

minute and to revise and extend his remarks.)

Mr. HERGER. Madam Speaker, last summer Congress passed the Taxpayer Relief Act. This legislation cuts taxes on every stage of life, providing for a \$500 per child tax credit, a reduction on the family farm and family businesses at the same time of death, and a reduction in the tax on capital gains.

But Congress should go further. America is overtaxed. Not only is America overtaxed, but middle class families in particular are overtaxed. The economy is projected to produce a significant surplus over the next 5 to 10 years, and Congress should use some of that money for tax cuts.

There are many politicians in Washington who cannot wait to get their hands on that surplus so they can do what they always do with taxpayers' money, spend it. Washington is not careful with the taxpayers' money. It wastes too much, and it never seems to be held accountable for its failures.

It is time to change direction. We need to pass further tax relief, and we need to hold the line on spending. I urge my colleagues to support the Republican package of middle-class tax cuts.

CALLING FOR FURTHER TAX RELIEF FOR AMERICANS

(Mr. SHIMKUS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SHIMKUS. Madam Speaker, we recently marked the first year anniversary of the Taxpayer Relief Act, the first major tax reduction since the Reagan tax cuts of the 1980s. Let us face it, there would have been no tax cut at all were it not for a Republican Congress.

In fact, the last time the Democrats controlled Congress they did what Democrats can be expected to do, raise taxes. The Republican Party is the party of tax cuts, the Democrat party is the party of bigger government and higher taxes; two different directions, two different visions of what the people's representatives in Washington should do with other people's money.

Last year tax cuts were only a first step. The Taxpayer Relief Act reduced the tax on capital gains, cut the estate tax, expanded IRAs for middle class savers, provided a \$500 per child tax cut, and passed into law a host of other tax reductions. But this Congress would like to go further. We should eliminate the marriage tax penalty and pass more tax relief for middle class taxpayers.

THE "SCARE ME AL" DOLL

(Mr. PETERSON of Pennsylvania asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PETERSON of Pennsylvania. Madam Speaker, it seems each holiday

season a hot new toy or doll takes the Nation by storm. Parents and kids line up and pay hefty prices for the item of the season. If it is not beany babies, it is a doll called Tickle Me Elmo.

If the Vice President has his way, this year's sensation will be a new doll called Scare Me Al. Scare Me Al is a carved wooden doll with one of those pull strings connected to prerecorded messages for our kiddies. It says things like, "Today was the hottest day in the history of the world." Pull the string again and Scare Me Al will tell your kids that unless you get rid of that sport utility vehicle that mom uses to drive them to soccer practice, the ice caps will melt and raise the sea levels until we all drown.

Scare Me Al is the perfect companion for all of the EPA taxpayer-printed coloring books and other literature which relate the same frightening global warming scare stories to the children K through 12. As for me, Madam Speaker, I would rather take my chances with the Clinton Justice Department, and buy my grandkids a new game of monopoly.

URGING INDONESIAN GOVERNMENT TO INVESTIGATE CRIMES AGAINST MINORITIES

(Mr. PITTS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PITTS. Madam Speaker, I rise today to express concern for the victims of the rapes and riots in Indonesia, and to stand with those victims, the Chinese ethnic community, the Christian, and the other religious minority communities.

Yesterday I was briefed by Indonesians themselves on what is happening in their country. In the last 3 months, 15 churches have been destroyed or burned since Habibie has been in power. I want to join with those Indonesians and the Chinese people worldwide in condemning these gross violations of human rights, in particular, the raping of ethnic Chinese women.

Reliable reports suggest that the attacks on ethnic and religious minorities were orchestrated. Unfortunately, individuals and organizations which are assisting these victims have been harassed, threatened with phone calls, explosives, and even death should they continue to help the victims.

Madam Speaker, I urge the Indonesian government immediately to proceed with a thorough investigation to promptly bring to justice all individuals who are associated with or who are perpetrators of these crimes against minorities.

REGARDING TAX REFORM AND SOCIAL SECURITY

(Mrs. CUBIN asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. CUBIN. Madam Speaker, now that both Houses of Congress are back in session, I believe one of the primary goals that we should set our sights on is providing an across-the-board tax cut for all Americans. The Clinton administration has said that they do not support any tax cuts until Congress has made sure that Social Security is solvent for the so-called baby boomer generation, of which I am one.

Madam Speaker, I believe we can achieve both of these goals. With an anticipated budget surplus of \$1.6 trillion over the next 10 years, there is no doubt in my mind that we can continue to have a balanced budget, begin paying down the national debt, provide tax relief for hard-working Americans, and maintain the solvency of our Social Security program.

Simply by paying off our \$5 trillion national debt, which probably is not all that simple, and maintaining budgetary balance, the future of Social Security will be secure for Americans into the next century.

There is a plan being offered by the gentleman from Texas (Mr. SAM JOHNSON) and the gentlewoman from Connecticut (Mrs. NANCY JOHNSON) which will achieve these worthy goals. While their proposal is not everything I would envision in the way of tax reform, it is a good step in the right direction.

THE JONES ACT

(Mr. SMITH of Michigan asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SMITH of Michigan. Madam Speaker, I rise today to talk about an act known as the Jones Act. The Jones Act is an act passed by Senator Jones of Washington as a floor amendment in the Senate in 1920. It is a protectionist act that requires that any transportation of goods by ship between any two U.S. ports has to be on a ship made in the U.S.A., manned by U.S. sailors, paying U.S. taxes, et cetera.

I have legislation that is going to tremendously make a difference in helping farmers this fall and next year that says, let us allow these vessels to be built anywhere in the world to transport these agricultural commodities, still require that they be manned by U.S. crews, that they be American-owned, American-flagged, pay all American taxes, and comply with environmental laws.

Agriculture is going through a tremendously depressed time. We cannot afford to further depress those commodity prices by limiting the transportation to move these goods between U.S. ports.

MIGRATORY BIRD TREATY REFORM ACT OF 1998

Mr. DIAZ-BALART. Madam Speaker, by direction of the Committee on Rules, I call up House Resolution 521

and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 521

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 1(b) of rule XXIII, declare the House resolved into the Committee of the Whole House on the state of the Union for consideration of the bill (H.R. 2863) to amend the Migratory Bird Treaty Act to clarify restrictions under that Act on baiting, to facilitate acquisition of migratory bird habitat, and for other purposes. The first reading of the bill shall be dispensed with. General debate shall be confined to the bill and shall not exceed one hour equally divided and controlled by the chairman and ranking minority member of the Committee on Resources. After general debate the bill shall be considered for amendment under the five-minute rule. It shall be in order to consider as an original bill for the purpose of amendment under the five-minute rule the amendment in the nature of a substitute recommended by the Committee on Resources now printed in the bill. The committee amendment in the nature of a substitute shall be considered as read. During consideration of the bill for amendment, the Chairman of the Committee of the Whole may accord priority in recognition on the basis of whether the Member offering an amendment has caused it to be printed in the portion of the Congressional Record designated for that purpose in clause 6 of rule XXIII. Amendments so printed shall be considered as read. The chairman of the Committee of the Whole may: (1) postpone until a time during further consideration in the Committee of the Whole a request for a recorded vote on any amendment; and (2) reduce to five minutes the minimum time for electronic voting on any postponed question that follows another electronic vote without intervening business, provided that the minimum time for electronic voting on the first in any series of questions shall be 15 minutes. At the conclusion of consideration of the bill for amendment the Committee shall rise and report the bill to the House with such amendments as may have been adopted. Any Member may demand a separate vote in the House on any amendment adopted in the Committee of the Whole to the bill or to the committee amendment in the nature of a substitute. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

The SPEAKER pro tempore (Mrs. EMERSON). The gentleman from Florida (Mr. DIAZ-BALART) is recognized for 1 hour.

