for.

We request that you examine these documents, including the legality of the regulations and policy as they apply to the FWS.

We understand that there are lease applications pending. Were these lease applications properly filed? Do they need to be refiled after the BLM has issued the regulations?

5. The National Wildlife Refuge System Administration Act (16 U.S.C. 668dd(c)) prohibits certain activities unless permitted under 16 U.S.C. 668dd(d) or by express provision of law. Included in that provision is a proviso that the U.S. mining and mineral leasing laws "shall continue to apply" to the System to the same extent as they applied prior to October 15, 1966. The Act then provides, in 16 U.S.C. 668dd(d), authority to permit uses in any area of the System for any purpose, including those listed in the FWS memorandum of July 27, 1982, whenever the Secretary "determines that such uses are compatible with the major purposes for which such areas were established".

It is our understanding that under this law and the mining and mineral leasing laws oil and gas leasing has been very limited as it was prior to October 1966. Apparently relying on Board of Appeals decision, the BLM regulations appear to change that statutory policy and then change the status of the application of the leasing laws from what they were prior to October 1966. This was done without any determination of compatibility

We question whether the BLM may use those laws to open any FWS lands in advance of any determination of compatibility by the Secretary. We also want to know when this determination of compatibility is to be made (i.e. on a refuge-by-refuge basis or on each application). We also ask that you examine the FWS interpretations of the term "compatibility", particularly as it is discussed in the attachment to the memorandum of May 13, 1983. That memorandum refers to two criteria that, on their face, seem

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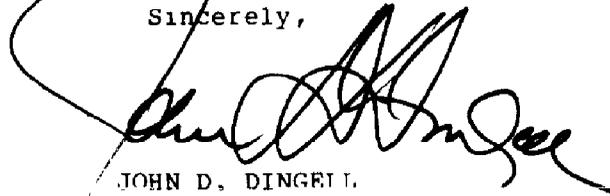
to ensure that in most instances the use will be found compatible. We question whether such criteria are appropriate to meet the statutory test.

6. We also request that the GAO examine the FWS practices and policies for carrying out the provisions of 16 U.S.C. 668dd(d)(2).

These issues are of extreme importance, particularly after the issuance of the BLM regulations to be effective next month. We request that the GAO move swiftly on these legal and other issues and avoid long scoping delays that often occur prior to initiation of GAO investigations.

Please keep us currently and fully informed about the progress of this investigation. As usual, the GAO should not review its draft report with the agencies, but the GAO should ensure that all factual information is accurate.

Sincerely,



JOHN D. DINGELL
Chairman
Subcommittee on
Oversight and Investigations

Enclosures

NATIONAL WILDLIFE REFUGE SYSTEM UNITS INTERVIEWED
IN GAO TELEPHONE SURVEY

<u>ALABAMA</u>	<u>LOUISIANA NWR</u>	Redhead Retreat WPA
Choctaw NWR ^a	Catahoula NWR	Rierson WPA
	D'Arbonne NWR	Stateline WPA
<u>ARKANSAS</u>	Delta NWR	Widgeon Slough WPA
Felsenthal NWR	Lacassine NWR	<u>NEW MEXICO</u>
Overflow NWR	Sabine NWR	Bitter Lake NWR
Wapanocca NWR	Tensas River NWR	Maxwell NWR
White River NWR	Upper Ouachita NWR	
	<u>MINNESOTA</u>	<u>NEW YORK</u>
<u>CALIFORNIA</u>	Litchfield Wetlands Management District	Montezuma NWR
Butte Sink NWR		<u>NORTH DAKOTA</u>
Colusa NWR	<u>MISSISSIPPI</u>	Crosby Wetland Management District
Delevan NWR	Bon Secour NWR	J. Clark Salyer NWR
Hopper Mountain NWR	Mississippi Sandhill Crane NWR	Lostwood County WPA
Kern NWR	Noxubee NWR	Sheridan County WPA
Merced NWR	Yazoo NWR	Upper Souris NWR
Pixley NWR		
San Luis NWR	<u>MISSOURI</u>	<u>OHIO</u>
Seal Beach NWR	Squaw Creek NWR	Cedar Point NWR
Sutter NWR		Ottawa NWR
	<u>MONTANA</u>	<u>OKLAHOMA</u>
<u>COLORADO</u>	Benton Lake NWR	Salt Plains NWR
Alamosa NWR	Glacier County WPA ^b	Tishomingo NWR
Arapaho NWR	Lake Mason NWR	Washita NWR
Browns Park NWR	N.E. Montana Wetlands Management District	
Monte Vista NWR	Big Slough WPA	<u>OREGON</u>
	Carlson WPA	Cold Springs NWR
<u>GEORGIA</u>	Erickson WPA	Umatilla NWR
Okefenokee NWR	Gabrielson WPA	
	Gjeisdal West WPA	<u>PENNSYLVANIA</u>
<u>ILLINOIS</u>	Goose Lake WPA	Erie NWR
Crab Orchard NWR	Jerde WPA	
	Long Lake WPA	
<u>INDIANA</u>	Mallard Pond WPA	
Muscatatuck NWR	Northeast WPA	
	Outlet Marsh WPA	
<u>KANSAS</u>	Perry WPA	
Flint Hills NWR	Pintail WPA	
Quivira NWR		

^aNational Wildlife Refuge.

^bWaterfowl Production Area.

TENNESSEE

Lake Isom NWR
Reelfoot NWR

TEXAS

Anahuac NWR
Aransas NWR
Attwater Prairie
Chicken NWR
Brazoria NWR
Buffalo Lake NWR
Hagerman NWR
Laguna Atascosa NWR
McFaddin NWR
Muleshoe NWR
San Bernard NWR
Santa Ana NWR
Texas Point NWR

WASHINGTON

Columbia NWR
Saddle Mountain NWR
Toppenish NWR

WYOMING

Hutton WPA
National Elk NWR
Seedskaadee NWR

REFUGES VISITED AND SELECTION CRITERIA

<u>FEDERAL</u>	<u>CRITERIA</u> ^a
Delta NWR, La.	E, D, and most revenue.
Noxubee NWR, Miss.	A, F, and timber use.
Tennessee NWR, Tenn.	Farming and public use.
Aransas NWR, Tex.	D, E, windpower, and grazing.
Wichita Mountains NWR, Okla.	Extensive public use.
Salt Plains NWR, Okla.	B, E, D.
Quivira NWR, Kans.	A, E, grazing, hay production.
J. Clark Salyer NWR, N.D.	C, E, grazing, hay production, and farming.
C. M. Russell NWR, Mont.	Grazing.
Columbia NWR, Wash. ^b	
Umatilla NWR, Ore.	B, F, and windpower.

OTHER

J. Paul Rainey Sanctuary, La.

^aOil- and gas-related criteria have been symbolized as follows:

- A = acreage affected by lease applications.
- B = number of lease applications.
- C = threats/problems identified by API and FWS surveys with ongoing activity.
- D = no problems identified with ongoing activity by API and FWS surveys.
- E = ongoing oil and gas activity.
- F = no ongoing oil and gas activity.

^bColumbia NWR was visited in place of Saddle Mountain NWR, a Department of Energy nuclear facility which is not open for public visitors. Saddle Mountain NWR was originally selected because it had the most acreage applied for oil and gas leases. Columbia and Saddle Mountain NWR are managed by the same FWS staff.

DISCUSSION OF REFUGES GAO VISITEDDELTA NWR

Delta NWR, an estuarial marsh of about 49,000 acres, is located in Plaquemines Parish, Louisiana, where the Mississippi empties into the Gulf of Mexico. Established in 1935 primarily as a sanctuary for wintering geese and ducks, Delta also contains over 200 species of birds and other wildlife, including deer, mink, alligators, and turtles.

The refuge's major economic use is oil and gas extraction, with government revenues of over \$2 million in fiscal year 1983. The refuge estimated future expansion of oil and gas activities at \$200,000 over fiscal year 1981. Oil and gas seismic surveys, marsh drilling, and canal digging are perceived to be major problems, causing destruction of wildlife habitat. Only accessible by boat, Delta has few visitors, and little public use.

Each year about 40 square miles of delta wetlands erode or sink, basically because of salt water intrusion. Much of the refuge is being turned into open salt water lakes. This is a loss of habitat, mainly aquatic vegetation, for the refuge and an entire area's loss of a commercial nursery for seafoods.

NOXUBEE NWR

Noxubee NWR, located in east-central Mississippi, is a 48,000 acre woodland interspersed with fields, streams, and roads. Established in 1940, it provides habitat for migratory birds, and habitat and protection for three endangered species: the American alligator, the northern bald eagle, and the red-cockaded woodpecker.

The major economic use is timber harvesting, mainly as a forest thinning operation. About a \$285,000 expansion in timber revenues was projected as part of forest habitat improvements. Selective cutting allows sunlight to penetrate the forest floor, encouraging new vegetative growth for wildlife. The major public uses are camping and hunting. Approximately 180,000 people visit the refuge annually.

A lake spillway has a heavy water flow 6 to 7 months of the year. FWS's Atlanta regional engineering staff identified this area as having hydroelectric generation potential. No feasibility study has been done nor has any interest been shown by the local utilities in this project. The lake is being restocked and facilities are to be rehabilitated and enlarged to increase public use.

TENNESSEE NWR

Tennessee NWR, located along the Tennessee River and the Tennessee-Kentucky Lake, is a 51,000-acre refuge established in 1945 for migratory waterfowl. The refuge consists of three separate operational units which are interspersed with private

holdings, mostly neighboring vacation homes and boat docks. With 67 entryways and unlimited entry throughout the refuge, Tennessee NWR has no control over uses of the lake. The refuge's major economic use is farming, cooperatively run by local farmers supplying both farm products and food for waterfowl. The major public activities are observing wildlife, fishing, hunting, and hiking. Some increase in haying and small game hunting was projected. Approximately 490,000 people directly visit the refuge annually, with an undeterminable number using the refuge lake area.

