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108TH CONGRESS, 2d Session | HOUSE OF REPRESENTATIVES | REPORT 108–520

EXCLUSION OF NONNATIVE SPECIES FROM MIGRATORY BIRD TREATY ACT; CONSERVATION OF NEOTROPICAL MIGRATORY BIRDS

JUNE 3, 2004.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. POMBO, from the Committee on Resources, submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 4114]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the bill (H.R. 4114) to amend the Migratory Bird Treaty Act to exclude non-native migratory bird species from the application of that Act, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

TITLE I—EXCLUSION OF NONNATIVE SPECIES FROM MIGRATORY BIRD TREATY ACT

SEC. 101. SHORT TITLE.

This title may be cited as the "Migratory Bird Treaty Reform Act of 2004".

SEC. 102. EXCLUSION OF NON-NATIVE SPECIES FROM APPLICATION OF CERTAIN PROHIBITIONS UNDER MIGRATORY BIRD TREATY ACT.

Section 2 of the Migratory Bird Treaty Act (16 U.S.C. 703) is amended—

(1) in the first sentence by striking "That unless and except as permitted" and inserting the following: "(a) IN GENERAL.—Unless and except as permitted"; and

(2) by adding at the end the following:

"(b) LIMITATION ON APPLICATION TO INTRODUCED SPECIES.—

"(1) IN GENERAL.—This section applies only to migratory bird species that are native to the United States and whose occurrence in the United States is entirely the result of natural biological or ecological conditions.

"(2) TREATMENT OF INTRODUCED SPECIES.—For purposes of paragraph (1)—

"(A) a bird species shall not be treated as native to the United States if it occurs in the United States solely as a result of intentional or unintentional human-assisted introduction; and

"(B) a migratory bird species shall be treated as native to the United States if—

"(i) it was native to the United States and extant in 1918;

"(ii) it was extirpated after 1918 throughout its range in the United States; and

"(iii) after such extirpation, it was reintroduced in the United States as a part of a program carried out by a Federal agency.".

SEC. 103. PUBLICATION OF LIST.

The Secretary of the Interior shall publish in the Federal Register within 3 months after the date of enactment of this Act a list of all non-native, human introduced bird species to which the Migratory Bird Treaty Act does not apply that belong to biological families of migratory birds covered under any of the migratory bird conventions with Great Britain (for Canada), Mexico, Russia, or Japan. The Secretary shall provide adequate time for public comment. Nothing in this section concerning the publication of the list shall delay implementation of other provisions of this Act that exclude non-native, human introduced bird species from the application of the Migratory Bird Treaty Act.

TITLE II—CONSERVATION OF NEOTROPICAL MIGRATORY BIRDS

SEC. 201. SHORT TITLE.

This title may be cited as the "Neotropical Migratory Bird Conservation Improvement Act of 2004".

SEC. 202. AMENDMENTS TO NEOTROPICAL MIGRATORY BIRD CONSERVATION ACT.

(a) FINDINGS.—Section 2(1) of the Neotropical Migratory Bird Conservation Act (16 U.S.C. 6101(1)) is amended by inserting "but breed in Canada and the United States" after "the Caribbean".

(b) PURPOSES.—Section 3(2) of the Neotropical Migratory Bird Conservation Act (16 U.S.C. 6102(2)) is amended by inserting "Canada," after "United States,".

(c) DEFINITION OF CARIBBEAN.—Section 4 of the Neotropical Migratory Bird Conservation Act is amended by redesignating paragraphs (2) and (3) in order or paragraphs (3) and (4), and by inserting paragraph (1) the following:

"(2) CARIBBEAN.—The term 'Caribbean' includes Puerto Rico and the United States Virgin Islands.".

