

DETROIT RIVER INTERNATIONAL WILDLIFE REFUGE
ESTABLISHMENT ACT

NOVEMBER 5, 2001.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. HANSEN, from the Committee on Resources,
submitted the following

REPORT

[To accompany H.R. 1230]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the bill (H.R. 1230) to provide for the establishment of the Detroit River International Wildlife Refuge in the State of Michigan, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Detroit River International Wildlife Refuge Establishment Act”.

SEC. 2. FINDINGS.

The Congress finds the following:

(1) The Detroit River, one of North America’s greatest rivers, was created some 14,000 years ago during the retreat of the Wisconsin Glacier.

(2) The present river channel, established when falling water levels permitted erosion of the Lake Plain and moraines, is a connecting channel linking the Upper and Lower Great Lakes, as well as linking the United States to Canada.

(3) The Lower Detroit River ecosystem is diverse with a number of distinct channels, numerous shoals that support dense stands of aquatic plants, and many islands. These nationally and internationally significant habitats and ecological features attract as many as 29 species of waterfowl and 65 kinds of fish.

(4) The Detroit River is a major migration corridor for fish, butterflies, raptors, and other birds, in addition to waterfowl. Over 300 species of birds have been documented in the Detroit-Windsor area, of which about 150 species breed in the immediate area.

(5) Because the Great Lakes are situated at the intersection of the Atlantic and Mississippi Flyways, the Detroit River is an important waterfowl migration corridor. 3,000,000 ducks, geese, swans, and coots migrate annually through the Great Lakes region.

(6) The importance of this corridor is recognized in the Canada-United States North American Waterfowl Management Plan that has identified the Detroit River as part of one of 34 Waterfowl Habitat Areas of Major Concern in the United States and Canada.

(7) Some 300,000 diving ducks stop in the Lower Detroit River on their fall migration from Canada to the east and south each year to rest and feed in beds of water celery found in the region.

(8) The international importance of the Lower Detroit River area is manifested in the United States congressional designation of the 460-acre Wyandotte National Wildlife Refuge.

(9) Canada's Canard River Marsh Complex is an internationally significant waterfowl staging area which is one of the main resting and feeding areas for canvasbacks migrating from their nesting grounds in the Canadian prairies to the East Coast. Many over-winter in the area as well.

(10) The diversity of biota and habitats in the Lower Detroit River ecosystem provides substantial benefits to the over 5,000,000 people who live in the vicinity. The Lower Detroit River has an international reputation for duck hunting. On an economic basis, retail sales related to waterfowl hunting in Michigan were estimated in 1991 to be \$20,100,000. During the same year birding, photography, and other nonconsumptive uses of waterfowl contributed an additional \$192,800,000 in Michigan.

(11) More than 1,000,000 pleasure boats are registered in Michigan and about half of those are used on the Detroit River and Lake St. Clair, in part to fish for the estimated 10,000,000 walleye that migrate to the Detroit River each spring from Lake Erie to spawn. These walleye have helped create an internationally renowned sport fishery estimated to bring in \$1,000,000 to the economy of communities along the lower Detroit River each spring.

(12) All of these natural resource values and socioeconomic benefits were acclaimed when the Detroit River was designated an American Heritage River in 1998. The Detroit River is also a Canadian Heritage River, making it the first international heritage river system in the world.

(13) The Detroit River has lost over 95 percent of its coastal wetland habitats and despite increased awareness and supporting science of their importance, habitats continue to be destroyed and degraded.

(14) Protection of remaining wildlife habitats and enhancement of degraded wildlife habitats are essential to sustain the quality of life enjoyed by so many living along the Detroit River corridor.

SEC. 3. DEFINITIONS.

For purposes of this Act:

(1) The term "Refuge" means the Detroit River International Wildlife Refuge established by section 5.

(2) The term "Secretary" means the Secretary of the Interior.

(3) The term "Detroit River" means those lands and waters within the area described in section 5(a).

SEC. 4. PURPOSES.

The purposes for which the Refuge is established and shall be managed are as follows:

(1) To protect the remaining high-quality fish and wildlife habitats of the Detroit River before they are lost to further development and to restore and enhance degraded wildlife habitats associated with the Detroit River.

(2) To assist in international efforts to conserve, enhance, and restore the native aquatic and terrestrial community characteristics of the Detroit River (including associated fish, wildlife, and plant species) both in the United States and Canada.

(3) To facilitate partnerships among the United States Fish and Wildlife Service, Canadian national and provincial authorities, State and local governments, local communities in the United States and in Canada, conservation organizations, and other non-Federal entities to promote public awareness of the resources of the Detroit River.

SEC. 5. ESTABLISHMENT OF REFUGE.