ARANSAS NWR

Aransas NWR, a 55,000-acre refuge, was established in 1937 to protect the vanishing wildlife of coastal Texas. Six endangered species are included among birds and mammals that utilize the refuge, the most publicized being the whooping crane. Although there are oil and gas activities, grazing is the major federal revenue-producing economic use. About a \$20,000 increase in grazing was identified as possible by the refuge manager with smaller expansions of haying, tours, and hunting.

All oil and gas activities are operated by private companies (primarily Conoco) owning sub-surface rights, and therefore do not generate revenues to the government. Aransas has a visitor's center and approved public use area so that most of the grazing and oil and gas activities are in more remote areas of the refuge. Approximately 80,000 people visit Aransas NWR annually, mostly to observe the waterfowl.

WICHITA MOUNTAINS NWR

Wichita Mountains NWR, a 59,000 acre refuge in Oklahoma, was established in 1901 as a forest preserve. Today it is a protective area for western big game animals, including Texas Longhorn cattle, buffalo, and elk. The major economic use is the sale of these surplus animals. The refuge provides the public with a wide variety of public uses including swimming, wildlife trails and exhibits, fishing and camping. Approximately 1.2 million people visit Wichita Mountains annually. The refuge manager projected no major increases in any of the refuge's economic or public uses.

In the past, Wichita Mountains had many problems associated with public use. A new recreational development plan for the refuge and restrictions on approved camping, swimming, and public use have reduced these problems.

SALT PLAINS NWR

Salt Plains NWR is a 32,000-acre refuge located in the north-central section of Oklahoma. Established in 1930, the refuge provides habitat and food for migrating and wintering waterfowl. A small increase in grazing (\$2,000) was seen as possible by the refuge manager. The major economic uses are farming and energy production. The refuge has three active gas wells, with the possibility of additional development because of drainage from

private wells bordering the refuge. Approximately 144,000 people visit the refuge's beach, picnic areas, and salt flats annually.

Salt plains NWR was withdrawn from the mining and mineral leasing laws but has been the subject of considerable oil company interest. Since the refuge is also a National Natural Landmark and critical habitat for endangered species, FWS has not supported leasing requests.

QUIVIRA NWR

Quivira NWR, a 22,000-acre prairie refuge in south-central Kansas, was established in 1955 for migratory waterfowl. It has some economic use, mainly grazing, haying, and oil and gas activities. Some haying and grazing were identified for expansion, totalling \$5,500. There is little public use. Only 4,200 people visit the refuge annually, largely because of its remote location.

Oil and gas operations at Quivira pre-date the refuge and are highly visible, because of the refuge's grassy terrain. Region 6 was using Quivira NWR as a test case for an oil and gas compatibility analysis. The region's staff, however, were making this evaluation, and the refuge manager had had little direct involvement with the process.

J. CLARK SALYER NWR

J. Clark Salyer NWR, a 59,000-acre refuge, was established in 1935 along the Souris River, North Dakota, for migrating waterfowl. About 140 species of birds nest at the refuge. Animals commonly residing include deer, muskrat, beaver, and fox. It has well-developed economic uses, including farming, haying, grazing, and oil production. The only projected increases in use were farming, as part of habitat development, and trapping. The refuge has about 16,000 visitors a year, mostly for the public uses of hunting, fishing, and trapping.

A tanker had caused an oil spill on the refuge. The oil company kept the oil contained by building a dyke between the spill and the marshy lake area. Although the oil came within 200 feet of the lake area, damage was minimal.

CHARLES M. RUSSELL NWR

C.M. Russell NWR, a 1-million acre refuge established in 1936, is located in northeastern Montana, and extends approximately 125 miles from east to west. It was established with joint management: FWS was to protect sharptail grouse and antelope, and BLM was to administer the livestock grazing program. In 1976, total management of the refuge was vested with FWS.

The major economic use is grazing. C.M. Russell, being the largest grazing unit in NWRS, reported \$175,000 in revenues in fiscal year 1983. A 4-year EIS study showed most grazing on the refuge was neither beneficial nor compatible. Cattle competed

with game animals for food, and destroyed birds' nesting cover. The refuge hopes to reduce grazing based on an appeals court decision¹ which established that the refuge's resources shall be first utilized for wildlife.

Although federal regulations² require fees charged for products to be at fair market value, refuge grazing fees are at reduced rates. A 1983 refuge survey of local markets estimated grazing fees at \$8.75 per animal unit month, while Washington headquarters has required C.M. Russell to charge \$3.69, or less than half the local rate. FWS has now approved an increase to \$4.61 for the 1984 grazing season.

Approximately 140,000 people visit the refuge annually. Public uses are varied and include observing wildlife, hiking, hunting, fishing, boating, swimming, and sailing. The only expansions identified were for trapping and firewood gathering.

COLUMBIA NWR

Columbia NWR, a 22,500-acre refuge, is located in south-central Washington. It was established in 1944 as a sanctuary for migratory birds and other wildlife. Although Columbia's biggest income is from grazing (\$4,000), no economic use is very significant. The major public uses are fishing and hunting, with fishermen representing 81 percent of the 90,000 visitors annually.

UMATILLA NWR

Umatilla NWR, a 23,000-acre refuge, was established in 1967 along the Columbia River in Washington and Oregon. It was created to partially compensate the wildlife habitat loss created by the building of a local dam. It is mainly a nesting and migratory waterfowl area. Farming and revenues from public hunting fees have been the main economic revenues. Visitors annually have totaled more than 50,000. Public use, especially for wildlife observation and tours, was projected to increase.

¹Schwenke, v. Secretary of the Interior, 720 F.2d 571 (9th Cir. 1983). Essentially a compromise, the ruling establishes a first priority for a specific number of grouse and antelope, after which wildlife preservation and grazing have equal status. Since the refuge does not currently sustain 400,000 grouse and 1,500 antelope (Ex. Order 7509), it appears FWS will be able to reduce grazings.

²(50 CFR. 29.5) "Fees and charges . . . on wildlife refuge areas . . . shall be set at a rate commensurate with fees and charges for similar privileges and products made by private land owners in the vicinity or in accordance with their local value."

U.S. GENERAL ACCOUNTING OFFICE

SURVEY OF THE ECONOMIC USES OF WILDLIFE REFUGES

This study is being conducted by the U.S. General Accounting Office (GAO). The GAO, an agency of the U.S. Congress, has been asked by Congressman Dingell, the Chairman of the House Oversight and Investigation Subcommittee, Committee on Energy and Commerce, to study the Department of Interior's plans to expand public and economic uses of the national wildlife refuge system.

I would like to talk to _____. I would like to ask you some questions which should take about 15 minutes of your time. Several questions contain rating scales, for example, to a very great extent, great extent, moderate extent, some extent, not at all. I would expect you to answer after I read all the responses.

Case Number _____

Interviewee's Name _____

Interviewed by _____

Refuge Name _____

1. How many years have you worked at this location? (CHECK ONE.) (3)
1. One year or less (including 0 years)
 2. Three years or less, but greater than 1 year
 3. Five years or less, but greater than 3 years
 4. More than 5 years

Q1	YEARS WORKED AT LOCATION			
	FREQUENCY	CUM FREQ	PERCENT	CUM PERCENT
UNDER 1 YEAR	7	7	11.290	11.290
1 TO 3 YRS (EXCLUDE 1 YR)	11	18	17.742	29.032
3 TO 5 YRS (EXCLUDE 3 YRS)	10	28	16.129	45.161
OVER 5 YRS	34	62	54.839	100.000

2. Do you have any concerns at all about the Fish and Wildlife Service's policy to expand public and economic use of the National Wildlife Refuge System? (CHECK ONE.)

1. Yes...CONTINUE TO QUESTION 3

2. No....SKIP TO QUESTION 6

Q2	ANY CONCERNS ABOUT POLICY			
	FREQUENCY	CUM FREQ	PERCENT	CUM PERCENT
YES	41	41	66.129	66.129
NO	21	62	33.871	100.000

3. What type of concerns do you have?

Q3	WHAT TYPES OF CONCERNS			
	FREQUENCY	CUM FREQ	PERCENT	CUM PERCENT
YES, WROTE	41	41	100.000	100.000

4A. Have you raised these concerns about public and economic uses with Fish and Wildlife Service management? (CHECK ALL THAT APPLY.)

- 1. Yes, with the Region
- 2. Yes, with Headquarters
- 3. Yes, with Other (SPECIFY) _____
- 4. No

Q4A1	RAISED CONCERNS WITH REGION			
	FREQUENCY	CUM FREQ	PERCENT	CUM PERCENT
NOT RAISED	17	17	41.463	41.463
YES, WITH REGION	24	41	58.537	100.000

Q4A2	RAISED CONCERNS WITH HEADQUARTERS			
	FREQUENCY	CUM FREQ	PERCENT	CUM PERCENT
NOT RAISED	40	40	97.561	97.561
YES, WITH HEADQUARTERS	1	41	2.439	100.000

Q4A3	RAISED CONCERNS WITH OTHERS			
	FREQUENCY	CUM FREQ	PERCENT	CUM PERCENT
NOT RAISED	37	37	90.244	90.244
YES, WITH OTHERS	4	41	9.756	100.000

Q4A4	NOT RAISED CONCERNS			
	FREQUENCY	CUM FREQ	PERCENT	CUM PERCENT
NOT RAISED	26	26	63.415	63.415
NOT RAISED CONCERNS	15	41	36.585	100.000

4B. Why (or why not) have you raised these concerns?

Q4B	REASONS WHY CONCERNS WERE RAISED			
	FREQUENCY	CUM FREQ	PERCENT	CUM PERCENT
YES, WROTE	40	40	97.561	97.561
DID NOT WRITE	1	41	2.439	100.000

5. To what extent do you believe your concerns have been addressed in the Fish and Wildlife Service's new economic use policy (April memo)? (CHECK ONE.)

