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RE: **Reelfoot Lake/Lake Isom National Wildlife Refuge
Draft Comprehensive Conservation Plan and Environmental Assessment**
December 2005 (Comments due January 30, 2006)

Following are comments on the Reelfoot Lake/Lake Isom National Wildlife Refuge Draft Comprehensive Conservation Plan (hereinafter, "Draft Plan") and Environmental Assessment (hereinafter, "EA"). Even though the Draft Plan, the EA, and the Appendices are 210 pages in length, multiple issues and details are omitted. Additionally, inconsistencies pervade throughout the documents. The overriding concern of this commenter is that the proposed Alternative D of the Draft Plan and EA is inconsistent with the primary purpose for which Reelfoot National Wildlife Refuge (NWR) was established.

I. PRIMARY PURPOSE: REELFOOT LAKE NWR WAS ESTABLISHED AS AN "INVIOULATE SANCTUARY" FOR MIGRATORY BIRDS. PROPOSED ALTERNATIVE D OF THE DRAFT PLAN AND EA IS INCONSISTENT WITH THE PRIMARY PURPOSE OF REELFOOT NWR.

As noted in the Draft Plan, Reelfoot NWR was established on August 28, 1941, under the authority of the Migratory Bird Conservation Act (16 U.S.C. § 1534), and pursuant to the terms of the 1941 Lease and Cooperative Agreement between U.S. Fish & Wildlife Service (hereinafter, "USFWS") and the State of Tennessee. (Draft Plan, 27).

The refuge was specifically authorized "... for use as an inviolate sanctuary, or for any other management purpose, for migratory birds" (Migratory Bird Conservation Act), and is '... suitable for (1) incidental fish and wildlife-oriented recreational development, (2) the protection of natural resources, (3) the conservation of endangered species or threatened species ...' (Refuge Recreation Act).
[Draft Plan, 27]

As an "inviolable sanctuary" for migratory birds, any plans for the Refuge and any activities on the Refuge must first and foremost ensure the conservation of migratory birds. USFWS "may not permit recreational uses on a national wildlife refuge unless those uses are first determined to be compatible wildlife-dependent uses." (Appendix V, 146).

- A. USFWS fails to define “inviolate sanctuary. The Draft Plan and EA must explain how each aspect of Proposed Alternative D will ensure the management of Reelfoot NWR as an “inviolate sanctuary” for migratory birds.**

First and foremost, the Reelfoot NWR must be managed for migratory birds. Thus, any management activity must be compatible with the management of the Refuge as an “inviolate sanctuary” for migratory birds. Furthermore, any management activity for purposes other than the conservation of migratory birds, comes secondary to the management of the Refuge as an inviolate sanctuary for migratory birds.

Both the Draft Plan and EA recognize that the primary purpose of Reelfoot NWR is management of the Refuge for migratory birds. In fact, the Draft Plan acknowledges that any use not compatible with the management of the Refuge as an inviolate sanctuary for migratory birds is impermissible, and that all operations and management of the Refuge are to be considered in light of their impact on migratory birds. (Draft Plan 17). Furthermore, the Draft Plan provides that “the refuge’s management priorities must be directed toward providing quality wetland areas that are attractive to migratory birds” (Draft Plan, 18). Despite this positive verbiage, Proposed Alternative D would permit increased consumptive and nonconsumptive uses that admittedly will result in disturbance to migratory birds, nesting migratory birds, and their habitat. (Draft Plan, 20, 95-99). Because of the inconsistency between USFWS’s stated intent, and USFWS’s actual planned activities, it is unclear how Proposed Alternative D meets the mandate for management of the Refuge as an inviolate sanctuary. It is also unclear what USFWS considers to be an “inviolate sanctuary.”

- B. Any approved and permitted “compatible uses” must be secondary and incidental to the use and management of Reelfoot NWR as an inviolate sanctuary for migratory birds. Proposed Alternative D impermissibly prioritizes compatible uses over the primary mandated use of Reelfoot NWR.**

