

**Statement**  
**U.S. Department of the Interior**  
**House Natural Resources Committee**  
**Subcommittee on Federal Lands**  
**H.R. \_\_\_\_, Sportsmen's Heritage and Recreational Enhancement Act**  
**May 20, 2015**

Thank you for the opportunity to discuss the views of the Department of the Interior on the discussion draft of the Sportsmen's Heritage and Recreational Enhancement Act of 2015. We appreciate the Committee's attention to the important issues of hunting, fishing, and other recreational uses of public lands, and we strongly support the goal of enhancing opportunities for recreation, including hunting, fishing, and target shooting, on public lands. The Administration supports many of the goals of the bill, but we have outlined some concerns in this statement. We look forward to working with the Chairman and the Committee to address these issues.

Agencies in the Department of the Interior manage 19% of the Nation's land area. Providing access to quality recreation on public lands is one of the Department's primary missions as outlined in its current Strategic Plan, which commits to improving outdoor recreation access and increasing opportunities for public enjoyment of Federal lands and waters. In addition to drawing people of all ages outdoors to play, serve, learn, and work, outdoor recreation is a significant contributor to the national economy and the economies of communities that surround the lands we manage. It is important that we make recreational opportunities available in communities across the nation, to promote health and fitness, engage our youth, and inspire the next generations to conserve and protect America's precious resources. In 2012, the Outdoor Industry Association reported that recreation activities generate \$64.6 billion dollars in spending each year and support 6.1 million jobs. The approximately 417 million visits to DOI-managed lands in 2012 contributed an estimated \$45 billion in economic output to the surrounding economies through trip-related spending.

The Department strongly prefers to testify on bills after they have been introduced. Additionally, we note that the draft legislation was provided to the Department just one week before the hearing date, leaving little time for analysis of the bill's provisions. We will provide preliminary views on the bill in this statement, but the Department would like to reserve the right to submit additional comments about this discussion draft or an introduced bill to more fully develop the Administration's position if necessary. Because of the complexity of the legislation and the importance of these issues to the Department, this statement will address each of the bill's provisions individually.

**Hunting, Fishing, & Recreational Shooting Protection Act (Title I)**

**Background**

Lead poisoning from lead shot and fishing tackle, such as lead sinkers and jigs, is a concern for wildlife. In habitats important to sensitive species, lead shot poisoning has been documented in several taxonomic families of migratory birds, especially waterfowl and raptors. Of particular concern is the continued lead poisoning of swans and other waterfowl, where lead shot has been prohibited for many years under section 20.21 of title 50, Code of Federal Regulations, and the

documentation of lead poisoning in bald eagles and the endangered California condor. In fact, lead poisoning is listed as a major threat to the recovery of the California condor in both the U.S. Fish and Wildlife Service's (Service) action plan and the recovery plan.

Section 102 of this discussion draft bill addresses lead shot and tackle by redefining "chemical substances" under the Toxic Substances Control Act (TSCA). This would prevent the Environmental Protection Agency (EPA) from regulating lead in ammunition and fishing tackle under TSCA.

Section 103 would prevent the Secretaries of the Interior and Agriculture from regulating the use of ammunition and fishing tackle based on the lead content with some exceptions. Exceptions include existing regulations under section 20.21 of title 50, Code of Federal Regulations that prohibit the use of lead shot over water and wetlands, similar successor regulations, and new regulations that are consistent with existing State laws.

### **Analysis**

Section 102 makes clear that the Environmental Protection Agency cannot regulate any component of articles listed in TSCA section 3(2)(B)(v) (e.g., shot, bullets, and other projectiles, propellants and primers). This approach is not opposed by the Administration; and it preserves targeted approaches available to the Service to limit the use of lead shot or tackle in habitats used by wildlife species that are vulnerable to metal poisoning through ingestion of these items.

The Department strongly opposes section 103, which would prohibit federal land managers from using these more targeted approaches. Section 103 would obstruct the issuing of federal regulations to limit the use of lead shot, beyond the current prohibitions on use of lead shot over water and wetlands in 50 CFR 20.21. This could prevent the U.S. Fish and Wildlife Service from limiting the use of lead shot or tackle where it is threatening populations of native migratory birds and other wildlife, including on national wildlife refuges. It would also undermine the National Park Service Organic Act by preventing park managers from regulating lead shot in national parks, even in cases where it is causing impairment to wildlife. It would also prohibit federal land managers from regulating lead fishing tackle in any way, regardless of current or new information that documents negative effects of these items in certain habitats on native wildlife species.