1. Completely (to a very great extent)
2. To a great extent
3. To a moderate extent
4. To some extent
5. Not at all (no extent)

Q5	EXTENT CONCERNS WERE ADDRESSED			
	FREQUENCY	CUM FREQ	PERCENT	CUM PERCENT
COMPLETELY	3	3	10.714	10.714
GREAT EXTENT	2	5	7.143	17.857
MODERATE EXTENT	9	14	32.143	50.000
SOME EXTENT	5	19	17.857	67.857
NOT AT ALL	9	28	32.143	100.000

6. How much flexibility have you been given to determine that an activity is incompatible with the purposes of your refuge? (CHECK ONE.)

1. Very great amount of flexibility
2. Great amount of flexibility
3. Moderate amount of flexibility
4. Some amount of flexibility
5. No flexibility

Q6	FLEXIBILITY TO DETERMINE COMPATIBILITY			
	FREQUENCY	CUM FREQ	PERCENT	CUM PERCENT
VERY GREAT FLEXIBILITY	13	13	22.414	22.414
GREAT FLEXIBILITY	25	38	43.103	65.517
MODERATE FLEXIBILITY	13	51	22.414	87.931
SOME FLEXIBILITY	4	55	6.897	94.828
NO FLEXIBILITY	3	58	5.172	100.000

7. Can you think of any circumstances under which economic uses would be compatible with the purposes of your refuge? (CHECK ONE.)

1. Yes...CONTINUE TO QUESTION 8

2. No....SKIP TO QUESTION 11

ANY TIME WHEN ECONOMIC USE IS COMPATIBLE				
Q7	FREQUENCY	CUM FREQ	PERCENT	CUM PERCENT
YES	68	68	90.667	90.667
NO	7	75	9.333	100.000

8. I would like to explore a bit with you, hypothetically, under what situations you might find economic uses to be compatible.

If economic uses were somewhat detrimental to your refuge, do you believe they could be compatible with its purposes? (CHECK ONE.)

1. To a very great degree

2. To a great degree

3. To a moderate degree

4. To some degree

5. Not at all

HOW COMPATIBLE IF SOMEWHAT DETRIMENTAL				
Q8	FREQUENCY	CUM FREQ	PERCENT	CUM PERCENT
MODERATE DEGREE	11	11	18.333	18.333
SOME DEGREE	25	36	41.667	60.000
NOT AT ALL	24	60	40.000	100.000

9. If economic uses were moderately detrimental to your refuge, do you believe they could be compatible with its purposes? (CHECK ONE.)

- 1. To a very great degree
- 2. To a great degree
- 3. To a moderate degree
- 4. To some degree
- 5. Not at all

Q9	HOW COMPATIBLE IF MODERATELY DETRIMENTAL			
	FREQUENCY	CUM FREQ	PERCENT	CUM PERCENT
MODERATE DEGREE	5	5	8.333	8.333
SOME DEGREE	12	17	20.000	28.333
NOT AT ALL	43	60	71.667	100.000

10. At what point would you decide to decrease an economic use? If it caused...(CHECK ONE.)

- 1. Very great detriment to refuge
- 2. Great detriment to refuge
- 3. Moderate detriment to refuge
- 4. Some detriment to refuge
- 5. Little detriment to refuge
- 6. Never

Q10	HOW MUCH DETRIMENT IS ACCEPTABLE			
	FREQUENCY	CUM FREQ	PERCENT	CUM PERCENT
VERY GREAT DETRIMENT	1	1	1.538	1.538
GREAT DETRIMENT	3	4	4.615	6.154
MODERATE DETRIMENT	22	26	33.846	40.000
SOME DETRIMENT	22	48	33.846	73.846
LITTLE DETRIMENT	16	64	24.615	98.462
NEVER	1	65	1.538	100.000

11A. Do you feel that you have adequate staffing and expertise to implement an expanded use policy? (CHECK ONE.)

- 1. Very adequate.....SKIP TO QUESTION 12
- 2. Adequate.....SKIP TO QUESTION 12
- 3. Neither adequate nor inadequate...SKIP TO QUESTION 12
- 4. Inadequate.....CONTINUE TO QUESTION 11B
- 5. Very inadequate.....CONTINUE TO QUESTION 11B

Q11A	HOW ADEQUATE IS THE STAFF			
	FREQUENCY	CUM FREQ	PERCENT	CUM PERCENT
VERY ADEQUATE	3	3	4.054	4.054
ADEQUATE	9	12	12.162	16.216
NEITHER ADEQUATE/ NOR INADEQUATE	2	14	2.703	18.919
INADEQUATE	48	62	64.865	83.784
VERY INADEQUATE	12	74	16.216	100.000

11B. What type of expertise would you need?

Q11B	WHAT TYPE OF EXPERTISE IS NEEDED			
	FREQUENCY	CUM FREQ	PERCENT	CUM PERCENT
YES, WROTE	57	57	93.443	93.443
DID NOT WRITE	4	61	6.557	100.000

OPTIONAL QUESTIONS

If refuge did not complete an API Questionnaire, Skip to Question 17.

12. In the spring of 1983 American Petroleum Institute survey, you identified several incidents relating to oil and gas operations which have occurred on your refuge in the past 10 years, specifically _____

What types of damage were specifically caused by these incidents? (CHECK ALL THAT APPLY.)

1. Water pollution
2. Fire
3. Habitat disturbance
4. Soil erosion
5. Other (SPECIFY) _____
6. Don't know

Q121 WAS THERE WATER POLLUTION DAMAGE				
	FREQUENCY	CUM FREQ	PERCENT	CUM PERCENT
NOT WATER POLLUTION	15	15	42.857	42.857
WATER POLLUTION	20	35	57.143	100.000

Q122 WAS THERE FIRE DAMAGE				
	FREQUENCY	CUM FREQ	PERCENT	CUM PERCENT
NOT FIRE	26	26	74.286	74.286
FIRE	9	35	25.714	100.000

Q123 WAS THERE HABITAT DISTURBANCE DAMAGE				
	FREQUENCY	CUM FREQ	PERCENT	CUM PERCENT
NOT HABITAT DISTURBANCE	11	11	31.429	31.429
HABITAT DISTURBANCE	24	35	68.571	100.000

Q124 WAS THERE SOIL EROSION DAMAGE				
	FREQUENCY	CUM FREQ	PERCENT	CUM PERCENT
NOT SOIL EROSION	18	18	51.429	51.429
SOIL EROSION	17	35	48.571	100.000

Q125 WERE THERE OTHER DAMAGES				
	FREQUENCY	CUM FREQ	PERCENT	CUM PERCENT
NO OTHER	15	15	42.857	42.857
OTHER	20	35	57.143	100.000

DON'T KNOW IF THERE WERE DAMAGES

Q126	FREQUENCY	CUM FREQ	PERCENT	CUM PERCENT
DON'T KNOW NOT CHECKED	32	32	91.429	91.429
DON'T KNOW	3	35	8.571	100.000

13. How serious was the damage to...(FOR EACH TYPE OF DAMAGE CHECK ONE COLUMN.)

TYPE OF DAMAGE	LEVEL OF SERIOUSNESS				
	Very Serious	Greatly Serious	Moderately Serious	Somewhat Serious	Not Serious
	1	2	3	4	5
1. Water					
2. Soil					
3. Wildlife					

HOW SERIOUS WAS THE WATER DAMAGE

Q131	FREQUENCY	CUM FREQ	PERCENT	CUM PERCENT
VERY SERIOUS	4	4	26.667	26.667
MODERATELY SERIOUS	1	5	6.667	33.333
SOMEWHAT SERIOUS	8	13	53.333	86.667
NOT SERIOUS	2	15	13.333	100.000

HOW SERIOUS WAS THE SOIL DAMAGE

Q132	FREQUENCY	CUM FREQ	PERCENT	CUM PERCENT
VERY SERIOUS	2	2	9.524	9.524
GREATLY SERIOUS	1	3	4.762	14.286
MODERATELY SERIOUS	11	14	52.381	66.667
SOMEWHAT SERIOUS	4	18	19.048	85.714
NOT SERIOUS	3	21	14.286	100.000

HOW SERIOUS WAS THE WILDLIFE DAMAGE

Q133	FREQUENCY	CUM FREQ	PERCENT	CUM PERCENT
VERY SERIOUS	1	1	4.348	4.348
GREATLY SERIOUS	2	3	8.696	13.043
MODERATELY SERIOUS	10	13	43.478	56.522
SOMEWHAT SERIOUS	4	17	17.391	73.913
NOT SERIOUS	6	23	26.087	100.000

14. Overall, how significant or serious were these incidents? (CHECK ONE.)

- 1. Extremely significant/serious
- 2. Greatly serious
- 3. Moderately serious
- 4. Somewhat serious
- 5. Not at all serious (harmless)
- 6. No way to measure

Q14	HOW SERIOUS WERE THE INCIDENTS			
	FREQUENCY	CUM FREQ	PERCENT	CUM PERCENT
GREATLY SERIOUS	2	2	5.882	5.882
MODERATELY SERIOUS	14	16	41.176	47.059
SOMEWHAT SERIOUS	9	25	26.471	73.529
NOT SERIOUS	7	32	20.588	94.118
NO WAY TO MEASURE	2	34	5.582	100.000

15A. You reported that _____ days (months) were spent on monitoring and enforcing oil and gas operations in FY 1982. If oil and gas activities were to increase on your refuge, how much additional time could be spent by current staff on monitoring and enforcement? (CHECK ONE.)

- 1. Several staff months
- 2. Several staff weeks
- 3. A few staff weeks
- 4. A few staff days
- 5. No more time
- 6. No way to measure

Q15A	STAFF TIME ON MONITORING AND ENFORCEMENT			
	FREQUENCY	CUM FREQ	PERCENT	CUM PERCENT
SEVERAL STAFF MONTHS	4	4	9.756	9.756
SEVERAL STAFF WEEKS	7	11	17.053	26.829
A FEW STAFF WEEKS	5	16	12.195	39.024
A FEW STAFF DAYS	4	20	9.756	48.780
NO MORE TIME	15	35	36.585	85.366
NO WAY TO MEASURE	6	41	14.634	100.000

15B. What kind of increase would you consider this...(CHECK ONE.)

