

TESTIMONY OF PAUL R. SCHMIDT
ASSISTANT DIRECTOR FOR MIGRATORY BIRDS
U.S. FISH AND WILDLIFE SERVICE, U.S. DEPARTMENT OF THE INTERIOR,
BEFORE THE HOUSE COMMITTEE ON NATURAL RESOURCES SUBCOMMITTEE ON
INSULAR AFFAIRS, OCEANS AND WILDLIFE,
ON H.R. 1916 THE MIGRATORY BIRD HABITAT INVESTMENT AND ENHANCEMENT
ACT; H.R. 2062, THE MIGRATORY BIRD TREATY ACT PENALTY AND ENFORCEMENT
ACT OF 2009; AND H.R. 2188, THE JOINT VENTURES FOR BIRD HABITAT
CONSERVATION ACT OF 2009

May 13, 2009

Chairwoman Bordallo, Ranking Member Brown, and Members of the Subcommittee, I am Paul Schmidt, Assistant Director for Migratory Birds, U.S. Fish and Wildlife Service (Service), within the Department of the Interior (Department). I appreciate the opportunity to appear before the Subcommittee today to testify on three important pieces of legislation related to migratory birds: H.R. 1916, the Migratory Bird Habitat Investment and Enhancement Act; H.R. 2062, the Migratory Bird Treaty Act Penalty and Enforcement Act; and H.R. 2188, the Joint Ventures Bird Habitat Conservation Act of 2009. The Service greatly appreciates the Subcommittee's continued leadership and support for the conservation of the nation's migratory birds.

INTRODUCTION

Migratory birds are among nature's most magnificent natural resources, and they play a significant ecological, economic and cultural role in the United States and around the globe. Like canaries in coal mines, birds are indicators of the health and quality of our environment. Birds are also tremendous engines for local economies; each year millions of Americans watch birds in their backyards and in National Wildlife Refuges, National Parks, National Forests and other federal lands, as well as state and local birding hot spots. In fact, the 2006 Survey of Fishing, Hunting and Wildlife-Associated Recreation, conducted by the U.S. Fish and Wildlife Service in conjunction with the Federal census, showed that 48 million Americans watched birds, and wildlife watchers generated \$122.6 billion in total industrial outputs.

The Service is the lead Federal agency responsible for protecting, managing and conserving the species of birds covered by four major treaties with Canada, Mexico, Russia, and Japan through their implementing legislation, the Migratory Bird Treaty Act of 1918. The Service's Migratory Bird Program has two primary goals: (1) to conserve migratory bird populations and their habitats in sufficient quantities to prevent them from being considered as threatened or endangered and (2) to ensure the citizens of the United States continued opportunities to enjoy migratory birds and their habitats. The Service pursues these goals in concert with a host of participating partners, both domestic and foreign.

As Subcommittee Members are aware, on March 19, 2009, Secretary Salazar announced the release of the State of the Birds 2009 Report, which shows that while a number of species are healthy or recovering, many are in decline. This report, a partnership product led by the Service and coordinated with the American Bird Conservancy, The Nature Conservancy, Cornell Lab of Ornithology, the National Audubon Society, and many other organizations, is the first of an annual

and collective effort to monitor the health of our nation's birds, and will help us monitor the health of their environments and the success of our conservation efforts. The State of the Birds 2009 Report is a part of what the Service envisions as a greater and more collaborative approach to conserving birds in order to enhance the protection of their habitats while helping these landscapes to be more resilient to climate change.

H.R. 1916, THE MIGRATORY BIRD HABITAT INVESTMENT AND ENHANCEMENT ACT

H.R. 1916 amends the Migratory Bird Hunting and Conservation Stamp Act, popularly known as the "Duck Stamp Act". Introduced by Rep. John Dingell (D-MI), the bill would increase the price of the Migratory Bird Hunting and Conservation Stamp (Duck Stamp), for the first time since 1991, from \$15 to \$25 in 2010. A further increase to \$35 would be imposed after the hunting year 2020. The Department supports this legislation, with technical amendments, because of its potential to greatly enhance the contribution of hunters and other stakeholders who purchase the stamp toward migratory waterfowl habitat protection. The administration would like to work with the Congress on a legislative formula that would address increasing costs of the program over time.

Background

Among other migratory bird authorities, the Service administers the Migratory Bird Conservation Act, which was passed in 1929, creating the Migratory Bird Conservation Commission. The Service works with the Commission to determine priority land and habitat conservation projects that benefit waterfowl with funds that are generated in part through the sale of the Duck Stamp.