### **Target Practice & Marksmanship Training Support Act (Title II)**

The Department supports Title II, which will provide a more favorable cost share requirement under Pittman-Robertson for the construction and maintenance of shooting ranges by states. The Department previously testified in support of this provision on July 25, 2013, testimony before the former House Natural Resources Subcommittee on Fisheries, Wildlife, Oceans and Insular Affairs.

### **Polar Bear Conservation & Fairness Act (Title III)**

As the Department has testified in the 113th Congress, the Department supports this provision and thanks Congressman Young for incorporating the Department's technical comments into this

legislation. Title III would allow those hunters who both applied for a permit and completed their legal hunt of a polar bear from an approved population prior to the Endangered Species Act (ESA) listing of the polar bear to import their polar bear trophies, provided that the hunter is required to submit proof that the bear was legally harvested in Canada from an approved population prior to the effective date of the ESA listing. The Department does not support any broader changes to the Marine Mammal Protection Act that would allow additional sport-hunted polar bear trophies to be imported beyond those where hunters submitted their import permit application and completed their hunt prior to the ESA listing.

#### **Recreational Lands Self-Defense Act (Title IV)**

The Department of the Interior defers to the U.S. Army Corps of Engineers regarding provisions in this title.

#### **Wildlife & Hunting Heritage Conservation Council Advisory Committee (Title V)**

##### **Background**

For more than a century, hunters and anglers have worked tirelessly to ensure an abundance of game through the establishment and enforcement of conservation laws to protect and conserve sustainable wildlife populations, and they have consistently supported funding for habitat conservation, public education, and enforcement efforts through license fees and the 75-year-old Wildlife and Sport Fish Restoration Program, with funds that are derived from fees placed on the equipment they use in the field. The sporting community continues to dedicate their time, wisdom, and energy to conservation, working side-by-side with a diversity of stakeholders even as the challenges facing wildlife and their habitats continue to grow.

The Administration established the Wildlife and Hunting Heritage Conservation Council (WHHCC) in 2010 to identify, consider, and incorporate the perspectives and views of the hunting community into agency decisions related to wildlife conservation and hunting programs, and we strongly support the continuation of this effort. We take very seriously our commitment to hunters and anglers and the provision of opportunities for the diversity of enthusiasts – from waterfowl hunters to upland game hunters to anglers – to pursue their passion for wildlife and outdoors.

The members of the WHHCC have represented this constituency well and have made valuable contributions to the Administration's ability to meet its wildlife conservation obligations through this partnership with the hunting and angling community. Each of the specific constituencies represented on the Council was chosen to ensure that all key voices from this community are at the table, including the waterfowl hunting, "hunting at large", and hunting outreach and education perspectives, all of which are removed from the Council in this bill.

##### **Analysis**

Title V would abolish the existing WHHCC and statutorily authorize a new one, making it a permanent advisory committee for the Secretaries of the Interior and Agriculture. While we appreciate the intent of ensuring engagement of the hunting community, the Administration is unable to support Title V for several reasons. It would remove the flexibility to review and

revise the Council every two years, it presents a new mandate without additional funding, and it removes from Council membership some important voices for the hunting and wildlife conservation community. We also note that the bill exempts the Advisory Council from the Federal Advisory Committee Act. FACA provides a framework and assurances for federal agencies, council members and interested members of the public whose ideas, advice and recommendations are considered in decision-making.

The Administration is committed to continuing the WHHCC through the existing FACA-compliant process in which we are currently engaged. We look forward to working with our partners on this valuable team as we face the challenges of the future, and we look forward to working with them to build, evolve and amend, as appropriate, the forums and processes through which this valued community provides input on the Administration's fulfillment of its obligations to the resources and the American people. We would welcome the opportunity to work with the subcommittee to help address its concerns while preserving the flexibility that the Administration currently has to tailor this important advisory council to evolving constituent needs and to the availability of resources and to ensure that all key hunting perspectives are represented.

## **Recreational Fishing & Hunting Heritage Opportunities Act (Title VI)**

### **Background**

The Bureau of Land Management (BLM) is responsible for the management of 245 million acres of public land under the principles of multiple use and sustained yield. The BLM manages these public lands for a variety of uses under the multiple use, sustained yield mandate of the Federal Land Policy and Management Act (FLPMA), including energy development, livestock grazing, recreation, and timber production, while protecting an array of natural, cultural, and historical resources. The BLM's recreation program is one of the key elements of our multiple use, sustained yield mission. In the West, public lands are America's backyard, providing close-to-home outdoor recreation venues. In addition, they afford extensive backcountry recreation opportunities. The expansive landscapes and world-class recreation opportunities offered by the BLM's public lands are among America's greatest treasures.

