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Senate

(Legislative day of Friday, October 2, 1998)

The Senate met at 11 a.m., on the expiration of the recess, and was called to order by the President pro tempore [Mr. THURMOND].

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Almighty God, You have all authority in heaven and on Earth. You are Sovereign Lord of our lives and of our Nation. We submit to Your authority. We seek to serve You in this Chamber and in the offices that work to help make the deliberations of the Senate run smoothly. We commit to You all that we do and say this day. Make it a productive day. Give us positive attitudes that exude hope. In each difficult impasse, help us seek Your guidance. Draw us closer to You in whose presence we rediscover that, in spite of dif-

ferences in particulars, we are here to serve You and our beloved Nation together. In our Lord's Name. Amen.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The able acting majority leader is recognized.

Mr. DEWINE. Mr. President, I thank the Chair.

SCHEDULE

Mr. DEWINE. Mr. President, on behalf of the majority leader, let me make the following statement.

This morning the Senate will begin a period of morning business lasting until 12 noon. Following morning business, the Senate may consider any leg-

islation that may be cleared by unanimous consent.

All Members should be aware that yesterday the Senate passed a 2-day continuing resolution that will keep the Government operating until midnight Wednesday, allowing the Congress to continue negotiations on the omnibus appropriations bill. If good progress can be made today, the spending bill may be ready for Senate action as early as Wednesday afternoon.

As a reminder to all Members, it is hoped that the remaining legislation of the 105th Congress can be cleared by unanimous consent. However, if a roll-call vote is needed on the omnibus bill, all Members will be given ample notice in order to plan their schedules accordingly.

NOTICE

If the 105th Congress adjourns sine die on or before October 14, 1998, a final issue of the Congressional Record for the 105th Congress will be published on October 28, 1998, in order to permit Members to revise and extend their remarks.

All material for insertion must be signed by the Member and delivered to the respective offices of the Official Reporters of Debates (Room HT-60 or S-123 of the Capitol), Monday through Friday, between the hours of 10:00 a.m. and 3:00 p.m. through October 27. The final issue will be dated October 28, 1998, and will be delivered on Thursday, October 29.

If the 105th Congress does not adjourn until a later date in 1998, the final issue will be printed at a date to be announced.

None of the material printed in the final issue of the Congressional Record may contain subject matter, or relate to any event that occurred after the sine die date.

Senators' statements should also be submitted electronically, either on a disk to accompany the signed statement, or by e-mail to the Official Reporters of Debates at "Records@Reporters".

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By order of the Joint Committee on Printing.

JOHN W. WARNER, *Chairman.*

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.



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I thank my colleagues for their attention.

Mr. KENNEDY addressed the Chair.

The PRESIDENT pro tempore. The Senator from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, I withhold my request because I understand the acting majority leader has some further business.

MIGRATORY BIRD TREATY REFORM ACT OF 1998

Mr. DEWINE. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of Calendar No. 699, H.R. 2863.

The PRESIDENT pro tempore. The clerk will report.

The legislative clerk read as follows:

A 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 PRESIDENT pro tempore. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Environment and Public Works, with an amendment; as follows:

(The parts of the bill intended to be inserted are shown in *italic*)

H.R. 2863

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."

SEC. 3. CRIMINAL PENALTIES.

Section 6(a) of the Migratory Bird Treaty Act (16 U.S.C. 707(a)) is amended—

- (1) by striking "thereof shall be fined not more than \$500" and inserting the following: "thereof—

"(1) shall be fined not more than \$10,000";

(2) in paragraph (1) (as designated by paragraph (1)), by striking the period at the end and inserting "; and"; and

(3) by adding at the end the following:

"(2) in the case of a violation of paragraph (1) or (2) of section 3(b) that is committed in connection with guiding, outfitting, or providing any other service offered, provided, or obtained in exchange for money or other consideration, shall be fined under title 18, United States Code, imprisoned not more than 1 year, or both."

SEC. 4. REPORT.

Not later than 5 years after the date of enactment of this Act, the Secretary of the Interior shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Resources of the House of Representa-

tives a report analyzing the effect of the amendments made by section 2, and the general practice of baiting, on migratory bird conservation and law enforcement efforts under the Migratory Bird Treaty Act (16 U.S.C. 701 et seq.).