(a) BOUNDARIES.—There is hereby established the Detroit River International Wildlife Refuge, consisting of the lands and waters owned or managed by the Secretary pursuant to this Act in the State of Michigan within the area extending from the point in Michigan directly across the river from northernmost point of Ojibway Shores to the southern boundary of the Sterling State Park, as depicted upon a map entitled "Detroit River International Wildlife Refuge Proposed", dated July 31, 2001,

which shall be available for inspection in appropriate offices of the United States Fish and Wildlife Service.

(b) **EXISTING REFUGE LANDS.**—The Wyandotte National Wildlife Refuge is hereby included within, and shall be a part of, the Detroit River International Wildlife Refuge. All references to the Wyandotte National Wildlife Refuge shall hereafter be treated as references to the Detroit River International Wildlife Refuge.

(c) **BOUNDARY REVISIONS.**—The Secretary may make such revisions of the boundaries of the Refuge as may be appropriate to carry out the purposes of the Refuge or to facilitate the acquisition of property within the Refuge.

(d) **ACQUISITION.**—The Secretary is authorized to acquire by donation, purchase with donated or appropriated funds, or exchange the lands and waters, or interests therein (including conservation easements), within the boundaries of the Refuge.

(e) **TRANSFERS FROM OTHER AGENCIES.**—Any Federal property located within the boundaries of the Refuge which is under the administrative jurisdiction of another department or agency of the United States may, with the concurrence of the head of administering department or agency, be transferred without consideration to the administrative jurisdiction of the Secretary for the purposes of this Act.

(f) **STUDY OF ASSOCIATED AREA.**—The Secretary (acting through the Director of the United States Fish and Wildlife Service) shall conduct a study of fish and wildlife habitat and aquatic and terrestrial communities of the north reach of the Detroit River, from the northernmost point of Ojibway Shores north to the mouth of Lake St. Clair, for potential inclusion in the Refuge. Not later than 18 months after date of enactment of the Act, the Secretary shall complete such study and submit a report containing the results thereof to the Congress.

SEC. 6. ADMINISTRATION.

(a) **IN GENERAL.**—The Secretary shall administer all federally owned lands, waters, and interests therein that are within the boundaries of the Refuge in accordance with the National Wildlife Refuge System Administration Act (16 U.S.C. 668dd and following) and this Act. The Secretary may use such additional statutory authority as may be available for the conservation of fish and wildlife, and the provision of fish and wildlife dependent recreational opportunities as the Secretary considers appropriate to carry out the purposes of this Act.

(b) **PRIORITY USES.**—In providing opportunities for compatible fish and wildlife dependent recreation, the Secretary, in accordance with paragraphs (3) and (4) of section 4(a) of the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd(a)), shall ensure that hunting, fishing, wildlife observation and photography, and environmental education and interpretation are the priority public uses of the Refuge.

(c) **COOPERATIVE AGREEMENTS REGARDING NONFEDERAL LANDS.**—The Secretary is authorized to enter into cooperative agreements with the State of Michigan, or any political subdivision thereof, and with any other person or entity for the management in a manner consistent with this Act of lands that are owned by such State, subdivision, or other person or entity and located within the boundaries of the Refuge and to promote public awareness of the resources of the Detroit River International Wildlife Refuge and encourage public participation in the conservation of those resources.

(d) **USE OF EXISTING GREENWAY AUTHORITY.**—The Secretary shall encourage the State of Michigan to use existing authorities under the Transportation Equity Act for the 21st Century (TEA-21) to provide funding for acquisition and development of trails within the boundaries of the Refuge.

SEC. 7. INDEMNIFICATION.

(a) **IN GENERAL.**—Whenever any person donates to the United States in fee simple real property located within the boundaries of the Refuge, if—

(1) the State of Michigan has determined that such property meets applicable State standards regarding the presence of hazardous substances, pollutants or contaminants, or petroleum or petroleum derivatives, and

(2) the Secretary determines, after public review and comment, that the acquisition of such real property by the United States will further the purposes of the refuge and is otherwise in the public interest,

the Secretary is authorized to hold harmless, defend, and indemnify such person in full from and against any suit, demand, or action, liability, judgment, cost, or fee arising out of any claim or order that results from, or is in any manner predicated upon, the release or threatened release of, any hazardous substance, pollutant, or contaminant, or petroleum or petroleum derivative on such real property. Such indemnification may be provided at the same time as the owner of the property donates and transfers the property to the United States.

(b) **BENEFITS AND RISKS.**—In determining whether indemnification under this section is in the public interest, the Secretary shall consider whether the benefits to

the United States of acquiring the real property concerned outweigh the risks associated with the known or potential contamination.

(c) **ADDITIONAL TERMS AND CONDITIONS.**—The Secretary may require such additional terms and conditions in connection with granting indemnification under this section as he considers appropriate to protect the interests of the United States.