- 1. Very small increase
- 2. Small increase
- 3. Moderate increase
- 4. Great increase
- 5. Very great increase

Q15B	HOW MUCH OF AN INCREASE IS IT			
	FREQUENCY	CUM FREQ	PERCENT	CUM PERCENT
VERY SMALL INCREASE	2	2	10.000	10.000
SMALL INCREASE	3	5	15.000	25.000
MODERATE INCREASE	8	13	40.000	65.000
GREAT INCREASE	6	19	30.000	95.000
VERY GREAT INCREASE	1	20	5.000	100.000

16. What types of problems, if any, have you experienced with oil companies?
(CHECK ALL THAT APPLY.)

TYPES OF PROBLEMS	WHERE PROBLEMS WERE EXPERIENCED			
	Small Companies Only	Large Companies Only	Both Small and Large Companies	No Problems
	1	2	3	4
1. Unaware of requirements				
2. Noncompliance with stipulations				
3. Lack of cooperation				
4. Carelessness				
5. Abandoned operations				
6. Other (SPECIFY) _____				
7. Not applicable				

PROBLEM-UNAWARE OF REQUIREMENTS				
Q161	FREQUENCY	CUM FREQ	PERCENT	CUM PERCENT
SMALL COMPANY ONLY	12	12	31.579	31.579
LARGE COMPANY ONLY	2	14	5.263	36.842
BOTH SMALL AND LARGE	6	20	15.789	52.632
NO PROBLEM	18	38	47.368	100.000

PROBLEM-NONCOMPLIANCE WITH STIPULATIONS				
Q162	FREQUENCY	CUM FREQ	PERCENT	CUM PERCENT
SMALL COMPANY ONLY	15	15	39.474	39.474
LARGE COMPANY ONLY	3	18	7.895	47.368
BOTH SMALL AND LARGE	5	23	13.158	60.526
NO PROBLEM	15	38	39.474	100.000

PROBLEM-LACK OF COOPERATION				
Q163	FREQUENCY	CUM FREQ	PERCENT	CUM PERCENT
SMALL COMPANY ONLY	10	10	26.316	26.316
LARGE COMPANY ONLY	2	12	5.263	31.579
BOTH SMALL AND LARGE	2	14	5.263	36.842
NO PROBLEM	24	38	63.158	100.000

PROBLEM-CARELESSNESS				
Q164	FREQUENCY	CUM FREQ	PERCENT	CUM PERCENT
SMALL COMPANY ONLY	14	14	36.842	36.842
LARGE COMPANY ONLY	3	17	7.895	44.737
BOTH SMALL AND LARGE	9	26	23.684	68.421
NO PROBLEM	12	38	31.579	100.000

PROBLEM-ABANDONED OPERATIONS				
Q165	FREQUENCY	CUM FREQ	PERCENT	CUM PERCENT
SMALL COMPANY ONLY	7	7	19.444	19.444
LARGE COMPANY ONLY	2	9	5.556	25.000
BOTH SMALL AND LARGE	3	12	8.333	33.333
NO PROBLEM	24	36	66.667	100.000

OTHER PROBLEMS				
Q166	FREQUENCY	CUM FREQ	PERCENT	CUM PERCENT
SMALL COMPANY ONLY	1	1	11.111	11.111
LARGE COMPANY ONLY	1	2	11.111	22.222
BOTH SMALL AND LARGE	6	8	66.667	88.889
NO PROBLEM	1	9	11.111	100.000

Q167	FREQUENCY	NOT APPLICABLE		
		CUM FREQ	PERCENT	CUM PERCENT
NO PROBLEM	4	4	100.000	100.000

17. Your refuge has been established to protect a variety of wildlife. How compatible can oil and gas activities be with the purposes of your refuge? (CHECK ONE.)

1. Very greatly compatible
2. Greatly compatible
3. Moderately compatible
4. Somewhat compatible
5. Not at all compatible
6. No way to judge, depends on the situation

Q17	HOW COMPATIBLE ARE OIL AND GAS ACTIVITIES			
	FREQUENCY	CUM FREQ	PERCENT	CUM PERCENT
VERY GREATLY COMPATIBLE	1	1	1.333	1.333
GREATLY COMPATIBLE	2	3	2.667	4.000
MODERATELY COMPATIBLE	18	21	24.000	28.000
SOMEWHAT COMPATIBLE	22	43	29.333	57.333
NOT AT ALL COMPATIBLE	17	60	22.667	80.000
NO WAY TO JUDGE	15	75	20.000	100.000

18. How effective do you feel Federal lease stipulations can be in mitigating damage to wildlife or environment on your refuge? (CHECK ONE.)

1. Very effective
2. Largely effective
3. Moderately effective
4. Somewhat effective
5. Not at all effective
6. Don't know, have not had experience

Q18	EFFECT OF FEDERAL LEASE STIPULATIONS			
	FREQUENCY	CUM FREQ	PERCENT	CUM PERCENT
VERY EFFECTIVE	10	10	13.333	13.333
LARGELY EFFECTIVE	7	17	9.333	22.667
MODERATELY EFFECTIVE	13	30	17.333	40.000
SOMEWHAT EFFECTIVE	16	46	21.333	61.333
NOT AT ALL EFFECTIVE	5	51	6.667	68.000
DON'T KNOW	24	75	32.000	100.000

19. How threatening, if at all, are each of the following types of oil and gas activities to your refuge? (FOR EACH TYPE OF ACTIVITY CHECK ONE COLUMN.)

AMOUNT OF THREAT

TYPES OF ACTIVITIES	Very Threatening	Greatly Threatening	Moderately Threatening	Somewhat Threatening	Not at all Threatening
	1	2	3	4	5
1. Seismic testing					
2. Leasing					
3. Exploratory drilling					
4. Production					
5. Pipelines or other transport					

THREAT FROM SEISMIC TESTING

Q191	FREQUENCY	CUM FREQ	PERCENT	CUM PERCENT
VERY THREATENING	2	2	2.817	2.817
GREATLY THREATENING	1	3	1.408	4.225
MODERATELY THREATENING	19	22	26.761	30.986
SOMEWHAT THREATENING	24	46	33.803	64.789
NOT AT ALL THREATENING	25	71	35.211	100.000

THREAT FROM LEASING

Q192	FREQUENCY	CUM FREQ	PERCENT	CUM PERCENT
VERY THREATENING	5	5	8.333	8.333
GREATLY THREATENING	6	11	10.000	18.333
MODERATELY THREATENING	16	27	26.667	45.000
SOMEWHAT THREATENING	19	46	31.667	76.667
NOT AT ALL THREATENING	14	60	23.333	100.000

THREAT FROM EXPLORATORY DRILLING

Q193	FREQUENCY	CUM FREQ	PERCENT	CUM PERCENT
VERY THREATENING	10	10	14.925	14.925
GREATLY THREATENING	8	18	11.940	26.866
MODERATELY THREATENING	29	47	43.284	70.149
SOMEWHAT THREATENING	17	64	25.373	95.522
NOT AT ALL THREATENING	3	67	4.478	100.000

THREAT FROM PRODUCTION

Q194	FREQUENCY	CUM FREQ	PERCENT	CUM PERCENT
VERY THREATENING	11	11	16.176	16.176
GREATLY THREATENING	15	26	22.059	38.235
MODERATELY THREATENING	23	49	33.824	72.059
SOMEWHAT THREATENING	13	62	19.118	91.176
NOT AT ALL THREATENING	6	68	8.824	100.000

THREAT FROM PIPELINES, ETC.					
Q195	FREQUENCY	CUM FREQ	PERCENT	CUM PERCENT	
VERY THREATENING	12	12	17.391	17.391	
GREATLY THREATENING	12	24	17.391	34.783	
MODERATELY THREATENING	22	46	31.884	66.667	
SOMEWHAT THREATENING	15	61	21.739	88.406	
NOT AT ALL THREATENING	8	69	11.594	100.000	

20. In the 1982 survey of economic use expansion, you did not identify any potential increases in oil and gas activities. Why? (CHECK ALL THAT APPLY.)

1. No oil and gas potential
2. Adverse impacts
3. It was not the policy to lease
4. No industry interest
5. Oil and gas potential unknown
6. Other (SPECIFY) _____

WHY NO REPORT OF INCREASE IN OIL AND GAS					
Q201	FREQUENCY	CUM FREQ	PERCENT	CUM PERCENT	
NOT A REASON	53	53	73.611	73.611	
NO OIL & GAS POTENTIAL	19	72	26.389	100.000	

WHY NO REPORT OF INCREASE IN OIL AND GAS					
Q202	FREQUENCY	CUM FREQ	PERCENT	CUM PERCENT	
NOT A REASON	67	67	93.056	93.056	
ADVERSE IMPACTS	5	72	6.944	100.000	

WHY NO REPORT OF INCREASE IN OIL AND GAS					
Q203	FREQUENCY	CUM FREQ	PERCENT	CUM PERCENT	
NOT A REASON	59	59	81.944	81.944	
NOT POLICY TO LEASE	13	72	18.056	100.000	

WHY NO REPORT OF INCREASE IN OIL AND GAS					
Q204	FREQUENCY	CUM FREQ	PERCENT	CUM PERCENT	
NOT A REASON	57	57	79.167	79.167	
NO INDUSTRY INTEREST	15	72	20.833	100.000	

WHY NO REPORT OF INCREASE IN OIL AND GAS					
Q205	FREQUENCY	CUM FREQ	PERCENT	CUM PERCENT	
NOT A REASON	55	55	76.389	76.389	
OIL & GAS POTENTIAL UNKNOWN	17	72	23.611	100.000	

Q206	WHY NO REPORT OF INCREASE IN OIL AND GAS			
	FREQUENCY	CUM FREQ	PERCENT	CUM PERCENT
NOT A REASON	37	37	51.389	51.389
OTHER	35	72	48.611	100.000

21. Do you have any other comments you would like to make about the Fish and Wildlife Service's public and economic use of refuges?