BLM maintains high quality dispersed recreation opportunities where visitors and recreationists are free to explore and discover undeveloped places in the outdoors. There are countless outstanding examples of fishing and hunting opportunities on the public lands. The BLM-managed Gunnison Gorge National Conservation Area is designated by the State of Colorado as a Gold Medal Trout Fishery and supports excellent rainbow, brown, and cutthroat trout populations; Wyoming BLM lands provide habitat for abundant herds of trophy pronghorn and Rocky Mountain elk; and the BLM-managed Steens Mountain area in Oregon supports fantastic big game hunting opportunities for trophy mule deer. In many places across the west, the BLM's remote lands are highly regarded for the quality of the hunting experiences they offer.

Hunting activities and regulations on public lands are generally managed by State fish and wildlife agencies, and BLM-managed lands are considered open to hunting, fishing, and recreational target shooting unless they have been specifically closed by law or to protect public safety. BLM data indicate that over 99 percent of BLM-managed public lands are open to

hunting and 99 percent of BLM-managed public lands are open to recreational target shooting. In rare circumstances, the BLM may also close areas to address conflicts with other uses pursuant to a public land-use planning process. The most common restricted areas are administrative sites, campgrounds and other developed facilities and in a few other areas with intensive energy, industrial or mineral operations or nearby residential or community development.

The Department appreciates the interest that the Committee has expressed in the National Wildlife Refuge System (Refuge System), administered by the U.S. Fish and Wildlife Service (Service) and in enhancing and increasing public use and enjoyment of the Refuge System. The Refuge System is the only system of Federal lands administered specifically for the conservation wildlife. There are 563 national wildlife refuges and thousands of waterfowl production areas across the United States in every state and territory. The Refuge System welcomes over 47 million visitors each year, providing visitors the opportunity to hunt, fish, observe and photograph wildlife, and learn about nature through environmental education and interpretation.

The Department has reviewed section 603(d)(2) of Title VI -- Strategic Growth Policy for the National Wildlife Refuge System. It appears that the intent of this section is to ensure that the wildlife dependent recreational uses identified and prioritized in the National Wildlife Refuge System Administration Act of 1966 as amended by the National Wildlife Refuge System Improvement Act of 1997 (Improvement Act) are acknowledged and given consideration in any regulation and policy affecting the management of the Refuge System. The Department strongly supports these wildlife-dependent recreational uses of refuges. These are: hunting, fishing, wildlife observation and photography, and environmental education and interpretation, often referred to as the "Big Six."

As directed by the law, the Service seek to maximize these Big Six uses on a refuge when they are determined to be compatible with the conservation purpose of a refuge. An example is hunting and fishing on refuges. The Refuge System provides some of the most outstanding hunting and fishing opportunities in the country. These opportunities are available to every American with the ability and desire to get outside and hunt and fish. Most refuge hunting and fishing programs complement and are coordinated with hunting programs administered by states. There are 335 refuges with hunting programs and 271 with fishing programs. There were nearly 2.5 million hunting and 7 million fishing visits to refuges in FY 2013. The Service is committed to strengthening and expanding hunting and fishing opportunities wherever those activities are compatible with the primary mission of the refuges on which they would occur. This is done each year through a *Federal Register* process that announces and seeks public input on opening new hunting programs on refuges.

### **Analysis**

Title VI is intended to facilitate and enhance opportunities for hunting, fishing, and shooting on public lands. The BLM supports that goal, but opposes certain provisions in this title.

Section 603 provides that the BLM and Forest Service exercise their authority to support and facilitate use of and access to Federal land for hunting, fishing, and recreational shooting. This section would require the agencies to consider effects on hunting, fishing, and target shooting when developing planning documents; designate public lands as open to hunting and shooting

unless they are closed for reasons authorized under the bill; and require designation of areas for target shooting. This section provides that actions under the bill would not be considered “major federal actions” under the National Environmental Policy Act (NEPA) thereby waiving any NEPA review, and defines actions taken under the bill as minimum requirements for purposes of the Wilderness Act. Finally, this title would initiate reporting requirements for any closures of lands to hunting or target shooting.

The Department strongly supports the goal of promoting recreational fishing, hunting and shooting opportunities. Some of these provisions, however, appear to be duplicative of existing policies and may interfere with existing management practices. For example, the BLM already regards public lands as open to fishing, hunting, and shooting unless it is demonstrated that the activity could result in unacceptable resource damage or create a public health and safety hazard. Any determination to permanently close public lands to certain activities is made following extensive public involvement and notification through the land use planning and NEPA processes. Temporary closures also involve public notification through the Federal Register. Additionally, when developing resource management plans or when taking any action that may affect shooting sports or access, the BLM notifies over 40 hunting and shooting groups, as specified in the Federal Land Hunting, Fishing and Shooting Sports Roundtable Memorandum of Understanding (MOU), expressly to help ensure that these activities and issues are fully considered.