(d) COST SHARING.—Section 5(e) of the Neotropical Migratory Bird Conservation Act (16 U.S.C. 6104(e)) is amended—

(1) in paragraph (1) by striking "25 percent" and inserting "50 percent"; and

(2) in paragraph (2) by amending subparagraph (B) to read as follows:

"(B) FORM OF PAYMENT.—

"(i) PROJECTS IN THE UNITED STATES AND CANADA.—The non-Federal share required to be paid for a project carried out in the United States or Canada shall be paid in cash.

"(ii) PROJECTS IN LATIN AMERICA AND THE CARIBBEAN.—The non-Federal share required to be paid for a project carried out in Latin America or the Caribbean may be paid in cash or in kind.".

(e) REPORT.—Section 8 of the Neotropical Migratory Bird Conservation Act (16 U.S.C. 6107) is amended—

(1) by striking "October 1, 2002," and inserting "12 months after the date of the enactment of the Neotropical Migratory Bird Conservation Improvement Act of 2004,"; and

(2) by inserting before the period the following: ", and a description of the activities of the advisory committee convened under section 7(b)".

(f) NEOTROPICAL MIGRATORY BIRD CONSERVATION FUND.—

(1) IN GENERAL.— Section 9 of the Neotropical Migratory Bird Conservation Act (16 U.S.C. 6108) is amended by striking so much as precedes subsection (c) and inserting the following:

"SEC. 9. NEOTROPICAL MIGRATORY BIRD CONSERVATION FUND.

"(a) ESTABLISHMENT.—There is established in the Treasury a separate account, which shall be known as the 'Neotropical Migratory Bird Conservation Fund'. The Fund shall consist of amounts deposited into the Fund by the Secretary of the Treasury under subsection (b).

"(b) DEPOSITS INTO THE FUND.—The Secretary of the Treasury shall deposit into the Fund—

"(1) all amounts received by the Secretary in the form of donations under subsection (d); and

"(2) other amounts appropriated to the Fund.".

(2) ADMINISTRATIVE EXPENSES.—Section 9(c)(2) of the Neotropical Migratory Bird Conservation Act (16 U.S.C. 6108(c)(2)) is amended by striking "$80,000" and inserting "$150,000".

(3) CONFORMING AMENDMENTS.—The Neotropical Migratory Bird Conservation Act is amended as follows:

(A) In section 4 (16 U.S.C. 6103), by striking paragraph (1) and inserting the following:

"(1) FUND.—The term 'Fund' means the Neotropical Migratory Bird Conservation Fund established by section 9(a).".

(B) In section 9(d) (16 U.S.C. 6108(d)), by striking "Account" and inserting "Fund".

(4) TRANSFER.—The Secretary of the Treasury may transfer to the Neotropical Migratory Bird Conservation Fund amounts that were in the Neotropical Migratory Bird Conservation Account immediately before the enactment of this Act.

(g) AUTHORIZATION OF APPROPRIATIONS.—Section 10 of the Neotropical Migratory Bird Conservation Act (16 U.S.C. 6109) is amended to read as follows:

"SEC. 10. AUTHORIZATION OF APPROPRIATIONS.

"(a) IN GENERAL.—There is authorized to be appropriated to the Fund to carry out this Act the following amounts:

"(1) $5,000,000 for fiscal year 2005.

"(2) $5,000,000 for fiscal year 2006.

"(3) $10,000,000 for fiscal year 2007.

"(4) $15,000,000 for fiscal year 2008.

"(b) AVAILABILITY.—Amounts appropriated under this section may remain available until expended.

"(c) ALLOCATION.—Of amounts appropriated under this section for each fiscal year, not less than 75 percent shall be expended for projects carried out outside the United States.

"(d) LIMITATION ON EXPENDITURES FOR PROJECTS IN CANADA.—Amounts appropriated under this section for a fiscal year may not be used for any project in Canada unless the amount available to carry out this Act for that fiscal year is greater than $10,000,000.".

PURPOSE OF THE BILL

The purpose of H.R. 4114 is to amend the Migratory Bird Treaty Act to exclude non-native migratory bird species from the application of that Act, and for other purposes.