Q21	OTHER GENERAL COMMENTS			
	FREQUENCY	CUM FREQ	PERCENT	CUM PERCENT
YES, WROTE	44	44	69.841	69.841
DID NOT WRITE	19	63	30.159	100.000

GAO LEGAL OPINION ON

OIL AND GAS LEASING ON WILDLIFE REFUGE LANDS

I. DIGESTS:

1. National Wildlife Refuge System Administration Act of 1966, as amended, authorizes Secretary of Interior to permit oil and gas leasing on National Wildlife Refuge System lands as long as such leasing is compatible with major purposes for which refuge areas were established. 16 U.S.C. § 668dd(c) and (d).
2. National Wildlife Refuge System Administration Act of 1966, as amended, does not require Secretary of Interior to make determination of compatibility before he issues regulations allowing filing of applications for oil and gas leases for certain lands within National Wildlife Refuge System. Act requires Secretary of Interior to make determination of compatibility for a particular use, such as oil and gas leasing, for particular area within System where such use will occur. 16 U.S.C. § 668dd(d).
3. When language of legislation is clear, ordinarily there is no need to resort to legislative history. United States v. Oregon, 366 U.S. 643 (1961).
4. Two proposed criteria Fish and Wildlife Service may use to determine whether oil and gas leasing is compatible with refuge's purpose(s)--reduction of conflict and lack of irreversible effect in the future--are consistent with provisions of National Wildlife Refuge System Administration Act of 1966, as amended. Neither Act nor its legislative history define term "compatible," and, so long as administrative construction of statutory language by agency responsible for administration of Act is reasonably consistent with Act's purposes, reviewing courts will accord such administrative construction great deference. B-177579, August 21, 1973; Howe v. Smith, 452 U.S. 473 (1981).

5. Status of applications filed for oil and gas leases on certain National Wildlife Refuge System lands before those lands were arguably opened by regulation is unclear. Interior Department has been directed to repromulgate regulations and prepare an environmental impact statement before it allows oil and gas leasing on such lands. Status of applications will depend on Interior Department's decisions whether lands have been open or closed and whether to open or close such lands when it repromulgates regulations and prepares an environmental impact statement.

II. BACKGROUND

By letter dated July 26, 1983, the Chairman, Subcommittee on Oversight and Investigations, House Committee on Energy and Commerce, asked GAO to examine the Department of Interior's (DOI) efforts "to expand economic and public use of public and acquired lands within the National Wildlife Refuge System." The Chairman was particularly interested in DOI's announced intention to open certain national wildlife refuge lands outside Alaska to oil and gas leasing.¹

Until a recent revision, oil and gas leasing on wildlife refuge lands has been governed by a regulation, 43 C.F.R. 3101.3-3, originally promulgated in 1958.² As pertinent here, 43 C.F.R. 3101.3-3 provides as follows:

¹/ In a letter dated January 31, 1984, Secretary of Interior Clark informed Senator McClure, Chairman of the Subcommittee on Interior and Related Agencies, Committee on Appropriations that "the Department has no plans to allow oil and gas activity on the wildlife refuges under consideration." He stated that he would be recommending other uses for the \$500,000 Congress had appropriated for an environmental impact statement. The environmental impact statement was to be done before DOI processed or granted oil and gas lease applications in the refuges.

²/ The regulation adopted on January 8, 1958, 23 Fed. Reg. 227, was originally classified to 43 C.F.R. 192.9 (1958 Supp.)

"(a) Wildlife refuge lands. Such lands are those embraced in a withdrawal of public domain and acquired lands of the United States for the protection of all species of wildlife within a particular area.

"(1) Leasing. No offers for oil and gas leases covering wildlife refuge lands will be accepted and no leases covering such lands will be issued except as provided in § 3101.3-1 [relating to drainage]."

By decision dated September 1, 1981, the Interior Board of Land Appeals (IBLA) concluded that 43 C.F.R. § 3101.3-3 only precluded leasing of wildlife refuge lands "embraced in a withdrawal for the protection of all species of wildlife within a particular area." Esdras K. Hartley, Impel Energy Corp., 57 IBLA 319 (1981) expressly overruling David A. Provinse, 49 IBLA 134 (1980) and Lee B. Williamson, 54 IBLA 326 (1981). In other words, acquired lands not included within the wildlife refuge's boundary as established by the Secretarial or Executive Order creating or adding to such refuge are open to oil and gas lease offers.³ The Secretary, however, may reject an oil and gas lease offer for acquired lands where the development of an oil and gas lease would be incompatible with uses of the land otherwise worthy of preservation. Id.

^{3/} The Hartley decision further held that acquired and withdrawn lands encompassed within a withdrawal for less than "the protection of all species of wildlife within a particular area" are also open to leasing. See also D.M. Yates, 73 IBLA 353 (1983); Bernard A. Holman, 64 IBLA 13 (1982). In D.M. Yates, above, the IBLA construed a withdrawal to establish a "refuge and breeding ground for migrating birds and other wildlife" to satisfy the regulatory requirement that a withdrawal be for "all species of wildlife." Id. at 358. Similarly, a withdrawal of lands "for the protection, enhancement, and maintenance of wildlife resources" is within the meaning of the 1958 regulation "since they were withdrawn for the protection of wildlife." Nugget Oil Corp., 61 IBLA 43 (1981).

On June 30, 1982, the Bureau of Land Management (BLM) published proposed revisions to its regulations governing oil and gas leasing on Federal lands. 47 Fed. Reg. 28550 (June 30, 1982). With respect to oil and gas leases on wildlife refuge lands, the proposed regulations provided that "[l]ands within the contiguous 48 States that are in the National Wildlife Refuge System are not available for leasing" with two limited exceptions. 47 Fed. Reg. 28558. Neither the regulation itself nor the accompanying explanatory material discussed the reasons for the revision to the language of 43 C.F.R. 3101.3-3.

Approximately 13 months after publication of the proposed regulations, BLM promulgated in final form revised oil and gas leasing regulations. 48 Fed. Reg. 33648 (July 22, 1983). Instead of the proposed revision noted above, the final regulations reverted in all material respects relevant here to the language of the 1958 regulations. In the supplementary information accompanying publication of the final regulations, BLM advised the public that

"The Department of the Interior is continuing to examine oil and gas leasing on National Wildlife Refuge System lands. Until a thorough review of the Department's leasing policy is completed, the Department will make no substantive change in existing regulations covering such lands. In the future, should the Department make any changes in its policy on National Wildlife Refuge System lands, the public will be afforded an opportunity to comment on the proposed changes."

48 Fed. Reg. at 33651.

Shortly before publication of the final oil and gas leasing regulations, the Acting Director, Fish and Wildlife Service (FWS or Service), advised regional FWS directors that the subject regulations "supported" the 1981 Hartley decision, "meaning that all 'acquired, non-withdrawn' refuge lands outside Alaska are available for leasing subject to the determination by the Service that the proposal is compatible with the purposes for which the refuge was established." Memorandum from Acting Director, FWS, to Regional Directors, FWS, dated May 12, 1983. By way of explanation, the Acting Director, FWS, defined "acquired, non-withdrawn" refuge lands as "those

lands acquired outside a withdrawal boundary established by either a Secretarial or Executive Order." Id.

Apart from the above, the FWS published in June 1983 a fact sheet, in a question and answer format, discussing oil and gas leasing on national wildlife refuges. Particularly noteworthy are the following questions and answers:

"Q. Under what conditions are refuges open to leasing?

"A. Whether a particular refuge is open depends on where it is, how it was established as a refuge, who owns the subsurface rights, and certain other factors.

* * * * *

"--Outside Alaska, the Interior Department's policy has generally been that refuge lands are closed to leasing by regulation except in the following circumstances:

* * * * *

"(3) the areas are 'acquired, non-withdrawn lands' and the Fish and Wildlife Service determines that oil and gas leasing is 'compatible'."

* * * * *

"Q. Have acquired, nonwithdrawn lands always been open to leasing?

"A. No. Prior to 1981, all refuge lands outside of Alaska were closed to leasing by regulations under the Mineral Leasing Act of 1920 except in cases of drainage or where the Federal Government does not own the subsurface rights.

"In 1981, the Interior Board of Land Appeals (IBLA) interpreted Interior Department (Bureau of Land Management) regulations concerning oil and gas leasing on

national wildlife refuges to mean that only refuge lands that had been 'withdrawn' were closed; 'acquired, nonwithdrawn' lands were open.

"The Bureau of Land Management is now preparing final regulations to streamline Federal oil and gas leasing procedures. Under these regulations, the IBLA decision that 'acquired, nonwithdrawn' refuge lands are open to leasing will stand unchanged."

As noted earlier, BLM takes the position that the July 1983 regulations make no substantive change in DOI's policy with regard to oil and gas leasing on wildlife refuge lands. BLM argues instead that the 1958 regulations construed in the Hartley decision as well as the 1983 repromulgated version thereof have been consistently construed by the Department of Interior to permit oil and gas leasing on "acquired, nonwithdrawn" lands within wildlife refuges.

