Statement of the George Wright Society on H.R. 901, the "American Land Sovereignty Protection Act"

Submitted for Inclusion in the Hearing Record to the House Committee on Resources, June 10, 1997

[Ed. note: For the second year in a row, the GWS has offered written testimony to Congress on legislation proposed in the U.S. House of Representatives that would gut American participation in the World Heritage Convention and the UNESCO's biosphere reserve program. This year's incarnation, the "American Land Sovereignty Protection Act" (H.R. 901), came up for a hearing on June 10. This legislation, as drafted, would erect cumbersome roadblocks and add layers of Congressional approvals to any future World Heritage nomination, would retroactively dismantle the existing biosphere reserve designations in the United States, would require "economic impact statements" for new World Heritage nominations, and so forth. The following statement was drafted by the GWS in response. *For more on H.R. 901, see Tommy Gilbert's "Box 65" essay in this issue.* In addition, we note here that GWS member Tom Cobb, wearing his hat as president of the Association for the Protection of the Adirondacks, testified against H.R. 901 at a field hearing on the bill held in early May in upstate New York. Our thanks go to Tom for standing up for these important programs.]

The George Wright Society (GWS) is a nonprofit, nonpartisan professional association of researchers, resource managers, and administrators who work in natural and cultural parks, reserves, and other protected areas. Our purpose is to promote better protection and management of protected areas through research and education. The GWS would like to submit, for the hearing record, the following statement on H.R. 901.

Our central comment on the proposed legislation is that it would needlessly and severely hinder U.S. participation in the two pre-eminent international protected area programs: the biosphere reserve component of UNESCO's Man and the Biosphere (MAB) Program, and the World Heritage Convention, whose secretariat is also hosted by UNESCO. Because the two programs are fundamentally different— the World Heritage Convention is an international treaty to which the U.S. is a State Party, while the MAB's biosphere reserve program is entirely voluntary—we would like to divide our comments into four sections: comments specific to the World Heritage Convention, comments

specific to biosphere reserves, comments on Section 5 of the proposed legislation, and general comments on the proposed legislation.

Comments Specific to the World Heritage Convention

The Convention for the Protection of the World Cultural and Natural Heritage, popularly known as the "World Heritage Convention," was completed on November 16, 1972. The United States ratified the Convention on December 7, 1973—one of the first countries to do so. The Convention is intended to recognize, and give sovereign States additional means to protect, the world's most outstanding protected natural areas and cultural sites and monuments. As the Convention preamble states: "Parts of the cultural or natural heritage are of outstanding interest and therefore need to be preserved as part of the world heritage of mankind as a whole." Sites inscribed on the World Heritage List must, therefore, meet the highest standards of significance so as to be of "outstanding universal value."

Obligations Imposed by the Convention. The fundamental commitment of State Parties is given in Article 4: "Each State Party to this Convention recognizes that the duty of ensuring the identification, protection, conservation, presentation and transmission to future generations of the cultural and natural heritage referred to in Articles 1 and 2 and situated on its territory, belongs primarily to that State. It will do all it can to this end...." Note that this does *not* imply the abrogation of any existing laws within the sovereign States; rather, it commits the State Parties to seek the maximum protection for these sites under their respective legal systems. Certainly the Convention encourages State Parties to augment protective legislation where needed, but it does not dictate legal mechanisms for protection. Thus the basic thrust of the Convention is to commit State Parties to maximum protection of their World Heritage Sites. How they achieve that protection is a sovereign matter. Significantly, nothing in H.R. 901 is aimed at increasing the U.S. government's ability to protect our World Heritage Sites. Rather, the bill seeks to impose roadblocks to our effective participation in the treaty.

Sovereignty and World Heritage Designations. Article 3 of the Convention states that "it is for each State party to this Convention to identify and delineate the different properties situated on its territory" to be considered for inclusion on the World Heritage List. Thus, all World Heritage properties in the United States were proposed by the U.S. government, not by the United Nations or any other body. (It should be noted that World Heritage nominations have originated under both Democratic and Republican administrations.)