On its 75th anniversary, the Federal Duck Stamp Program is one of the most successful conservation initiatives in the U.S. and has, since 1934, generated more than \$725 million in revenues. Duck Stamp revenues, along with import duties on arms and ammunition, have funded the acquisition of more than 5.3 million acres of waterfowl habitat. This includes 3 million fee title acres and 2.3 million acres protected with permanent easements. Waterfowl hunters over the age of 16 across the U.S. are required to purchase a Duck Stamp to hunt waterfowl and other migratory birds, and the stamp is also purchased by stamp collectors, conservationists and outdoor enthusiasts. Funds from the sale of Federal Duck Stamps are deposited in the Migratory Bird Conservation Fund, and ninety-eight cents of every dollar is used to acquire wetlands habitat for the National Wildlife Refuge System. In addition to supporting migratory bird populations, wetlands support one third of the nation's endangered and threatened species, create areas for outdoor enthusiasts, and help flood control and improving water quality. Since 2004, about 1.5 million Duck Stamps have been sold annually, generating revenue totaling over \$20 million per year.

An increase in the price of the Duck Stamp is important to supporting the conservation goals for migratory bird habitat because as land prices increase, the purchasing power of Duck Stamp funds has eroded. Since the last Duck Stamp price increase in 1991, land prices have soared in many parts of the nation. In addition, over the last six to eight years, stamp sales have declined primarily due to a fairly steady decline in the number of licensed hunters each year. While the Service is working to increase stamp sales to non-hunters, it is not yet clear that this market can significantly contribute to the Migratory Bird Conservation Fund. With no price increase, revenue and purchasing power is likely to continue to fall, thereby inhibiting the Service's ability to preserve habitat and support migratory waterfowl populations.

The last increases in Duck Stamp prices, contained in P.L. 99-645, authorized \$10 per stamp in hunting years 1987 and 1988, \$12.50 in 1989 and 1990, and \$15.00 beginning in 1991 and each hunting year thereafter. These increases did not result in a decline in the number of stamps sold. As measured by the Service's economic surveys, the price of a Duck Stamp is an expenditure that represents a small percentage of a hunter's total cost of waterfowl hunting – the current \$15 cost of the Duck Stamp represents 2 percent of annual expenditures. Therefore, the Service does not anticipate that the increases proposed under H.R. 1916 would significantly impact Duck Stamp sales.

The Service estimates that an increase in the price of the Duck Stamp to \$25 could result in an approximate \$14 million increase per year over revenues generated at the current \$15 per stamp price and the price increase could provide important increases in acres of habitat protected. The Service focuses its acquisition efforts – with state review and approval and the approval of the Migratory Bird Conservation Commission – to benefit waterfowl species most in need of habitat protection. Each year the Service identifies fee-title and permanent-easement acquisition priorities in each of the four major migratory bird flyways. In reviewing these priorities and based on previous years' acquisition efforts and current trends and projects, the Service anticipates that the increased revenue could allow the Service to permanently protect an estimated 10,000 additional acres in easements and an additional 6,800 acres in fee per year across the nation.

The Department appreciates the leadership of Rep. Dingell and the Subcommittee in supporting the Duck Stamp program. We look forward to working with you to maximize the programs ability to support migratory bird habitat conservation.

H.R. 2062, THE MIGRATORY BIRD TREATY ACT PENALTY AND ENFORCEMENT ACT OF 2009

H.R. 2062 would amend the Migratory Bird Treaty Act (MBTA) by adding new felony provisions to the law. This change would require that any violator of the MBTA whose actions are "intentional and malicious" be charged as a felon. It would allow for a maximum penalty of \$50,000 and imprisonment for not more than 2 years. Additionally, H.R. 2062 requires that penalty fines be used to pay rewards to individuals who provide information which results in an arrest or criminal conviction under this Act. The Department supports the intent of HR 2062, and we share the concerns of Rep. DeFazio and the Subcommittee about prosecution of particularly egregious violations of the MBTA. However, we have concerns with the bill as drafted and would like to work with the committee to address those concerns before consideration by the full House.

Background

The Migratory Bird Treaty Act prohibitions include the pursuit, hunting, taking, capturing and killing without a permit of migratory bird species that are covered by the Act including most, but not all, native species found in the U.S. Native species excluded from the MBTA protections include "Gallinaceous" birds, such as turkeys and quail, which, unless endangered or threatened, are managed by state fish and wildlife agencies outside of the jurisdiction of MBTA provisions. "Taking" violations of the MBTA prohibitions are Class B Misdemeanors. The statute provides

upon conviction a fine of not more than \$15,000 and or imprisonment of not more than 6 months. The Service has worked with the Department of Justice to prosecute cases that present the greatest threat to migratory birds under the strict-liability standard.

