

MIGRATORY BIRDS AND FWS

OVERSIGHT HEARING BEFORE THE COMMITTEE ON RESOURCES HOUSE OF REPRESENTATIVES ONE HUNDRED FOURTH CONGRESS

SECOND SESSION

ON

THE MIGRATORY BIRD TREATY ACT AND REVIEW THE IMPLEMENTATION BY U.S. FISH AND WILDLIFE SERVICE OF BAITING REGULATIONS

MAY 15, 1996—WASHINGTON, DC

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MIGRATORY BIRD TREATY AND FWS

WEDNESDAY, MAY 15, 1996

HOUSE OF REPRESENTATIVES,
COMMITTEE ON RESOURCES,
Washington, DC.

The Committee met, pursuant to call, at 11:08 a.m., in room 1324, Longworth House Office Building, Hon. Don Young (Chairman of the Committee) presiding.

STATEMENT OF HON. DON YOUNG, A U.S. REPRESENTATIVE FROM ALASKA; AND CHAIRMAN, COMMITTEE ON RESOURCES

The CHAIRMAN. The Committee will come to order.

More than a decade ago, the House Fisheries Subcommittee conducted a series of hearings on Federal baiting regulations and the Migratory Bird Treaty Act. At that time, there were many witnesses who believed that these regulations were flawed, and innocent hunters were being prosecuted.

Today, these regulations remain highly controversial, and bird hunters still face a minefield of confusion as to what constitutes a baited field and what is a bona fide agricultural practice and what is a zone of influence. In addition, unlike most other laws, the U.S. Fish and Wildlife Service does not have to prove intent or that a hunter even knew a field was baited.

The fundamental issue in these baiting cases is whether our migratory birds are being protected or whether the Fish and Wildlife Service is more interested in obtaining headlines through high-profile law enforcement sting operations. On October 13th of last year, Senator Charles Williams of Tallahassee invited 500 Floridians to join with him in a charity dove hunt in Dixie County, Florida. The purpose of the hunt was to raise money for Florida Sheriffs Youth Ranches, a nonprofit organization that provides a lifeline for abused, troubled and orphaned children throughout the State.

After more than 3 hours of hunting, law enforcement agents of the Fish and Wildlife Service stopped the hunt, seized more than 440 birds and cited 88 individuals for allegedly hunting over a baited field. Among those cited were three county sheriffs, a regional commissioner of the Florida Game and Freshwater Commission, mayors, clerks of the court, Florida prison officials and city and county commissioners. The agents even raided an adjoining farm and cited several University of Florida students.

While I do not know whether it was a good or a bad bust, a number of those cited strongly believe that the only thing baited, trapped, tried and fined on that hot October day were law-abiding citizens.

What I do not know is that the wildlife resources were not protected. If there was baiting, the Fish and Wildlife Service had a responsibility to stop the hunt at 1:15 or 1:30 p.m., not hours later, when the amount of the fines had substantially increased. In addition, I understand that the Service cannot stop an individual from hunting in a baited field. Nevertheless, the agents should have advised Senator Williams or somebody involved in the charity hunt that in their professional judgment, there was a problem with the field. By doing so, the resource would have been protected.

Finally, we will hear testimony from two panels of experts who will discuss what improvements could be made to our baiting regulations to better protect both wildlife and sportsmen. Let me conclude by quoting Sheriff Larry Edmonds, who was cited and paid his fine in the Florida case. He said: "I was only on the field that day because I felt an obligation to be there to support the youth ranches. I do not intend to shoot any more doves, because it is too hard to do it legally when they have laws like this, and this is a bad law."

As I have mentioned in my opening statement, I have been through this business now for 24 years. This law, I do believe, will have to be changed.

The gentleman from California, Mr. Miller.

**STATEMENT OF HON. GEORGE MILLER, A U.S.
REPRESENTATIVE FROM CALIFORNIA**

Mr. MILLER. Thank you, Mr. Chairman, and this, I think, promises to be a most interesting hearing, since the facts seem to be in substantial contention here among the parties. I think in fact what we will see at this hearing is that the questions of baiting are not as ambiguous as you suggest in this particular case. I think we will also see that the Service acted according to regulation, and I think that we will also see that there is a suggestion that somehow, they would act differently in a law enforcement situation than what we would require any other law enforcement agency in that particular situation to act. And that we would somehow suggest that because of the nature of those who were arrested that somehow, this should have been allowed or should have been stopped, or somebody should have been warned when, in fact, the violations of the law, both at the time and the actions of those who were cited and those who went on to have further involvement with the courts that this case is pretty clear in terms of classic baiting.

But unfortunately, it got beyond that in terms of altercations against law enforcement officials or game officials in this particular case, who were there to enforce a law and were apparently doing it quite properly when, in fact, people decided they were going to abuse them. It would be a shame when we suggest that somehow, if you disagree with a law enforcement agent or in this case a game enforcement agent who becomes a law enforcement agent at the time of violations of the law that somehow there is an ability to assault those individuals. I notice that those people who assaulted the law enforcement people here from the Service are not on the witness list.

But you do not get a right to do that. You do not do that when an officer stops you for exceeding the speed limit when you say I

did not know it was 35 miles an hour or I think it should be 50 miles an hour, or I think this is a stupid place to have a speed limit. You do not get to start assaulting the officer. There have got to be some rules of a civil society. You know, Pete Rose did not get to slug the umpire, and Magic Johnson did not get to push the referee, and hunters do not get to push around the Fish and Wildlife Service individuals because they disagree with them.

So, this hearing invokes a number of levels of concern. Yours is that the baiting laws are apparently—from our discussions that the baiting laws are too ambiguous and that hunters should not be held liable, because they did not know. That is also to suggest that speeders should not be held liable if they did not know what the speed limit was. The fact is that there is some obligation on the hunters. But I think in this case, we will see that there was not a lot of ambiguity about whether this was baited or not baited.

And secondly, the suggestion that this was all on the up-and-up because we had a lot of sheriffs and judges and lawmakers and others participating. I have hunted most of my life, and every now and then, I have watched our colleagues in public service and elected office be embarrassed because they are hunting without a plug in their gun, or they are hunting without their license, or they did not think anybody would really care. And from time to time, they get snared. And so, they do not put a patina of legality on an activity because of their presence or of their title in office.

So, I look forward to the hearing.

The CHAIRMAN. Well, I thank the gentleman. I think the witnesses can understand the difference of opinion between the ranking member and the Chairman himself. I would just like to suggest that when there are 250 hunters involved here, and four of those were charged with assault, and most of that was just hollering, and it took the agents to holler back. It takes two to tango in this game.

The gentleman from Minnesota.