Mr. DIAZ-BALART. Madam Speaker, for purposes of debate only, I yield the customary 30 minutes to the gentleman from Ohio (Mr. HALL), pending which I yield myself such time as I may consume. During consideration of this resolution, all time yielded is for purposes of debate only.

Madam Speaker, House Resolution 521 is an open rule providing for the consideration of H.R. 2863, the Migratory Bird Reform Act of 1998. The purpose of the bill is to codify a uniform standard to determine when someone is guilty of hunting migratory birds on a baited field.

The rule provides the customary 1 hour of debate, equally divided and controlled by the chairman and the

ranking minority member of the Committee on Resources. The rule makes in order for the purposes of amendment the substitute recommended by the Committee on Resources now printed in the bill which shall be considered as read.

In addition, the rule permits the Chair to grant priority in recognition to members who have preprinted their amendments, and considers them as read. Further, as has become standard practice for open rules, the Chair is allowed to postpone recorded votes and reduce the time for electronic voting on postponed votes. Finally, the rule provides for one motion to recommit, with or without instructions.

Madam Speaker, I am pleased that the House is able to consider legislation today that enjoys wide bipartisan support. H.R. 2863 is needed to clarify baiting restrictions under the 1918 Migratory Bird Treaty Act, which is the United States law which implemented the convention for the protection of migratory birds signed in 1916 by the United States, and on behalf of Canada, by Great Britain.

□ 1030

A curious provision which has caused some controversy in the 80 years since Congress passed the Migratory Bird Act involves the hunting of birds over fields that have been illegally baited to attract these migratory birds.

I am not a hunter, but hunters are well aware that hunting migratory birds over bait is considered unsportsmanlike and is illegal. This is not in dispute and will remain illegal under this bill. The problem, however, arises when a hunter was truly unaware of the nearby bait. The current Fish and Wildlife regulations provide no possible defense for a hunter who may have been legitimately and completely unaware that someone else may have scattered corn, for example, in a nearby field. Simply possessing a loaded firearm in a nearby field is enough to convict a hunter of a crime in most States.

H.R. 2863 seeks to bring some common sense and uniformity to baiting regulations. The bill applies a single standard that make it unlawful for a person to hunt over a baited field if that person knows or reasonably should know that the area is baited, and also makes it unlawful for someone to place that bait in the field for the purpose of attracting migratory birds for hunters.

Madam Speaker, I urge my colleagues to support this rule. I guess it could be referred to as the House version of the Byrd rule.

Madam Speaker, I reserve the balance of my time.

Mr. HALL of Ohio. Madam Speaker, I yield myself such time as I may consume, and thank the gentleman from Florida (Mr. DIAZ-BALART) for yielding me this time.

Madam Speaker, this resolution is an open rule. It will allow for full and fair

debate on H.R. 2863. As the gentleman from Florida has described, this rule will provide 1 hour of general debate to be equally divided and controlled by the chairman and the ranking minority member of the Committee on Resources.

The rule permits amendments under the 5-minute rule. This is the normal amending process in the House. All Members on both sides of the aisle will have the opportunity to offer amendments.

As my colleague said, this bill amends and clarifies a provision of the Migratory Bird Treaty Act which restricts the hunting of birds over fields that have been baited with food to attract them. The U.S. Fish and Wildlife Service has concerns about this bill because it will preempt the service's ability to issue regulations. Also some animal welfare advocates believe the bill would harm waterfowl populations.

Because the bill will be considered under an open rule, Members will have the opportunity, they will be able to offer improving amendments. This is an open rule, as I said before. It was adopted by the Committee on Rules by voice vote. I urge its adoption.

Madam Speaker, I have no further speakers, and I yield back the balance of my time.

Mr. DIAZ-BALART. Madam Speaker, I also yield back the balance of my time, and I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

The SPEAKER pro tempore (Mr. DIAZ-BALART). Pursuant to House Resolution 521 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 2863.

□ 1034

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 2863) to amend the Migratory Bird Treaty Act to clarify restrictions under that Act on baiting, to facilitate acquisition of migratory bird habitat, and for other purposes, with Mrs. EMERSON in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the bill is considered as having been read the first time.

Under the rule, the gentleman from New Jersey (Mr. SAXTON) and the gentleman from California (Mr. MILLER) each will control 30 minutes.

The Chair recognizes the gentleman from New Jersey (Mr. SAXTON).

Mr. SAXTON. Madam Chairman, I yield myself such time as I may consume.

Madam Chairman, I rise in strong support of H.R. 2863, a bill introduced by the gentleman from Alaska (Chairman YOUNG) to reform the Migratory

Bird Treaty Act. He has been joined in this effort by a number of colleagues, including the gentleman from Michigan (Mr. DINGELL), the gentleman from Tennessee (Mr. TANNER), the gentleman from Florida (Mr. STEARNS), the gentleman from Pennsylvania (Mr. WELDON) and the gentleman from Minnesota (Mr. PETERSON).

Madam Chairman, it has been 80 years since Congress enacted this law to conserve migratory birds. It is a good law and it has worked. During this time, the U.S. Fish and Wildlife Service has issued many regulations dealing with the harvest of migratory birds. The vast majority of these regulations were proposed by the hunting community, and as such, they have worked.

The Federal courts, however, impose a rule which is referred to as the rule of strict liability on those accused of hunting migratory birds over bait. It is this rule of strict liability that this reform act seeks to change. I would like to say at this point that the basic bill, the law itself and the provisions it imposes, are not changed at all.

For example, the term "baiting" is defined in the current law and the definition remains the same. And just for the purpose of clarification, I would like to state what that rule is. Baiting is defined and it says, "No person shall take migratory bird by the aid of baiting, which means the placement or scattering of corn, wheat, or other feeds so as to constitute a lure, attraction or enticement to any areas where hunters are attempting to take them," "them" referring of course to migratory waterfowl. That provision remains intact as it is and as it has been and as it has worked well.

However, the Federal court's imposition of a rule of strict liability of those accused of hunting migratory birds under bait as defined by the words I just read has not worked well, at least in the opinion of those of us who support this bill.

What this means is that if a hunter is there in a location and bait is there, the hunter is guilty. There is little opportunity for defense. The court rules the bait was there, the hunter was there. Whether or not the hunter knew the bait was there is irrelevant, and the guilty verdict applies.

Further, conviction under this act is a Federal criminal offense and penalties may include a fine of up to \$5,000 and 6 months in jail. This is strict liability interpretation. "If you are there, you are guilty" is fundamentally wrong under our American system of laws, law enforcements, and jurisprudence. It violates one of our most basic constitutional protections, that a person is innocent until proven guilty. Strict liability has a chilling effect, therefore, on thousands and thousands of law-abiding citizens.