Furthermore, Article 6 of the Convention states: "Whilst fully respecting the sovereignty of the States on whose territory the cultural and natural heritage mentioned in Articles 1 and 2 is situated, and without prejudice to property rights provided by national legislation, the States Parties to this Convention

recognize that such heritage constitutes a world heritage for whose protection it is the duty of the international community as a whole to co-operate." This statement deserves careful analysis. First, it reiterates the primacy of national sovereignty with respect to the Convention. Second, it explicitly states that each State Party's system of property rights will be respected, regardless of the obligations signatory countries undertake when they ratify the Convention. Third, it states the international context of cooperation under which the Convention is carried out. When the United States ratified the Convention, it obligated our nation to cooperate with the other State Parties, the Convention Secretariat, ICOMOS, IUCN, and other qualified international bodies to protect World Heritage properties within the United States. Of course places such as Yellowstone are first and foremost the heritage of the United States and its people. But when we assent to their recognition as being part of the world's heritage as well, this surely does not diminish their value to the American people; rather, it augments and enhances it. Through the ratification of the Convention, and subsequent nominations of properties for consideration—all of which were freely undertaken—our nation has recognized that we can only protect this heritage by actively cooperating with the international community (just as other countries recognize that they must cooperate with the United States to protect their World Heritage Sites.)

This gets to the philosophical heart of the Convention: namely, that protection of the world's most outstanding natural and cultural sites must occur within an international cooperative framework. Every professional organization concerned with the management of natural parks and cultural sites agrees with this. It is simply impossible to achieve lasting protection in isolation from extranational events. Obviously, many environmental impacts are international in scope. Additionally, the increasing integration of the global economy and the rise of international tourism are changing the socioeconomic conditions under which all natural and cultural protected areas, wherever situated, operate.

What does international cooperation under the terms of the Convention mean? Article 7 reads: "For the purpose of this Convention, international protection of the world cultural and natural heritage shall be understood to mean the establishment of a system of international co-operation and assistance designed to support States Parties to the Convention in their efforts to conserve and identify that heritage." The system is designed not to usurp States Parties' efforts to conserve natural and cultural heritage, but to *assist* them. The functions of the Convention are not at all coercive. In fact, the Convention is an outstanding example of constructive international cooperation.

List of World Heritage in Danger. It is apparent that the proposed legislation has been drafted partly as a response to the New World Mine–Yellowstone controversy, so the GWS would like to specifically address some of the issues

surrounding this. Article 11, Paragraph 4 of the Convention establishes a "List of World Heritage in Danger," which is defined as "a list of the property appearing in the World Heritage List for the conservation of which major operations are necessary and for which assistance has been requested under this Convention." The list may include only those World Heritage Sites "threatened by serious and specific dangers," including the threat of "large-scale public or private projects." The New World Mine project clearly fell into this category of potential threat. Therefore, the United States was not only right to bring the mine project to the attention of the World Heritage Committee for possible inclusion on the List of World Heritage in Danger: we were legally obligated to.

The fact that Yellowstone was eventually included on the Danger List is, in our opinion, a sign that the Convention is working properly. The process has been caricatured as an exercise of outside self-appointed experts coming in and dictating a course of action to the U.S. government. In fact, the listing of Yellowstone was the result of a careful deliberative process and represents the best judgment of a distinguished international panel of professionals as to the risk posed by the mine project. The GWS believes that the listing of Yellowstone was entirely justified on the basis of sound information. This is precisely the role objective science and scholarship should play under the terms of the Convention (and in the analysis of threats to protected areas in general). The Convention's peer-review process is a source of valuable *additional* information. It should be emphasized that this information is *not* intended to be *determinative*; it is up to the State Party to decide on how it will respond to uphold its obligations under the Convention.

Furthermore, under Article 27, Paragraph 2, it is incumbent upon the U.S. government as a State Party "to keep the public broadly informed of the dangers threatening this heritage and of the activities carried on in pursuance of this Convention." Thus the Convention's workings are not secretive, but transparent.

Economic Impact Requirements. Section 3 of H.R. 901, which would require the Secretary of the Interior to certify that a proposed World Heritage listing has no adverse impact on commercial uses of any lands within ten miles of the designated area, sets a standard that is virtually impossible to meet. As this section is worded, "commercial use" is not limited to *existing* uses. No new land-use designation, however benign, can be guaranteed to have absolutely no adverse impact on every *conceivable* commercial use that currently exists or may one day exist nearby. Even if this section were worded so as to include only existing commercial use, the entire concept of economic impact assessment is, as the current state of the art stands, highly dubious. For example, are the considerable positive economic impacts of World Heritage listing to be

given weight in the assessment? Who would make the assessment? Using what criteria and methods?