The National Wildlife Refuge Improvement Act (1997), 16 U.S.C. §§ 668dd-668ee, establishes six legitimate “priority public uses”: (1) hunting; (2) fishing; (3) wildlife observation; (4) photography; (5) environmental education; (6) environmental interpretation. These uses have been deemed legitimate secondary and incidental “priority public uses” at Reelfoot NWR. (Draft Plan, 27). However, these secondary and incidental priority public uses cannot take primacy over the primary purpose of the Reelfoot NWR as an inviolate sanctuary for migratory birds. (*See* Refuge Recreation Act: “fish and wildlife-oriented recreational development” are “incidental” to the primary purpose of the Refuge.). Neither is it permissible for these secondary and incidental priority public uses to be put on the same level as the primary purpose of Reelfoot NWR as an inviolate sanctuary for migratory birds. (*Id.*). Proposed Alternative D, however, provides for increased hunting and fishing opportunities, increased wildlife observation and education opportunities, the building of new facilities, etc. As summarized in Table 3, beginning page 95, these activities are anticipated to disturb and pose harms to migratory birds. Even though Proposed Alternative D permits only legitimate priority public uses, too much permitted use will still compromise the management of the Refuge as an inviolate sanctuary. USFWS fails to discuss the impact of current use levels on migratory birds and other wildlife. USFWS also does not address in sufficient detail the impact that expanded use will have on migratory birds and other wildlife. Nor does USFWS discuss the limit of expanded opportunities that will be made available.

The burden is on USFWS to show that Proposed Alternative D only accommodates recreational values “where they are appropriate and compatible with the Congressional mandate for protecting wildlife first.” (Draft Plan, 53). In the current Draft Plan and EA, USFWS does not meet this burden.

- C. Proposed Alternative D provides for expanded consumptive public uses, and the building of new facilities, etc. USFWS must explain how the secondary effects of the planned activities**

will not frustrate the use and management of Reelfoot NWR as an inviolate sanctuary for migratory birds.

Neither the Draft Plan nor the EA discuss the secondary effects (*i.e.*, noise, vibrations, pollution, erosion, roads needed to access logging sites, roads needed to move logging machinery into the target area, etc.), of building new facilities, trails, etc. on migratory birds. It is insufficient for USFWS to dismiss secondary impacts as “temporary,” and therefore of no significance, because many of these secondary impacts are known to have lasting impacts on crucial wildlife habitat.

II. LAND ACQUISITION: USFWS STATES A NEED FOR CONTIGUOUS SWATHS OF LAND (ESPECIALLY BOTTOMLAND HARDWOOD FORESTS) TO SUPPORT MIGRATORY BIRDS; HOWEVER, PROPOSED ALTERNATIVE D PLANS TO INCREASE BOTH CONSUMPTIVE AND NONCONSUMPTIVE ACTIVITIES ON NEWLY ACQUIRED LANDS. PROPOSED ALTERNATIVE D DOES NOT SUPPORT THE NEED—AND JUSTIFICATION—IDENTIFIED BY USFWS FOR CONTIGUOUS FORESTS.

As of 1978, only 5 million acres of isolated patches of forested wetlands remained in the Mississippi Alluvial Valley (MAV). (Draft Plan, 39). Originally, there was approximately 24 million acres of contiguous forested wetlands. (Id.). USFWS cites to the need to create contiguous forested lands for the enhancement of wildlife habitat, as their justification for expanding the boundary of Reelfoot NWR. However, USFWS concurrently plans for increased use opportunities that will extend into newly acquired lands.

- A. USFWS justifies its boundary expansion and land acquisition plan, by pointing to the need to create contiguous forested lands for the management of the Reelfoot NWR as an inviolate sanctuary for migratory birds. Proposed Alternative D, however, incongruously provides for new and expanded consumptive and nonconsumptive uses in these newly acquired lands.**

Proposed Alternative D would expand the boundary of Reelfoot NWR from its current 10,428 acres (*see* Figure 6), to the 1989 approved boundary of 18,015 acres. (Draft Plan, 25). The majority of the additional 7,587 acres to be acquired are located in Kentucky. (Id.).

Both the Draft Plan and EA recognize that a considerable amount of critical habitat has been destroyed. In an effort to prevent further harm to migratory birds and other wildlife, USFWS proposes to extend the Refuge boundaries, and hence, expand their protection of migratory birds and other wildlife and their critical habitat. However, Proposed Alternative D would increase use opportunities, and would extend these increased activities into newly acquired lands. Neither the Draft Plan nor the EA explain how increased use activities on both existing and newly acquired Refuge land will be protective of migratory birds. In fact, the Draft Plan and EA acknowledge that increased public use near bird nesting and foraging sites will be disruptive and possibly detrimental. For example, Table 3, beginning on page 95, specifies that increased uses/activities may disturb even nesting migratory birds! A Comprehensive Conservation Plan and EA must address and explain how choosing to increase consumptive and nonconsumptive activities on Reelfoot NWR, which admittedly will pose harms to migratory birds and other wildlife, is consistent with USFWS’s mandate to manage Reelfoot NRW as an inviolate sanctuary for migratory birds. Furthermore, the Reelfoot Comprehensive Conservation Plan and EA must detail the anticipated effects that permitting new and expanded uses in newly acquired land (needed for critical habitat) will have on migratory birds, other wildlife, and especially struggling wildlife populations.