Let me just put forth a couple of examples about how unfair this rule is. Baiting is illegal. It will continue to be illegal. And unfortunately, there will

be those who take part in the practice of baiting, I suppose thinking they will never be caught. So let us just assume for a moment that someone in the Midwestern part of the country decides they want to hunt for Canadian geese. As we know, Canadian geese love to eat corn. And if a flock of Canadian geese, Canada geese, become accustomed to feeding in a field every morning at 6:30 a.m., because somebody goes out and spreads corn around every afternoon at 6 p.m., the flock comes back again and again and again. And those who bait and who are illegally hunting there, I suppose, benefit from the fact that they are getting away with this baiting.

Now, let us just suppose for a moment that on their way home from school some 16- or 17-year-old boys who love to hunt notice that this is a prime spot for hunting. It is so because every morning on the way to school they see this hunting activity taking place and they say to themselves, tomorrow morning, on Friday, let us go to that field because it must be a wonderful place to hunt. So the teenagers show up, they get in a blind, and along come the snow geese followed by a game warden.

The teenagers are there doing their hunting which they think is totally legitimate because they had no idea that the baiting has taken place. The warden shows up, arrests the teenagers, and they go to court and they are found guilty with no reference whatsoever to whether or not they knew the baiting had occurred. They were there, the bait was there, and therefore they were guilty. There are many other examples like this that could be used, but I think that example makes the point.

At the full Committee on Resources markup, the gentleman from Alaska (Chairman YOUNG) offered an amendment that limited the scope of the bill to the two issues that can be resolved through this legislative process. The first is to replace this strict liability, if the hunter was there and the bait was there, the hunter is guilty, to replace this liability with the phrase that the person knew or should have known that the baiting had taken place.

The second provision improves the current law by making it unlawful to place or direct the placement of bait. This will allow the service to cite those commercial operators who intentionally bait a field without the knowledge of the hunter.

Madam Chairman, I believe that every American is innocent until proven guilty and that people should be entitled to offer evidence in their defense. I hope that others will agree with this provision. It is the right thing to do and the "knows" or "reasonably should know" standard will be effectively applied throughout this Nation. There is no justification for the strict liability doctrine in this case when it refers to these migratory birds, and I hope that my colleagues on both sides of the aisle will agree and vote "yes" on this measure.

Madam Chairman, I submit the following for the RECORD:

CALIFORNIA WATERFOWL ASSOCIATION,
Sacramento, CA, July 10, 1998.

Hon. DON YOUNG,

House of Representatives, Washington, DC.

DEAR CONGRESSMAN YOUNG: The California Waterfowl Association (CWA) is pleased to support HR 2863, your effort to obtain changes in federal migratory bird baiting regulations to provide hunters, wildlife managers, farmers, law enforcement officials, and the courts with enhanced clarity and guidance as to the restrictions on the taking of migratory birds.

CWA supports the intent of regulations aimed at preventing baiting for the purpose of increasing the vulnerability of waterfowl to the gun. However, our Association has long recognized that current regulations, if actively enforced, would likely result in negative impacts to California's critical remaining managed wetland base, as well as unwarranted prosecution of law abiding sportsmen and women. Of primary concern are ambiguities in the current regulations which conflict with traditional "moist-soil" wetland management practices which are intended to augment habitat values for waterfowl and other wetland-dependent wildlife. Because California has lost nearly 95% of its historic waterfowl habitat, it is critical that the wetland values and functions of the habitat base which remains be maximized. Currently, however, confusion over the meaning and enforcement of these regulations is compromising the willingness of many landowners to employ preferred waterfowl habitat management practices on their lands.

In an effort to address these concerns, for nearly three years, CWA and others have actively urged the U.S. Fish and Wildlife Service (Service) to consider changes in federal baiting regulations. As you are aware, this past March, the Service responded by offering for comment a variety of amendments to the existing rules. Our Association applauds the Service for this proposal which addresses many of our concerns regarding conflicts with preferred wetland management practices. Although the Service proposal needs further clarification, we believe our remaining concerns in this area can be addressed administratively during the proposal's public comment process.

The Service's proposal does not, however, address another area of concern to our Association—the issue of strict liability. Existing regulations are written in a "guilty until proven innocent" fashion which has, at times, resulted in law abiding hunters being unreasonably prosecuted for baiting. By proposing to amend the rule to install the "knows or reasonably should know" standard, your HR 2863 effectively addresses this concern by allowing those who believe they were unfairly cited to present their case in court.

Our Association appreciates your willingness to carefully address the outstanding issue of strict liability without weakening the important intent of current restrictions, or the protection they offer the waterfowl resource. As such, we are pleased to offer this legislation our support, and we look forward to working closely with you to secure its passage.

Sincerely,

BILL GAINES,
Director, Government Affairs.

THE GRAND NATIONAL
WATERFOWL ASSOCIATION,
Cambridge, MD, May 13, 1998.

Hon. DON YOUNG,

Rayburn HOB, Washington, DC.

DEAR CONGRESSMAN YOUNG: The Grand National Waterfowl Association was chartered

in 1983 as a private, non-profit organization. The organization's purpose is to promote the conservation and wise use of our wildlife and natural resources and to promote a better understanding of our responsibilities to the land. Grand National has members both from the local community as well as across the United States and several from foreign countries.

We understand that the Resources Committee is reporting out H.R. 2863 amending the Migratory Bird Treaty Act, and that this legislation will provide some much needed clarification on the "baiting" issue. Over the past 50 or so years this has been one of the most vexing problems for the sportsman due to inconsistencies in enforcement and in court decisions.

Let me assure you we have no quarrel with the intent of the Migratory Bird Treaty Act, but the implementation has caused unnecessary confusion and resulting injustices for many sportsmen. We hope the "strict liability" and "zone of influence" issues are clarified in the legislation and that the legislation is acted upon before another waterfowl season of uncertainty.

Sincerely,

ROBERT GORMLEY,
President.

INTERNATIONAL ASSOCIATION OF
FISH AND WILDLIFE AGENCIES,
Washington, DC, April 29, 1998.

Hon. DON YOUNG,
Chairman, House Resources Committee, Rayburn House Office Building, Washington, DC.

DEAR CHAIRMAN YOUNG: I recently discussed with Harry Burroughs of your staff the recommendations of the International Association of Fish and Wildlife Agencies on the issue of baiting as it relates to waterfowl hunting. As you know, our concern with this matter goes back several years and eventually led to the Association's establishment in 1996 of an ad hoc Committee on Baiting. This committee completed its work with the submission of a final report on April 29, 1997 that presented recommended changes in federal waterfowl hunting regulations. The recommendations in this report were adopted by the Association's Executive Committee as the official position of the Association. On May 15, 1997, Brent Manning, Chairman of our ad hoc Committee and Director of the Illinois Department of Natural Resources, testified before your Committee on H.R. 741 and presented the recommendations of the Association's committee on baiting. I am enclosing a copy of this report for your ready reference.

