

CHAMBER OF COMMERCE  
OF THE  
UNITED STATES OF AMERICA

NEIL L. BRADLEY  
EXECUTIVE VICE PRESIDENT &  
CHIEF POLICY OFFICER

1615 H STREET, NW  
WASHINGTON, DC 20062  
(202) 463-5310

June 12, 2019

The Honorable Jared Huffman  
Chairman  
Subcommittee on Water, Oceans,  
and Wildlife  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Tom McClintock  
Ranking Member  
Subcommittee on Water, Oceans,  
and Wildlife  
U.S. House of Representatives  
Washington, DC 20515

Dear Chairman Huffman and Ranking Member McClintock:

The U.S. Chamber of Commerce writes to express our concerns regarding the discussion draft of the “Migratory Bird Protection Act of 2019.” While the Chamber recognizes the importance of avian conservation, the complex permitting program provided in the discussion draft is both unnecessary and would not improve conservation.

Congress passed the Migratory Bird Treaty Act (MBTA) in 1918 to protect the over 1,000 species of birds that migrate between the United States and Canada, Mexico, Japan, and Russia. Congress intended to impose strict liability on those that “kill” or “take” such birds, as unregulated market hunting and the plume trade decimated bird populations across the U.S. The MBTA reversed this trend. It helped facilitate sustainable bird populations, and it is a cornerstone of American environmental law.

This discussion draft would amend the MBTA to develop a permitting program that covers the incidental take of migratory birds that results from a commercial activity. By extending the scope of the MBTA to cover the death of migratory birds that are incidental to commercial or industrial activities, Congress would impose strict liability on those stakeholders that are otherwise acting in good faith in the course of their daily operations. Many of our members have already developed voluntary conservation practices, including avian protection plans, which are designed to avoid or minimize impacts to migratory birds that are incidental to such activities.

The discussion draft explicitly highlights five commercial activities that would require a general permit for further operations: oil, gas, and wastewater disposal pits; methane or other gas burner pipes; communication towers; electric transmission and distribution lines; and wind and solar power general facilities.

At best, this would create uncertainty for a vast range of commercial and industrial activities across the economy as to the need for a permit and thus unduly hinder their operations, increasing costs for consumers. At worst, it would create a liability scheme for these sectors

without any mechanism for relief. It seems arbitrary and capricious to single out certain sectors of the economy without addressing the vastly greater sources of bird impacts, calling into question the value that this bill would have for bird conservation.

This discussion draft, if codified into legislation, would require stakeholders to bear enormous costs. These costs would need to be passed on to the American taxpayers, in order for stakeholders to conduct their commercial or industrial activities. For example, the discussion draft calls for the imposition of a mitigation fee for each permit, in addition to a provision calling for compensatory mitigation. Further, a \$10,000 civil penalty would be imposed “per violation” of the MBTA, and it is unclear in the discussion draft as to what would constitute a violation.

We look forward to working with you on this important matter as the legislative process continues.

Sincerely,

A handwritten signature in blue ink, appearing to read "Neil L. Bradley", with a stylized flourish at the end.

Neil L. Bradley

cc: Members of the Subcommittee on Water, Oceans, and Wildlife