(d) **DEFINITION.**—As used in this section, the term “Secretary” means the Secretary of the Interior acting through the Director of the United States Fish and Wildlife Service.

SEC. 8. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Department of the Interior—

- (1) such sums as may be necessary for the acquisition of lands and waters within the Refuge;
- (2) such sums as may be necessary for the development, operation, and maintenance of the Refuge; and
- (3) such sums as may be necessary to carry out the study under section 5(f).

PURPOSE OF THE BILL

The purpose of H.R. 1230 is to provide for the establishment of the Detroit River International Wildlife Refuge in the State of Michigan.

BACKGROUND AND NEED FOR LEGISLATION

The Detroit River, which connects the Upper and Lower Great Lakes, is an international waterway that flows through a metropolitan region of over five million people. The Detroit River originally had extensive marshes along its banks and expansive upland habitat supporting abundant wildlife. However, an estimated 95 percent of the original wetlands have been lost due to development.

This legislation establishes the Detroit River International Wildlife Refuge in the area of the Lower Detroit River defined as the downstream reach of the river from the confluence of the Rouge River to the mouth of Lake Erie. The proposed refuge would protect remaining high-quality fish and wildlife habitats, authorize international efforts to conserve, restore, and manage the fish and wildlife habitats both in Canada and the United States, and encourage cooperation to promote public awareness of the resources of the Detroit River.

The boundaries begin at the point in Michigan directly across from the northernmost point of Ojibway Shores, and extend to the southern boundary of Sterling State Park. This area contains shipping channels, numerous shoals that support dense stands of aquatic plants, and many islands, five of which are Canadian. These numerous distinct channels and other unique habitats attract and sustain more than 29 species of waterfowl and 65 aquatic species. In addition, this area serves as a major migration corridor for a variety of wildlife.

The existing Wyandotte National Wildlife Refuge is included within these boundaries, and will become part of the Detroit River International Wildlife Refuge. All federal property located within the new boundary will fall under the jurisdiction of the Secretary of the Interior. Any private lands within the refuge boundary may only be acquired with consent of the owner through purchase or exchange of land, water, or other interests, including conservation easements.

The Detroit River International Wildlife Refuge will be managed in accordance with the National Wildlife Refuge System Improvement Act of 1997, and provide opportunities for compatible fish and

wildlife dependent recreation. Accordingly, activities such as hunting, fishing, wildlife observation, photography, and environmental education and interpretation, will be priority public uses.

COMMITTEE ACTION

H.R. 1230 was introduced on March 27, 2001, by Congressman John D. Dingell (D–MI) and was referred to the Committee on Resources and within the Committee to the Subcommittee on Fisheries Conservation, Wildlife and Oceans. On June 21, 2001, the Subcommittee held a hearing on the bill. On July 19, 2001, the Subcommittee met to mark up the bill. Congressman Robert A. Underwood (D–GU) offered an amendment that directed the U.S. Fish and Wildlife Service to assess whether any fish and wildlife habitats and aquatic communities in the northern half of the Detroit River could be added to this new refuge in the future. The amendment was adopted by voice vote. The bill, as amended, was then forwarded to the Full Resources Committee by voice vote. On September 12, 2001, the full Resources Committee met to consider the bill. An amendment in the nature of a substitute authored by Congressman Wayne T. Gilchrest (R–MD) was offered that made a number of technical and clarifying changes to the bill. In particular, the amendment re-drafted Section 7 to ensure that any indemnification protection is discretionary, that the public will have an opportunity to comment on any proposed indemnification offers in the future and that the Secretary of the Interior may require additional conditions to protect the interest of the United States. The amendment was adopted by unanimous consent. The bill, as amended, was then ordered favorably reported to the House of Representatives by unanimous consent.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Resources' oversight findings and recommendations are reflected in the body of this report.

CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8, and Article IV, section 3, of the Constitution of the United States, grant Congress the authority to enact this bill.

COMPLIANCE WITH THE HOUSE RULE XIII

1. *Cost of Legislation.*—Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974.

2. *Congressional Budget Act.*—As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not

contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

3. *General Performance Goals and Objectives.*—As required by clause 3(c)(3) of rule XIII, the general performance goal or objective of this bill is to provide for the establishment of the Detroit River International Wildlife Refuge in the State of Michigan.

4. *Congressional Budget Office Cost Estimate.*—Under clause 3(c)(3) of Rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 29, 2001.

Hon. JAMES V. HANSEN,
*Chairman, Committee on Resources,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1230, the Detroit River International Wildlife Refuge Establishment Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Deborah Reis.