**STATEMENT OF HON. BRUCE F. VENTO, A U.S.
REPRESENTATIVE FROM MINNESOTA**

Mr. VENTO. Mr. Chairman, this hearing is an interesting hearing in an oversight nature, and I hope that we all will approach it with an open mind. Obviously, there are sharp differences of opinions with regards to the issue of manipulation of vegetation and so-called baiting and the violations in terms of responsibility of the Fish and Wildlife Service. And they have substantial responsibilities in terms of coordination with State game and fish. In fact, for most of my constituents and probably yours, Mr. Chairman, they do not know where the State ends and the Federal Government begins with regard to some of these laws. And so, we want to set a clear path and policy in place with regard to this.

I am fearful that so often the examples that are portrayed tend to be sort of anecdotal stories, and we are hearing from one side and perhaps not the other in these. So, I think that I would just suggest again, Mr. Chairman, as I did earlier when we were dealing with the Endangered Species Act that we try to get before us at that point both sides of the story, so to speak, so that we could judge the facts rather than just hearing from one group. I look at

hearings as being a way that we can learn something, not just exchange rhetorical flourishes, Mr. Chairman.

The CHAIRMAN. Will the gentleman yield for one moment?

Like I say, this is not the first time I have been involved in this issue. When we were on the Fish and Wildlife Subcommittee, we had about five different hearings on this issue.

Mr. VENTO. Yes.

The CHAIRMAN. What has happened is this law is an ambiguous, bad law. The gentleman from California talks about speed limit signs. Now, if I see a speed limit sign, I know what the speed should be. But if I am hunting on a field, and I have been invited there, and I do not know it is baited, and I am arrested for it, that is wrong, because I do not know what the speed limit is.

Mr. VENTO. You know what the old Navy adage is: ignorance of the law is no excuse.

The CHAIRMAN. Well, ignorance is an excuse when we do not change the law. I do not know why you are defending this law. Both of you are defending this law; it is a bad law.

Mr. VENTO. I am suggesting that simply because you do not know something does not mean you are right in terms of your behavior, Mr. Chairman.

The CHAIRMAN. The comment here—if you will listen to the testimony, then, you will make up your mind, if you defend the law then, I will be terribly disappointed.

Mr. VENTO. OK.

The CHAIRMAN. This is a bad law; it has to be changed.

Mr. VENTO. Well, I do not know that that is the case, Mr. Chairman. I am very concerned about the fact because I understand that the incidence of hunting and the associated agricultural activities are often compatible, and that they work and work together. I think the issue here of actually, for instance, in wet soil management for ducks and geese, which goes on—and there are a lot of groups that work in good faith. The Pheasants Forever groups, the Ducks Unlimited, many others, and the clubs and organizations have a real interest in promoting, I think, a sound habitat and production and, for that matter, reproduction and sustaining various populations of species that they are interested in game hunting.

The fact is, though, that some of the incidents of doing this, if, in fact, you are just doing this for the purpose of the propagation of the species and maintaining it, then, it should not really be associated with the incidence of hunting. But when a club or organization puts up and does wet soil management, and then, during the hunting season, mows it down and leaves the seeds lying on the ground all around the duck blind, it does not take much imagination. It does not take much imagination to understand that the purpose here is not just a good faith effort to, in fact, manage the habitat for the propagation of those species but to, in fact, increase the success rate in terms of hunting.

And so, I would suggest that if you suspended the hunting activity from the incidence of these manipulations of vegetation that we would have no question. I understand that some states have good natural vegetation for propagation of species and a good success rate with regards to the exotics like pheasants or the indigenous species like ducks in my State. Some states have better habitats

than others. But the absolute manipulation of this to increase the success rate in terms of the hunt is what gives rise to the problem here. And we know the incidence of agriculture and farming is not the problem, I do not think. It is the manipulation specifically for that purpose.

And so, I just want to underline the importance. And I think that in some cases, even this manipulation, we can talk about the starting of this; raising this grain; stopping and then the starvation of the species when it is done improperly. But that may be a good faith effort that goes wrong. But we are talking about when it is associated with the incidence of hunting to substantially increase the success and bagging of geese, ducks and, for that matter, other types of species like doves, which are being talked about. We think of those as songbirds in Minnesota, Mr. Chairman, but I understand that other states have different attitudes with regard to the hunting of doves.

But I think that in looking at this, we want to make certain, and we should be certain, that we give a broad range of responsibility to the Fish and Wildlife Service, the professionals, to, in fact, fulfill this mission. For us to get in specifically—because I hunt or you hunt, and we have certain views about it—for us to get in and try to micromanage this on a basis that can lend itself to become political, I think, is a real mistake. I do not think these particular policies ought to be run like a political yoyo, up and down, depending upon who the hell is sitting in the chair over here that particular day.

And so, so many of these laws have been around for a long time that I think legislatively, we ought to leave this mostly to the professionals to provide close oversight so we are providing clarity in terms of our constituents and sportspersons who are using this, like myself or others. And I would just suggest—you cannot even put a posted sign up on private property unless you have permission to do it, so you cannot say, for instance, or even prewarn hunters. So maybe, we ought to have some suggestions like that—

The CHAIRMAN. The gentleman's time has expired.

Mr. VENTO. [continuing]—at least, in order to solve this problem.

The CHAIRMAN. The gentleman's time has expired.

Mr. VENTO. I thank the Chairman.

The CHAIRMAN. The gentleman from Oklahoma, Mr. Brewster. Thank God for America.

Mr. PICKETT. Mr. Chairman, may I—

The CHAIRMAN. Mr. Pickett, I am sorry.

STATEMENT OF HON. OWEN B. PICKETT, A U.S. REPRESENTATIVE FROM VIRGINIA

Mr. PICKETT. I know it is past time to get to our distinguished witnesses here this morning, but I do not want this opportunity to pass without commenting on the fact that any law that an average citizen cannot read, interpret and apply is a bad law, and I come down on the side of wanting things to be understandable so that citizens who want to be good citizens can be good citizens. And equivocal and difficult laws are not ones that we should have on the books.

So, I am very interested in hearing what has to be said this morning, but I would disagree with my friend from Minnesota that we give special prerogatives to enforcement officers in the Federal Government. I do not think they know any more about wildlife or any more about issues than anyone else, and they do not have any special prerogative to go out and take action that is not warranted by the facts and circumstances. Too often, they seem to think they do, but that is not the case, and I hope we make that clear in the course of this hearing.

Thank you, Mr. Chairman.

The CHAIRMAN. I thank the gentleman. I am sorry; I was so agitated with the previous speaker that I did not see you at the end of the line.

Mr. VENTO. I was agitated too, Mr. Chairman.

The CHAIRMAN. Well, I know you do.

