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Reflections on the Tenth Anniversary of the Refuge Improvement Act

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FOCUS . . . *On Refuge*

Alaska's Refuges and the Improvement Act

by Mike Boylan



The danger in looking at Alaska to understand the Refuge System is like looking for a date in a funhouse mirror – the image is pretty distorted. Alaska has just three percent of the

nation's wildlife refuges, but a whopping 80 percent of the acreage. To give a sense of scale, Yukon Delta National Wildlife Refuge is the size of South Carolina.

Alaska's big size has spawned big dreams, and these have touched its refuges. In the 1960s, the state wanted to build a dam and flood an area the size of New Jersey for hydroelectric power. The Rampart Dam project fell through, though, and today the third largest refuge, Yukon Flats, sits where there might have been a reservoir larger than Lake Erie. In 1958, the Atomic Energy Commission wanted to demonstrate the peaceful uses of nuclear power by atom-blasting a harbor at Cape Thompson in today's Alaska Maritime Refuge. Project Chariot was abandoned, but Amchitka

Reflections on the Tenth Anniversary of the Refuge Improvement Act

The Centrality of the Mission

by Robert Fischman

Ten years after Congress enacted the National Wildlife Refuge System Improvement Act, the law remains the most recent organic act for any federal public land system. The envy of other systems, the law provides a hierarchy of preferred uses, comprehensive planning, substantive management criteria and many other elements necessary to conserve public resources.

The most fundamental change wrought by the 1997 law is its systemic goal of conservation. The U.S. Fish and Wildlife Service must “sustain and, where appropriate, restore and enhance healthy populations of fish, wildlife, and plants utilizing . . . methods and procedures

associated with modern scientific resource programs.” This is a very different conception of conservation from the multiple-use, sustained-yield missions that sought to conserve a steady stream of commodities to be extracted from the public lands. It also embraces a broader land and water ethic that extends to plants and habitat rather than the previous, almost exclusive, focus on animals.

A key lesson of conservation biology is that nature reserves need to be interconnected. The 1997 Act reconceived the Refuge System as a “national network” of lands and waters to sustain plants and animals. This realigned the geometry of refuge conservation from linear flyways to a

“The Service now has an affirmative conservation stewardship duty.”

Improvement Act

Island, part of the Aleutian Islands Reservation since 1913, endured three underground nuclear tests, including the largest held in the U.S. in 1971.

It's no wonder that Alaska National Interest Lands Conservation Act (ANILCA) was seen as the salvation of Alaska's refuges. And it's no surprise that the National Wildlife Refuge System Improvement Act clearly defers to ANILCA: "If any conflict arises between any provisions of this Act and any provision of the Alaska National Interest Lands Conservation Act, then the provisions in the Alaska National Interest Lands Conservation Act shall prevail."

It would be an exaggeration to say ANILCA gave birth to the Refuge Improvement Act, but it was certainly present in the delivery room. Three notable examples include the Refuge Improvement Act's consistent direction for Comprehensive Conservation Plans (CCPs), its visionary Biological

Integrity policy, and its innovative Appropriate Uses policy.

New Level of Scientific Sophistication

The Refuge Improvement Act directs that CCPs be developed for each refuge or complex within 15 years, "except with respect to refuge lands in Alaska. . ." This exemption recognizes that Alaska has had CCPs since the 1980s, as required by ANILCA. Still, Alaska refuges have seized upon Refuge Improvement Act guidance to revise their CCPs to address new challenges and opportunities. The Improvement Act adopted Alaska's "Comprehensive Conservation Plans" title as the national standard, replacing variants like "master plan" and "comprehensive management plan" used before the Act.

If the Improvement Act benefited from ANILCA, it reciprocated by patching some holes in the landmark law. For example, among the standard purposes ANILCA specified for each refuge is "to

conserve fish and wildlife populations and habitats in their natural diversity. . ." Regrettably, ANILCA didn't define "natural diversity." However, the Refuge Improvement Act provides direction to "ensure that the biological integrity, diversity, and environmental health of the System are maintained." The subsequent 2001 Policy on Biological Integrity turned ANILCA's "natural diversity" from a stumbling block into a stepping stone by clarifying that biological integrity must "provide for the consideration and protection of the broad spectrum of fish, wildlife and habitat resources found on refuges and associated ecosystems. Further, it provides refuge managers with an evaluation process to ". . . prevent further degradation of environmental conditions and . . . restore lost or severely degraded components."

This policy brought a new level of scientific sophistication to refuge management by considering genetic variation, population levels, keystone

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more complex web of relationships. It challenges the Service to consider how actions on each refuge contribute to or diminish the conservation potential of the System. It provides traction for adapting to the monumental disruptions of climate change.