I believe it is significant that the ad hoc committee recommended that consistency be brought to the application of hunter's liability by adoption of the Delahoussaye language from the federal Fifth Circuit. The Association's recommendations contained in the ad hoc committee's report are generally contained in your amendment in the nature of a substitute for H.R. 2863, which you recently introduced and which is consistent with the Association's position regarding liability.

We appreciate your leaving the detailed recommendations regarding agricultural crops and management of natural vegetation to the regulatory process. As Mr. Manning indicated in his testimony, it is likely that these will need to be modified and fine tuned to reflect changing agricultural practices.

As you are aware, the Fish and Wildlife Service recently published proposed regulations on baiting and baiting areas in the Federal Register. Those proposed regulations reflect a number of the recommendations of our ad hoc Committee regarding agricultural crops and management of natural vegeta-

tion. Unfortunately, the proposed regulations do not reflect changes recommended by the Committee regarding liability. Our Association has officially requested that the 60-day comment period be extended until October 1, 1998, so that we can have time to conduct and coordinate an adequate review. We were disappointed that the Service did not address the liability issue in their draft regulations, even though we had requested earlier that they do so. We will comment on the draft regulations based on our ad hoc Committee report. In the meantime, the report of the ad hoc Committee as adopted by the Association constitutes the official position of the Association.

I hope that the information I have provided is useful and look forward to working with you on this and other important issues that we face.

Sincerely,

R. MAX PETERSON,
Executive Vice President.

ILLINOIS DEPARTMENT OF
NATURAL RESOURCES,
Springfield, IL, April 29, 1998.

Hon. DON YOUNG,
Chair, Committee on Resources, House of Representatives, Rayburn House Office Building, Washington, DC.

DEAR CONGRESSMAN YOUNG: As the Chief Law Enforcement Officer for the Illinois Department of Natural Resources, I wish to go on record in support of H.R. 2863 (as amended). As a career Conservation Law Enforcement Officer, I know first hand the strengths and weaknesses of our current federal baiting regulations. If Congress adopts the Delahoussaye standard for waterfowl baiting regulations, a serious and longstanding weakness will have been remedied.

Some opponents of your bill object on the basis that law enforcement officers will have to work much harder to make good baiting cases. In my opinion, in a free society like ours, ease of enforcement should not be a standard that is applied when evaluating a law. Rather, we should seek to enact common sense laws that treat sportsmen fairly, and protect our precious natural resources first and foremost. I believe your amended bill meets all of these criteria.

I thank you for your support of waterfowl and wetland management and the hunting opportunities they provide.

Sincerely,

LARRY D. CLOSSON,
Chief, Office of Law Enforcement.

ILLINOIS DEPARTMENT OF
NATURAL RESOURCES,
Springfield, IL, April 27, 1998.

Hon. DON YOUNG,
Chair, Committee on Resources, House of Representatives, Rayburn House Office Building, Washington, DC.

DEAR CONGRESSMAN YOUNG: As Director of the Illinois Department of Natural Resources, I am writing to express my support specifically for the component of H.R. 2863 addressing the issue of strict liability for waterfowl hunting. I am a wildlife biologist, chairman of a committee reviewing federal baiting regulations, and an avid waterfowl hunter. In these capacities I have been exposed to a considerable amount of information regarding the application of strict liability in the enforcement of federal baiting regulations. It is my opinion that the so-called Delahoussaye standard should be adopted in place of the current strict liability regulation. This change will not put the waterfowl resource at risk, as some allege. I applaud your attempt to bring common sense and fairness to this aspect of waterfowl

hunting. Please be assured of my support in this regard.

Sincerely,

BRENT MANNING,
Director.

MIGRATORY WATERFOWL
HUNTERS, INC.,
Alton, IL, June 18, 1998.

Hon. JOHN SHIMKUS,
State Representative, Springfield, IL.

DEAR REPRESENTATIVE SHIMKUS: HB 2863 removes the "strict liability" clause from the migratory bird hunting regulations as proposed by the U.S. Fish and Wildlife Service in the Federal Register. Migratory Waterfowl Hunters, Inc. strongly urges you to vote in favor of this bill.

Far too many duck and goose hunters have been arrested and wrongly convicted of baiting waterfowl because the "strict liability" clause renders a sportsman guilty before proven innocent. H.R. 2863 will take the guess work out of this law enforcement issue and cause conservation police officers to focus on the real criminals.

Once again, please support H.R. 2863, Congressman Don Young's bill to remove the "strict liability" clause from migratory bird hunting regulations.

Sincerely,

GREG FRANKE,
Corresponding Secretary.

NATIONAL RIFLE ASSOCIATION
OF AMERICA,
Fairfax, VA, May 5, 1998.

Hon. DON YOUNG,
Chairman, House Resources Committee, Longworth House Office Building, Washington, DC.

DEAR CHAIRMAN YOUNG: On behalf of the National Rifle Association of America (NRA), I would like to convey our appreciation to you for the commitment you have made to reforming the baiting rules governing the hunting of migratory birds.

We wish to congratulate you on the passage of your bill, HR2863, as amended, from the Resources Committee on April 29. The NRA has long been an active and enthusiastic supporter of legislative reform in this area. It has been our pleasure to work with your staff to meet your stated objective of providing clarity, simplicity and uniformity to the enforcement of the baiting rules.

While we anticipated having the legislation reported from your Committee last year, we supported your decision to give the US Fish and Wildlife Service one last opportunity to reform the baiting rules through the regulatory process. We were very disappointed to find that the publication of the proposed rule on March 25 gave truth to our suspicions that the Service will never step in where reform is most needed.

All of us, including the Service, have known from the beginning that the core of the issues surrounding enforcement of the baiting rules has been the application of the doctrine of strict liability. It is regrettable that the Service buckled under pressure from its law enforcement agents and refused to propose the *Delahoussaye* standard for public review and comment. As we stated in our comments to the Service on the proposed rule, "the NRA can only surmise that the Service fully intends to have the Congress resolve the issue by codifying the *Delahoussaye* standard through the legislative process."

HR 2863, as amended, not only acknowledges the work left uncompleted by the Service, but also acknowledges the fact that many of the reforms in the parent bill were adopted in the proposed rule. While the NRA has already stated that it supports HR 2863 as introduced, we are also supportive of the

narrower version that now awaits House Floor action.

Again, on behalf of the NRA, I extend the appreciation of our 2.8 million members for your efforts on behalf of the hunting community.

Sincerely,

SUSAN R. LAMSON,
*Director, Conservation, Wildlife
and Natural Resources.*

SAFARI CLUB INTERNATIONAL,
Herndon, VA, April 28, 1998.

Chairman DON YOUNG,
*Rayburn House Office Building,
Washington, DC.*

DEAR CONGRESSMAN YOUNG: Safari Club International urges you to pass without delay The Migratory Bird Treaty Reform Act.

Several recent incidents indicate that the "strict liability" language of the existing regulations has led to prosecution of sportsmen that are unfair and that do not aid the conservation of the migratory birds.

The Service had promised to administratively correct the situation, but to date they have failed to do so. As late as the end of March, the Chairman of the Resources Committee had urged the Service to provide Congress with a solution that would correct the unfair components of the regulations. Despite repeated promises from the Service to address the inequities of the current regulations, their recent proposed amendment does not address the issue. It is evident that Congress must act.