The gentleman from Maryland, Mr. Gilchrest.

**STATEMENT OF HON. WAYNE T. GILCHREST, A U.S.
REPRESENTATIVE FROM MARYLAND**

Mr. GILCHREST. I will just take a minute. I come to this section of hearings today with a totally open mind. I certainly do not want to open the door for the wholesale slaughter of migratory birds or other species. I do think, however, there ought to be some clear understanding as far as what the rules and regulations are so that we do not get innocent people caught up in them.

Management of wild species, especially migratory birds, is a very difficult, very complex thing for humans to endeavor to accomplish successfully. On the Eastern Shore of Maryland in 1980, we had about 600,000 wintering geese on the Eastern Shore alone. We have about 250,000 now, and that is for a number of different reasons. But there are farmers who grow corn out there so the geese can eat the corn, or they leave a little bit of wheat, or they leave the corn standing, or they leave a lot of other things. And on the next field over, where they happen to land, you are going to have hunting.

In the county where I come from, we actually have legalized baiting deer. Now, you cannot do that unless it is very carefully managed. Now, I am not sure if I like that on a continuing basis, but there are so many deer there that to manage them, you have to make sure that the herd has enough food to eat. It is a very complicated issue.

So, Mr. Chairman, I am going to listen very carefully to the testimony. I do not think we want to open the door to the slightest crack to give anybody an advantage over shooting geese or whatever, but I think we have to be careful that is making a law that is clear, that the public can understand so we do not have an incident like that which occurred in Florida.

Thank you.

The CHAIRMAN. Are there any other opening statements? The gentleman from Oklahoma has to—

How much time have you got, Bill?

**STATEMENT OF HON. BILL BREWSTER, A U.S.
REPRESENTATIVE FROM OKLAHOMA**

Mr. BREWSTER. Mr. Chairman, I had an appointment at 11:00 waiting in my office that I was hoping to get back for. What I would like to do is turn in my statement. I would like to make just a couple or three very quick comments, if I could.

I appreciate you and my friend from California, Mr. Miller, for having this hearing. One thing that I would like to point out to my friend from California is that there are speed limit signs on the highway. So, if you are speeding, you certainly know what the speed limit is. The main problem that I see with the baiting law is the inability to determine if you are breaking the law. Mr. Miller, I know you are a bird hunter and get invited places to hunt from time to time just as I. If you go to the Berry Patch in California, you have no way of knowing if the owner of that property has put something out on that place or if they have not or any other place that you might attend, and that is where the problem lies.

I think what we have to do is make fines very severe for those who intentionally break the law. It is not the lack of knowledge of the law. I think most everybody knows that it is illegal to bait migratory waterfowl or doves for that matter. However, the inability to determine whether the place is baited and the conciseness of the law becomes a problem. My place in Oklahoma, I have a deer feeder set up that I feed year-round on one end of the place. I dove hunt on the other end of the place a mile away. It is all under one fence. Am I in violation of the law? Is it my fault if a dove stops at the feeder a mile away where the deer feeder is and then comes onto an area where I may be hunting by a pond? Under the strict definition of the law, I guess I am probably baiting.

So, what we need to do is clarify it so someone who accidentally hunts on my place would not be punished if I broke the law. The landowner should be punished severely, but not someone who inadvertently, with no intent, ends up in a trap situation.

I would hope that we could clear the definition up and clarify it to the point that anyone could understand and could consult with a landowner, ask if a place has been baited. If the landowner says no, then, you could look at it and determine if that is the case, the proximity ratio or some kind of mechanism where you can determine so that you do not have 80 or 90 innocent people who are caught in this type deal.

A few years ago, there was a similar happening in Oklahoma. The editor of our major newspaper was caught in the deal, with certainly no intent to be out on a baited field. Our governor happened to be there. Our governor had a medical condition, went to sleep and never loaded his gun. Consequently, he was not ticketed. But you had many people who were ticketed who had no knowledge or intent of being on anyplace that was baited. And so, I think we need to clarify the law to make sure that we truly penalize those who do break it with intent, but someone who is out there as an innocent victim is quite different than intentionally speeding when you know what the speed limit is.

So, I would urge the Committee to look forward to working with U.S. Fish and Wildlife Service to come up with a concise definition

and to make it workable for all. Thank you; I would be glad to answer any questions in the short time I have remaining.

[The statement of Mr. Brewster may be found at end of hearing.]

The CHAIRMAN. Thank you, Bill. And I hope people understand. I doubt if my good friends understand where this came from. This was a 1918 treaty, and this is actually a regulation that was not a law passed and I hope you read this thing. I mean, there is no way a person could even hunt anywhere if the agencies decided to implement this so-called regulation. It is an open checkbook to arrest anybody.

Now, I know my gentleman from California says you can appeal. Yes, if you are going to hire a lawyer. He is a lawyer; he would like that. You could appeal, and then, it would cost you \$2,000, and in fact, under this law, you would probably lose the case, and then, you could be sentenced to 6 months in jail and a \$5,000 fine. The automatic thing is well, right, big Government, you win again.

Mr. MILLER. Would the gentleman yield?

The CHAIRMAN. Yes.

Mr. MILLER. Because we are running out of time.

The CHAIRMAN. We have to go vote, and then, we will come back.

Mr. MILLER. I will just say it has been on the books for 60 years, and millions of hunters and millions of landowners have conducted themselves within the law, year in, year out; season in, season out; species by species, you know. And the fact of the matter is that that is the situation, and hunters are all aware of the problems of baiting. It is discussed in every goddamned coffee shop before you hunt, after you hunt: what is this guy doing in this field? What is this hunter doing with his blinds?

The CHAIRMAN. Reclaiming my time——

Mr. MILLER. Did you hear about Joe? They are looking at him.

The CHAIRMAN. Reclaiming my time——

Mr. MILLER. He does not know.

The CHAIRMAN. You know, it is funny; in California, you can hunt over baited fields for dove. Did you know that?

Mr. MILLER. No, I do not know that.

The CHAIRMAN. I know you do not know that; you do not know the subject. But you can hunt over a baited field.

Mr. MILLER. I know the subject because I have friends who have been cited, friends who have been arrested and friends who have——

The CHAIRMAN. You can hunt over baited fields in California. No wonder you do not care about changing the regulation.

Mr. BREWSTER. Mr. Chairman, can I make one comment?

The CHAIRMAN. Yes, Bill.

Mr. MILLER. But, you know, you cannot hunt over baited fields in Florida.

The CHAIRMAN. You can do it in California.

Mr. MILLER. Yes, but these folks are from Florida.

The CHAIRMAN. Yes; I understand that.

Mr. MILLER. You are doing everything you can to move off the subject here.