USFWS also fails to address the secondary impacts of new and expanded uses on the Refuge, on migratory birds and other wildlife. Furthermore, USFWS must discuss how much of the newly acquired land will be permitted for increased use activities, and to what extent uses will be permitted. Limits on permitted activities are not discussed in either the Draft Plan or the EA. The burden is on USFWS to

demonstrate that Proposed Alternative D will be supportive of USFWS's primary management responsibilities of Reelfoot NWR.

B. The Draft Plan and EA give little detail of the practical consequences of boundary expansion.

Currently, no official map of the metes and bounds of the Reelfoot NWR exist. USFWS has had since 1941 to create such a map. In light of USFWS's planned boundary expansion, it is more than ever incumbent upon USFWS to create an official boundary map of the Reelfoot NWR, so as to allow proper management of the Refuge, and so as to allow the public to properly comment on the Draft Plan and EA.

Furthermore, it is unclear whether the new and expanded use opportunities included in Proposed Alternative D, will be dependant on the acquisition of new land. This fact is important to determine the permissible concentration of consumptive and nonconsumptive uses in a given area that will truly have no detrimental impact on migratory birds and other wildlife.

Additionally, USFWS should discuss whether the Reelfoot NWR will be eligible for wilderness designation after the proposed boundary expansion is complete.

C. The boundary expansion of Reelfoot NWR, and the land acquisition plan proposed in Proposed Alternative D was created without the involvement and consultation of local officials and affected property owners.

The Draft Plan and EA simply state that expansion to the 18,015 acre boundary line was approved in 1989. (Draft Plan, 25). No explanation is given as to how this number was reached, who voted to approve this expansion, and the rationale for including certain lands. (Draft Plan, 37).

Furthermore, inadequate notice was given to local citizens and officials that the Draft Plan and EA were available for review and comment. It is the knowledge of this commenter that many private property owners, whose lands were slated to be acquired, were not given notice of the Draft Plan and EA. Also, Obion County officials were not aware of USFWS's plan to buy several thousand acres in Obion County and to take the lands off of the County's tax rolls. The only "public notice" of the Draft Plan and EA, and notice of the public hearing which took place on January 17, 2005 in Ellington Hall at Reelfoot Lake State Park visitor center, appeared in a small announcement published in the Dyersburg State Gazette. Additionally, even though the bulk of lands that USFWS planned to acquire were located in Kentucky, affected counties and landowners in Kentucky were not given notice of the Draft Plan and EA, nor were these counties and landowners given notice of the public hearing in Tennessee. (Draft Plan, 25).

Finally, both the Draft Plan and EA fail to discuss the impact that the expiration of the 1941 lease in 2016 will have on this proposed Comprehensive Conservation Plan, and proposed land acquisition plan.

III. CHEMICAL CONTAMINANTS/HERBICIDES: HERBICIDE USE ON REELFOOT NWR HAS POSED A PROBLEM IN THE PAST, AND CONTINUES TO POSE A THREAT TO MIGRATORY BIRDS AND OTHER WILDLIFE. BOTH THE DRAFT PLAN AND THE EA FAIL TO DISCUSS IN ANY DETAIL THE CURRENT AND PLANNED FUTURE USE OF HERBICIDES, AND THEIR IMPACT ON MIGRATORY BIRDS AND OTHER WILDLIFE.

A. Because USFWS must manage Reelfoot NWR as an inviolate sanctuary for migratory birds, any Comprehensive Conservation Plan and EA must address the impact of herbicide use on migratory birds and other wildlife on the Refuge.

The organic statutes and documents creating Reelfoot NWR mandate that the Refuge be managed as an inviolate sanctuary for migratory birds. Thus, it is incumbent upon USFWS to ascertain the impact of herbicides/pesticides—used both to control noxious plants, and to maintain public use facility areas—

on migratory birds and on other terrestrial and aquatic life. Of particular concern to this commenter, is the fact that USFWS has stated in other documents that there is a known pesticide problem at Reelfoot Lake; however, even though USFWS has acknowledged that pesticide use has been a problem in the past at Reelfoot NWR, and even though it has been made evident that residual pesticides still reside in soils at Reelfoot NWR, neither the Draft Plan nor the EA address steps USFWS will take in the next fifteen years to ensure that residual pesticides and pesticide use does not compromise the USFWS's ability to manage the Refuge as an inviolate sanctuary for migratory birds. Furthermore, neither the Draft Plan nor the EA discuss the impact of herbicides from increased public use activities on migratory birds. Proposed Alternative D should incorporate plans to study the effect that pesticide use has had on migratory birds. Proposed Alternative D should also incorporate plans to monitor pesticide use on and affecting Reelfoot NWR.