Sportsmen and hunters are only asking that they be treated as fairly as all other Americans and that they only be found guilty if they knew or should have known that bait had been placed. The language of The Migratory Bird Treaty Reform Act assures that hunters will remain innocent until proven guilty.

Safari Club International requests that you change this unfair and punitive law.

Sincerely,

ALFRED S. DONAU, III,
President-elect.
HON. RON MARLENEE,
Consular.

THE WILDLIFE LEGISLATIVE
FUND OF AMERICA,
Columbus, OH, May 8, 1998.

Hon DON YOUNG,
*Chairman, Committee on Resources, House of
Representatives, Rayburn House Office
Bldg., Washington, DC.*

DEAR MR. CHAIRMAN: The Wildlife Legislative Fund of America strongly endorses H.R. 2863 to eliminate strict liability as it relates to the baiting proscriptions of the Migratory Bird Treaty Act. Strict liability, which enables convictions against unknowing and innocent hunters, is wholly inconsistent with principles of American law. The need for this reform has long been recognized, but neither the U.S. Fish and Wildlife Service nor other Members of Congress have been willing to provide the requisite leadership. We applaud your effort and the leadership you have demonstrated.

We are committed to working with you and the Committee to assure favorable House action on this important measure.

Sincerely,

WILLIAM P. HORN,
*Director, National Affairs and
Washington Counsel.*

Madam Chairman, I reserve the balance of my time.

Mr. MILLER of California. Madam Chairman, I yield myself such time as I may consume.

Madam Chairman, I rise in opposition to this legislation, H.R. 2863. This

bill changes a 60-year-old standard of strict liability for hunting migratory birds over bait, a standard that has provided effective protection of migratory birds from the overkill that can result from baiting. The law places the burden of guarding against unsportsmanlike hunting practices where it properly lies, with the hunter.

This bill is a product of a few anecdotes, and we will likely hear some of them as we already have this morning. The real issue here is much broader. The important issue is whether or not in changing this law, as this bill proposes, will allow us to maintain the enforcement of the law against harming migratory birds. That is the purpose of this law. It is for the protection of the migratory birds, a protection that runs to the Nation generally, not just to the question of the activities of hunters.

Notwithstanding these few anecdotal pieces of evidence, the supporters of this bill have not made a convincing case that there is a crisis that needs addressing. The paramount public interest in protecting migratory birds for all the American public, not just hunters, has traditionally warranted a high standard of protection embodied in strict liability and, with one exception, the courts have upheld this standard.

In fact, when the Congress had an opportunity to review this in previous Congresses, they inserted the "knowing" standard with respect to felony activities under the Migratory Bird Treaty, but they did not do that with respect to the misdemeanor portions, which indicates clearly that Congress understood the importance of this provision of the law.

The bill before the House today is an improvement over the bill as it was introduced, which would have substantially weakened the protection of migratory birds. The amendment makes it a violation to place bait for migratory birds if one knows it will be hunted over. This will make it easier to prosecute the real bad actors, that small number of property owners guides, and hunt club personnel who unlawfully try to improve hunting through baiting.

However, a number of law enforcement personnel charged with protecting migratory waterfowl tell me that they think this bill is ill-advised and will seriously complicate their job of battling illegal hunting. I am very concerned that this bill ignores the views of the hard-working law enforcement people and makes sweeping changes in the law based on a few isolated cases.

The Fish and Wildlife Service is in the process of revising its baiting regulations to address legitimate concerns that have been raised by the hunting community. It strikes me that it would be appropriate to withhold action on this legislation to allow the service to promulgate those regulatory changes.

□ 1045

For these reasons, and others, Madam Chairman, I oppose this legisla-

tion. I voted for this legislation as it has come out of the committee as it is presented here. I think it is an improved bill. But from discussions with those which are charged with enforcing this legislation, I think it has also become clear that there can be serious jeopardy attached to the passage of this legislation and the future of migratory birds. And that is certainly our first charge and our first concern.

Let me also say that, as suggested very often, that this is all about innocent, innocent people. If you look in the back of even some of the anecdotal evidence that was submitted to the Congress and one of the cases about individuals that were arrested and prosecuted under this law, these were not exactly innocent individuals. Many of them knew full well and it was so incredibly obvious what had taken place in this field for the purposes of these hunts.

I have hunted for many years, and let me say that people in the hunting community know very well those clubs that bait, those clubs that boast about it. Those clubs that have tried to increase their take by being responsible hunters do not go to those clubs. They do not participate in that activity.

One of the reasons they do not is because of this law. But if they can go there and claim that they are ignorant of everything the land owner did, the club owner did, or the guide did, then they are free to continue that practice and claim ignorance under the law.

Strict liability is not unconstitutional. It is not foreign to the Constitution. It has been upheld. In fact, it is a doctrine that we use very often. We use it with respect to this treaty. We use it with respect to governmental officials.

That is how the Kesterson Reservoir was shutdown when unsafe practices were there with respect to water pollution because people knew that people would be put in jeopardy if they continued those practices to harm migratory birds.

So I think, while this is a better piece of legislation than it was originally introduced, I think it interrupts a process that I think is more thoughtful and deliberative that the Fish and Wildlife Service is undertaking.

I expect the desire to undertake that has been prompted by the introducing of this legislation by the chairman of our committee having these hearings and reporting this bill, and I think that they will, in fact, be responsive to that effort.

At a minimum, I would think that this is the kind of legislation if we were to pass it we would want to provide for some kind of sunset so we had an ability to review the impact of this legislation.

For those reasons and others, Madam Chairman, I will be opposing this legislation.

Madam Chairman, I reserve the balance of my time.

Mr. SAXTON. Madam Chairman, I yield myself such time as I may consume.

Madam Chairman, I would just like to say to the gentleman, through the Chairman of course, that I think that a matter of fairness applies here and that it is crucial that the strict liability provision be replaced. I am not alone in feeling that way. As a matter of fact, I have here a letter from the Illinois Department of Natural Resources from their chief officer of law enforcement. I would just like to read a few lines from it.

The letter is addressed to the gentleman from Alaska (Mr. YOUNG). The letter reads, "As the chief law enforcement officer of the Illinois Department of Natural Resources," and I point out and emphasize here that this is the chief law enforcement officer, and of course I am speaking to the objections that the gentleman from California raised relative to law enforcement. He says, "I wish to go on record in support of the bill H.R. 2863. As a career conservation law enforcement officer, I know firsthand the strengths and weaknesses of our Federal baiting regulations. If Congress adopts the Delahoussaye standard for waterfowl baiting regulations, a serious and longstanding weakness will have been remedied."

"Some opponents," he said, "of your bill object on the basis that law enforcement officers will have to work much harder to make good baiting cases. In my opinion, in a free society like ours, ease of enforcement should not be a standard that is applied when evaluating a law. Rather, we should seek to enact common sense laws that treat sportsmen fairly and protect our precious natural resources first and foremost."

So this is, I think, stated very succinctly. I believe that it goes a long way to answer the gentleman's questions or objections.

Secondly, the bill makes a major improvement, I believe, in terms of law enforcement, because under the current law, if one baits and is not there when the game warden shows up, he can only be brought into the case through a conspiracy theory. Under the new law, the baiter actually will assume direct responsibility for the baiting. Those provisions are written very clearly in section 3 on page 2, lines 6 through 20.

