

**CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA**

NEIL L. BRADLEY
EXECUTIVE VICE PRESIDENT &
CHIEF POLICY OFFICER

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January 14, 2020

The Honorable Raul Grijalva
Chairman
Committee on Natural Resources
U.S. House of Representatives
Washington, DC 20515

The Honorable Rob Bishop
Ranking Member
Committee on Natural Resources
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Grijalva and Ranking Member Bishop:

While the U.S. Chamber of Commerce recognizes the importance of avian conservation, the Chamber opposes H.R. 5552, the “Migratory Bird Protection Act of 2020,” because it would create a burdensome and bureaucratic permitting program that would do little to achieve important conservation goals.

The Migratory Bird Treaty Act (MBTA) was enacted in 1918 to protect the more than 1,000 species of birds that migrate between the United States and Canada, Mexico, Japan, and Russia. Congress imposed 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 bill 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.

H.R. 5552 would explicitly require the Department of the Interior (“DOI”) to issue general permits for five commercial activities, within five years, to continue operations: oil, gas, and wastewater disposal pits; methane or other gas burner pipes; communication towers; electric transmission and distribution lines; and wind power generation facilities. It would also require DOI to issue a general permit, within 8 years, for solar powered generation 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 the 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.

H.R. 5552 would require stakeholders to bear enormous costs. These costs would need to be passed on to the American taxpayers, for stakeholders to conduct their commercial or industrial activities. For example, the discussion draft calls for the imposition of a permit fee and 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 bill 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 Committee on Natural Resources