Mr. DEWINE. Mr. President, I ask unanimous consent that the committee amendment be agreed to. And Senator CHAFEE has two amendments at the desk. I ask that they be considered en bloc.

The PRESIDENT pro tempore. Without objection, it is so ordered.

The committee amendment was agreed to.

AMENDMENT NO. 3819

(Purpose: To add other wildlife-related and water-related provisions to the bill)

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Ohio (Mr. DEWINE), for Mr. CHAFEE, proposes an amendment numbered 3819.

(The text of the amendment is printed in today's RECORD under "Amendments Submitted.")

AMENDMENT NO. 3820

(Purpose: To increase and change the application of the criminal penalty provisions)

The assistant legislative clerk read as follows:

The Senator from Ohio (Mr. DEWINE), for Mr. CHAFEE, proposes an amendment numbered 3820.

The amendment is as follows:

On page 2, line 21, strike "\$10,000" and insert "\$15,000".

On page 3, strike lines 1 through 7 and insert the following:

"(2) in the case of a violation of section 3(b)(2), shall be fined under title 18, United States Code, imprisoned not more than 1 year, or both."

Mr. CHAFEE. Mr. President, I am pleased that this package of fish and wildlife bills is being considered by the Senate today. It is a package that combines some very popular bills with some wonderful conservation initiatives approved by the Committee on Environment and Public Works. It represents an effort on the part of both the Senate and the House to quickly move these bills in the waning days of the 105th Congress. I would like to enumerate the components of this package.

The first item is H.R. 2863, a bill that amends the Migratory Bird Treaty Act with respect to offenses relating to the baiting of migratory birds. This bill was reported by the Environment and Public Works Committee on Friday, October 2.

I am including an amendment that makes two changes to the bill, as it was reported out of the EPW Committee. The first change is to increase the penalty under section 6(a) of the Migratory Bird Treaty Act from \$10,000 to \$15,000. This change is not intended to affect the classification of the offense, which is currently a class B misdemeanor. Indeed, in *United States v. Clavette*, the ninth circuit held that the fine may be as much as \$25,000 and still be considered a class B misdemeanor.

The second change is to eliminate the higher penalty for persons who violate section 3(b) of the Migratory Bird Treaty Act in connection with guiding, outfitting, or providing other service in exchange for money or other consideration. The intent of this provision was to discourage commercial operations from engaging in baiting in order to spur their business. However, the language in the reported bill was extremely broad. In addition, some existing laws, such as the Lacey Act, already provide that commercial operations may be subject to higher penalties.

In lieu of the higher penalty for commercial operations, the amendment that I offer today provides a higher penalty for persons who violate section 3(b)(2) of the Migratory Bird Treaty Act. Section 3(b)(2) prohibits 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. This penalty would entail fines under title 28 of the United States Code, or imprisonment of not more than one year, or both. Baiting would thus be a class A misdemeanor. The purpose of this higher penalty is to send a strong message to the public that baiting is a serious offense.

Mr. President, these changes have been discussed with Senator BREAU's staff, House Resources Committee staff, the administration, and the International Association of Fish and Wildlife Agencies, and have met with the approval of all interested parties. I believe that this amendment improves the bill as passed by the committee.

The second item included in the package is S. 2317, which makes several changes to the National Wildlife Refuge System Administration Act of 1966. First, it removes three areas from the Refuge System that have lost the habitat value that led to their being incorporated into the Refuge System. Second, it changes the name of the Klamath Forest National Wildlife Refuge in Oregon to the Klamath Marsh National Wildlife Refuge. The current name leads visitors to believe that it is a national forest, causing confusion over what activities are permitted. Finally, it reduces the penalty for unintentional violations of the National Wildlife Refuge System Administration Act. Currently, all violations of the act are class A misdemeanors, regardless of whether or not it was an intentional violation. Unintentional violations will now be a class B misdemeanor.

The third item included in the package is S. 361, sponsored by Senator JEFFORDS and approved by the Committee on Environment and Public Works on July 22, 1998. This item prohibits the import, export and trade in products that contain, or that are labeled or advertised as containing, rhino and tiger parts, in an effort to reduce the supply