- B. USFWS has a duty to coordinate with the Tennessee Wildlife Resources Agency (TWRA) and the Tennessee Department of Environment and Conservation (TDEC), who also manage portions of Reelfoot Lake, to avoid frustrating USFWS's ability to manage Reelfoot NWR as an inviolate sanctuary for migratory birds.**

Pursuant to the 1941 Lease and Cooperative Agreement between USFWS and the State of Tennessee, USFWS bears sole management responsibility over the National Wildlife Refuge at Reelfoot Lake. Also, where lands included in the Refuge overlap with either the state Wildlife Management Area (WMA) or the State Natural Area, the more restrictive law governing the use and management of the overlapping lands will control. (T.C.A. § 11-14-113).

Although thousands of acres of the Reelfoot NWR are located within the boundary of other state managed lands, neither the Draft Plan nor the EA discuss the land overlap. This is problematic considering that USFWS acknowledges that much of the harm to the Refuge originates from outside sources. (EA, 91-92). Additionally state management practices for the WMA and the State Natural Area are often contrary to the purpose and mandate of the Refuge to be managed as an inviolate sanctuary for migratory birds.

The Draft Plan and EA are seriously deficient in that neither document indicates an effort or an intention on the part of USFWS to coordinate with TWRA and TDEC to address the problem of "outside" sources harming the Refuge, and measures to stop the harms. Furthermore, Proposed Alternative D fails to mention any plans to identify the specific sources of contamination/harm to the Refuge, nor do the documents plan for future management. (EA, 91-92).

- C. The Draft Plan and EA do not discuss in any detail the use of pesticides/herbicides at Reelfoot NWR, and the impact of pesticide/herbicide use on migratory birds and other wildlife.**

The use of pesticides/herbicides at Reelfoot NWR and on other parts of the Reelfoot Lake have a significant impact on migratory birds, as well as terrestrial and aquatic wildlife. Not only are migratory birds and other wildlife at risk of ingesting pesticides/herbicides, but their habitats are also altered and polluted by these chemicals. USFWS has recognized that pesticide/herbicide use at Reelfoot has, and may still pose a problem. In fact, USFW has not permitted the use of contact herbicides since the 1970's—citing problems with illegal pesticide use, residual pesticides detected in the soils, etc. However, neither the Draft Plan nor the EA address the reasons for this ban, or that there is even a ban, or that there will be continued restrictions on types of pesticides/herbicides used at Reelfoot NWR.

The Draft Plan and EA are deficient, because the documents do not discuss the impact of pesticide/herbicide use at Reelfoot NWR and the rest of Reelfoot Lake and surrounding lands. The Draft Plan and EA are further deficient, because the documents fail to discuss the consequences of pesticide/herbicide use on migratory birds and other fish and wildlife.

At a minimum, Proposed Alternative D should include plans for additional testing to conclude that hazards from OCPs, PCBs, and PAHs do not pose a threat to the fish and wildlife of Reelfoot NWR.

(Draft Plan, 38; *see also* Shea et al. 2001 study cited in the Draft Plan). Proposed Alternative D should also follow-up on the recommendation of the 2001 North Carolina study which concluded that future testing was needed in order to accurately determine the risks associated with CUPs (Current Use Pesticides, *e.g.*, 2-4-D which have been used extensively at Reelfoot Lake). (Id.). (This commenter also notes that the 2001 North Carolina (Shea et al.) was not included in the Appendices, for public comment and review.).

Finally, neither the Draft Plan nor the EA discuss the impact of increased cooperative farming in and around the Refuge, and the effect that increased pesticide use will have on migratory birds.

IV. CONTROL OF PEST PLANTS: NEITHER THE DRAFT PLAN NOR THE EA DISCUSS PLANS FOR PEST PLANT MANAGEMENT, EVEN THOUGH USFWS HAS MANAGEMENT AUTHORITY OVER PEST PLANT PROGRAMS AT REELFOOT LAKE.

A. The Draft Plan and EA fail to discuss in any detail the extent to which noxious and invasive plant species will be controlled at Reelfoot NWR.