Similarly, the bill requires the BLM to lease lands for shooting ranges and designate specific lands for target shooting. The BLM currently has and regularly uses its authority under the Recreation and Public Purposes Act to patent certain lands to cities, counties, and non-profit organizations for use as shooting ranges. This approach allows entities that are focused on the operation of shooting ranges and are better equipped to handle potential clean-up requirements and to properly manage these areas of concentrated use. Given the BLM’s limited staff and resources, we feel strongly that the current approach is in the best interest of the shooting public and the general public, and the BLM opposes the bill’s requirement for designation of shooting ranges.

In addition to these duplicative requirements, some of the language in the section as drafted appears to contradict the intent of the legislation or to potentially cause confusion with implementation of existing laws. For instance, the BLM is concerned that Section 603(b) may be interpreted to limit the Secretary’s discretion and could result in legal uncertainty that might ultimately inhibit the BLM’s efforts to enhance opportunities for hunting, fishing, and shooting.

In regard to section 603(d)(2), the Department would appreciate the opportunity to work with the committee and the sponsor of this section to better understand the intent of the provision and to discuss whether administrative approaches can accomplish the goals of the language without the need for legislation.

The bill contains a provision (Section 603(d)(3)) exempting all actions taken under the legislation, as well as all National Wildlife Refuge System activities from the National Environmental Policy Act (NEPA) regulations and the attendant environmental review processes. Such an exemption would impair the ability of the Department to accurately assess the

likely impacts of decisions to manage federal lands under the Department's jurisdiction. Properly developed NEPA reviews are a critical tool for public involvement and they improve decision-making by allowing the officials to evaluate ways to resolve resource use conflicts and address issues that the public raises. These restrictions will limit the agencies' ability to make well-informed land management decisions and to engage the public on issues they care deeply about. The Department strongly opposes this provision.

Section 603(e) states that recreational fishing, hunting, or shooting that occurs on adjacent or nearby public or private lands shall not be considered in determining which Federal public lands shall be open for these activities. However, it is prudent and important to consider the cumulative effects of proposed actions on public lands during the decision making process as well as the ability to fully consider effects on neighboring landowners. In the NEPA planning process, there could be important topics that require consideration of nearby or adjacent lands in the analysis.

The Department strongly opposes and recommends deletion of Section 603(f) of the bill, which appears to have the unintended consequences of undermining the principles of the Wilderness Act of 1964. Specifically, the bill could be interpreted to allow mechanized transportation, development of permanent structures, and commercial activities in wilderness, which are clearly contrary to Congressional intent, 45 years of wilderness management, and judicial precedent.

The Department opposes and recommends deletion of the provisions of Section 604 related to units of the National Park System, which has the potential to undermine the authority of the National Park Service to manage wildlife within park boundaries. Section 604 would require the Secretary to consider the use of volunteers from the hunting community as agents to assist in carrying out wildlife management on public land. This section also provides that the Secretary shall not reject the use of volunteers from the hunting community as agents without the concurrence of the appropriate State wildlife management authorities. The National Park Service already has the authority to use skilled volunteers to manage ungulate populations and have successfully used volunteers to cull elk and mule deer in Theodore Roosevelt National Park and Rocky Mountain National Park. Further, many units of the National Park System are located in urban or populated areas where the use of skilled volunteers would not be appropriate because of safety concerns.

The Department supports the purposes of Title VI and would like the opportunity to work with the Chairman to ensure that those goals are met without unnecessary duplication or unintended legal consequences.

### **Farmer & Hunter Protection Act (Title VII)**

In working with the four flyways and our state partners to establish hunting seasons and bag limits for migratory game birds and in enforcing the provisions of the Migratory Bird Treaty Act, we take to heart both the agency's mandate to ensure sustainable populations of wild birds and our commitment to ensuring the perpetuation of hunting and other recreation associated with this resource. In this effort, we endeavor to create policy from statutory mandates for enforcement that can be fairly applied and can ensure that the intended conservation purpose behind the policy is met.

In 1997, Congress amended the Migratory Bird Treaty Act of 1918 (16 U.S.C. 703-712) (MBTA) to describe and prohibit baiting and to make it a criminal violation with a “known or reasonably should have known” prosecutorial standard. The Service’s challenge in implementing this statutory provision is to ensure that implementing regulations can clarify what is “prohibited,” so that hunters and farmers can know whether or not certain actions are prohibited and certain fields are off limits for hunting. The “known or reasonably should have known” standard requires the Service demonstrate state of mind when pursuing cases under the current provision.