The CHAIRMAN. Mr. Brewster?

No, I am not.

Mr. BREWSTER. You can hunt in Florida over baited fields for some species but just not for migratory birds, nor can you in California. But I would like to invite the gentleman from California to go dove hunting with me this fall, and we walk out in a field, and I want you to determine whether it has been baited or not just as a person who happens to be invited along to hunt. And I know you would not go into a field that was baited; neither would I. But if we go into a field of, say, 160 acres that is under one fence that appears to have normal farming practices, I would like to know how you can determine whether it has been baited.

Mr. MILLER. Well, let me just respond to the gentleman that I think we will see later that the bait here had nothing to do with the appearance of normal farming practices. Do you know what I am saying?

Mr. BREWSTER. As I said, I do not know about this—

Mr. MILLER. So, this is not the best case for the problem that you and the Chairman probably rightfully have about some of the ambiguity. But this case did not get there with normal farming practices or even anything close to it.

Mr. BREWSTER. Mr. Miller, I do not know about this case.

Mr. MILLER. Yes, I understand.

Mr. BREWSTER. I do not pretend to know about this particular case. I do know that it would be very difficult for you as a dove hunter to walk into a field of maybe 2 miles square, maybe 2,400 acres under one fence or whether it is 100 acres and determine if it has been baited.

The CHAIRMAN. You can be arrested.

Mr. BREWSTER. Because it is ambiguous, and there are no size constraints is the difficult part.

Mr. MILLER. We are having a debate up here; excuse me. What were you saying?

Mr. BREWSTER. I know. You all are not either one listening to me, so I do not even know if I should be talking.

The CHAIRMAN. All right; we have got to go vote, and I apologize to the witnesses, but this is part of this program. We will go vote; we will be back here approximately—we will reconvene at 15 minutes to 12:00.

[Recess.]

The CHAIRMAN. The Committee will reconvene. I would like to thank the Honorable Richard Schulze for being so patient, and as a former member, he understands this process of voting. So, I do thank you for being here, Dick, and you are on. You can give your testimony at this time.

STATEMENT OF HON. RICHARD T. SCHULZE, A FORMER MEMBER OF CONGRESS

Mr. SCHULZE. Thank you, Mr. Chairman, and it is obvious that this hearing was needed, evidenced by the emotional testimony so far.

Mr. Chairman, I ask that my entire testimony be put into the record, and I am going to basically synopsize that which I am going to present.

The CHAIRMAN. Without objection.

Mr. SCHULZE. Six years ago, as a member of this Committee, I became concerned with what I called the innocent hunter problem. What is that? That is if the average hunter is recommended by a friend to a guide down on the Eastern Shore or somewhere; he calls him up; he gets some of his friends; lines up a date; meets that guide at 4:30 or 5:00 in the morning at a diner. They divide up; they get into a pickup truck; they run out. The guide places them in a blind before daylight, and at daylight, the shooting begins.

If that area were baited, if there was corn in the water in front of that blind, if there was supplemental feeding in the area around that blind, that innocent hunter has absolutely no idea. And to arrest him, to fine him, and to give him a record for such action is unconscionable in my opinion.

Well, what do we do about it? I did give it a lot of thought, and I have come up with a proposed solution. And I think you know me well enough that I am not in favor of more government forms or regulations. But it seems to me that if we had a relatively simple form, which a landowner or guide who has leased land could fill out which would state the amount of feed put in an area, the date it was put out, the type of feed, and this form would have three copies, one copy to be posted on either a board if it is an open field; in a blind if there is a blind, like a duck or goose blind. And the second copy would be retained by the landowner or lessee or the farm manager, and the third copy would go to the local game enforcement agency or designee.

That way, the local agency knows that the area was baited at a certain date and a certain time, and if there is a court case, a judge would be able to make a reasonable assumption whether the hunter should have known about that or whether he has complied with the date that is on the form, and if a conservation agent has to go out and take a scoop in front of a blind, and he digs 16 or 17 times and comes up with two or three kernels of corn, a judge would reasonably understand that within 30 days, if a person put five or six bushels of corn out there, there might be two or three kernels of corn. If he comes up with 40 or 50 kernels, that is a different matter. But the one responsible would be the one who baited or fed that area.

Now, I know that everybody has a different solution, but it seems to me that if something like this could be tested or tried in a two- or three-county area or in one particular area for a season or two seasons, I think it could be determined whether it is an effective device. I have seen instances—although I have never been personally involved, I have been in the area when arrests have been made, and I think that the law is sometimes used to intimidate. The law is sometimes used in an abusive way.

It seems to me that we must do everything we can to protect the innocent hunter. As Mr. Miller was saying, on the highways, yes, there are posted speed limits. And on this form, it could be stated that this area was baited at a certain time, and if the local law says that you may not shoot over bait for 30 days, you can easily look at that form and see when it was placed there. If it is 10 days or 2 weeks or 3 weeks, you would then know when it was placed there.

I would recommend that the Committee in its deliberations consider this along with—I understand there is going to be a recommendation for a task force to look into this. I would endorse both of those solutions and would be happy to respond to any questions the Committee may have.

[The statement of Mr. Schulze may be found at end of hearing.]

The CHAIRMAN. Dick, to my understanding, there would be three notices if the field had been baited prior to the hunting taking place.

Mr. SCHULZE. If there is a baiting situation, and the area is going to be used for hunting—yes. There are a lot of people who feed ducks and geese on the Eastern Shore and do not allow any hunting on their property. They would not have to worry about a thing. But if I have a commercial hunting operation, or I lease it to a guy who runs a commercial hunting operation, he would be responsible for doing it. You know, sometimes, people put 10 or 20 bushels of corn out in a river, in a pond, in a creek, in front of a blind. And if they do that, say, 30 days before they are going to shoot if that is what the regulation is, they just put on this form that on such and such a date, they put 10 or 20 or 30 bushels of corn out in this area, and if a hunter comes into that blind 30 or 31 or 32 or 33 days later, he knows that this area was baited, but it certainly should be clean in 30 days.

The CHAIRMAN. Under the present regulations, it says by baiting. Baiting means the placement, exposing, depositing, distributing of shelled, shucked or unshucked wheat or grain, salt or other feed as to constitute to such birds a lure, attraction or enticement or over any areas where hunters are attempted to take them. The baited area means any areas where shelled, shucked or unshucked corn, wheat or other grains, salt or other foods, whatever, capable of luring, attracting or enticing such birds is directly or indirectly placed. The way it reads now, indirectly means if I harvested, and my harvester was a bad harvesting machine, Fish and Wildlife could, in fact, interpret that as a baited field. Where would your forms come in then?