Pursuant to the 1941 Lease and Cooperative Agreement (relating to USFWS's duty to control the water levels of Reelfoot Lake, and the agency's duty to manage the Refuge as an inviolate sanctuary for migratory birds), USFWS was granted authority over the control and management of pest plants at Reelfoot Lake. USFWS's authority to manage the pest plant program extends even outside of the boundaries of the Reelfoot NWR, to encompass the entire Reelfoot Lake. Therefore, it is a grave omission for the Draft Plan and EA to fail to discuss in any detail USFWS's management plans to control pest plants at Reelfoot Lake.

Additionally, the Draft Plan and EA only identify (1) hybrid cocklebur and (2) hemp sesbania, as "[n]oxious and/or invasive species known to present problems on the refuges. . . ." (Draft Plan, 32). The Draft Plan and EA do not address whether these will be the only plants targeted for control. Also, it is a well known fact that the State routinely permits any and all plant species located in an approved site area, to be targeted for extermination. Since there is a considerable overlap between Reelfoot NWR lands and state managed lands and waters, any Comprehensive Conservation Plan and EA (or EIS) must address management plans for overlapping lands and waters, and plans to ensure compliance with stricter NWR laws and regulations.

B. The Draft Plan and EA fail to discuss in any detail plans for control of certain vegetation.

The Draft Plan and EA fail to discuss in any detail plans for control of certain vegetation, stating only that: "vegetation management and control" decisions will be made "based on resource goals and refuge purposes, with due consideration for all environmental factors." (Draft Plan, 18). The final Comprehensive Conservation Plan and EA (or EIS) should detail the methods that will be used to control "noxious" or "invasive" species, and the impact that the choice control methods will have on migratory birds and other fish and wildlife.

V. ENDANGERED AND THREATENED SPECIES: USFWS MUST DO MORE TO PROTECT ENDANGERED AND THREATENED SPECIES.

A. USFWS will be unable to prevent disturbance of Bald Eagle nests, because USFWS does not have information locating all active nests.

USFWS has only documented one active Bald Eagle nest on both Reelfoot NWR and Lake Isom NWR, but states that other nests might exist. (EA, 87). Proposed Alternative D provides for increased

opportunities for consumptive and nonconsumptive uses on the Refuge that the Draft Plan and EA have identified will disturb nesting migratory birds. The burden is on USFWS to show that the data that the agency depended on to conclude that new and expanded use opportunities would bear no significant impact on nesting Bald Eagles is current and accurate. The Draft Plan and EA do not discuss when the last survey was completed, or how extensive the survey was.

- B. USFWS has done nothing to assess the impact of pesticides/herbicide use on the (1) threatened Bald Eagle, (2) the endangered Interior Least Tern, (3) the endangered Pallid Sturgeon, nor (4) other plant or animal species.**

USFWS has done nothing to assess the impact of pesticides/herbicide use on the (1) threatened Bald Eagle, (2) the endangered Interior Least Tern (which is regularly observed feeding on Refuge lands), (3) the endangered Pallid Sturgeon, nor (4) other plant or animal species. (Draft Plan, 17). Proposed Alternative D should include plans to study the impact of pesticide/herbicide use on these threatened and endangered species, as well as other plant and fish and wildlife species at Reelfoot. The final Comprehensive Conservation Plan and EA (or EIS) should discuss the effect of pesticide/herbicide use on these threatened and endangered species, as well as other plant and fish and wildlife species at Reelfoot.

- C. USFWS's conclusion that there will be no significant negative impact on migratory birds (especially the Bald Eagle and Interior Least Tern) is premature and unsupported.**

In the Draft Plan and EA, USFWS concludes that there will be no significant negative impact on migratory birds. However, aspects of Proposed Alternative D will result in disturbance to migratory birds, as consumptive and nonconsumptive opportunities and public uses increase on the Refuge. (*See e.g.*, Appendix V, 153 (increased fishing opportunities may disturb nesting bald eagles)). It should be clear from the above discussion and comments that USFWS has not studied the effects of pesticide use on migratory birds. It should also be clear from the above discussion and comments that the Draft Plan and EA insufficiently discuss the limits and extent of planned increased use opportunities. Both of these actions are required before USFWS can conclusively state that migratory birds will not be negatively impacted by increased use opportunities, and pesticide use, etc. on the Refuge. Neither the Draft Plan nor the EA discuss the extent of disturbance and detriment to migratory birds that is expected with the planned increased public uses of the Refuge. Furthermore, USFWS does not explain how increased disturbance to migratory birds and/or their habitat is consistent with USFWS's mandate to manage Reelfoot NWR as an inviolate sanctuary for migratory birds. It seems that USFWS is no longer treating "priority public uses" as "incidental" to the primary purpose and mission of the Reelfoot NWR to establish an inviolate sanctuary for migratory birds. It also seems that USFWS's Draft Plan and EA are placing the agency's mandate to protect migratory birds and their necessary habitats, either on the same level as other public uses, or else on a lower level than other public uses (such as increased hunting and fishing opportunities).