We strongly oppose Title VII because, although it preserves the MBTA prohibition on baiting, it greatly confuses enforcement of the baiting provision. The language in this section would require the Service to enforce such cases with the “known or reasonably should have known” standard when the determination about whether or not a field is “baited” would be unclear. Under Title VII, whether an area is considered “baited” can turn on determinations about agricultural practices made by the Service, Cooperative Extension, the States, or a crop insurer. Under this scenario, it may be difficult if not impossible for hunters to know whether an area is off limits or not—and could thus make enforcement of the statutory prohibition on baiting largely moot.

### **Transporting Bows Across National Park Service Lands (Title VIII)**

#### **Background**

Sec. 104 would prohibit the Director of the NPS from promulgating or enforcing any regulation that prohibits an individual from transporting inoperable bows and crossbows across any unit of the National Park System in the vehicle of an individual if the individual is not otherwise prohibited by law from possessing the bows and crossbows; the bows or crossbows that are not ready for immediate use remain inside the vehicle of the individual throughout the period during which the bows or crossbows are transported across National Park System land; and the possession of the bows and crossbows is in compliance with the law of the State in which the unit of the National Park System is located.

#### **Analysis**

NPS regulations in 36 CFR 2.4 allow for the transport of an inoperable bow in a motor vehicle and the NPS has no intentions of changing this regulation. Therefore, the Department objects to this section because it is unnecessary. However, if the committee decides to continue to include this provision, we would recommend that it be amended to define the term “vehicle” and to require that bows and crossbows, as well as arrows, be stored in a manner that prevents their ready use.

### **Federal Land Transaction Facilitation Act Reauthorization (Title IX)**

#### **Background**

Congress enacted FLTFA in July of 2000 as Title II of Public Law 106-248. FLTFA expired on July 25, 2011. Under FLTFA, the BLM could sell public lands identified for disposal through the land use planning process prior to July 2000, and retain the proceeds from those sales in a special account in the Treasury. The BLM and the other Federal land managing agencies were then able



to use those funds to acquire, from willing sellers, inholdings within certain federally designated areas and lands that are adjacent to those areas that contain exceptional resources. Lands were able to be acquired within and/or adjacent to areas managed by the NPS, USFWS, USFS, and the BLM.

Over the life of the FLTFA, approximately 27,249 acres were sold under this authority and approximately 18,535 acres of high resource value lands were acquired. The President's fiscal year 2016 Budget includes a proposal to permanently reauthorize FLTFA. The BLM identifies lands that may be suitable for disposal through its land use planning process, which involves full public participation. The BLM has the authority to sell lands identified for disposal under the Federal Land Policy and Management Act (FLPMA). Before the enactment of FLTFA, the proceeds from those sales were deposited into the General Fund of the Treasury. However, because of the costs associated with those sales (including environmental and cultural clearances, appraisals, and surveys), few sales were undertaken prior to the enactment of FLTFA. Since it was enacted, the BLM utilized FLTFA to sell 330 parcels previously identified for disposal totaling 27,249 acres, with a total value of approximately \$117.4 million. Over the same time period, the Federal government acquired 37 parcels totaling 18,535 acres, with a total value of approximately \$50.4 million using FLTFA funds.

Using the FLTFA proceeds, the BLM, NPS, FWS, and FS acquired significant inholdings and adjacent lands from willing sellers, consistent with the provisions of the Act. For example, in November 2009 the BLM used FLTFA funds to complete the acquisition of 4,573 acres within the BLM's Canyons of the Ancients National Monument in southwest Colorado. These inholdings encompass 25 documented cultural sites, and archaeologists expect to record an additional 700 significant finds. The acquisition also included two particularly important areas: "Jackson's Castle," which is archaeologically significant; and the "Skywatcher Site," a one-of-a-kind, 1,000-year-old solstice marker. The following are a few additional examples of important FLTFA acquisitions:

- Elk Springs Area of Critical Environmental Concern (ACEC), New Mexico/BLM – This 2,280-acre acquisition protects critical elk wintering habitat.
- Hells Canyon Wilderness, Arizona/BLM – A 640-acre parcel constituting the last inholding within the Hells Canyon Wilderness, located just 25 miles northwest of Phoenix.
- Grand Teton National Park, Wyoming/NPS – This small (1.38 acres), but critical inholding within the Park was acquired and protected from development.
- Nestucca Bay National Wildlife Refuge, Oregon/FWS – This 92-acre dairy farm on the outskirts of Pacific City, Oregon, was slated for residential development and was acquired to protect a significant portion of the world's population of the Semidi Islands Aleutian Cackling Goose.

## **Analysis**

Title IX would both reauthorize and modify the original FLTFA through a number of changes. The Department strongly supports the reauthorization of FLTFA and supports most of the changes proposed in this title. First, the title would reauthorize FLTFA. The Department supports the reauthorization of FLTFA, but recommends permanent or long-term reauthorization to facilitate long-term planning.