BACKGROUND AND NEED FOR LEGISLATION

In 1916, the United States and Great Britain (for Canada) signed a treaty known as the Convention for the Protection of Migratory Birds. The United States is now party to separate bilateral conventions for the conservation and protection of migratory birds with Canada, Japan, Mexico and Russia. The fundamental goal of all these agreements was to establish an international framework for the protection and conservation of migratory birds that seasonally migrate among the member nations. The Conventions with Japan and Russia clearly list individual species of birds that are protected. By contrast, the Conventions with Canada and Mexico introduce some confusion by merely listing protected families of birds; these Conventions do not expressly state whether they apply

to all species within the designated families or just to those species that are native to the territory of the parties.

Under the Canadian and Mexico Conventions, the term "migratory bird" includes a number of bird families such as Anatidae, Gruidae, Rallidae, Limicolae and Columbidae. Specifically, covered native species include brants, coots, cormorants, crows, gallinules, geese, gulls, mourning doves, rails, robins, snipes, swans, white-winged doves, whooping cranes, wild pigeons, wild species of ducks, and woodcocks. This is, however, not a complete list of protected bird species.

In 1918, Congress passed the Migratory Bird Treaty Act (MBTA, 16 U.S.C. 703–712) to implement the first Convention for the Protection of Migratory Birds. This landmark statute became the domestic law implementing all the international Conventions and it committed the United States to the protection and management of migratory birds. In addition, the MBTA gave the U.S. Fish and Wildlife Service (USFWS) authority to develop conservation plans and issue regulations on the harvest or "take" of migratory game birds and other migratory bird species causing economic damage or human health problems. In the 86 years since the enactment of the MBTA, the USFWS has promulgated regulations on the circumstances under which protected species may be taken and how these native species and their habitat will be protected.

Some bird species are biologically hard-wired to migrate, including neotropical migrant species like hummingbirds, warblers, shorebirds, and certain waterfowl species. Other birds may seasonally migrate shorter distances such as robins and crows. The MBTA does not define "migratory" and both obligant and nonobligant migratory species are included. The provisions of the MBTA have not included native, non-migratory game birds, like quail and turkey. Also the MBTA does not differentiate between native and exotic species. Species considered "exotic" include those intentionally introduced or accidentally released from captivity. Currently, the USFWS recognizes 832 species of native, non-introduced migratory birds in the U.S., 58 of them hunted game species.

Neither the international Conventions nor Congress in crafting the MBTA anticipated the presence of non-native bird species in the wild. In fact, until 2001, official federal policy treated non-native bird species as outside the MBTA and under the jurisdiction of the States. However, in 2001 a federal appeals court held for the first time that a non-native human- introduced species (in this case the mute swan) was covered by the MBTA. In Hill v. Norton,[1] the court reasoned that because the MBTA included taxonomic families of birds represented by species native to the United States, the MBTA's protection extended to all members of those families. This ruling had the effect of making the USFWS responsible for the conservation of all members of the family Anatidae (ducks, swans, and geese), including the non-native mute swan. The ruling also removed State authority to manage mute swans without federal permits.

Mute swans are among the Nation's largest bird species and are entirely non-migratory. Growing populations of mute swans in the Great Lakes and mid-Atlantic regions have conflicted with both the

[1] 275 F.3d 98 (D.C. Cir. 2001).

conservation of native avian species and habitats and with human use of shorelines. Mute swans can consume up to eight pounds per day of submerged aquatic vegetation critical to both avian and fish species. State fish and wildlife agencies have been working to control mute swans for over 20 years amid growing controversy. The State of Maryland, after an extensive public participation process, developed a five-year management plan for the species which included lethal removal of adult birds. Although this practice was occurring regularly and unchallenged in neighboring States,[2] a national controversy was generated over the Maryland management plan by animal welfare interests.