BLM's disclaimer notwithstanding, several wildlife and conservation groups disagree, arguing that DOI had altered a quarter century of consistent policy closing wildlife refuge lands to oil and gas leasing based on an "aberrational" IBLA interpretation of the 1958 regulation. Plaintiff's Memorandum in Support of Motions for Summary Judgment and Preliminary Injunction at 6-7, Environmental Defense Fund, Inc. v. Watt, Civil No. 83-2507 (D.D.C.). In particular, the Environmental Defense Fund, Inc., the Wilderness Society, and the Defenders of Wildlife (cumulatively referred to hereafter as EDF) asserted in a complaint filed in the United States District Court for the District of Columbia that BLM failed to give notice of their intention to open to oil and gas leasing acquired, nonwithdrawn lands within wildlife refuges outside of Alaska and further failed to provide interested persons an opportunity to comment thereon, all in violation of the Administrative Procedure Act, 5 U.S.C. § 551, 553. Complaint for Declaratory, Mandatory and Injunctive Relief at 15-16, Environmental Defense Fund, Inc. v. Watt, Civil Action No. 83-2507 (D.D.C.). EDF also complained that BLM's environmental assessment of the 1983 revised oil and gas leasing regulation inadequately considered the impacts of, and alternatives to, opening acquired lands outside Alaska to oil and gas leasing,

in violation of the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 et seq. Id. at 17.⁴

From a historical perspective, it is not at all clear that DOI's interpretation of the 1958 regulation has been entirely consistent or, conversely, as EDF contends, that the Hartley decision is simply an "aberrational" interpretation of the 1958 regulation. In several early Interior decisions, the Assistant Secretary of Interior affirmed BLM decisions based on the 1958 regulation rejecting oil and gas lease offers filed pursuant to the Mineral Leasing Act for Acquired Lands, 30 U.S.C. § 351 et seq., for lands within various wildlife and waterfowl refuges. Hunt Petroleum Corp., A-30121 (September 23, 1964); Duncan Miller, A-29340 (April 29, 1963); Duncan Miller, A-29041 (November 7, 1962); Duncan Miller, A-28937 (September 25, 1962); Duncan Miller, A-28368 (July 11, 1962); Shell Oil Co., Frank A. Brown, A-28370, A-28381 (May 7, 1962). However, in none of the above cases did the lease applicant question the application of the 1958 regulation to acquired lands. Nor did the cases explicitly indicate whether the acquired lands subject to the lease offer were or were not encompassed within a withdrawal.⁵

The first cases questioning the application of the 1958 regulation to acquired, nonwithdrawn lands were Gregory Salinas, A-28802, A-29302 (September 25, 1962) and Stuart Montgomery, A-29053 (January 24, 1963). In those cases, the Assistant Secretary of Interior concluded that although the acquired lands in question technically may not have been "wildlife refuge land" as defined in the regulation, the lease

^{4/} As a result of the enactment of the Act of November 24, 1983, Pub. L. No. 98-151, § 137, 97 Stat. 964, discussed in more detail below, EDF voluntarily dropped its suit.

^{5/} DOI maintains that it is "obvious" that each of the cited decisions involved acquired lands included within the respective withdrawals establishing the refuge. Since each decision used the regulatory prohibition to reject lease offers for lands described as "within," as opposed to "adjacent to," a wildlife refuge, Interior thinks the "obvious" implication of these decisions--i.e., that the acquired lands in question were in a withdrawal--belied the need for an explicit statement to that effect in the decision.

offers were "properly rejected as a discretionary matter since the lands are devoted to the same purpose as other refuge lands." Stuart Montgomery, supra. Gregory Salinas, supra, was to the same effect.

However, in a 1969 decision, Stephen C. Helbing, 76 I.D. 25 (1969), DOI squarely faced the issue raised but "avoided" in the Salinas and Montgomery cases, namely, whether acquired, nonwithdrawn lands should be treated as within the purview of the 1958 regulation prohibiting oil and gas leases on wildlife refuge lands:

** * *we think that the definition in the regulation of 'wildlife refuge lands' includes only lands covered by a withdrawal for refuge purposes. The regulation specifically refers to lands 'embraced in a withdrawal and to the terms of the withdrawal order.' This language cannot reasonably be read to include lands outside the withdrawn area even if they are acquired for the same purposes as the land in the withdrawn area."

Id. at 39.

The Helbing decision then characterized the Salinas and Montgomery cases as no "more than ad hoc determinations of the leasability of specific tracts of land in the light of the circumstances then present."

The Helbing decision was not the last word on the issue. In David A. Provinse, 49 IBLA 134 (1980), and Lee B. Williamson, 54 IBLA 326 (1981), the IBLA, without mentioning the earlier Helbing decision, specifically concluded that acquired, nonwithdrawn lands fell within the prohibition of the 1958 regulation. Accordingly, BLM's reliance on the 1958 regulation to reject lease offers on the acquired, nonwithdrawn lands in question was proper. As noted earlier, the Provinse and Williamson decisions were shortlived--in September 1981, the Hartley decision, 57 IBLA 319 (1981), expressly overruled them.

Notwithstanding DOI's formal interpretations of the 1958 regulations over the past 25 years, there is support for the proposition that BLM and FWS had traditionally viewed the 1958 regulation as closing all National Wildlife Refuge System

lands to oil and gas leasing.⁶ In addition to the FWS fact sheet noted earlier, the Acting Director, BLM, in a memorandum dated December 27, 1982, to all BLM state directors and mineral managers observed as follows:

6/ DOI would concede that:

"* * * some officials of the [FWS] as well as some officials of the [BLM] assumed that the definition of 'wildlife refuge lands' applied to all refuge lands outside Alaska. The Salinas-Montgomery-Helbing interpretation did not imprint itself into agency understanding * * * ."

In fact, in his January 31 letter to Senator McClure (see footnote 1), Secretary Clark stated:

"In 1981 the Interior Board of Land Appeals (IBLA) ruled that acquired non-withdrawn lands in the National Wildlife Refuge System were open to oil and gas leasing. Prior to this ruling, all wildlife refuge lands outside Alaska were considered by the Department to be closed to leasing except in cases of drainage or where the Federal Government did not own the subsurface rights."

The following remark may explain the practical effect of the failure of DOI's "official interpretation" to imprint itself on FWS and BLM understanding:

"Although we can find no record that any oil and gas leases have been issued under [Salinas-Montgomery-Helbing] interpretation, we are unaware of any lease offers for nonwithdrawn lands which were rejected based on an erroneous interpretation of the regulatory prohibition except for the decisions in David A. Provinse, 49 IBLA 134 (1980), and Lee B. Williamson, 54 IBLA 326 (1981) * * * ."

"The regulations at 43 C.F.R. 3101.3-3(a) address the issue of oil and gas leasing of National Wildlife Refuge (NWR) System lands in the conterminous United States for oil and gas, * * *

"This regulation has traditionally been interpreted by the Bureau of Land Management (BLM), the Fish and Wildlife Service, and the general public to mean that no NWR lands in the Lower 48 States are available for leasing. The Interior Board of Land Appeals (IBLA), however, held in September 1981 in Esdras K. Hartley, Impel Energy Corp., 57 IBLA 319, that only those lands embraced in a withdrawal of public domain lands or a withdrawal of acquired lands for the protection of all species are not available for leasing." (emphasis added).

Similarly, a March 30, 1982 memorandum from the Chief, Division of Refuge Management, to the Director, FWS, explained that

"[Region 6 staff] have received several oil and gas lease applications from the BLM for lands within the National Wildlife Refuge System. Historically, 43 C.F.R. 3100 was used by the Region to deny accepting these leases. However, regulation changes by the BLM and a recent IBLA decision have changed

the Bureau's interpretation of this policy."⁷ (emphasis added).

Recent congressional action has obviated the need to determine as a legal matter whether BLM has altered its policy concerning oil and gas leasing on all wildlife refuge lands. Section 137 of the Act of November 14, 1983, Pub. L. No. 98-151, 97 Stat. 964, directs the Secretary of Interior to suspend processing of oil and gas leases on wildlife refuge lands until certain actions are completed:

"No funds in this or any other Act shall be used to process or grant oil and gas lease applications on any Federal lands outside of Alaska that are in the units of the

^{7/} To like effect, see also memorandum from Acting Director of Fish and Wildlife to the Assistant Secretary--Land and Water Resources dated August 20, 1982: "By regulation, the BLM and FWS have built an administrative record that has conveyed the Departmental policy that National Wildlife Refuge System [NWRS] lands are not available or are 'closed' to leasing except under conditions of drainage from operations on adjacent lands." A leading industry lobbying group, the American Petroleum Institute, also perceived DOI's policy as closing NWRS lands to oil and gas leasing. By letter of August 31, 1982, the American Petroleum Institute commented on DOI's proposed rulemaking of June 30, 1982 as follows:

"API believes that the exploration and production segments of the oil industry can and do conduct their activities in a manner compatible with the major purpose of the NWRS. As a practical matter, however, NWRS lands have been largely closed to oil and gas activities. 43 C.F.R. Part 3101.3-1 and 3101.3-3(a)(1), the regulations under which the United States Fish and Wildlife Service (USFWS) administers NWRS lands, provide that no oil and gas leases will be issued in the lower 48 states unless there is a threat of drainage from adjacent areas. As a result, only small amounts of NWRS lands have been leased."

National Wildlife Refuge System, except where there are valid existing rights or except where it is determined that any of the lands are subject to drainage as defined in 43 C.F.R. 3100.2, unless and until the Secretary of the Interior first promulgates, pursuant to section 553 of the Administrative Procedure Act, revisions to his existing regulations so as to explicitly authorize the leasing of such lands, holds a public hearing with respect to such revisions, and prepares an environmental impact statement with respect thereto."⁸

The Senate Appropriations Committee explained the purpose of the above provision as follows:

"The Committee has included a general provision which provides direction to the Secretary of the Interior with respect to new oil and gas lease applications outside of Alaska that are in units of the national wildlife refuge system.

"The Committee, by including this language, does not intend to express its opinion on the wisdom of additional oil and gas leasing on national wildlife refuges. Instead, the Committee believes that a sounder decision on this vital matter will be made if all the information that will be developed during the preparation of an environmental impact statement and the promulgation of a rule is available to the public and the Congress. Requiring that these steps be taken will also provide time for the authorizing committees to conduct

^{8/} As a result of § 137's enactment, subcommittee counsel agreed that the issues concerning BLM compliance with the Administrative Procedure Act, 5 U.S.C. § 551 et seq., and the National Environmental Policy Act, 42 U.S.C. § 4321 et seq., were now moot.

oversight activities and take whatever action they deem necessary."
S. Rep. No. 98-275 at 21 (1983).⁹

III. DISCUSSION:

Question 1: Can the Secretary of Interior, consistent with the National Wildlife Refuge System Administration Act of 1966, as amended, permit oil and gas leasing on National Wildlife Refuge System lands?