Second, under the original FLTFA, only lands identified for disposal prior to July 25, 2000, were eligible to be sold. Title IX modifies that restriction by allowing any lands identified for disposal through the BLM's land use planning process to be sold through the FLTFA process. The Department supports this change, which recognizes the usefulness and importance of the BLM's land use planning process. The BLM currently oversees the public lands through 157 Resource Management Plans (RMPs). Since 2000, the BLM has completed over 77 RMP revisions and major plan amendments. Additionally, the BLM is currently involved in planning efforts on 57 new RMPs, all of which the agency expects to complete within the next three to four years. Planning updates are an ongoing part of the BLM's mandate under FLPMA. In this process, the BLM often makes incremental modifications to the plans, and identifies lands that may be suitable for disposal. All of these planning modifications or revisions are made in compliance with the National Environmental Policy Act, and are undertaken through a process that invites full public participation. Eliminating the restriction to provide more flexibility on the lands eligible for FLTFA will allow the BLM to maintain a more consistent program over time.

Third, the original FLTFA allowed acquisitions of inholdings within, or adjacent to, certain Federal units such as BLM conservation units, National Parks, National Wildlife Refuges, and certain Forest Service units if they existed prior to July 25, 2000. Title IX eliminates this limitation as well, allowing acquisitions within or adjacent to certain kinds of units created at any time, and we support this change. The legislation also includes language placing an added emphasis on land acquisitions to support access for hunting, fishing, and other recreational activities. We support this language which is consistent with the Bureau's past management of the program. The original FLTFA law required that 80% of funds were to be used for land acquisition within the state where the funds were generated through land sales. Title IX provides that if funds are not expended within four years they may be expended in any state. We support this provision. This title also adds exceptions to the FLTFA in recognition of specific laws that modify the FLTFA with respect to some particular locations. The FLTFA does not apply to lands available for sale under the Santini-Burton Act (P.L. 96-586) and the Southern Nevada Public Land Management Act (P.L. 105-263). This title additionally exempts lands included in the White Pine County Conservation, Recreation, and Development Act (P.L. 109-432) and the Lincoln County Conservation, Recreation and Development Act (P.L. 108-424). Finally, a number of provisions of the Omnibus Public Land Management Act of 2009 (P.L. 111-11) modify FLTFA at specific sites or for specific purposes, and these exceptions are also captured by this legislation.

Fourth, Title IX adds a new provision requiring the BLM to establish a publicly available database on the Department of the Interior website of lands identified for disposal in BLM's Resource Management Plans (RMPs). We would like the opportunity to work with the sponsor and the Committee to refine this provision.

RMPs identify lands that are potentially available for disposal, or criteria for lands that may be potentially available for disposal by sale, patent under the Recreation and Public Purposes (R&PP) Act, exchange, or a combination of these. Some RMPs specifically identify lands potentially available for sale according to criteria provided in section 203 of FLPMA, while other RMPs may only identify criteria to be used in identifying lands for disposal at a later date.

Although identified as potentially available for disposal, these lands may still have substantial impediments to disposal. In short, lands identified for disposal in RMPs are not analogous to a federal “multiple listing service.” RMPs typically identify general areas for disposal rather than specific parcels. The process of identifying these lands as potentially available for disposal in an RMP typically does not include site-specific identification of impediments to disposal, such as the presence of threatened or endangered species, cultural or historic resources, mining claims, mineral leases, rights-of-way, and grazing permits. Also not included in this identification process is an appraisal to establish market value or a specific survey of the lands. Furthermore, because land use plans typically extend over many years, lands identified as potentially available for disposal at one point in time may be found later to be unsuitable because of new circumstances such as oil and gas leasing, the listing of threatened and endangered species, the establishment of rights-of-way, or other encumbrances.

The Department and this Administration support transparency and public access to information. The BLM’s planning process is not a one-size fits all approach directed by the national office. Rather each individual RMP reflects local conditions and needs and lands identified as potentially available for disposal are considered in context of their RMP. We would like to work with the Sponsor and the Committee to modify this provision in order to provide flexibility in designing an online tool that supplies access to each of BLM’s RMPs and gives context and meaning to the data as well as information for approaching the local BLM offices about the potential sale of land.

Finally, Title IX appears to specify that funds in the FLTFA account be used for deferred maintenance activities. The Administration does not support the sale of federal lands to pay for operations or maintenance and opposes this change.