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

H.R. 1230—Detroit River International Wildlife Refuge Establishment Act

Summary: H.R. 1230 would establish the Detroit River International Wildlife Refuge in Michigan and Canada. Assuming appropriation of the necessary amounts, CBO estimates that initial costs to establish the new refuge would be between \$13 million and \$21 million over the five years following enactment. Recurring costs to administer the refuge would be about \$0.7 million annually, also assuming appropriation of the necessary amounts. Other costs of implementing H.R. 1230, such as environmental cleanup and restoration, are uncertain but could reach many times the initial investment over several years. Enacting H.R. 1230 would not affect direct spending or receipts; therefore, pay-as-you-go procedures would not apply.

The bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would have no significant impact on the budgets of state, local, or tribal governments.

Major provisions: The Detroit River International Wildlife Refuge would encompass over 5,400 acres of land around the Detroit River, including the existing Wyandotte National Wildlife Refuge. The bill would authorize the U.S. Fish and Wildlife Service (USFWS) to acquire, by donation, purchase, or exchange, land and other interests within the new boundary. In addition to managing federally owned acreage within the refuge, the USFWS could execute cooperative agreements for the management of refuge lands that remain in state, local or private ownership. The agency also would conduct a

study of the north reach of the Detroit River for potential future inclusion in the refuge. To carry out these activities, the bill would authorize the appropriation of whatever sums are necessary. Finally, H.R. 1230 would authorize the Secretary of the Interior to indemnify persons who donate refuge lands to the federal government from any liability or cost due to the presence of hazardous substances or other pollution on this property.

Estimated cost to the Federal Government

The initial \$13 million to \$21 million cost of implementing H.R. 1230 would cover activities such as planning, land acquisition, and basic development. We estimate that planning (including the preparation of conservation plan documents, environmental assessments, and studies) would cost about \$1 million over the first 2 years. Land acquisition costs are uncertain, but would probably be between \$5 million and \$10 million over five years. (CBO expects that the USFWS would not purchase much of the 5,400 acres within the refuge boundary because most of this land is either located in Canada, already protected by government agencies or nonprofit organizations, or badly contaminated with pollutants.)

In addition to these initial costs, we estimate that developing at least one site for visitor and administrative use (including demolition of existing man-made structures and building trails, parking lots, a visitor center, and other facilities) would cost between \$7 million to \$10 million. In addition we estimate that managing the new refuge would increase USFWS operating costs by about \$700,000 annually. All of these costs would be subject to the appropriation of the necessary amounts.

Finally, implementing the legislation could result in significant costs for land restoration, decontamination, and indemnification for current property owners. Such costs are uncertain because they would depend on how much land the USFWS would acquire, the condition of that land for conservation purposes, and the type and extent of contamination present (if any).

Restoration costs

CBO expects that a significant portion of land within the proposed refuge would require some level of restoration. The USFWS would be responsible for all of these costs on any lands it acquires and also could share the cost of restoring nonfederal property within the refuge under cooperative agreements with landowners. The total costs of these activities cannot be estimated in the absence of a land acquisition plan for the refuge and a specific environmental assessment of each parcel. Land restoration costs could be significant, however—the cost of similar work undertaken by the USFWS and by nonprofit organizations has ranged from \$500 to \$1,000 per acre. Restoration activities could include removing old seawalls on riverfront property, demolishing buildings and other facilities at former industrial sites, recreating wetlands, and re-seeding wetlands and grasslands with local plant species.

Decontamination and indemnification costs

While CBO assumes that the USFWS would try to avoid acquiring land for the refuge that is contaminated with hazardous waste or other pollutants, acquisition of such land is authorized by the

bill and could occur. Estimated costs to clean up contaminated sites vary widely: previous cleanup projects at other refuges where the USFWS has discovered contamination have cost the agency anywhere from \$3,000 per acre to over \$1 million per acre. Cleanup activities range from capping contaminants under barriers to more-expensive solutions such as removing or incinerating contaminated soil.

Finally, the federal government could incur significant additional costs if the Secretary of the Interior accepts donations of contaminated land and agrees to indemnify the donors against any potential liability resulting from that contamination. If the donated land is contaminated and the donor was held to be liable, the federal government would ultimately pay the full costs of any judgment awarded because of contamination. Because it is impossible to predict the likelihood or outcome of such a sequence of events, CBO cannot estimate the costs of indemnification.

Pay-as-you-go considerations: None.

Intergovernmental and private-sector impact: The bill contains no intergovernmental or private-sector mandates as defined in UMRA and would have no significant impact on the budgets of state, local, or tribal governments.

Estimate prepared by: Federal costs: Deborah Reis; impact on State, local, and tribal governments: Marjorie Miller; impact on the private sector: Lauren Marks.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW

If enacted, this bill would make no changes in existing law.