VI. WATER LEVEL MANAGEMENT: THE COMPREHENSIVE CONSERVATION PLAN AND EA MUST ADDRESS MANAGEMENT OF THE REELFOOT NWR, IN LIGHT OF THE FACT THAT THE 1941 LEASE UNDER WHICH USFWS EXERCISES EXCLUSIVE CONTROL OVER WATER LEVEL MANAGEMENT AT REELFOOT LAKE, WILL LAPSE BEFORE THE 15 YEAR PERIOD THAT THE DRAFT PLAN AND EA COVER ENDS.

USFWS exercises exclusive control over water level management at Reelfoot Lake, pursuant to the terms of the 1941 Lease and Cooperative Agreement which will lapse in 2016, before the fifteen year

period that the Draft Plan and EA cover ends. It is inexplicable that the Draft Plan and EA fail to discuss the lapsing of the 1941 Lease.

Neither the Draft Plan nor the EA discuss whether USFWS plans to hand over management of Reelfoot Lake water levels to the State of Tennessee (thus requiring an EIS, as stated by the 6th Circuit in Bunch v. Hodel, 793 F.2d 129 (6th Cir. 1986)), or whether USFWS intends to take steps to actuate the preferred alternative of the 1989 USFWS final EIS: dynamic water level fluctuation (with periodic major draw downs). (Draft Plan, 21, 39, 40, 48). Both the Draft Plan and the EA fail to even cite—moreover discuss—the important 1986 6th Circuit decision, Bunch v. Hodel, which would impact any comprehensive management plan that USFWS might develop. There is also no discussion on how this Draft Plan and EA comport with the fifty-year management plan for Reelfoot Lake. (Draft Plan, 39). Finally, the Draft Plan on page 21, refers the reader to Appendix VI for a more in depth explanation of water level management as it concerns the Draft Plan. However, Appendix VI does not sufficiently lay out how USFWS proposes to manage water levels for the next fifteen years, and the impact such management plans will have on migratory birds.

VII. LOGGING: PROPOSED ALTERNATIVE D'S FOREST MANAGEMENT PLAN IS INCONGRUOUS WITH THE MANDATE TO MANAGE REELFOOT NWR AS AN INVIOATE SANCTUARY FOR MIGRATORY BIRDS.

USFWS proposes to “manipulate forest stands [in order] to provide diverse habitat for a wide variety of wildlife species.” (Appendix V, 164). Proposed Alternative D includes plans for timber harvesting of target species, in order to promote the growth of new red oak stands. (Id.). However, based on the analysis provided in the Draft Plan and EA, and the Appendices, it is unclear the extent to which USFWS plans to harvest timber. Likewise, it is unclear that USFWS's intent to promote the growth of red oak stands will be beneficial for the over 250 species of birds known to occur on Reelfoot NWR, as well as the other wildlife and fish and plant species that may occur within the forest. (Draft Plan, 29).

- A. The prolific deforestation and destruction of critical habitat that has occurred on and near Reelfoot NWR, suggest that logging activity should be prohibited, unless extensive studies can support the need for targeted harvesting, and unless USFWS provides a detailed plan for logging.

Originally, there were 24 million acres of forested wetlands in the Mississippi Alluvial Valley (MAV). (Draft Plan, 39). By 1978, there were only approximately 5 million acres of isolated patches remaining. (Id.). Large scale clearing and fragmentation of bottomland hardwood forests have resulted in accelerated siltation and loss of wildlife habitat. (Id.). This catastrophic loss of forest area and critical migratory bird habitat, creates a significant presumption that any additional logging in the Reelfoot NWR and surrounding areas must be prohibited. Furthermore, in the Draft Plan and EA, USFWS highlights the need to expand the boundary of the Reelfoot NWR, for the purpose of creating contiguous swaths of forest land, and ultimately enhancing critical habitat for migratory birds. The burden is on USFWS to show that targeted harvesting of timber to promote the growth of new red oak stands will be beneficial for the documented 250+ species of birds known to occur on Reelfoot NWR (including the 70+ species of forest breeding birds known to occur in bottomland hardwood habitat), as well as the other wildlife and fish and plant species that may occur within the forest. (Draft Plan, 29; Appendix VI, 202). Neither the Draft Plan nor the EA discuss studies USFWS have conducted to conclude that promoting red oak and other “favored trees” will be beneficial or not detrimental for the 70+ species of forest breeding birds, the 180+ species of other migratory birds, not to mention, other species that may inhabit forests targeted for “selective” logging. (Appendix V, 164). Without having conducted studies on the need to increase red wood oak in the Refuge area, USFWS cannot conclude that this planned logging activity is supportive of forest restoration and the Refuge as an intended “anchor” for biological diversity. (Draft Plan, 11).