### **African Elephant Conservation & Legal Ivory Possession Act (Title X)**

There is a current mass slaughter of African elephants and they may face extinction if poaching and trafficking continue along this trajectory. Wildlife trafficking once was predominantly a crime of opportunity committed by individuals or small groups. Today, it is the purview of international criminal cartels that are well armed, highly organized, and capable of illegally moving large commercial volumes of wildlife and wildlife products. Improved economic conditions in markets such as China and other parts of Asia are fueling an increased demand for elephant ivory and other wildlife products. Although the primary markets are in Asia, the United States continues to play a significant role as a major consumer and transit country for illegally traded wildlife, and we must be a part of the solution.

The U.S. Fish and Wildlife Service is taking great strides to significantly restrict commercial trade in elephant ivory within the United States and across our border to make it harder for criminals to disguise the source of poached and trafficked ivory.

The Service issued Director’s Order 210 on February 25, 2014, which re-affirmed enforcement of the African Elephant Conservation Act (AECA) moratorium on import of African elephant ivory and clarified how the Service would enforce the Endangered Species Act (ESA) antiques provision. We also improved our ability to protect elephants, rhinos, and other CITES-listed

wildlife by publishing a final rule in June 2014 revising our CITES regulations, including “use after import” provisions that limit sale of certain CITES-listed wildlife within the United States. The result of this rule is that items, such as elephant ivory, imported for noncommercial purposes may not subsequently be sold within the United States.

The Service will also publish a proposed rule, available for public comment, to revise the ESA special rule for the African elephant, which will include proposed limitations on the interstate sale of African elephant ivory. The Service is considering including a de minimis exception that would exempt certain items from these prohibitions. We recommend that Congress wait for the Administration to publish this proposed rule, which we expect to publish within the next two months, and collect and review public comment, rather than legislating first. We therefore oppose Sections 1003 and 1006 of this bill. We have met with the stakeholders that are identified in this bill, and we believe we can accommodate their interests through the regulatory process while ensuring that the United States is not contributing to the elephant poaching crisis.

Section 1004 of the bill would allow the Service to station one law enforcement officer in the primary U.S. diplomatic or consular post in each African country that has a significant population of African elephants to assist local wildlife rangers in protecting the elephants and facilitating the apprehension of individuals who illegally kill them or assist in killing them. The Administration already has the authority to do this and we have been working to place law enforcement special agents abroad. In addition, we are strategically placing law enforcement special agents in locations to assist not only the source countries but also transit and consumer nations. With assistance from the State Department, we have created the first program for stationing Service law enforcement special agents at U.S. embassies as international attachés to coordinate investigations of wildlife trafficking and support wildlife enforcement capacity building. The first attaché began work in Thailand last year. We have selected three more attachés who will be located in Tanzania, Peru, and Botswana. We are working on placing a fifth attaché in China. The President’s FY 2016 budget request includes an increase to support the placement of additional attachés abroad.

The Service supports the intent of Section 1005 regarding certification for purposes of the Pelly Amendment to the Fishermen’s Protective Act of 1967. We note that the AECA already includes a section related to certification under the Pelly Amendment. We would be happy to provide technical assistance on this proposed amendment and how it relates to the statute’s existing text.

The Department opposes Section 1007, which would reverse the scientific finding the Service made under the ESA to suspend the import of elephant trophies from Zimbabwe. Due to the inadequacy of information on Zimbabwe’s elephant management program, as well as questions about law enforcement and the use of hunting revenues, a suspension on the import of elephant trophies from Zimbabwe has been in place for trophies taken on or after April 4, 2014. The Service could reconsider this suspension if information is received that documents that the situation in Zimbabwe meets the criteria established under the ESA. The Service provided Zimbabwe details on what information is needed to reconsider the current suspension.

Section 1008 would reauthorize the AECA through FY 2020. The Department supports reauthorization of the AECA, and we also recommend this language be amended to reauthorize the other Multinational Species Conservation Funds (MSCFs) to support the conservation of Asian elephants, rhinoceros, tigers, great apes, and marine turtles and to identify MSCFs as appropriate recipients of restitution or other funds generated in prosecuting violations of wildlife trafficking and other wildlife-related crimes. The MSCFs have formed the foundation for hundreds of projects around the world to address the needs of these highly endangered species. Section 1008 also would require the Secretary to give priority to projects designed to facilitate the acquisition of equipment and training of wildlife officials in ivory producing countries to be used in anti-poaching efforts. The Service already gives priority to elephant security efforts that include equipment and training for ecoguards and rangers.

### **Interest on Obligations Held in the Wildlife Restoration Fund (Title XII)**

As detailed in the Administration's FY 2016 budget proposal, the Administration strongly supports extending an important provision in the North American Wetlands Conservation Act (NAWCA) that requires interest on Pittman-Robertson funds to be allocated to finance waterfowl conservation projects funded through the NAWCA. This provision is scheduled to expire at the end of FY 2015.