Congressional Oversight. The layer upon layer of Congressional approvals laid out in this section is little more than a cumbersome mechanism for micromanaging the nominations process. It is apparent that such a mechanism, if enacted, would cause the process to grind to a halt. There is no need for separate laws to signify World Heritage listings when the U.S. government has already committed to World Heritage Convention. Congress has more than adequate oversight capabilities already: the relevant committees can hold hearings at any time on any aspect of the implementation of the Convention. Furthermore, Article 35 gives State Parties the power to denounce (withdraw from) the Convention.

Comments Specific to Biosphere Reserves

Purpose of Biosphere Reserves. The purpose of biosphere reserves is explained in the Statutory Framework for Biosphere Reserves, the document MAB uses to define the relationship of this voluntary program to the statutes of the States participating in the program. According to Article 3, "biosphere reserves should strive to be sites of excellence to explore and demonstrate approaches to conservation and sustainable development on a regional scale." They do this through:

- Conserving landscapes, ecosystems, species and genetic variation;
- Fostering economic and human development which is socio-culturally and ecologically sustainable;
- Supporting demonstration projects, environmental education and training, research, and monitoring related to local, regional, national, and global issues of conservation and sustainable development.

The George Wright Society unequivocally supports these goals and believes their achievement would be tremendously beneficial to the people of the United States. In our view, biosphere reserves are therefore an important component in the overall protected area system (running from the national to the local level) in the United States. The biosphere reserve is the only protected area designation that explicitly promotes the *voluntary* attainment of these goals. As such, it is an irreplaceable complement to other designations such as national and state parks.

Sovereignty and Biosphere Reserves. The fundamental characteristic of the biosphere reserve program is that it is voluntary. Thus, it is impossible for a biosphere reserve designation to usurp the sovereignty of any participating country. The introduction to the Statutory Framework for Biosphere Reserves makes this unmistakably clear: "Biosphere reserves are designated by the Inter-

national Co-ordinating Council of the MAB Programme, *at the request of the State concerned.* Biosphere reserves, *each of which remains under the sole sovereignty of the State where it is situated and thereby submitted to State legislation only*, form a World Network in which *participation by the States is voluntary*" (emphases added). This is reiterated in Article 2 of the Framework: "Individual biosphere reserves *remain under the sovereign jurisdiction of the States* where they are situated. Under the present Statutory Framework, *States take the measures which they deem necessary according to their national legislation*" (emphases added). Like all other participants in the MAB biosphere reserve program, the United States, through our national MAB Committee, initiates nominations for new biosphere reserves. The U.S. MAB Committee, as a wholly voluntary body, operates under the laws governing the agencies which are represented on the Committee (e.g., the National Park Service, U.S. Forest Service), as well as codified interagency agreements, Executive Office memoranda, and other statutes.

Private Property and Biosphere Reserves. Biosphere reserves simply do not impinge on private property. In the U.S., this designation is overlaid on existing protected areas. Even cluster biosphere reserves, which encompass nonfederal lands, do not override any land protection or zoning status which may (or may not) exist. Zoning authority continues to reside with local governments. The U.S. MAB Committee tries to ensure that local governments and a wide range of interest groups not only are consulted during the nomination process, but actually participate in it. There is no mechanism within the MAB program—and certainly no desire—to "take over" any one's property. And there are no reputable studies showing any devaluation in private property as a result of biosphere reserve designation.

These findings were confirmed by the Congressional Research Service in its analysis of biosphere reserves. That report, "Biosphere Reserves: Fact Sheet," (95-517, June 1996) found that "Biosphere Reserve recognition does not convey any control or jurisdiction over such sites to the United Nations or to any other entity. The United States and/or state and local communities where biosphere reserves are located continue to exercise the same jurisdiction as that in place before designation. Areas are listed only at the request of the country in which they are located, and can be removed from the biosphere reserve list at any time by a request from that country." The report went on to affirm that "there are no legally binding requirements on countries or communities regarding the management of biosphere reserves. Full sovereignty and control over the area continues as it was before recognition. The main effect of recognition is to publicize the inclusion of an area in the Biosphere Reserve Network, thus making it known that research on the area's ecosystem type and impacts of adjacent human development on the area is appropriate as part of an international network of such research."