In particularly egregious MBTA cases, fines have been greatly increased by incorporating prosecution for other federal and state statute violations. For example, on Dec 8, 2004, a 738 foot cargo vessel flagged in Singapore ran aground off the Aleutian Islands in Alaska. The hull split in half and spilled 354,000 gallons of fuel oil into the sea. During the spill response, more than 1,700 bird carcasses, 6 sea otter carcasses and 600,000 bags of oily waste were collected. In August 2007, the corporation that owned the vessel pleaded guilty to two violations of the Refuse Act and one violation of the Migratory Bird Treaty Act. The combined penalties totaled \$10 million, which included \$3 million to conduct a risk assessment for shipping hazards of the area where the vessel went aground, \$1 million for the Alaska Maritime National Wildlife Refuge Fund, and \$2 million for the North American Wetlands Conservation Fund. Another example: in 2007, a chemical company responsible for four separate discharges in Ohio that killed migratory birds pleaded guilty to Federal charges and was ordered to pay a \$215,000 fine and contribute \$210,000 to two environmental groups.

The Department shares the Subcommittee's concerns over cases such as the one in Oregon which involved large numbers of raptors being killed by people using various means, including shooting, poisoning, gassing, and trapping and using roller pigeons as live bait. In this case, and in others, depending on the federal court district, the Service has worked with the Department of Justice to prosecute the violators to the full extent under the law. However, fines, penalties, and sentencing are ultimately assigned by the courts in each case, and as we see in other MBTA cases, penalties *can* vary widely.

Under Title 18 of the United States Code, a felony generally means any crime punishable by more than a year in prison, so it is true that a felony carries higher penalties than a misdemeanor under Federal law. Generally, federal statutes for felonies are "intentional" acts or acts committed "knowingly." However, under the proposed legislation, prosecution would be complicated by the addition of a standard of proof requiring that the violation be committed "maliciously," a term which is not currently defined in the statute. Application of this standard may cause confusion on enforcing the law, may vary among Federal courts, and may as a result prevent the prosecution of these cases as felonies, even if they fall within the intent of this legislation.

Congress has worked with the Service in the past to increase penalties to discourage certain specific types of MBTA violations. In 1998, the MBTA was amended by P.L. 105-312, the Migratory Bird Treaty Reform Act of 1998, to increase the maximum fine for most MBTA violations to \$15,000, although they are still considered Class B Misdemeanors. P.L. 105-312 also made the taking of migratory game birds with the aid of bait, and – for this type of violation only – replaced the strict-liability standard of proof to a "known or should have known" standard, meaning that in order to prosecute violators under this provision, enforcement agents must prove that the violator knew or should have known the area was baited. This violation is treated as a Class A Misdemeanor with a maximum penalty of \$100,000, or \$200,000 if the violation is committed by an organization or group, and maximum imprisonment of 1 year.

The Department understands the intent of H.R. 2062 is to discourage particularly egregious violations of the MBTA, as in the roller pigeon case in Oregon.

H.R. 2188, JOINT VENTURES FOR BIRD HABITAT CONSERVATION ACT OF 2009

H.R. 2188 would expressly authorize the Service's current program of participating in and supporting Joint Ventures and would codify the mechanisms currently used to establish and support the Joint Ventures operating across the United States. It would require the Secretary of the Interior, through the Director of the U.S. Fish and Wildlife Service, to conduct a migratory bird Joint Ventures Program, and require the Director to develop an administrative framework for the approving, establishing, and implementing Joint Ventures.

The Department supports H.R. 2188.

Background

Joint Ventures are regional, self-directed partnerships, that work to conserve migratory birds. The Service plays a significant role in supporting Joint Ventures to further the bird conservation community's goals for achieving healthy and sustainable populations of migratory birds. The Service approves Joint Venture management plans and provides funds and technical assistance to the Joint Ventures Management Boards and partners to administer the program.

The first Joint Ventures were formed to put into action the strategies laid out in the North American Waterfowl Management Plan (Plan), agreed upon by the United States and Canadian governments in 1986, with Mexico signing on in 1994. The Plan presents an international perspective on waterfowl conservation with a focus on regional implementation of habitat protection, restoration and enhancement projects. In 1998, the Plan was updated to articulate and implement a vision of waterfowl conservation guided by biologically-based planning and defining and working toward landscape conditions needed to sustain waterfowl and to benefit other wetland-associated species.