The State of Maryland applied to the USFWS for a permit to implement the plan. After preparing an Environmental Assessment under the National Environmental Policy Act (NEPA) which covered mute swan management in the Atlantic flyway, the USFWS issued to Maryland a permit to lethally remove up to 525 mute swans. Consequently, USFWS' permit decision was challenged in federal court, and on September 9, 2003, the District of Columbia District Court issued an injunction, halting Maryland from implementing its permit and concluding that the USFWS must prepare an Environmental Impact Statement under NEPA before issuing any additional mute swan permits.[3] Incredibly, this multi-year and multi-million dollar process would, under the MBTA, be undertaken with the goal of conservation of healthy mute swan populations in the United States.

The decision in Hill has far-reaching consequences beyond mute swans. Under the rationale expressed by the court, any non-native, human-introduced bird species within a taxonomic family represented by native U.S. bird species could now be protected by the MBTA. The introduction of non-native birds is a growing problem, with additional species being detected annually.

Although most introduced species never become established in the wild, 19 non-native bird species that belong to MBTA-protected families are known to have established self-sustaining populations in the U.S. While most of these species have rather restricted ranges, the mute swan, pigeon, and European starling are most broadly distributed across the continental United States. These non-native birds, like other alien species, compete with native birds, damage other natural resources, and impose economic costs. For example, rock doves or pigeons are long-lived birds, native to Europe and Asia, introduced into the U.S. by American colonists as early as 1621. Although there are no firm population figures for pigeons in the U.S., they are the single-most destructive bird in the United States. It has been estimated that they account for up to $1.1 billion in damages annually to private and public property. Their droppings deface and accelerate the deterioration of buildings and significantly increase maintenance costs. Furthermore, invasive pigeons are reservoirs and vectors for over 50 human and livestock diseases.

H.R. 4114 would amend the Migratory Bird Treaty Act to clarify that the provisions of that Act apply only to species native to the

[2] In 2002, USFWS issued 66 permits for the take of 1,758 mute swans. In 2003, the agency had issued 66 permits for the take of 3,605 mute swans.

[3] *Fund for Animals* v. *Norton,* Civil Action No. ECF 03–1710; *Kathryn Burton* v. *Norton,* Civil Action No. ECF 03–1102 (D. D.C. September 9, 2003) (memorandum opinion).

United States, Canada, and Mexico (the species covered by the Conventions with Japan and Russia are all native to the United States). There is no historical indication that the United States, Canada, and Mexico ever intended for the Conventions to apply to human-introduced species not native to the party countries. The proposed change is also consistent with Executive Order 13112 (Invasive Species), which directs the federal government to "prevent the introduction of invasive species and provide for their control and to minimize the economic, ecological, and human health impacts that invasive species cause." The fundamental goals of the bill are to restore a nearly century-old policy that reserves the application of the MBTA to native avian species that have not been introduced by humans, to allow the States to retain primacy over wildlife management, and to allow federal, State and local governments and private individuals to concentrate on the conservation of true native bird species. H.R. 4114 also ensures that any native species extant in the U.S. in 1918 when the MBTA was enacted, and then extirpated from the U.S. and reintroduced as part of a federal restoration effort, would be covered by the MBTA.

COMMITTEE ACTION

H.R. 4114 was introduced by Congressman Wayne T. Gilchrest (R-MD) on April 1, 2004. The bill was referred to the Committee on Resources and within the Committee to the Subcommittee on Fisheries Conservation, Wildlife and Oceans. On April 22, 2004, the Subcommittee met to mark up the bill. No amendments were offered and the bill was ordered favorably reported to the Full Committee by voice vote. On May 5, 2004, the Full Resources Committee met to consider the bill. Congressman Ron Kind (D-WI) offered an amendment in the nature of a substitute that established a new Title II of the bill reauthorizing and modifying certain provisions of the Neotropical Migratory Bird Conservation Act of 2000. This law allowed the Secretary of the Interior to make grants for the conservation of migratory birds primarily in Latin America and the Caribbean. The amendment was adopted by voice vote. The bill, as amended, was then ordered favorably reported to the House of Representatives by voice vote.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Resources' oversight findings and recommendations are reflected in the body of this report.

CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8 of the Constitution of the United States grants Congress the authority to enact this bill.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(3)(B) of that rule provides

that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974.

2. Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

3. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to amend the Migratory Bird Treaty Act to exclude non-native migratory bird species from the application of that Act, and for other purposes.

4. Congressional Budget Office Cost Estimate. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 27, 2004.

Hon. RICHARD W. POMBO,
Chairman, Committee on Resources,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4114, the Migratory Bird Treaty Reform Act of 2004.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Deborah Reis.

Sincerely,

ELIZABETH M. ROBINSON
(For Douglas Holtz-Eakin).

Enclosure.

H.R. 4114—Migratory Bird Treaty Reform Act of 2004

Summary: H.R. 4114 would amend the Migratory Bird Treaty Act to clarify that only species that are native to the United States are protected under that act, which governs the conservation of migratory birds. Title II of the bill would reauthorize funding for projects carried out under the Neotropical Migratory Bird Conservation Act through fiscal year 2008. (The current authorization to fund this program expires after fiscal year 2005.) The Secretary of the Interior uses this funding primarily to help finance research and conservation programs in North and South America.

Assuming appropriation of the authorized amounts, CBO estimates that implementing title II would cost $30 million over the 2006–2009 period. We estimate that enacting title I would have no significant effect on the federal budget. Enacting the legislation would not affect direct spending or receipts. H.R. 4114 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal government.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 4114 is shown in the following table. For this estimate, CBO assumes that the entire amounts authorized by the bill will be appropriated for each fiscal year. Outlay estimates are based on recent spending patterns for conservation programs. The cost of this legislation falls within budget function 300 (natural resources and environment).

	By fiscal year, in millions of dollars–					
	2004	2005	2006	2007	2008	2009
SPENDING SUBJECT TO APPROPRIATION						
Spending under current law for neotropical bird conservation programs:						
Authorization level [1]	4	5	0	0	0	0
Estimated outlays	4	5	1	0	0	0
Proposed changes:						
Authorization level	0	0	5	10	15	0
Estimated outlays	0	0	4	7	10	9
Spending under H.R. 4114 for neotropical bird conservation programs:						
Authorization level [1]	4	5	5	10	15	0
Estimated outlays	4	5	5	7	10	9

[1] The 2004 level is the amount appropriated for that year for neotropical migratory bird conservation. The 2005 level is the amount authorized under current law.

Intergovernmental and private-sector impact: H.R. 4114 contains no intergovnermental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

Estimate prepared by: Federal Costs: Deboarh Reis. Impact on State, Local, and Tribal Governments: Majorie Miller. Impact on the Private Sector: Selena Caldera.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

COMPLIANCE WITH PUBLIC LAW 104–4

This bill contains no unfunded mandates.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECTION 2 OF THE MIGRATORY BIRD TREATY ACT

SEC. 2. **[**That unless and except as permitted**]** *(a) IN GENERAL.—Unless and except as permitted* by regulations made as hereinafter provided, it shall be unlawful at any time, by any means or in any manner, to pursue, hunt, take, capture, kill, attempt to take, capture, or kill, possess, offer for sale, sell, offer to barter, barter, offer to purchase, purchase, deliver for shipment, ship, export, import, cause to be shipped, exported, or imported, deliver for transportation, transport or cause to be transported, carry or cause to be carried, or receive for shipment, transportation, carriage, or export,

any migratory bird, any part, nest, or egg of any such bird, or any product, whether or not manufactured, which consists, or is composed in whole or part, of any such bird or any part, nest, or egg thereof, included in the terms of the conventions between the United States and Great Britain for the protection of migratory birds concluded August 16, 1916, the United States and the United Mexican States for the protection of migratory birds and game mammals concluded February 7, 1936, the United States and the Government of Japan for the protection of migratory birds and birds in danger of extinction, and their environment concluded March 4, 1972 and the convention between the United States and the Union of Soviet Socialist Republics for the conservation of migratory birds and their environments concluded November 19, 1976.