Section 4 in General. The effect of this section is to destroy the MAB Biosphere Reserve program in the United States. Federal officials would be prohibited from making any biosphere reserve nominations. Existing biosphere reserve designations would be voided unless legislation is passed in the next three years (a totally arbitrary sunset date) specifically authorizing them.

The proposed legislation fails to understand the distinguishing characteristic of biosphere reserves: they are a graduated combination of land uses, ranging from strictly protected natural areas to intensely managed multiple-use areas, voluntarily working with each other under the biosphere reserve designation. There is absolutely nothing coercive or dictatorial about a biosphere reserve; in fact, the entire literature on biosphere reserves is emphatic in stating that they can be successful only if there is local support. Far from being "social engineering," biosphere reserves are one of the most flexible, participatory protected-area designations available today.

The Effect of Biosphere Reserve Designation on Existing Management Practices. A 1995 survey of U.S. biosphere reserve managers revealed that some explicitly identified at least a portion of their management activities with the biosphere reserve designation, while some other managers did not. Those managers who did identify with the designation reported that they cooperated with more parties at the local level than those managers who were not as involved with the biosphere reserve program. Furthermore, those managers who reported a stronger identification with the biosphere reserve concept reported significant benefits from participating in the program. These included public recognition of resource significance, better nature and cultural resource protection, increased environmental awareness, and more public consultation and participation. This strongly suggests that biosphere reserves are, in practical terms, "value-added" designations: that is, they are an effective tool to enhance the base management activities of the protected areas participating in the program.

Congressional Oversight. Our objections to the Congressional oversight proposed in this section are the same as for World Heritage designations.

Comments on Section 5 of H.R. 901

This section, by erecting general roadblocks of the same type as proposed above specifically for World Heritage listings and biosphere reserves, would effectively end U.S. participation in any international protected area designation program (other than Ramsar). The requirement that each individual designation be enacted by a separate law might have some merit if these international designations superseded the sovereign management policies of U.S. federal agencies, but, as was discussed above, they do not. The exceptions admitted into this section for Ramsar sites and other wetland areas important as waterfowl habitat seem to suggest that the authors of the legislation are willing

to accept international designations when a direct benefit to fish and game interests would be forthcoming.

General Comments on H.R. 901

H.R. 901 would devastate U.S. participation in the World Heritage Convention and the MAB Biosphere Reserve program. The George Wright Society believes this would be a grievous mistake. Over the long run, the effect of H.R. 901 would be to prevent the United States from fully protecting the cultural and natural attributes in our World Heritage Sites and biosphere reserves, thus contravening the very laws Congress has passed to establish the underlying protected areas in perpetuity. Biosphere reserve and World Heritage designations are a source of national pride around the world, and they should be here as well. The effect of World Heritage and biosphere reserve designation is salutary, not detrimental. In fact, far from infringing on U.S. sovereignty, participation in these international programs actually offers opportunities to *enhance* our sovereignty by giving us ready access to different approaches and solutions to managing our natural and cultural heritage: approaches and solutions that we may then adapt to the uniquely American situation, or reject—as we see fit.

One aim of the bill which the GWS does support is the desirability for open and accurate communication between the federal land-managing agencies with authority over World Heritage Sites and biosphere reserves and the Congress, and between these agencies and the general public. We believe that improved communication about the purposes of World Heritage sites and biosphere reserves would help defuse some of the misconceptions that have taken hold among certain segments of the public. These distortions have thus far served to poison any chance to achieve a badly needed rational discussion of the issues involved. Unfortunately, H.R. 901 does nothing to move such a discussion forward.

As an organization devoted to promoting the scientific, heritage, and educational values of protected areas, the GWS strongly supports the Convention and biosphere reserve programs precisely because they specifically recognize and advance these values. The fact that the programs operate in a cooperative manner makes them entirely consonant with American sovereignty.

Thank you for allowing the George Wright Society to include our comments in the hearing record.