Mr. SCHULZE. If it is in normal, agricultural practices, you should spell that out, and a judge will be able to determine.

Now, we all know that sometimes, they leave an extra row or so forth for the ducks or the geese, and if that is normal agricultural practice on the Eastern Shore, then that should be acceptable, normal agricultural practice.

The CHAIRMAN. OK.

Mr. SCHULZE. But I think that is something that you could clarify in this test program or have the game and fisheries people recommend. Even the distance, if there is a blind a half mile away, and you are feeding over at this place, if that is too far, then, if you inform the conservation officer, then it is their obligation ahead of time to come up and say, now, wait a minute, you know, you cannot hunt that blind, because you are feeding over here. So, they have an obligation instead of sitting there—and I know this does not happen all the time, but there are instances where the game officers might lurk behind the blind early in the morning in the dark and then wait until the shooting begins and then, come out.

Again, for an innocent hunter, it creates a great deal of resentment against law enforcement.

The CHAIRMAN. The gentleman from California?

Mr. MILLER. No.

The CHAIRMAN. The gentleman from Minnesota?

Mr. VENTO. Thanks, Mr. Chairman, and I thank our former colleague for his testimony and suggestions. I gather that, of course, you are trying to place the responsibility on the Fish and Wildlife Service or the State DNR in terms of making a determination or evaluation whether something has or has not happened with regard to the manipulation—

Mr. SCHULZE. No, it would be the individual who did it, Mr. Vento.

Mr. VENTO. Well, would not the appropriate thing be, I mean, for instance, those of us who hunt are well aware of all of the signs we get about not coming here, no hunting in these areas. I go down the by-ways in Minnesota—

Mr. SCHULZE. No, I have never seen a sign at 4:30 in the morning. It is really very difficult.

Mr. VENTO. Well, I understand that you might not see it, but, on the other hand, you know, what I am suggesting is that private property owners are quite capable of putting up signs to direct hunters in a variety of ways. Rather than placing this responsibility on the DNR or someone else, why do we not place the responsibility on the landowner?

Mr. SCHULZE. Well, the responsibility would be the landowner or farm manager, the one who does either supplemental feeding or baiting, because a copy of it then goes to the conservation officer, so he is aware of what is going on. And if he thinks there is something fishy going on in that area, he can go over and talk to the farm manager. He can talk to the—

Mr. VENTO. Well, do you think that warning signs should be placed—in other words, where there are incidents or problems, where they have reviewed this? No actual incidence of violation occurs until somebody actually hunts, in other words, and that really is one of the problems, because as you said, many agricultural practices may overlap. There is that particular problem as an incidence of agriculture. There is also the problem that they may suspect that that is going to be used; would it not be advisable to permit them to place placards as well? Because a landowner may not agree with the issue. If you want to prevent this and put up some type of—let the DNR or the Fish and Wildlife Service put up a notice.

Mr. SCHULZE. I do not want to make it too burdensome, but I think that most of our laws are based on the reasonable man test. And if a reasonable man could go into a blind, and he sees something up there that says this area was baited 48 hours ago, if I were the hunter, I would get out of there.

Mr. VENTO. Well, that is right. But, I mean, the courts have ruled that posting baiting notices on private property prior to an actual violation is an illegal taking of property rights without due process of law. So the fact is that if you want to put up a warning as a State DNR person or as a Federal Fish and Wildlife Service ranger, you cannot even do it.

Mr. SCHULZE. You are saying if the Fish and Wildlife would go in on a property and put up a sign?

Mr. VENTO. If anyone who is aware of it who has a responsibility, whom we give the responsibility to, in fact, oversee and enforce fish and game laws.

Mr. SCHULZE. What we would do under my proposal, Bruce, would be to put that responsibility on either the farm manager or the lessee.

Mr. VENTO. Well, I understand; they should have it, and they do not exercise that today. But I think that beyond that, if you want to avoid the types of confrontations and problems you have, what is wrong with permitting—and you want to educate—what is wrong with permitting the State officer or the Federal officer who has the responsibility for enforcing the law to put up notification that there is violation or that there would be a violation if someone hunted there?

Mr. SCHULZE. I think that is too much of a burden on the conservation officers, that they should cover a county or a three-county or five-county area, and they should go out and put up signs everywhere. I think that is too much of an obligation on the conservation officers.

Mr. VENTO. I know that not everybody who speeds is going to get a warning ticket, but to give a warning to those who are going to hunt on that, we could avert the type of confrontation we had in many of these instances, and that would, I think, serve notice that you cannot. Because I think the real issue here is that there are disagreements as to whether or not baiting actually occurred.

Mr. SCHULZE. I am sure that if the Committee in its wisdom decides to appoint a task force on this topic that they will take that under consideration.

The CHAIRMAN. This Committee in its wisdom is going to write a bill.

Mr. VENTO. We never have any task forces on this Committee, do we?

The CHAIRMAN. We are going to write a bill, and we are going to change this law, and it is going to move out of this Committee, and we will fight it on the Floor. I want to see who has the nerve to say that a person is guilty when he is not.

Mr. SCHULZE. I thank the Chairman, and I thank the Chairman for the opportunity to testify before this distinguished Committee.

The CHAIRMAN. Thank you, Richard.

Mr. DUNCAN. Mr. Chairman?

The CHAIRMAN. Yes.

**STATEMENT OF HON. JOHN J. DUNCAN, A U.S.
REPRESENTATIVE FROM TENNESSEE**

Mr. DUNCAN. I just want to say I appreciate the reasonable, moderate approach that Congressman Schulze has taken on this. I did not know what this hearing was about when I first came here, and when I read this briefing paper, I just really was shocked that our laws would be interpreted by the bureaucrats at the Fish and Wildlife Service in this manner to swoop down on people and stop this hunt that was in Florida being done for charitable purposes. I think it is just totally ridiculous, and I think this is the kind of

thing that makes people wonder if we still have a free country anymore, and it makes people—this is an example of the very type of thing that causes so many people across this country to be so angry and fed up with all of the rules and the regulations and the red tape and the bureaucracy of the Federal Government. I think this whole thing is ridiculous, and we ought to have this law changed, and I just wanted to make those comments before Congressman Schulze leaves.

Mr. SCHULZE. Thank you.

The CHAIRMAN. Thank you, Richard.

Anybody else? The gentleman from Maryland.

Mr. GILCHREST. Mr. Schulze, I would like to talk to you further on your proposal, and in general, it seems to me that at least in my area, when you have people—and I personally do not like the sign thing; that is a whole other dimension that is often misinterpreted; often, the wrong sign is put up; often, it creates more problems than it solves.