(b) LIMITATION ON APPLICATION TO INTRODUCED SPECIES.—

(1) IN GENERAL.—This section applies only to migratory bird species that are native to the United States and whose occurrence in the United States is entirely the result of natural biological or ecological conditions.

(2) TREATMENT OF INTRODUCED SPECIES.—For purposes of paragraph (1)—

(A) a bird species shall not be treated as native to the United States if it occurs in the United States solely as a result of intentional or unintentional human-assisted introduction; and

(B) a migratory bird species shall be treated as native to the United States if—

(i) it was native to the United States and extant in 1918;

(ii) it was extirpated after 1918 throughout its range in the United States; and

(iii) after such extirpation, it was reintroduced in the United States as a part of a program carried out by a Federal agency.

NEOTROPICAL MIGRATORY BIRD CONSERVATION ACT

* * * * * * *

SEC. 2. FINDINGS.

Congress finds that—

(1) of the nearly 800 bird species known to occur in the United States, approximately 500 migrate among countries, and the large majority of those species, the neotropical migrants, winter in Latin America and the Caribbean *but breed in Canada and the United States*;

* * * * * * *

SEC. 3. PURPOSES.

The purposes of this Act are—

(1) * * *

(2) to assist in the conservation of neotropical migratory birds by supporting conservation initiatives in the United States, *Canada,* Latin America, and the Caribbean; and

* * * * * * *

SEC. 4. DEFINITIONS.

In this Act:

[(1) ACCOUNT.—The term "Account" means the Neotropical Migratory Bird Conservation Account established by section 9(a).]

(1) FUND.—The term "Fund" means the Neotropical Migratory Bird Conservation Fund established by section 9(a).

(2) CARIBBEAN.—The term "Caribbean" includes Puerto Rico and the United States Virgin Islands.

[(2)] *(3)* CONSERVATION.—The term "conservation" means the use of methods and procedures necessary to bring a species of neotropical migratory bird to the point at which there are sufficient populations in the wild to ensure the long-term viability of the species, including—

(A) * * *

* * * * * * *

[(3)] *(4)* SECRETARY.—The term "Secretary" means the Secretary of the Interior.

SEC. 5. FINANCIAL ASSISTANCE.

(a) * * *

* * * * * * *

(e) COST SHARING.—

(1) FEDERAL SHARE.—The Federal share of the cost of each project shall be not greater than [25] *50* percent.

(2) NON-FEDERAL SHARE.—

(A) * * *

[(B) FORM OF PAYMENT.—

[(i) PROJECTS IN THE UNITED STATES.—The non-Federal share required to be paid for a project carried out in the United States shall be paid in cash.

[(ii) PROJECTS IN FOREIGN COUNTRIES.—The non-Federal share required to be paid for a project carried out in a foreign country may be paid in cash or in kind.]

(B) FORM OF PAYMENT.—

(i) PROJECTS IN THE UNITED STATES AND CANADA.—The non-Federal share required to be paid for a project carried out in the United States or Canada shall be paid in cash.

(ii) PROJECTS IN LATIN AMERICA AND THE CARIBBEAN.—The non-Federal share required to be paid for a project carried out in Latin America or the Caribbean may be paid in cash or in kind.

* * * * * * *

SEC. 8. REPORT TO CONGRESS.