Furthermore, both the Draft Plan and the EA fail to discuss the extent that logging is already being permitted, and the extent that logging will be permitted on the Refuge (and on surrounding lands). The extent of existing and intended logging activity is important for assessing whether targeted harvesting will be supportive of USFWS's directive to manage Reelfoot NWR as an inviolate sanctuary for migratory birds.

B. USFWS fails to discuss in sufficient detail the anticipated impacts of logging, and the approved methods that will be utilized.

The Draft Plan and EA should discuss the methods of logging (*e.g.*, clear-cutting, fire, chemical controls, etc.) that will be approved for use by successful private bidders. (Appendix V, 164). The Draft Plan and EA should also discuss the secondary effects of logging (*i.e.*, noise, vibrations, pollution, erosion, roads needed to access logging sites, roads needed to move logging machinery into the target area, etc.), and the impact these secondary effects will have migratory birds.

VIII. CUMULATIVE IMPACTS: THE DRAFT EA CONCLUSIVELY STATES—WITHOUT GIVING ANY SUPPORTING ANALYSIS—THAT PROPOSED ALTERNATIVE D WILL RESULT IN NO SIGNIFICANT CUMULATIVE IMPACT. USFWS MUST SUBSTANTIATE THEIR CONCLUSION.

USFWS gives no analysis supporting the agency's conclusion that there will be no significant cumulative impacts from Proposed Alternative D. (EA, 91-92). USFWS must substantiate this conclusion, however, especially in light of the fact that the Draft EA acknowledges that many threats to the Refuge come from outside of the Refuge, and that planned increased use opportunities will likely result in disturbance to migratory birds. ((Draft Plan, 20; EA, 92, 95-99).

IX. TERMINATION OF THE 75-YEAR LEASE: THE DRAFT PLAN AND EA FAIL TO DISCUSS WHAT WILL HAPPEN IN 2016 WHEN THE 1941 LEASE CREATING REELFOOT NWR TERMINATES.

It is a grave oversight that neither the Draft Plan nor the EA even mention that USFWS's lease of majority portions of the Reelfoot NWR will terminate in 2016. Technically speaking, once the 1941 Lease and Cooperative Agreement creating Reelfoot NWR expire, management responsibility of what is now Reelfoot NWR could revert back to the State. In creating a Comprehensive Conservation Plan and EA that extends beyond 2016, USFWS must discuss its intention for retaining management responsibility of Reelfoot NWR lands. USFWS must also discuss whether the agency intends to deviate from its original mandate to manage Reelfoot NWR as an inviolate sanctuary for migratory birds.

Furthermore, other management duties and responsibilities were delegated to USFWS under the terms of the 1941 Lease and Cooperative Agreement. These duties include the exclusive right to manage Reelfoot Lake's water level, as well as implementation of a "pest plant program" to control pest plants for the benefit of migratory birds. Neither the Draft Plan nor the EA specifically address these other duties. The Draft Plan and EA are also silent on the issue of whether USFWS intends to retain all of the management duties and responsibilities delegated to the agency under the 1941 Lease and Cooperative Agreement. In the final Comprehensive Conservation Plan and EA, USFWS must address the lapsing of the lease.

Also, the 1941 Lease and Cooperative Agreement is referenced on page 25 and page 48 of the Draft Plan, and is said to be included in Appendix VIII; however, Appendix VIII does not exist in the document made available to the public.

X. PUBLIC NOTICE/INVOLVEMENT: INADEQUATE NOTICE WAS GIVEN TO LOCAL CITIZENS AND OFFICIALS THAT THE DRAFT PLAN AND EA WERE AVAILABLE FOR REVIEW AND COMMENT, AND THAT A PUBLIC HEARING WAS SCHEDULED.

This commenter has confirmed that many local landowners were not aware of, nor were they given written notice of this Draft Plan and EA. These same landowners were also unaware of the public hearing which took place on January 17, 2005 in Ellington Hall at Reelfoot Lake State Park visitor center. Additionally, inadequate notice and insufficient opportunity for involvement in the land acquisition planning process was given to at least one identified Obion County official, who was unaware of USFWS's plan to buy several thousand acres in Obion County and to take those lands off of the County's tax rolls. Furthermore, affected landowners in Kentucky were not given notice of the Draft Plan and EA, and the public hearing, even though most of the additional lands to be acquired are located in Kentucky. (Draft Plan, 25). The only public notice announcing the January 17 meeting, that this commenter is aware of appeared in a small announcement published in the Dyersburg State Gazette. At the very least, all riparian landowners—in both Tennessee and Kentucky—should have been contacted.