The key to this, at least in my area, is that people get together, and they discuss the issue. Whether you are a farmer or whether you are a hunting guide, and the conservation officer in that area, if he is doing his job, if he wakes up at all during the day is going to know who the potential offenders of this are going to be. And so, if they can communicate this issue about whether the combine did not work too good—and a lot of them do not work very well; they spit that corn out there, or whether someone did feed the geese on a particular area. But I think the key to the success of this law and any legislation that comes out of here is to give us an opportunity for people to communicate with each other on a basis not out of intimidation but out of how we can consult with each other to make a better product.

Mr. SCHULZE. I agree with the gentleman from Maryland, that oftentimes, this takes the form of somewhat of a game of we are going to get these guys, or we are going to try to avoid being caught. And we should take that out of it. It ought to be a serious operation and should be done in a common sense way.

The CHAIRMAN. I thank the gentleman.

Richard?

Mr. SCHULZE. Thank you, Mr. Chairman.

The CHAIRMAN. The next list, finally, after an hour of time is the second panel, Senator Charles Williams—the famous Charles Williams—from the State of Florida; Sheriff Stephen Oelrich, from Alachua County, Gainesville, Florida; Mr. William Boe, Chapter Advisor, Alpha Gamma Rho Fraternity, University of Florida, Gainesville, Florida; Mr. John Pelham, Florida Power Corporation, Crystal River, Florida; Mr. Chadwell Bruce Clemons, University of Florida, High Springs, Florida. Gentlemen, you all take your seats. And I am a little lenient but not too lenient. We will take all your written testimony and submit it for the record. Try to limit your comments to 5 minutes apiece.

We will start out with the Senator. Welcome, Senator, to the hearing.

**STATEMENT OF HON. CHARLES WILLIAMS, A STATE SENATOR
IN FLORIDA**

Mr. WILLIAMS. Thank you, Mr. Chairman and other members of the Committee for the chance to appear before you today. I represent a very large, rural senate district in Florida, Senate District 4, all across North Florida from Tallahassee all the way to the Atlantic Ocean north of Jacksonville, largely a rural area encompassing 18 counties in Florida—by the way, one of the largest senate districts geographically in the United States

I currently reside in Tallahassee, Florida, where professionally, I am a full-time State senator and a part-time farmer, a part-time real estate broker and a part-time adjunct professor of insurance at Florida State University. I sponsored the infamous charity dove hunt in Florida, which was raided last October 13. As you well know, serving in public office, often, you have the opportunity to host charitable events, and I have been a big supporter of the Florida Sheriffs Youth Ranches in Florida, which are scattered all over the State of Florida and have helped many young people get their lives straightened out.

The hunt that was raided—and I use that word raided loosely, because that is what many have termed it as, that it was raided—was held on a very isolated farm in rural Dixie County. You have got to sort of go out of your way to get to Dixie County, Florida. It was a large tract of land, about 200 acres in an open field on about a 600-acre tract of land. But we had a luncheon that day. About 125 hunters showed up to eat lunch and then went out to the field. But before going to the field, I had made a little speech and told everybody to please observe all of the hunting laws. I had as my guest the regional director of the Florida Game and Freshwater Fish Commission, Colonel Larry Martin, there and told everybody that Colonel Martin was my guest and to make sure that everybody observed the hunting laws.

The hunters proceeded to the field about 1:00, and about 4:00, approximately a dozen of the U.S. Fish and Wildlife agents converged on the field and started pulling hunting licenses. Let me just mention that I was not out there at the time. I had been out very briefly as the host of the hunt to talk to different people. It was extremely hot that day, and I had gone back up to the barn about a mile away. And after the incident that afternoon, we tried to finish the evening. Everybody was, I can tell you, very, very upset, because they had been very innocently detained and written up.

But let me just say that I am not here today to bash the U.S. Fish and Wildlife Service at all. Everybody has a job to do, and those agents who were called in for whatever reason that day I am sure performed as admirably as they could. I will just tell you that there is a lot of confusion concerning the Federal baiting regulations under the Migratory Bird Treaty Act. We have all come to that conclusion, I can tell you, and something does need to be done. As a matter of fact, in response to an inquiry from a congressman on the matter, the regional director of the U.S. Fish and Wildlife Service stated in writing had the hunters conducted an inspection of the field prior to the hunt, it would have been apparent to them that the field was baited.

I can tell you that is not true. I was in the field, and I checked the field. And I have been a hunter all my life. I saw no evidence of bait. The regional director of the Game and Fish Commission shot. He killed the legal limit of 12 birds that day. He inspected the field; said he saw absolutely no evidence of bait on the field.

But apparently, this was not sufficient for the U.S. Fish and Wildlife Service. They determined that it was baited, and they issued the citations. I think it could have been handled a lot better if the agents discovered bait on the field if they would have at least come and told us that they saw evidence that the field was baited, had gone to the landowner—and by the way, I checked with the landowner on two occasions before the hunt to make sure that the field was not baited, because I wanted to make sure that none of the innocent guests of mine whom I brought there that day would get caught up in an embarrassing situation. That was not the case.

But what we need are solutions and changes to the current law to bring some common sense to the situation. And I think we can do that by simply addressing the regulations and require that a hunter knowingly and intentionally be breaking the law. And I can tell you that none of the people who were there that day thought they were breaking the law. They were all innocent people, and I was innocent in inviting them there.

I can tell you one thing. I may be a lot of different things, but I am not stupid, although some might think I am as a politician. But I would not have invited my friends to hunt over a field that I thought was baited and end up with the embarrassing situations that we had that day. There were some individual violations, and when you have 125 hunters in a field, even though they had been warned, you cannot control the individual actions of everyone. There were some unplugged guns, two or three; there may have been one or two hunters charged with killing in excess of the legal limit. Bear in mind, there were only four hundred and something birds confiscated from 88 hunters; that is about five birds per hunter average. So, it was not a slaughter, as I have read in some of the proposed testimony that will come before this Committee today. It was not a slaughter at all.

A lot of fine characters and reputations have been tarnished in Florida because of this ordeal. There again, it is not my intent to bash the U.S. Fish and Wildlife Service; it is just to try to get some changes. And we have gone to great lengths to try to do that, and that is the reason that we are in Washington today talking to you. I do not know about Washington, but in the State of Florida, we are having to make extremely wise use of our tax dollars down there. We just finished our session of the legislature week before last; produced a \$40 billion budget. And we are having to spend our money wisely. And I believe that the U.S. Fish and Wildlife Service could spend their money a little more wisely and perhaps target some other areas that might be of a little bit more importance.

Let me just mention——

The CHAIRMAN. Your red light is on, so I will give a little——

Mr. WILLIAMS. Thank you, Chairman, and I will conclude my remarks with that.

[The statement of Mr. Williams may be found at end of hearing.]