Meeting the Mission at Minnesota Valley National Wildlife Refuge

But there is more. In an effort to hold the Service accountable to the broad purpose for the Refuge System, Congress imposed a number of path-breaking substantive management criteria. The law requires that the Service maintain "biological integrity, diversity, and environmental health" on refuges. This is the most ecological standard in all of U.S. public land law. It represented a return of the Refuge System to the cutting edge of

conservation after three decades of lagging. The Service policy implementing this standard addresses external threats – those sources of degradation that originate from actions that occur outside of the refuge boundary. Of all the federal public land systems, only the national parks' policies deal as forthrightly with external threats.

One of my favorite examples of how this policy can make a difference in meeting the mission occurred near Minnesota Valley National Wildlife Refuge in 2003-04. Facing construction of a 19,250-seat amphitheater on a tract of land adjacent to the refuge, the refuge staff carefully documented how the amphitheater would project noise, nighttime light and stormwater into the refuge, harming refuge resources and priority public uses. They took measures to ensure that

these concerns were incorporated into the formal environmental impact analysis of the proposed project, and the Service followed the policy's prescription to raise concerns in the context of local land use procedures. The regional director testified in opposition to the project's conditional use permit before the county commission. In the face of the Service's well-documented opposition, which was amplified by the refuge Friends organization, the county commissioners unanimously rejected the permit application.

Stewardship and Restoration

The 1997 statutory mission of the system also includes restoration, where appropriate, of plants and animals. This element is reflected in three unusual obligations. First, the Service has a duty to acquire water rights, the only

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affirmative trust mandate of its kind in U.S. public land law. Because instream flow problems in refuges are generally caused by upstream users outside of the refuge boundaries, this provision supports the commitment to abate external threats.

Second, the 1997 statute requires the Service to “monitor the status and trends” of animals and plants in each refuge. This biological monitoring duty will prompt development of an essential, yet chronically missing, element of adaptive management. Adaptive management requires feedback about the consequences of decisions in order to adjust them continually. Public land management generally lacks a research component that adequately evaluates the success of predictions.

Third, the Service now has an affirmative conservation stewardship duty. This looks to the future when the system will face problems not specifically addressed in the current law. While it will initially be used as a shield to defend protective actions, it may ultimately be wielded as



Blackwater National Wildlife Refuge in Maryland (Karen Hollingsworth/USFWS)

a sword to advance the restoration goal and the mission to maintain biological integrity, diversity, and environmental health. To succeed, refuges must go beyond abating threats and lead through example to demonstrate what good land use is for a watershed or region.

The Challenge and Potential of Purpose

Notwithstanding its systemic purpose, the 1997 law retained the disparate purposes for which individual refuges were established. The Service still faces a tremendous challenge in orchestrating the hodgepodge of refuges

into a coherent network for continental conservation. The refuges do not yet fully cohere into a system that is more than the sum of its parts. The web remains frayed and patchy.

The Refuge Improvement Act is a call to action that will be remembered as farsighted as Theodore Roosevelt’s 1903 proclamation of the “preserve” on Pelican Island. The traditionally shy Service is poised to provide leadership in the tremendous land use challenges facing our fragmented landscape. The manifestation of the mission on-the-ground can inspire neighbors to join in urgent conservation projects. The Refuge System under the 1997 statute can be more than just the national network of nature. It can be the polestar for reformed resource management throughout the world. ♦

Robert Fischman is a law professor at Indiana University—Bloomington and the author of The National Wildlife Refuges: Coordinating a Conservation System through Law (Island Press 2003).

Is the Refuge Improvement Act all Wet?—continued from pg 15

to ensure the necessary quantities? The short answer is yes... and no.

Few refuges have federally reserved water rights, and the overwhelming majority operates under state water laws with water rights granted by the states. Although the Act does not create new water rights, it does require that the Secretary of the Interior “acquire, under state law, water rights that are needed for refuge purposes” and “assist in the maintenance of adequate water quantity and water quality to fulfill the mission of the System.”

While this directive to the Secretary is clear, ultimately the Refuge System must have adequate funds to meet this obligation. The Western Water Policy Review Advisory Commission reported in 1998 that the Service has inadequate

funding to access and document the water uses and needs on refuges and recommended development of a program to “improve data collection and analysis for use in defense of refuge water rights” and “increase the efficiency and effectiveness of existing water management.”

Until the Administration requests and Congress substantially increases appropriations for purchasing water rights, the Secretary will simply be unable to comply with the law.

In the meantime, it is the responsibility of those who care about refuges to defend refuge water needs. Some refuges have already benefited from citizen action. Tennessee and Cross Creeks National Wildlife Refuges may be spared drastically reduced water volume and its disastrous

effects on wildlife as a result of intervention by the National Wildlife Refuge Association and others who stopped “rider language” in the Water Resources Development Act that would have extended high water levels in upstream Lake Barkley.

If we do nothing about water quantity, many of this country’s most beautiful and biologically diverse lands will cease to exist. Refuge supporters around the country need to look around them, acknowledge and understand the problem, and do what they can to assure that refuge habitat and wildlife have a voice in the clamor for the clean water we all need in order to survive and thrive. ♦

Evan Hirsche is president of the National Wildlife Refuge Association.