Not later than [October 1, 2002,] *12 months after the date of the enactment of the Neotropical Migratory Bird Conservation Improvement Act of 2004,* the Secretary shall submit to Congress a report on the results and effectiveness of the program carried out under this Act, including recommendations concerning how the Act might be improved and whether the program should be continued*, and a description of the activities of the advisory committee convened under section 7(b).*

[SEC. 9. NEOTROPICAL MIGRATORY BIRD CONSERVATION ACCOUNT.

[(a) ESTABLISHMENT.—There is established in the Multinational Species Conservation Fund of the Treasury a separate account to be known as the "Neotropical Migratory Bird Conservation Account", which shall consist of amounts deposited into the Account by the Secretary of the Treasury under subsection (b).

[(b) DEPOSITS INTO THE ACCOUNT.—The Secretary of the Treasury shall deposit into the Account—

[(1) all amounts received by the Secretary in the form of donations under subsection (d); and

[(2) other amounts appropriated to the Account.]

SEC. 9. NEOTROPICAL MIGRATORY BIRD CONSERVATION FUND.

(a) ESTABLISHMENT.—There is established in the Treasury a separate account, which shall be known as the "Neotropical Migratory Bird Conservation Fund". The Fund shall consist of amounts deposited into the Fund by the Secretary of the Treasury under subsection (b).

(b) DEPOSITS INTO THE FUND.—The Secretary of the Treasury shall deposit into the Fund—

(1) all amounts received by the Secretary in the form of donations under subsection (d); and

(2) other amounts appropriated to the Fund.

(c) USE.—

(1) * * *

(2) ADMINISTRATIVE EXPENSES.—Of amounts in the Account available for each fiscal year, the Secretary may expend not more than 3 percent or up to [$80,000] *$150,000*, whichever is greater, to pay the administrative expenses necessary to carry out this Act.

(d) ACCEPTANCE AND USE OF DONATIONS.—The Secretary may accept and use donations to carry out this Act. Amounts received by the Secretary in the form of donations shall be transferred to the Secretary of the Treasury for deposit into the [Account] *Fund*.

[SEC. 10. AUTHORIZATION OF APPROPRIATIONS.

[There is authorized to be appropriated to the Account to carry out this Act $5,000,000 for each of fiscal years 2001 through 2005, to remain available until expended, of which not less than 75 percent of the amounts made available for each fiscal year shall be expended for projects carried out outside the United States.]

SEC. 10. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There is authorized to be appropriated to the Fund to carry out this Act the following amounts:

(1) $5,000,000 for fiscal year 2005.

(2) $5,000,000 for fiscal year 2006.

(3) $10,000,000 for fiscal year 2007.

(4) $15,000,000 for fiscal year 2008.

(b) AVAILABILITY.—Amounts appropriated under this section may remain available until expended.

(c) ALLOCATION.—Of amounts appropriated under this section for each fiscal year, not less than 75 percent shall be expended for projects carried out outside the United States.

(d) LIMITATION ON EXPENDITURES FOR PROJECTS IN CANADA.—Amounts appropriated under this section for a fiscal year may not

be used for any project in Canada unless the amount available to carry out this Act for that fiscal year is greater than $10,000,000.

ADDITIONAL VIEWS

The Committee approved a substitute amendment to H.R. 4114 that included as Title II a reauthorization of the Neotropical Migratory Bird Conservation Act (NMBCA). Because over one-quarter of U.S. native bird species are either listed as threatened or endangered by extinction or expected to attain that status, the committee agreed that it was appropriate to re-authorize this important bird conservation statute before it expired in Fiscal Year 2005.