The CHAIRMAN. And I thank you, Senator, and we are reviewing the Fish and Wildlife budget as we are speaking right now.

Sheriff Oelrich?

Mr. OELRICH. Yes.

The CHAIRMAN. Good to see you.

STATEMENT OF SHERIFF STEPHEN M. OELRICH, ALACHUA COUNTY, GAINESVILLE, FLORIDA

Mr. OELRICH. My name is Steve Oelrich; I am the sheriff of Alachua County. I really appreciate the opportunity to be here with you today. My wife and I have both come at considerable expense, and we both have a very busy schedule, but I thought this was a very important issue to speak with you on two main topics that I want to cover today. One is the really heavy-handed and unnecessary tactics of the U.S. Fish and Wildlife Service, an agency of the Federal Government; two, the existence of a law that requires no intent and no knowledge to violate, to be charged, coerced, and to paying a large what they term as a collateral forfeiture, which they call a fee, rather than contest, due to the way the very onerous penalties, completely out of perspective to the proposed violation. In short, the agency needs some major controls, and the law needs some major revisions.

First, I want to tell you about my background, so you can get a better idea of my perspective. As far as wildlife goes, I have been a hunter and a fisherman, an outdoor person, since I was in the Boy Scouts when I was about 12 years old. So, I have got about 37 or 38 years of experience in the outdoors. I am a member of the American Turkey Hunters Federation. I was past president of our Ducks Unlimited chapter here for 2 different years. I am in the Florida Conservation Association, and in the law enforcement realm, I have two degrees in law enforcement, one in police administration and one in criminology. I have 20 years of experience as a city, State and now as the sheriff of Alachua County.

Part of the thing that I want to talk to you about is this whole idea about the way this thing was conducted from a law enforcement standpoint and also from a wildlife standpoint. I went out there that day; I got there late, went to a stand that the chief deputy of that county took me to; shot my birds. And to give you a little rendition of the encounter I had with the Fish and Wildlife, the wildlife agent came to me and said his name and said he was with the U.S. Fish and Wildlife Service. I said fine; I am Steve Oelrich; I am the sheriff of Alachua County. And he wanted to see my license; I showed him my license. He wanted to see a driver's license; I showed him my driver's license, trying to be cooperative. He wanted to see my gun; I showed him my gun. He wanted to see my birds; I showed him my birds.

Then, he said there is a problem with the field. And I was so taken aback; I said no, man; we have got permission to hunt on this field. And he looked at me right in the eye and said no, the wrong kind of seeds are on the ground. And I was absolutely taken aback by that, but we walked over to a road there, and he showed me where there were some seeds that he said did not come from the plants that were indigenous to that area.

My point in saying all that is just that the whole perception of the people who were out there—they were invited people who came out there on this hunt. I do want to say about this that certainly, none of the people out there had any intent to violate the law, and that is not required, and also no knowledge to violate the law. Many people have made a point about why we would send in our money. And if you read the letter that they sent, the U.S. Fish and Wildlife Service sends to you, when you get this letter, it has some very what I call heavy-handed saber rattling, if you will, letter that says that you can send in this money, or, if you want to plead guilty to this or if you want to contest it, then, you can face 6 months in prison, a \$5,000 fine, or 5 years with your hunting privilege revoked.

I talked to an attorney, and he said look: with no intent and with no knowledge, you can still be in violation of this thing; my advice to you is to pay this collateral forfeiture. They do not call it a fine, but it is still your money, \$500; \$525 in my particular instance that I did pay. But I made it clear in the letter that I was not pleading guilty or admitted any guilt.

The other part of it is that I work every day with the U.S. Department of Justice, the U.S. Attorney's office. And it became clear to me when I went into a pretrial talk with the U.S. Fish and Wildlife Service agent and the assistant U.S. Attorney that we were going to be in an adversarial situation. My thing about working with the FBI and the DEA on an everyday basis, it was not worth it to me to put that whole relationship in jeopardy, so I went ahead and sent this money in.

Here again, what you are faced with, I think, is two-pronged in its nature. Number one, get some sort of control over the U.S. Fish and Wildlife Service as far as law enforcement goes. The other thing is to really review this law. For over 30 years, ever since I went to criminology school, one of the elements of violating the law is intent. Certainly, no one there or very few of the people there, I would think, out of all of the numerous people who were there had any intent to violate any Federal law, certainly as the Senator has said, they have too much invested in it. So, with that, I say thank you for the opportunity to state my case.

[The submissions of Mr. Oelrich may be found at end of hearing.]

The CHAIRMAN. Thank you, Sheriff, for coming and bringing your wife, too. And I think you brought up some valid points, what I believe personally should be done with this law. And by the way, I have that letter, and for the members of the Committee, it says if you wish to contest the charge and you do not submit the collateral, you will be notified of your assigned court date. Under the provisions of Title 16 United States Code 707(a), if you enter a guilty plea or are found guilty at trial, it is \$5,000. This is a regulation passed by the Fish and Wildlife Service. It is not a law of this Congress. They set the penalty. It was \$500. I do not know where they got this. It is a great way to make use of the hammer.

Mr. Boe, University of Florida. Welcome.

**STATEMENT OF WILLIAM K. BOE, CHAPTER ADVISOR, ALPHA
GAMMA RHO FRATERNITY, UNIVERSITY OF FLORIDA,
GAINESVILLE, FLORIDA**

Mr. BOE. Mr. Chairman and members of the Committee, thank you for the opportunity to be here. I am giving testimony today as the chapter advisor to the Alpha Gamma Rho fraternity at the University of Florida. These are students, primarily from rural areas, who are majoring in agriculture. I will not provide you an in-depth overview of my own packet due to the time restrictions placed on me today, 5 minutes. My statement of my adventure in the field is quite thorough, and it is very honest, and it is very candid.

The hunting scenario was this: A 600-acre field section of land, 1 mile square; I did not know what part I would be hunting in. I drove in with a company that I have intense respect for as their guest. I drove to the end of the field; got out; hunted; was told that the field was baited. I noticed in one statement from one of the people who will be speaking later today that we were offered an opportunity to see the bait. I requested of the officer who took my license to show me the bait in proximity to where I was hunting. I shot four doves; shot 15 shells in 2 hours. That is not what I call a high pattern of birds. I am a graduate of Southwest Texas State University, and I know what heavy volumes of doves in the air look like from the State of Texas, and it does not look like what I saw in Dixie County that day. To make a long story short, basically, I requested two different agents to show me the bait in proximity to where I was hunting; neither would do so.