XI. OTHER ISSUES:

A. Off-road Vehicles (ORVs)

The Draft Plan and EA do not discuss in sufficient detail the impact of ORVs use on migratory birds. Although only approximately three-to-five disabled hunters currently apply for ORV permits, the Draft Plan and EA do not discuss whether USFWS plans to limit the number of ORV permits that will be issued to disabled persons, or whether USFWS plans to limit the frequency which these permits can be used by an individual. (Appendix V, 147). There is also no discussion concerning which trails will be "designated" as acceptable for ORV use, and it is unclear if USFWS has ever assessed the length of time needed for critical habitat to regenerate, once an ORV has made its path.

B. Management of overlapping lands and waters

As discussed above, neither the Draft Plan nor the EA discuss the management of lands and waters that are both within the NWR and within other state managed areas. Considering that there are approximately 8,000 acres of overlapping lands and waters, and that USFWS has identified outside harms as posing a threat to Reelfoot NWR, the Comprehensive Conservation Plan and EA must discuss the management of overlapping lands and waters, and the management plans the agency intends to enact to ensure that USFWS's directive to manage Reelfoot NWR as an inviolate sanctuary for migratory birds will not be frustrated.

A final Comprehensive Conservation Plan and EA should also specify exactly what portions of Reelfoot NWR overlap with other designated lands and waters.

C. Permits

Proposed Alternative D involves new and expanded uses of Reelfoot NWR, and the building of new facilities. Many of these planned uses and activities will require federal and state permits. (*See State ex rel. Cates v. West Tennessee Land Co.*, 158 S.W. 746 (Tenn. 1913) (the Supreme Court of Tennessee held that Reelfoot Lake waters were "navigable" waters.)). Also, Reelfoot Lake has been designated an Outstanding Natural Resource Water (ONRW), and thus receives Tier III protections. (T.N.R. § 1200-4-3-.01 et seq.). The Comprehensive Conservation Plan and EA must discuss whether Proposed Alternative D activities will be permitted on an ONRW.

D. Consultation: cultural/historic resources

Under § 106 of the rules and regulations implementing the National Historic Preservation Act (NHPA), federal agencies are required to consult with federally recognized Native American tribes when Native American remains or cultural/historic artifacts are identified on federal land, or lands managed by federal agencies. Even though the Draft Plan and EA state that the Reelfoot/Lake Isom NWR area is likely rich in prehistoric and historic cultural resources, and that two limited surveys have unearthed prehistoric artifacts, Proposed Alternative D contains no plans to consult with Native American tribes.

Furthermore, Proposed Alternative D includes plans to undertake an archaeological survey of parts of the Refuges, if funds become available. However, in the meantime, neither the Draft Plan nor the EA discuss what steps will be taken to ensure that cultural/historic resources are not destroyed during the planned building of new facilities, and plans for increased public use of the Refuge.

E. Limited alternatives considered

Alternative A: No Action

Alternative B: Public Use Emphasis

Alternative C: Habitat Management Emphasis

Alternative D: Balanced Public Use and Habitat Management (*the proposed action)

Because the Reelfoot Lake NWR must be maintained as an inviolate sanctuary for migratory birds, Alternative B (“Public Use Emphasis”) was never really a viable option, because Alternative B elevated public uses above the management of the Refuge as an inviolate sanctuary for migratory birds. It is disconcerting then, that Proposed Alternative D integrates portions of Alternative B. For example, the EA admits that increased hunting opportunities may have negative impacts on migratory bird target population objectives. (EA, 97 (“Table 3: Comparison of environmental consequences of management alternatives”). This is impermissible and inconsistent with the primary purpose for which Reelfoot Lake NWR was established. The onus is on USFWS to explain how enhancing certain public uses will not compromise the mission and primary purpose of the Reelfoot Lake NWR as an inviolate sanctuary for protection of migratory birds.

Final thoughts:

As proposed, Alternative D will likely have a significant impact on migratory birds and other fish and wildlife, as well as plant species. To fully consider the impact of USFWS’s proposed actions, USFWS should draft an Environmental Impact Statement (EIS). In its current state, the Draft Plan and EA do not support a Finding of No Significant Impact (FONSI).