NMBCA was enacted by Congress and signed into law by the President on July 20, 2000 as Public Law 106–247. Congress found that most of the avian species in the U.S. migrate among countries, and the large majority—the neotropical migratory birds—winter in Latin America and the Caribbean. Many of these birds provide invaluable environmental, economic, recreational, and aesthetic benefits; but their populations are in decline and their long-term survival is in doubt without conservation assistance. Therefore, the Act established a matching grant program to fund projects that promote the conservation of migratory birds in the United States, Latin America, and the Caribbean. Eligible projects for this grant include activities to benefit bird populations and their habitats, research and monitoring, law enforcement, and outreach and education. All grant requests must be matched by non-U.S. Federal funds by at least a 3:1 ratio. Eligible proposals are reviewed by a diverse panel of experts from the U.S. Fish and Wildlife Service (Service), who then make recommendations for project funding to the Service's Director. The Director then approves projects on behalf of the Secretary of the Interior.

Interest in the program has been significant from its inception. Grant requests received for the periods between Fiscal Years 2002–2004 represented 579 projects totaling more than $225 million in proposed conservation projects. In Fiscal Year (FY) 2002, the Service received 280 proposals requesting a total of $24 million. Of those, the Director selected 32 projects for grants totaling $2.9 million. In FY 2003, 150 proposals were submitted, requesting a total of $12 million. The Director selected 37 projects for a total of $2.9 million in grant funds. In both years, many more qualifying proposals were received than could be funded. Projects are located in 19 countries, including the United States, and eight are multi-national in scope. Congress appropriated $4 million for this program in FY2004. Following a January 16, 2004 deadline, the Service received 139 proposals (30 from the US) having project activities in 28 countries (including a number of multi-country proposals), requesting about $12 million in grants. These requested funds were matched by $39.06 million, almost a 4 to 1 match ratio.

Despite this record of achievement there remains a desperate need for the funding and infrastructure to assure the implementation of projects to promote comprehensive habitat conservation

management and protection. In addition, coordination among the federal, state, and local governments and the private sector, comprehensive monitoring programs, and integration of sound science into management decisions need support. Because of a lack of funding, in FY '03 alone, 113 projects were turned down for $8.7 million, leaving over $20.2 million in matching funds on the table.

The money that Congress has appropriated for the NMBCA has been more than quadrupled by matching funds for such critical projects, including those that protect, restore, and manage habitat for migratory birds and other wildlife. Bird conservation investments in the U.S. will not be effective without making investments to conserve these migratory species throughout their hemispheric range.

The re-authorization of the NMBCA in Title II will assist in addressing persistent threats to neotropical migratory birds during their breeding and migration in North America as well as during their migration and over-wintering in South America and the Caribbean. The purposes of NMBCA would remain the same: to perpetuate healthy populations of neotropical migratory birds by supporting, through financial assistance, conservation initiatives in the United States, Latin America, and the Caribbean. Title II would continue to provide grants for the conservation of migratory birds in range states, as well as within the U.S. Authorizations for grant-funding would be raised from the current level of $5 million to $10 million in FY 2007 and to $15 million in FY 2008. Matching requirements would be lowered from 3:1 to 1:1 to allow greater participation. The existing requirement that at least 75% must go for projects in Latin America and the Caribbean would remain unchanged. Also, projects in Canada would now be eligible in any fiscal year where amounts appropriated for the program exceed $10 million. A slight increase would also be allowed for the Service to administer the program.

Ironically, the population declines of many migratory bird species come at a time when bird-related recreation in the U.S. is hitting an all-time high in popularity. The National Survey on Recreation and the Environment tallies 71 million Americans participating in some form of bird-related activities in 2001. According to the 2001 U.S. FWS report, Birding in the U.S.: A Demographic and Economic Analysis, bird-related expenditures added $85 billion in overall economic impacts, generated $13 billion in state and federal income taxes, and created 863,406 jobs. Hunting migratory birds contributed $1.4 billion in direct expenditures. Clearly, birding is big business, and the health and protection of birds, an important issue in many parts of our country.

The passage, full-funding, and implementation of the NMBCA amendments contained in Title II of H.R. 4114 could help prevent further declines in many avian species. The Committee believed it was important to re-authorize this important bird conservation measure in this Congress and I commend them for supporting this effort.

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