

Committee on Resources

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**Testimony of
The Honorable Mike Ross
Arkansas-04
United States House of Representatives**

Before the
Committee on Resources
United States House of Representatives

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Mr. Chairman and members of the committee I want to thank you for allowing me the opportunity to visit with you today regarding my bill H.R. 3320, the American Aquaculture and Fishery Resources Protection Act.

This proposed legislation will do several things, which are urgently needed. I will speak to these later, but first let me say what HR 3320 will not do.

- It will NOT diminish the authority of the U. S. Fish and Wildlife Service.
- It will NOT violate, nor bring into question, the four treaties between the United States and the United Kingdom (1916); the United Mexican States (1936); Japan (1972); and the Union of Soviet Socialist Republics (1976); which are the basis of the Migratory Bird Treaty Act.
- It will NOT violate nor weaken the Migratory Bird Treaty Act.
- It will NOT break new ground by waiving the requirements of the National Environmental Policy Act.
- It will NOT take migratory bird management away from the U. S. Fish and Wildlife Service.
- Most of all, it will NOT allow the confusing dilemma surrounding migratory bird depredation permits to continue.

Because this great country has become more environmentally responsible and has reduced the use of persistent chemical pesticides, the reproductive success of many species of fish eating birds at the top of the food chain has skyrocketed. These birds have done what they do well— eat fish— and have increased depredation at fish farms and sport fishing lakes. Scientists have clearly documented this phenomenon.

The history of migratory bird depredation permits is confusing, and often contradictory. In 1986, when Wildlife Services was transferred from the U. S. Department of the Interior to the U. S. Department of Agriculture, it is my understanding that the responsibility for addressing migratory bird problems, as well as the authority for doing this work was being transferred. Assigning a responsibility without the authority to perform the necessary actions is simply not practical.

There is still some question as to whether it is legal for USDA Wildlife Services' biologists, who, until 1986, were employed by the U. S. Fish and Wildlife Service; and who have the same technical training as biologists in the U. S. Fish and Wildlife Service, to issue depredation permits and take migratory birds without a permit or the consent of any other agency. For several years, a federal court held that federal agencies are not required to obtain migratory bird permits from the U. S. Fish and Wildlife Service. However, another court decision reversed the previous decision.

H.R. 3320 will clarify this most perplexing dilemma by simply granting duplicate authority to USDA Wildlife Services' biologists that is presently held by employees of the U. S. Fish and Wildlife Service. It is important to understand that H.R. 3320 will not diminish the authority of the U. S. Fish and Wildlife Service.

Mr. Chairman and members of the Committee, there has been concern expressed that because USDA's Wildlife Services is not an enforcement agency and does not have enforcement powers, the authorities granted in H.R. 3320 would necessitate that agency's stepping into the deep water of law enforcement. In order to assure everyone that this is not my intention, I recommend that the following language be added to H.R. 3320.

"Guidelines to promulgate these authorities shall be written and implemented by USDA/APHIS/Wildlife Services. Enforcement of these and related regulations shall be the responsibility of United States Department of Interior/U.S. Fish and Wildlife Service in cooperation with the state fish and wildlife management agencies."

Among the many problems which exist in the U. S. Fish and Wildlife Service permitting process, the inconsistencies between the Service regions and the non-responsiveness of some regions to actually grant permits are two of the greatest difficulties. In some cases, personnel within U. S. Fish and Wildlife Service are overruling recommendations of professional wildlife biologists in USDA Wildlife Services for no biologically sound reason and either altering or denying permits. Furthermore, permits are being refused to state fish and wildlife managing agencies for no sound biological reason. When bird depredation occurs, losses are often great, creating an urgent problem. Permits are often too slow in being issued. There is presently a proposal to raise the fees assessed by U. S. Fish and Wildlife Service for issuing permits and another proposal to consolidate all permitting at a single location, either in West Virginia or Colorado. Considering the severity of the problems plaguing the present permitting system, consolidation of all permitting at a single, more distant location, would, no doubt, exacerbate the present frustrations of permittees.

Just to clarify, the four treaties upon which the Migratory Bird Treaty Act (MBTA) is based are between the United States of America and the United Kingdom, Mexico, Russia, and Japan.

H.R. 3320 would waive the requirements of the National Environmental Policy Act (NEPA). Under existing NEPA rules, a "categorical exclusion" means a category of actions that do not individually or cumulatively have a significant effect on the human environment. An almost unlimited list of categorical exclusions exists for federal agencies. Providing NEPA exclusions has become somewhat common in recent history and allows for our government to work for the people instead of being bogged down in bureaucratic red tape.

Furthermore, the use of NEPA as a mechanism for lawsuits by organizations unable to support a cause for action in trying to stop worthwhile federal programs has become standard operating procedure. The NEPA waiver listed in H.R. 3320 in no way prevents any entity from filing a lawsuit to stop actions by USDA Wildlife Services, which they believe to be based on poor biological or unprofessional judgment. The NEPA waiver would force such allegations to be judged on programmatic merits. The waiver would, however, save the taxpayers untold dollars in fighting unproductive litigation. The NEPA waiver will not restrict USDA Wildlife Services from continuing voluntary efforts to keep the public informed of their work plans.

As has been noted throughout the history of this proposed legislation, it is not practical for USDA Wildlife Services to be asked to serve the American people in solving depredations by migratory birds without the authorities granted by H.R. 3320. For too long, the U. S. Fish and Wildlife Service has attempted to shift the "hot potato" of fish eating migratory bird management to USDA Wildlife Services and state fish and wildlife management agencies while retaining control which would guarantee failure of all management efforts.

The two cormorant depredation orders, 50 CFR. 21.47 and 50 CFR 21.48 are perfect examples of this. While these orders appear to liberalize fish eating bird management restrictions, the U. S. Fish and Wildlife Service has publicly stated that these orders are specifically aimed at addressing localized problems. This has been tried for years, and has failed. Cormorant populations have continued to increase at a rate that exceeds depredation losses. Also, these orders have extensive restrictions, monitoring, and U. S. Fish and Wildlife Service oversight included to ensure that essential regional population reduction will not be possible. This delaying tactic has been successfully used by U. S. Fish and Wildlife Service for many years and borders on dereliction of duty and certainly does not qualify as migratory bird management.

USDA Wildlife Services is willing to conduct this management and, in fact, has had the personnel on the ground, which for many years have been providing assistance to the citizens of the U.S. in addressing migratory bird depredation problems. It simply makes good sense to grant this agency the needed authorities which will be provided by H.R. 3320.

Mr. Chairman, I want to thank you for having a hearing on this critical legislation. I appreciate very much you allowing me to testify and look forward to working with you and the Full Resources Committee on this legislation.