So we have tried very hard to provide for the continuation of a strong antibaiting law but to put a degree of fairness in the reform bill that simply does not exist in the current statutes.

Madam Chairman, I reserve the balance of my time.

Mr. MILLER of California. Madam Chairman, I yield myself such time as I may consume.

Madam Chairman, I too want to put a letter into the RECORD from the head of the Maryland Department of Natural Resources, which indicates his enforcement staff, unlike that from the gentleman from Illinois, in our dueling letters here, his enforcement staff tells him that this would have a detrimental

impact in Maryland's and the Nation's migratory bird resources.

Finally, let me say, under current law, the baiter, if you will, can be prosecuted and, in fact, is prosecuted. But I do agree with the gentleman that that is an improvement, that is an improvement in the law.

If the gentleman is going to add more letters, I am going to have to add more letters. We can submit these for the record, and we can all go on our merry way. This should not delay us from coming to a vote on this matter.

Mr. MILLER of California. Madam Chairman, I have no further requests for time, and I yield back the balance of my time.

Mr. SAXTON. Madam Chairman, I yield myself such time as I may consume.

Madam Chairman, I would just conclude once again by saying as directly and as forthrightly as I can that we in no way change the provisions of the basic law, the antibaiting provisions remain in effect, and that no person shall take migratory birds by the aid of baiting in any way, but that we do replace the strict liability provision with the known or should have known provision.

I ask all Members on both sides of the aisle, with the exemption perhaps of my friend, the gentleman from California (Mr. MILLER), to support the bill.

Mr. STEARNS. Madam Chairman, I am pleased to join my good friend and colleague, Chairman YOUNG, in support of the Migratory Bird Treaty Reform Act.

I became involved in issue because I found it outrageous that almost ninety sportsmen were cited for violating the Migratory Bird Treaty Act during a charity dove hunt in Dixie County, Florida back in 1995. I had the privilege of representing that area when I first came to Congress and I take personal umbrage with how unfairly these individuals were treated.

It is not my intention to give you a blow by blow description about this incident, but I will tell you that many hunters were cited and fined almost \$40,000 for "allegedly" hunting on a baited field.

The fact is that nearly all the hunting took place in an area which had never been inspected for baiting. What is even more perplexing is that the citations were delivered without any regard to the guilt or innocence of the hunters.

The purpose of this legislation is to clarify what we mean when we use the term "baited field." Since Congress has never passed a law defining what qualifies as "baiting" a field, there is much confusion which results in federal courts acting inconsistently on such cases.

While this activity is justifiably illegal, there are various legal interpretations that should be clarified. Under current standards, a person is held liable for hunting on a baited field even though that person did not realize the field was baited. This is unfair, as many of my constituents found out the hard way.

Under current law, it is not illegal to bait a field or to feed migratory birds. However, it is strictly prohibited to hunt in such an area. This

bill amends the Migratory Bird Treaty Reform Act of 1918 by eliminating strict liability for baiting by adding the following provision:

"It is unlawful for any person to take any migratory game bird by aid of baiting, or on or over any baited area, if the person knows or reasonably should know that the area is a baited area; or place or direct the placement of bait on or adjacent to an area for the purpose of causing, inducing, or allowing any person to take or attempt to take any migratory game bird by the aid of baiting on or over the baited area."

Mr. Chairman, I believe this definition spells out precisely what we mean when we use term "baiting" a field, and will eliminate any possible future misinterpretation.

The sole purpose of this legislation is to clarify baiting restrictions to ensure that migratory birds and their habitats are preserved while protecting law-abiding citizens from unfair prosecution.

Unfortunately, passage of this legislation did not occur in time to assist the hunters in Dixie County, Florida, but it will prevent others from facing unfair repercussions for being at the wrong place at the wrong time.

Last year, I testified before Chairman YOUNG's committee on the problems associated with the need to define what we mean when we use the term "baiting" a field, I believe H.R. 2863 will achieve that goal and prevent the problems that many law-abiding hunter have experienced from occurring in the future.

Mr. YOUNG of Alaska. Madam Chairman, I rise in strong support of H.R. 2863, a bill I introduced to reform the Migratory Bird Treaty Act (MBTA). I have been joined in this effort by a number of our colleagues including JOHN DINGELL, JOHN TANNER, CLIFF STEARNS, CURT WELDON, and COLLIN PETERSON.

It has been 80 years since Congress enacted this law to conserve migratory birds. During this time, the U.S. Fish and Wildlife Service has issued many regulations dealing with the harvest of migratory birds. The vast majority of these regulations were proposed by the hunting community. The only exception has been the regulations dealing with hunting in a field that is "baited" to unfairly attract migratory game birds.

Congress has never passed a law that says—this is baiting and this practice is illegal. In fact, it is not illegal to "bait" a field or to feed migratory birds. It is strictly prohibited, however, to hunt in such an area.

Over the years, the Fish and Wildlife Service has modified its baiting regulations 17 times. In addition, the Service and many Federal courts impose strict liability on those accused of hunting migratory birds over bait. What this means is that if a hunter is there and the bait is there, they are guilty.

Regrettably, whether to cite someone for violating the MBTA is a subjective decision. Conviction under this act is a Federal criminal offense, and penalties may include up to a \$5,000 fine and six months imprisonment.

Under strict liability, if you are hunting in a field that an agent determines is baited, whether you know it or not, you are guilty. There is no defense and any evidence you may have to support your position is irrelevant. It does not matter whether there was a ton of grain or three kernels, whether this feed served as an attraction to migratory birds, or even how far the "bait" is from the hunting site.

This interpretation—if you were there, you are guilty—is fundamentally wrong. It violates one of our most basic constitutional protections that a person is innocent until proven guilty. As a result of strict liability, thousands of law-abiding citizens have stopped hunting migratory game birds because they do not want to risk being convicted of a Federal crime for shooting a snow goose or a duck over a pond that may contain a handful of corn. Sadly, there are Fish and Wildlife Service agents who believe that all hunters are criminals and that it is their duty to cite them, even when they know the hunter is unaware of any baiting problem.

In fact, we had testimony before my committee where a former agent of the U.S. Fish and Wildlife Service stated that, and I quote: "Have I ever charged someone for hunting over bait that I truly believed they did not know the area was baited? And I would say yes. I have in my career. I have probably charged people for hunting over bait that truly did not know."

I had hoped that the Fish and Wildlife Service would administratively fix its baiting regulations. I was anxious to see them try and on March 25th, for the first time in 25 years, the Service did issue a proposed rule containing some modifications. While the Service deserves credit for redefining certain terms and allowing greater State input into what constitutes a normal agricultural activity, I am deeply disappointed that they have chosen to retain the strict liability standard. This is a terrible mistake and a complete reversal of their earlier support for this change.

At our full committee markup, I offered an amendment that limited the scope of the bill to the two issues that can only be resolved through the legislative process. The first is to replace strict liability with the "knows or reasonably should know" legal standard. This is not a new or radical idea.