Answer: Yes, as long as such oil and gas leasing is "compatible with the major purposes for which such areas were established." 16 U.S.C. § 668dd(a)(1)(A).

Discussion:

The National Wildlife Refuge System Administration Act of 1966, as amended, 16 U.S.C. § 668dd-668ee, (NWRSA) established the National Wildlife Refuge System (System). The NWRSA's purpose was to consolidate the authorities governing the various categories of areas administered by the Secretary of Interior as wildlife refuges, areas for the protection and conservation of fish and wildlife that are threatened with extinction, wildlife ranges, game ranges, wildlife management areas, and waterfowl production areas. 16 U.S.C. § 668dd(a)(1).

^{9/} As a general rule, provisions in an appropriation act, such as Public Law 98-151, are not construed to be permanent legislation effective beyond the fiscal year covered by the appropriation act unless the language or the nature of the provision makes it clear that such was the intent of Congress. 62 Comp. Gen. 54, 56 (1982); 36 Comp. Gen. 434, 436 (1956). Usually when words of "futuraity" are used, or when the provision is of a general character bearing no relation to the object of the appropriation, the provision may be construed to be permanent legislation. Id. Here, section 137 of Public Law 98-151 contains words of futurity ("unless and until"). Furthermore, section 137 bears no direct relationship to the appropriation act in which it appears, a continuing appropriation act for fiscal year 1984.

The NWRSA generally prohibits the entry, use, or occupation of System lands for any purpose

"unless such activities * * * are permitted either under subsection (d) of this section or by express provision of the law, proclamation, Executive order, or public land order establishing the area, or amendment thereof: Provided, That the United States mining and mineral leasing laws shall continue to apply to any lands within the System to the same extent they apply prior to October 15, 1966 * * *."

16 U.S.C. § 668dd(c) (subsection (c)) (emphasis supplied).

As pertinent here, subsection (d)(1)(A) authorizes the Secretary of Interior to

"permit the use of any area within the System for any purpose, including but not limited to hunting, fishing, public recreation and accommodations, and access whenever he determines that such uses are compatible with the major purposes for which such areas were established."

16 U.S.C. § 668dd(d)(1)(A).

Similarly, subsection (d)(1)(B) authorizes the Secretary of Interior to

"permit the use of, or grant easements in, over, across, upon, through, or under any areas within the System for purposes such as but not necessarily limited to, powerlines, telephone lines, canals, ditches, pipelines, and roads, including the construction, operation and maintenance thereof, whenever he determines that such uses are compatible with the purposes for which these areas are established."

16 U.S.C. § 668dd(d)(1)(B).

In our opinion, the above-quoted provisions of subsection (d) authorize the Secretary of Interior to permit oil and gas leasing on System lands subject, of course, to the required

compatibility determination. Nor do we think that the language of subsection (c), particularly the underlined portion of the proviso, limits the Secretary's authority to permit leasing on wildlife refuge lands.

One could argue that subsection (c)'s proviso was designed to eliminate the Secretary's authority to permit oil and gas leasing on System lands where such lands had been closed by regulation or order issued pursuant to the mining and mineral leasing laws prior to October 15, 1966. According to this argument, if the Secretary had closed wildlife refuge lands before October 15, 1966, such lands by force of section (c)'s proviso must remain closed.

Although not entirely free from doubt, we do not think such a construction of subsection (c) would properly reflect Congress' intent. Subsections (c) and (d) were originally enacted by Public Law 89-669 § 4, 80 Stat. 927 (1966). Both the House bill (H.R. 9424) and the Senate bill (S. 2217) were based on a legislative proposal submitted by DOI. In this regard, subsection (c)'s language as ultimately enacted by Public Law 89-669 is identical to DOI's suggested legislative language. Endangered Species: Hearings on H.R. 9424 and H.R. 9493 Before the Subcommittee on Fisheries and Wildlife Conservation of the House of Representatives Comm. on Merchant Marine and Fisheries, 89th Cong., 1st Sess., 123, 126 (1965) (House Hearings).

During hearings on H.R. 9424, Interior representatives indicated that H.R. 9424 with one limited exception contained no changes in the mining laws. See House Hearings at 158-159 (remarks of Mr. Finnegan). Indeed, a colloquy between Congressman Dingell and DOI representatives not only indicates that subsection (c)'s proviso was not meant to alter the mining and mineral laws but that under those laws, the Secretary had the discretionary authority to control the extent of mineral development on wildlife refuge lands:

"MR. DINGELL. Last of all, I would like to know, is there any way other than those which you indicated that the mining and mineral rights and the mineral and mining laws of the United States are changed.

"MR. PARKER. Only to the extent that Mr. Finnegan has already recited--that the

mining patentee will not receive title to the surface and the products growing on the surface, * * *.

"MR. DINGELL. Are fish and wildlife refuges which are acquired by migratory bird fund receipts open to mining?

"MR. FINNEGAN. No, sir.

"MR. DINGELL. They are not?

"MR. FINNEGAN. No.

"MR. DINGELL. The only refuges, then, which are open to mining are those which are--

"MR. PARKER. Game ranges and the wild-life ranges, primarily public domain.

* * * * *

"MR. DINGELL. And the refuges which you get from the Corps of Engineers and the Bureau of Reclamation--are they open too--

"MR. PARKER. The answer generally is 'No.' It may be that in certain instances we have bought the land, the surface, with some reservation.

"MR. DINGELL. Of mineral rights?

"MR. PARKER. Of the mineral rights in the deed.

"MR. FINNEGAN. One qualification, sir, that maybe Mr. Parker can say something further on, but on the land within the National Wildlife Refuge System the Secretary can administratively permit mineral leasing. There is nothing to prohibit him from doing so even where the public land is withdrawn from the U.S. mining laws.

"MR. DINGELL. He may withdraw them from mineral leasing if he so chooses?

"MR. FINNEGAN. Or he can open them.

"MR. DINGELL. Once he opens, he has to open without restrictions?

"MR. FINNEGAN. Well, he does it according to the regulations."
House Hearings at 170 (emphasis supplied).

Hence, Congress was aware that the Secretary could use his discretionary authority under the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 181 et seq. and the Mineral Leasing on Acquired Lands Act, as amended, 30 U.S.C. § 351 et seq., both to open and close refuge lands to oil and gas leasing. Apparently, the DOI representatives did not consider H.R. 9424 and, more particularly, subsection (c)'s proviso, to restrict the Secretary's discretionary authority to permit oil and gas leasing within the System. Conversely, had DOI viewed subsection (c)'s proviso as prohibiting oil and gas leasing after enactment of H.R. 9424, it would have been erroneous to suggest that the Secretary of Interior could administratively permit mineral leasing.

In our view, subsection (c)'s proviso was designed to clarify the application of the mining and mineral laws to wildlife refuge lands in light of subsection (c)'s general prohibition on entry, use, or occupation of any area of the System. The Senate Report's explanation of subsection (c) of H.R. 9424 confirms this view:

"Subsection (c) prohibits from the date of its enactment, subject to the above-mentioned exceptions, a person from entering, using, or otherwise occupying any area of the system for any purpose, including mining or mineral leasing. In the case of the public lands that are withdrawn from all forms of appropriation under the public land laws except the U.S. mining and mineral leasing laws, the proposal continues to make the mining and mineral leasing laws and regulations issued thereunder applicable to these areas unless, of

course, such lands are subsequently withdrawn by the Secretary of the Interior from the operation of these laws."

Sen. Rep. No. 89-1463 at 6 (1966).

This is not to say that Congress was unconcerned about mineral development on refuges.

"In the case of mineral leases, the committee expects that the discretionary authority of the Secretary will be exercised only upon a finding that mineral leasing will be compatible with the purposes of the wildlife system."

Id.

Accordingly, the application of the mining and mineral leasing laws to wildlife refuge lands are committed to the Secretary's discretion provided that any use permitted by such laws must be compatible with the major purposes for which the wildlife refuge areas were established. In our opinion, Congress intended the compatibility test found in 16 U.S.C. § 668dd(d)(1)(A) to limit mineral development, including oil and gas leasing, on System lands, not subsection (c)'s general restriction on use and occupation of refuge lands.

Question 2: Did the Secretary of the Interior have to make a determination of compatibility before he issued regulations allowing oil and gas leasing on certain lands within the National Wildlife Refuge System?

Answer: No.

Discussion:

On July 22, 1983, the Secretary of Interior issued regulations which arguably allowed oil and gas leasing for the first time since 1958 on System lands. By memorandum dated May 12, 1983, the Acting Director of the Fish and Wildlife Service advised the regional directors that after a lease application is filed with the Bureau of Land Management, "[t]he FWS must prepare a determination of compatibility for those refuge lands affected by the lease application * * *." Even assuming arguendo that the regulations did open System lands for the first time since 1958 to oil and gas leasing, the Secretary was not required to issue a compatibility

determination before the regulations' issuance. For the reasons discussed below, the approach outlined in the Acting Director's May 12, 1983, memorandum appears to generally satisfy NWRSA's requirements.

The Secretary's authority to issue regulations governing oil and gas leasing on Federal lands derives from the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 181 et seq., and the Mineral Leasing Act for Acquired Lands, as amended, 30 U.S.C. § 351 et seq.¹⁰ See 48 Fed. Reg. 33662 (July 22, 1983). The Mineral Leasing Act of 1920 bestows broad discretion upon the Secretary of Interior to lease with certain exceptions lands owned by the United States for oil and gas development: "All lands subject to disposition under this chapter which are known or believed to contain oil or gas deposits may be leased by the Secretary." 30 U.S.C. § 226(a). Under the Mineral Leasing Act for Acquired Lands, deposits of oil and gas within acquired lands "may be leased by the Secretary under the same conditions as contained in the leasing provisions of the mineral leasing laws * * *." 30 U.S.C. § 352.