Section 7 of the NAWCA of 1989 (16 U.S.C. 4401-4412) amended the Pittman-Robertson Act (16 USC 669b) (P-R) to provide the Secretary of the Treasury the authority to invest P-R funds in interest-bearing obligations of the United States. The interest, according to the statute, is available for allocation by the Secretary of the Interior for the purposes of NAWCA, which means the interest provides additional funding for NAWCA projects. P-R was amended in 2005 (P.L. 109-75), to extend authorization for this provision through FY 2015. Through this provision, an additional \$7 – \$23 million per year is contributed to NAWCA. This substantial contribution to NAWCA projects should be extended before this fiscal year ends on September 30, 2015.

### **Permits for Film Crews of Five People or Less (Title XIII)**

#### **Background**

Under current commercial filming fee law (Public Law 106-206), the Secretary of the Interior and Secretary of Agriculture are authorized to establish a fee system for commercial filming activities on Federal lands. The Act requires a permit for all commercial filming and directs the Secretaries to collect a cost recovery fee associated with processing the permit requests and monitoring the permitted activities, and a location or rental fee to provide a fair return to the United States for the use of federal lands. The Department of the Interior regularly receives and processes requests for commercial film permits under existing law.

We welcome individuals, groups, and companies who wish to film the beauty and bounty of our nation's incredible public lands. We also understand and appreciate the interest of hunters and anglers in taking video and photos to record their own experiences and memorialize their visit to the public lands. It is important for Americans to see their public lands and – done right and

under the right conditions – commercial filming is a very welcome and important use of our nation’s natural areas.

### **Analysis**

Title XIII would establish a process for assessing fees and authorize access to Federal land for small commercial film crews. This section would amend Public Law 106-206 by requiring the Secretaries of the Interior and Agriculture to allow commercial filming crews of five persons or fewer access to all areas designated for public use on lands and waters under their purview, provided each filming crew pays one, \$200 annual fee, and that the access is during public hours. While notification would be required and the Secretary could deny access under certain circumstances, no further restrictions could be placed on such film crews, including on the cameras, vehicles or other equipment they may use on public lands.

The Department has concerns about the timeframes for permit denial established by this section of the bill. While the bill requires film crews to notify the managing agency 48 hours before filming begins, and allows the Secretary to deny access in certain circumstances, the Department is concerned that this section does not offer the Secretary the discretion needed to manage film crew permits most effectively. Though the Secretary may deny access, the section does not allow for permit restrictions specific to the circumstances of a filming event, which would limit the Department’s primary mechanism for avoiding resource damage, user conflicts, or risks to public safety. Additionally, the Department feels that in most cases, a 48-hour notification is not sufficient to assess the possibility of resource damage, user conflicts, or safety risks that may be incurred.

The Department is also concerned that the bill could be interpreted to require authorization of commercial filming in wilderness areas, notwithstanding the requirements and restrictions in the Wilderness Act. Section 4(d)(6) of the Wilderness Act (P.L. 88-577) states that commercial services may be performed in wilderness areas only to the extent necessary for activities that are proper for realizing the recreational or other wilderness purposes of the areas. Under this bill, some of our most pristine lands could be open to commercial filming, regardless of these wilderness factors. Since the vast majority of public lands, including wilderness, do not have designated hours, this use could occur and at any time and without consideration of potential resource impacts.

The Department also has concerns about the fee structure in this title. The effects of some language in this section are not entirely clear. This section does not specify whether the single annual permit fee would be: 1) one fee applicable for all use on federal lands; 2) a fee that must be paid by each film crew to each agency, depending on the type of land being accessed; or 3) an annual fee to be paid for each federal land unit being accessed. This section also does not make clear whether the agencies would be authorized to recover subsequent costs for further monitoring that may be necessary. We also note that in many cases, the \$200 fee may not represent a fair return to the taxpayer for uses authorized under this section. The appropriate cost recovery and location or rental fees for a given use may depend on the needs of the project, requirements for monitoring, and degree of impact to natural or cultural resources or the experience of other visitors.

The Administration appreciates the needs of the many different visitors to the public lands. These constituencies include commercial film makers and videographers, and we value their contributions in films that educate, enlighten and entertain. However, it is important that all commercial filming activities be managed to avoid disruption to visitor activities and damage to natural and cultural resources, and the Administration cannot support this section as written because it does not provide sufficient discretion for the agencies to manage film crews as a use of public lands.

**Conclusion**

Thank you for the opportunity to provide testimony on this legislation as it pertains to the Department of the Interior. The Department shares the Committee's interest in enhancing recreational opportunities and access for hunting, fishing, and target shooting on public lands, and we look forward to continuing to work with you on these important issues.