In fact, this standard was first articulated for migratory birds in 1978 in the Federal 5th Circuit Court's decision known as *United States v. Delahoussaye*. In this case, the Court found that:

At a minimum, the bait must have been so situated that its presence could have been reasonably ascertained by a hunter wishing to check the area of his activity.

For the past 20 years, this standards has worked effectively in the States of Louisiana, Mississippi, and Texas where migratory birds are hunted in great numbers.

In fact, between 1984 and 1997, the U.S. Fish and Wildlife Service issued 2,318 citations in these three States using the "known or should have known" legal standard. The Service obtained guilty pleas or payments of fines in 2,042 cases, which is a conviction rate of over 88 percent.

As these statistics clearly show, the *Delahoussaye* decision has been effectively used to protect migratory birds. No migratory bird population has been put at risk, there have been numerous convictions and it is, therefore, not surprising that the Service has never attempted to overturn or challenge the *Delahoussaye* decision.

While this legislation will allow a person to offer a defense in their baiting case, if the preponderance of evidence so demonstrates, a defendant will be found guilty. This standard is far less stringent than the "beyond a reasonable doubt" which is used in all other criminal cases.

I received a letter from the Chief Law Enforcement Officer for the Illinois Department of Natural Resources that states:

Some opponents of your bill object on the basis that law enforcement officers will have to work harder to make good baiting cases. In my opinion, in a free society like ours, ease of enforcement should not be a standard that is applied when evaluating a law. Rather, we should seek to enact common sense laws that treat sportsmen fairly and protect our precious natural resources first and foremost. I believe your amended bill meets all of these criteria.

The elimination of strict liability under the Migratory Bird Treaty Act is strongly supported by a diverse group of conservation organizations including the California Waterfowl Association, the Grant National Waterfowl Association, the International Association of Fish and Wildlife Agencies, the National Rifle Association, Safari Club International, and the Wildlife Legislative Fund of America. In addition, it was supported by the Fish and Wildlife Service's Ad Hoc Committee on Baiting that included representatives from each of the Flyway Councils, Ducks Unlimited, National Wildlife Federation, and the Wildlife Management Institute.

My bill also improves current law by making it unlawful to place or direct the placement of bait. This will allow the Service to cite those commercial operators who intentionally bait a field without the knowledge of the hunter.

Mr. Chairman, if you believe that every American is innocent until proven guilty and that a person should be entitled to offer evidence in their defense, then you should vote for this legislation. It is the right thing to do and the "knows or reasonably should know" legal standard will be effectively applied throughout this nation.

There is no rationale, justification or defense for the strict liability doctrine for migratory birds. I urge an "aye" vote on H.R. 2863.

Mr. TANNER. Mr. Chairman, H.R. 2863 is about common sense and basic fairness.

It would replace the "strict liability" standard with the "knew or should have known" standard that is being enforced in the Fifth Circuit, which includes Mississippi, Louisiana, and Texas.

What it means is that anyone cited for an alleged baiting violation can put on a defense and present evidence to a judge in their case of alleged baiting violations. Both the Fifth Circuit and Fourth Circuit have both agreed this is not presently an option under the "strict liability" requirement.

Further, the bill clearly makes it unlawful for anyone who places or directs the placement of bait on or adjacent to an area where hunting for migratory game birds takes place.

That's just plain common sense to ensure that those involved in these cases have the same rights that are available throughout our system of justice. It also continues to recognize the stewardship responsibilities hunters share relative to the conservation of migratory game bird species.

Indeed, enforcement over the past decade in those states with the "knew or should have known" standard has been at least as successful as in those states where "strict liability" is the threshold. Nearly 90 percent of baiting cases prosecuted in Mississippi, Texas, and Louisiana during the 11-year period ending in 1996-97 resulted in convictions and fines.

This legislative solution is needed because while the Service has proposed other regulatory changes to existing baiting regulations and recognized as we have that some of those regulations need to be examined particularly in light of recommendations made by the International Association of Fish and Wildlife Agencies' Ad Hoc Committee on Baiting, it expressly omitted the "strict liability" issue saying in the Federal Register that "no changes are proposed in the application of the strict liability to migratory game bird baiting regulations."

No one here today is advocating with this bill that season lengths and bag limits should be changed except by those in the Office of Migratory Bird Management working with their counterparts in state fish and wildlife agencies and input from the public. If someone illegally baited a field they should be punished, but they should also have the opportunity to present a defense when they go before a judge.

Indeed, the Law Enforcement Advisory Commission created by the Service in 1990 described the rules governing baiting as both "confusing" and "too complex."

This common sense change has been recommended by the International's Ad Hoc Committee on Baiting, whose members include:

Representatives of all four Flyway Councils, the Illinois Department of Natural Resources, the Tennessee Wildlife Resources Agency, the Alabama Game and Fish Division, the North American Wildlife Enforcement Officers Association, Ducks Unlimited, the National Wildlife Federation, the Wildlife Legislative Fund of America, and the Wildlife Management Institute.

The goal of this bill coupled with issues raised by the Service's regulatory proposal are aimed at addressing the very real concerns about fairness and confusion that many have raised over the past 10 to 15 years.

My colleague Representative GEORGE MILLER, who has done a little hunting himself, spoke articulately in support of the bill when it was marked-up and unanimously approved by the Resources Committee by voice vote. I was disappointed that he saw fit to change his mind, but that is certainly his prerogative.

You know, hunters provide more money for wildlife conservation than virtually any other single group and they deserve the same fairness we all expect as citizens when it comes to alleged violations of the law. It should be noted that hunters were and are among the strongest advocates of the implementation of these rules to prohibit baiting to attract migratory game bird species.

With that Mr. Chairman, I want to encourage my colleagues to support this common sense appeal to basic fairness. Vote for H.R. 2863.

MR. SAXTON. Madam Chairman, I yield back the balance of my time.

The CHAIRMAN. All time for general debate has expired.

Pursuant to the rule, the committee amendment in the nature of a substitute printed in the bill is considered as an original bill for the purpose of amendment under the 5-minute rule and is considered read.

The text of the committee amendment in the nature of a substitute is as follows:

H.R. 2863

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Migratory Bird Treaty Reform Act of 1998".

SEC. 2. ELIMINATING STRICT LIABILITY FOR BAITING.

Section 3 of the Migratory Bird Treaty Act (16 U.S.C. 704) is amended—

(1) by inserting "(a)" after "SEC. 3."; and

(2) by adding at the end the following:

"(b) It shall be unlawful for any person to—
 "(1) take any migratory game bird by the aid of baiting, or on or over any baited area, if the person knows or reasonably should know that the area is a baited area; or

"(2) place or direct the placement of bait on or adjacent to an area for the purpose of causing, inducing, or allowing any person to take or attempt to take any migratory game bird by the aid of baiting on or over the baited area."

The CHAIRMAN. During consideration of the bill for amendment, the Chair may accord priority in recognition to a Member offering an amendment that he has printed in the designated place in the CONGRESSIONAL RECORD. Those amendments will be considered read.

The Chairman of the Committee of the Whole may postpone a request for a recorded vote on any amendment and may reduce to a minimum of 5 minutes the time for voting on any postponed question that immediately follows another vote, provided that the time for voting on the first question shall be a minimum of 15 minutes.

Are there any amendments?