Neither the Mineral Leasing Act of 1920 nor the Mineral Leasing Act for Acquired Lands requires the Secretary of the Interior to make a compatibility determination before he issues regulations opening or closing lands within the System to oil and gas leasing. Accordingly, any such restriction applicable to System lands must come from the NWRSA.

As noted earlier, the NWRSA authorizes the Secretary of Interior

"under such regulations as he may prescribe, to * * * permit the use of any area within the System for any purpose * * * whenever he determines that such uses are

^{10/} The regulation prohibiting oil and gas leasing on "wildlife refuge lands" except in cases of drainage, 48 F.R. 33665 (July 22, 1983), to be codified at 43 C.F.R. 3101.5-1, is a formal exercise of the Secretary's discretion under 30 U.S.C. § 226. Nugget Oil Corp., 61 IBLA 43 (1981).

compatible with the major purposes for
 which such areas were established * * *."
 16 U.S.C. § 668d(d)(1)(A) (emphasis supplied).

In our opinion, the above language of the NWRSA plainly indicates that the Secretary of the Interior must determine the compatibility of a particular use, such as oil and gas leasing, on a refuge, as opposed to a System-wide, basis. Had Congress intended that the Secretary determine compatibility of a particular use by reference to the major purposes for which the wildlife refuge system as a whole was established, we think Congress would have used the term "System" rather than "areas." The very language quoted above, namely, "any area within the System" suggests that Congress clearly distinguished between the System as a whole and the various components ("areas") thereof. Indeed, the language of NWRSA carefully maintains this distinction in terminology throughout the Act. Finally, the wide diversity in the types of refuges, habitats, ecosystems, and terrain, argue against requiring the Secretary of the Interior to make a System-wide "compatibility" finding before he issues regulations allowing interested parties to conduct a particular use such as oil and gas exploration on refuge lands. Hence, such compatibility determinations are more appropriately made at the field level on a use-by-use, refuge-by-refuge basis.

Although, NWRSA's language speaks of the compatibility determination in terms of "areas" within the System, not the System as a whole, one remark in the legislative history suggests the contrary:

"In the case of mineral leases, the committee expects that the discretionary authority of the Secretary will be exercised only upon a finding that mineral leasing will be compatible with the purposes of the wildlife system."

Sen. Rep. No. 89-1463 at 6 (1966) (emphasis supplied).

The importance of legislative history in construing a statute's meaning is, of course, well established. N.L.R.B. v. Bell Aerospace Co., 416 U.S. 267 (1974). However, legislative history as an extrinsic aid in the construction of a statute is used to resolve doubt, not create it. Stated

somewhat differently, if statutory language is clear, it is ordinarily conclusive, United States v. Clark, 454 U.S. 555, 560 (1982). Although the so-called "plain meaning rule," as a maxim of statutory construction, does not preclude consideration of persuasive evidence to the contrary, if it exists, we do not consider an isolated remark in the NWRSA's legislative history a sufficient basis to negate otherwise clear statutory language. See Boston Sand Co. v. United States, 278 U.S. 41, 48 (1928) (J. Holmes); Cobell v. Markham, 148 F.2d 737, 739 (2d. Cir. 1945), affirmed 326 U.S. 404 (1945).

Apart from the fact that we think the NWRSA's language only requires a refuge-by-refuge compatibility determination, the above remark suggests that only "[i]n the case of mineral leases" would the Secretary be required to make a System-wide compatibility determination. No such requirement exists in the NWRSA's language, either with respect to mineral leasing or any other use. Accordingly, we think that plain language of the NWRSA, not an isolated remark in its legislative history, should prevail.

Question 3: Are the two criteria that the Acting Director, FWS, described in a May 12, 1983, memorandum to regional FWS personnel for use in determining oil and gas leasing is "compatible" with a refuge's purposes consistent with the provisions of the National Wildlife Refuge System Administration Act, as amended?

Answer: Yes.

Discussion:

The NWRSA states that the Secretary is authorized to permit the use of any area within the System whenever he determines that such uses are compatible with the major purposes for which the areas were established. 16 U.S.C. § 668dd(d)(1)(A). Neither the NWRSA nor its legislative history define the term "compatible."

In a May 12, 1983, memorandum, the Acting Director of the Fish and Wildlife Service outlined the environmental assessment procedures which regional FWS personnel must use to analyze the compatibility of a leasing action with the major purposes for which a refuge was established. For purposes of the "compatibility" analysis, the Acting Director gave the following definition of "compatibility":

"Activities (in this case oil and gas leasing) are considered compatible with refuge purposes if there is a reduction of conflict resulting in no significant adverse impact in the present and the lack of irreversible effect in the future."

He elaborated further on this definition:

"Inherent to this statement is the condition that where an activity offers no conflict and no significant adverse impact, then the activity is considered compatible. Otherwise, in this definition there are two criteria to be met. The first criteria is the 'reduction of conflict', which implies setting controls or standards for operations based on real or perceived disturbances. This standard is not one of 'no conflict', but rather acknowledges the potential for conflict and strives to mitigate such conflicts. The second criteria to be met is the 'lack of irreversible effect in the future' which implies acceptance of some impacts but only those that can be mitigated or reversed via restoration or rehabilitation of habitat. If the proposal is analyzed under this type of scrutiny, the questions that need to be answered are:

"(1) Will the activity as stipulated reduce conflicts (or pose no conflict) with the purposes for which the refuge was established?

and

"(2) Can the land used for this activity be restored in the future to

useful habitat for the wildlife resource?"¹¹

An established rule of statutory construction is that in determining the meaning of statutory language, great deference is to be given to the interpretation thereof by those individuals responsible for the administration of the statute in question. B-177579, August 21, 1973; see also Howe v. Smith, 452 U.S. 473, 485 (1981); Udall v. Tallman, 380 U.S. 1, 16 (1964). Indeed, reviewing courts generally will follow an agency's construction of its statutory mandates unless there are compelling indications that the agency's construction is wrong. E.I. DuPont de Nemours & Co. v. Collins, 432 U.S. 46, 54 (1976); Red Lion Broadcasting Co. v. FCC, 395 U.S. 367, 381 (1969).

Here we have found nothing in the NWRSA or its legislative history to suggest that FWS's interpretation is incorrect. Moreover, FWS's construction of the term "compatible" does not appear to be necessarily inconsistent with the NWRSA's conservation purpose. Accordingly, we would not question as a legal matter the two criteria FWS will use to determine if oil and gas leasing are compatible with a refuge's purposes.

Question 4: May the Interior Department consider applications for oil and gas leases on acquired, nonwithdrawn refuge lands filed before the Interior Department issued final regulations in July 1983?

Answer: Should DOI maintain its position that acquired, nonwithdrawn lands have been open to oil and gas leasing since 1958 and continue to be so, DOI must consider applications for oil and gas leases filed before DOI issued final regulations in July 1983.

¹¹/ In a July 21, 1983 memorandum the Acting Director informed the regional directors that this guidance for a compatibility analysis was to be modified. However, no modifications were issued before the enactment of section 137 of Public Law 98-151, supra.

Discussion:

The status of applications filed before the July 1983, rulemaking for oil and gas leases became unclear when section 137 of Public Law 98-151, supra, was enacted. Any environmental impact statement and rulemaking DOI may issue pursuant to Public Law 98-151 may have an impact on that status as was noted in a November 16, 1983, memorandum from the Assistant Secretary, Land and Water Resources to Director, Bureau of Land Management. The memorandum stated that as a result of the passage of section 137:

- "1. Action on all pending lease applications should be suspended until the necessary steps have been completed. At that time, any application pending as of the date of this memorandum for wildlife refuge lands not embraced in a withdrawal for the protection of all species of wildlife, if the lands are made available for consideration for leasing by an amendment to the regulations, shall receive the appropriate priority for lease issuance. All other pending applications shall be rejected at that time.
- "2. No further non-competitive oil and gas lease applications shall be accepted for lands within any unit of the National Wildlife Refuge System outside Alaska. Any such applications which are received shall be returned as unacceptable." (emphasis supplied).

The "appropriate priority for lease issuance" is statutorily mandated. 30 U.S.C. § 352, 226. If the acquired lands to be leased are within any known geological structure of a producing oil or gas field, they must be leased to the highest responsible qualified bidder by competitive bidding. 30 U.S.C. § 352, 30 U.S.C. § 226(b)(1). If the acquired lands to be leased are not within any known geological structure of a producing oil or gas field, they must be leased to the person first making an application to lease the lands. 30 U.S.C. § 352, 30 U.S.C. § 226(c).

DOI has maintained that acquired, nonwithdrawn lands have been open to applications for oil and gas leasing since 1958 and that the July 22, 1983, regulations did not change the leasing policy on System lands. Whether the Department of Interior will continue to maintain this position is open to doubt.¹² However, assuming DOI, were to continue to maintain that acquired, nonwithdrawn refuge lands have been and continue to be open to leasing, the provisions of the Mineral Leasing Act for Acquired Lands, supra, discussed above would appear applicable.

Should DOI take the position that acquired, nonwithdrawn lands had been closed in the past but nonetheless decides to open them pursuant to a new rulemaking, DOI would have to reject all applications filed for leases on those lands prior to promulgation of the new rule. Stephen C. Helbing, 76 I.D. 25 (1969). Conversely, should DOI decide that acquired, nonwithdrawn lands had been opened, but wishes to close them, it can reject all applications filed for such lands even though at the time of filing the lands were opened. Duncan Miller, A-29340 (April 29, 1963); Richard K. Todd, 68 I.D. 291 (1961), aff'd sub. nom., Duesing v. Udall, 350 F.2d 748 (D.C. Cir. 1965), cert. denied, 383 U.S. 912 (1966).

^{12/} In a letter dated January 31, 1984, Secretary of Interior Clark informed Senator McClure, Chairman, Subcommittee on Interior and Related Agencies, Committee on Appropriations, that the Interior Department had dropped plans to allow oil and gas activity on wildlife refuges.

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