After more than 23 years, the Plan is among the most successful collaborative conservation efforts in wildlife conservation history, and its success depends upon the strength of its implementation through the regional partnerships. The Joint Ventures include federal, state, provincial, tribal, and local governments, businesses, conservation organizations, academia, and individual landowners and citizens. As of January 2009, Joint Ventures have guided the investment of more than \$4.5 billion to protect, restore, and/or enhance 15.7 million acres of waterfowl habitat and to conduct research and population management projects.

There are currently 19 habitat Joint Ventures across the United States, including Atlantic Coast, Upper Mississippi and Great Lakes, Central Hardwoods, Appalachian Mountains, Northern Great Plains, San Francisco Bay, Playa Lakes, Sonoran, Intermountain West, and Gulf Coast Joint Ventures. Although the Joint Ventures originally focused on waterfowl, they now serve the conservation needs of all migratory bird species. In addition, there are three species-specific Joint Ventures, which address the black duck, Arctic nesting geese, and sea ducks throughout their international ranges.

The Joint Ventures work on a range of projects including: (1) biological planning, conservation design, and prioritization; (2) project development and implementation; (3) monitoring, evaluation, and applied research activities; (4) communications and outreach; and (5) fund-raising for projects and activities. The Joint Venture partnerships are creating the scientific knowledge and the conservation partnership base that allow states and other partners to pool resources for regional projects in vital habitats for priority bird species

Currently, the Service provides base operations funding to support the Joint Ventures as they address local, regional and continental goals for sustaining migratory bird populations. In Fiscal Year 2009, the U.S. Joint Ventures received a total of \$12,942,000 million in appropriations to plan and deliver bird conservation, a \$2,049,000 million increase over the FY 2008 level, which allowed the Service to support four new Joint Ventures and provide additional funds to increase the capabilities of existing Joint Ventures.

Each Joint Venture has a Management Board and a coordinator. The Management Board must draft an implementation plan and have it approved by the Director of the Service in order to be eligible for federal funding. Each Joint Venture must also produce an annual report of funding and activities. The Director and the Division of Bird Habitat Conservation work with the Flyway Councils (Atlantic, Mississippi, Central, and Pacific), the national or international boards that oversee the various bird conservation initiatives, such as the North American Waterfowl Management Plan, the U.S. Shorebird Conservation Plan, North American Waterbird Conservation Plan, Partners in Flight, and other interested parties before determining whether or not to approve the plan.

Before formally recognizing a Joint Venture, the Director considers whether The Joint Venture: (1) can take on the responsibility for delivering bird conservation in the United States and deliver on bird habitat conservation priorities in their geographic areas; (2) is directed by a management board consisting of a broad spectrum of representatives from public and private organizations, institutions, and other interests vested in conservation of fish and wildlife habitat within the region of the joint venture; (3) is guided by an implementation plan, developed or adopted by the management board, that is established through a biological planning process and that identifies the biological planning, conservation implementation, and evaluation process of the joint venture; and (4) can implement conservation actions identified in the implementation plan including the design, funding, and tracking of conservation projects that advance the objectives of the joint venture.

In addition to their real and potential contribution to migratory bird conservation, Joint Ventures are also well positioned to help address the impacts of climate change at the landscape scale. From mapping anticipated sea-level rise along the Pacific Coast to exploring reforestation and carbon sequestration projects on abandoned minelands in the Appalachian Mountains, Joint Ventures are already using adaptive-management strategies to address anticipated effects of climate change on bird habitats. Hundreds of Joint Venture habitat protection and restoration projects provide vital ecosystem services, such as flood control, buffers to erosion, groundwater recharge and carbon sequestration. Joint Ventures are leaders in identifying and addressing the data gaps that will help land managers, private landowners, decision makers and other partners understand how to respond to climate change.

For the past 15 years, the Service has operated the Joint Venture program and have managed it in a manner that achieves the goals of the North American Waterfowl Management Plan and other bird plans. Throughout the 15 year history of the current Joint Ventures program, the breadth of the program has expanded to 19 joint ventures as States, environmental organizations, and other partners across the country have seen the success of the program. Program reviews have shown the positive results of the program not just in the growth in additional Joint Ventures but also through the protections provided to additional species. The Service currently has a process for approving, establishing, and implementing Joint Ventures. That process includes the provision of Service oversight for Joint Ventures and their migratory bird conservation approaches and use of federal funding, while allowing sufficient independence for each to mold its migratory bird conservation planning and activities to the most up to date science and to fluctuations of regional conditions over time."

CONCLUSION

Madame Chairwoman and Subcommittee Members, thank you for the opportunity to testify on H.R. 1916, H.R. 2062 and H.R. 2188. The Department greatly appreciates the support of this Subcommittee to protect and conserve our Nation's migratory bird species. At this time, I would be happy to answer any questions.