If not, the question is on the committee amendment in the nature of a substitute.

The committee amendment in the nature of a substitute was agreed to.

The CHAIRMAN. Under the rule, the Committee rises.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. DIAZ-BALART) having assumed the chair, Mrs. EMERSON, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 2863) to amend the Migratory Bird Treaty Act to clarify restrictions under that Act on baiting, to facilitate acquisition of migratory bird habitat, and for other purposes, pursuant to House Resolution 521, she reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

The question is on the committee amendment in the nature of a substitute.

The committee amendment in the nature of a substitute was agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. SAXTON. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 322, nays 90, not voting 22, as follows:

[Roll No. 420]

YEAS—322

Ackerman	Dicks	Johnson (WI)
Aderholt	Dingell	Johnson, Sam
Allen	Doggett	Jones
Archer	Dooley	Kanjorski
Army	Doolittle	Kaptur
Bachus	Doyle	Kasich
Baesler	Dreier	Kelly
Baker	Duncan	Kilpatrick
Baldacci	Edwards	Kim
Ballenger	Ehlers	Kind (WI)
Barr	Ehrlich	King (NY)
Barrett (NE)	Emerson	Kingston
Bartlett	English	Kleczka
Barton	Ensign	Klink
Bass	Etheridge	Klug
Bateman	Everett	Knollenberg
Bentsen	Ewing	Kolbe
Bereuter	Fawell	LaHood
Bilbray	Fazio	Lampson
Bilirakis	Foley	Largent
Bishop	Forbes	Latham
Biley	Fossella	LaTourette
Blunt	Fowler	Lazio
Boehlert	Fox	Leach
Boehner	Franks (NJ)	Levin
Bonilla	Frelinghuysen	Lewis (CA)
Bono	Frost	Lewis (KY)
Borski	Galleghy	Linder
Boswell	Ganske	Lipinski
Boucher	Gejdenson	Livingston
Boyd	Gekas	LoBiondo
Brady (TX)	Gephardt	Luther
Brown (CA)	Gibbons	Manton
Bryant	Gilchrest	Manzullo
Bunning	Gillmor	Mascara
Burr	Gilman	McCarthy (MO)
Burton	Goode	McCarthy (NY)
Buyer	Goodlatte	McCollum
Callahan	Goodling	McCrery
Calvert	Gordon	McDermott
Camp	Goss	McHale
Canady	Graham	McHugh
Cannon	Granger	McInnis
Capps	Green	McIntosh
Carson	Greenwood	McIntyre
Castle	Gutknecht	McKeon
Chabot	Hall (OH)	Menendez
Chambliss	Hall (TX)	Metcalfe
Chenoweth	Hamilton	Mica
Christensen	Hansen	Miller (FL)
Clement	Harman	Minge
Coble	Hastert	Mink
Coburn	Hastings (WA)	Mollohan
Collins	Hayworth	Moran (KS)
Combest	Hefley	Murtha
Condit	Herger	Myrick
Conyers	Hill	Nethercutt
Cook	Hilleary	Neumann
Cooksey	Hilliard	Ney
Costello	Hinojosa	Northup
Cox	Hobson	Norwood
Coyne	Hoekstra	Nussle
Cramer	Holden	Obey
Crane	Hooley	Ortiz
Crapo	Horn	Oxley
Cubin	Hostettler	Packard
Cummings	Houghton	Pappas
Cunningham	Hoyer	Parker
Danner	Hulshof	Pastor
Davis (FL)	Hunter	Paul
Davis (VA)	Hutchinson	Pease
Deal	Hyde	Peterson (MN)
DeFazio	Inglis	Peterson (PA)
DeLay	Istook	Petri
Deutsch	Jefferson	Pickering
Diaz-Balart	Jenkins	Pickett
Dickey	John	

Pitts	Saxton	Stupak
Pombo	Scarborough	Sununu
Pomeroy	Schaefer, Dan	Talent
Porter	Schaffer, Bob	Tanner
Portman	Scott	Taylor (MS)
Price (NC)	Sensenbrenner	Taylor (NC)
Quinn	Sessions	Thomas
Radanovich	Shaw	Thompson
Rahall	Shimkus	Thornberry
Ramstad	Shuster	Thune
Rangel	Sisisky	Thurman
Redmond	Skaggs	Tiahrt
Regula	Skeen	Traficant
Reyes	Skelton	Turner
Riggs	Smith (MI)	Upton
Riley	Smith (NJ)	Walsh
Rodriguez	Smith (OR)	Wamp
Roemer	Smith (TX)	Watkins
Rogan	Smith, Adam	Watts (OK)
Rogers	Smith, Linda	Weldon (FL)
Rohrabacher	Snowbarger	Weldon (PA)
Ros-Lehtinen	Snyder	Weller
Roukema	Solomon	White
Royce	Souder	Whitfield
Ryun	Spence	Wicker
Salmon	Spratt	Wilson
Sanchez	Stabenow	Wise
Sanders	Stearns	Wolf
Sandlin	Stenholm	Young (FL)
Sanford	Strickland	
Sawyer	Stump	

NAYS—90

Abercrombie	Jackson (IL)	Oberstar
Andrews	Jackson-Lee	Olver
Barrett (WI)	(TX)	Owens
Becerra	Johnson (CT)	Pallone
Berman	Johnson, E. B.	Pascrell
Blagojevich	Kennedy (RI)	Payne
Blumenauer	Kildee	Pelosi
Bonior	Kucinich	Rivers
Brady (PA)	LaFalce	Rothman
Brown (FL)	Lantos	Roybal-Allard
Brown (OH)	Lee	Sabo
Campbell	Lewis (GA)	Serrano
Cardin	Lofgren	Shays
Clay	Lowey	Sherman
Clayton	Maloney (CT)	Slaughter
Clyburn	Maloney (NY)	Stark
Davis (IL)	Markey	Tauscher
DeGette	Martinez	Tierney
Delahunt	Matsui	Torres
DeLauro	McGovern	Velazquez
Dixon	McKinney	Vento
Eshoo	McNulty	Visclosky
Evans	Meehan	Waters
Farr	Meek (FL)	Watt (NC)
Fattah	Meeks (NY)	Waxman
Filner	Millender	Wexler
Ford	McDonald	Weygand
Frank (MA)	Miller (CA)	Woolsey
Gutierrez	Moran (VA)	Wynn
Hastings (FL)	Nadler	Yates
Hinchee	Neal	

NOT VOTING—22

Barcia	Kennelly	Schumer
Berry	McDade	Shadegg
Dunn	Moakley	Stokes
Engel	Morella	Tauzin
Furse	Paxon	Towns
Gonzalez	Poshard	Young (AK)
Hefner	Pryce (OH)	
Kennedy (MA)	Rush	

□ 1117

Messrs. PASCARELL, SERRANO, ANDREWS, HASTINGS of Florida, SHAYS, MEEHAN, MATSUI, and Ms. DEGETTE changed their vote from "yea" to "nay."

Mr. SCOTT and Ms. SANCHEZ changed their vote from "nay" to "yea."

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PERSONAL EXPLANATION

Mr. BERRY. Mr. Speaker, on rollcall No. 420, I am unable to be present for voting as