But my primary concern is in reference to the students I work with from the University of Florida. They were invited to this hunt to assist with bringing refreshments into the field. They were told while they were bringing it in and out that they could stop and shoot at a bird now and then, which some of them did. They were also told by the parents of one of the students that they had an adjacent field that they owned adjacent to Mr. Sanchez's field, and due to the fact that there would be fewer people over there—i.e. nobody over there—they could hunt in the field owned by one of the boy's parents.

We had five University of Florida students in a separate piece of property, separated by a fence, that was never inspected for bait or alleged to be baited. Nonetheless, the agents, once they raided the Sanchez field, went into the adjacent field and issued thousands of dollars in citations to the University of Florida students. I talked with the parents of each one of the students; they were intimidated, upset—outraged, I suppose, would be a good term. I shared that outrage. I asked them to contact Congressman Cliff Stearns of Ocala, which they did, and thanks to Mr. Stearns, we are up here today.

To the point, several of the boys paid their fines. They were under the impression that their professional careers would be challenged if they did not from the letter they received, which basically is extortion in a kind word. We have one young man over here to my left and your right, Chad Clemons from High Springs, who told me quite candidly he had no intention of paying that fine. He said: "I am in a field that was never determined to be illegal; in the

United States of America, you are not guilty unless you are proven to be so.”

He lacked the financial means to get representation in Federal court, and this ag student from the University of Florida served as his own attorney in Federal court and was acquitted, thank God, by a judge in the United States of America who could distinguish between the bare mechanics of the law and justice. He was provided justice in Gainesville, Florida; he certainly was not provided justice in that dove field in Dixie County. A week later, another student also went up, defended himself, and was also acquitted.

Though my time is short, one of my primary concerns is the impact on these young men’s future. And I contend to all of you in here that a young man or woman attending the University of Florida should not begin their professional life with a stain branded on their character from the overzealous enforcement of an impractical law, and no, you cannot inspect effectively an undefined area for 10 consecutive days before hunting in it; this is an impractical law.

The members of this Committee did not create the law that has had a negative impact on the lives of the young men that I work with and respect, but you do have the ability to improve the law to make it functional and make it fair for sportsmen and law enforcement agents. Under the current laws, the doves died; the hunters were massively fined; and I guarantee you that Federal Government units in the State of Florida have lost a lot of public support and respect.

I was handed by an aide to Congressman Stearns a few minutes ago a fax from Florida, and I would like to share this with you. This is from one of the young men whose family decided to pay the fine to provide this boy not a Federal stain on his future:

“Dear Congressman Stearns:

“I am a student at the University of Florida and decided this past spring to enroll in the Army ROTC program. Because I had not enrolled as a freshman, I was scheduled to attend Camp Challenge at Fort Knox, Kentucky, beginning June 4, 1996, to compensate for training I had missed. The ROTC staff at the University of Florida advised me that I would need to have a waiver for a hunting violation that I received last fall, but they did not believe there would be any problem receiving the waiver.

“Yesterday, May 13, 1996, I was advised that the waiver committee denied the waiver and that I would not be allowed to attend the camp and would not be able to contract to become a United States Army officer.”

And I see the light is about on. The point is that this was a young man who had the desire to serve his country in an honorable fashion. He was a victim of a law he did not identify; he had no knowledge of the law being there or any intent to violate it. This country will be denied his service.

Thank you.

[The statement of Mr. Boe may be found at end of hearing.]

The CHAIRMAN. Thank you, Mr. Boe.

Mr. Pelham, Florida Power Corporation, Crystal River, Florida.

**STATEMENT OF JOHN PELHAM, FLORIDA POWER
CORPORATION, CRYSTAL RIVER, FLORIDA**

Mr. PELHAM. Thank you, Mr. Chairman, for the opportunity to be here today. I am not going to dwell on this hunt; I think we have heard quite a bit about it. Similar action has occurred with me in that the citing officer could not show me the bait, did not know where the bait was, told me that the field had been flown several days before, and that was where the bait was identified.

My contention is that if they knew that the field was baited, why did they not close the field and save the lives of those birds? That is called documenting a field. If I want to get you in trouble, Mr. Chairman, if I know you are going to a hunt in 2 weeks, all I need to do is take a Dixie cup of cracked corn and put it in the middle of a field and anonymously call that agency and let them know that that field is baited and where it is.

The Department of the Interior is charged with protecting the migratory birds. I do not believe that they fulfilled their obligation. Let me say this also: I do not want this to be an adversarial thing with the Department of the Interior. They have a tough job to do. The officer or the agent who cited me was courteous and professional. However, the letter that I received about 2 weeks subsequent to that citation that was written in the field where they asked me who I worked for and what my title was, that does not seem to gel, why they needed to know where I worked and what my title was. They had my hunting license.

The citation, as you have heard earlier in the letter, I felt was very intimidating and very coercive in that it was up to a \$5,000 fine, 6 months in jail—I assume that is a Federal prison—5 years probation and a loss of hunting privileges. Mr. Chairman, I have hunted in Florida all my life; I could not wait to write that check. But I could have paid by MasterCard or Visa if I wanted.

But I think the answer to the problem is that maybe we should allow baiting. Let me explain. If we allow baiting, the congregation of birds will not be as dramatic as they are by denying baiting. The enforcement of the bag limit is the key. That is what we are concerned about: the preservation of the birds. And I need to apologize, because when I wrote this, I was working specifically toward doves in this hunt, and I realize that we are also talking about waterfowl. But I think we should stop documenting the fields, and I think we should look at sports planting rather than planting for agricultural purposes. I am not a farmer, Mr. Chairman, and the only thing I recognize as bait is cracked corn. I do not know wheat from rye from whatever it may be. I cannot identify it. I did not see any in this field, and I would not know it now.

And if you decide to form a committee or a group to pursue this further, I would like to volunteer to help or assist or give any input that I may. This is a tough issue, and I thank you for your time, Mr. Chairman, Committee members, and the opportunity to be here today. Thank you very much.

[The statement of Mr. Pelham may be found at end of hearing.]

The CHAIRMAN. Thank you, John.

Chad Clemons from the University of Florida, High Springs, Florida. Chad?

STATEMENT OF CHADWELL BRUCE CLEMONS, UNIVERSITY OF FLORIDA, HIGH SPRINGS, FLORIDA

Mr. CLEMONS. Hello; I would like to take this time to thank you, Mr. Chairman and Committee members, for this opportunity to testify regarding a dove hunt that occurred on October 13. I served in this dove hunt as an AGR member, Alpha Gamma Rho. I am attending the University of Florida, and I was invited by a friend, Ray Hodges, who is an aide to Senator Williams. I attended this hunt anticipating to help serve refreshments and help make the guests as comfortable as possible. We were told that if we had enough time and in between all of this, we could hunt, so we did. We had time.

After the luncheon, I was invited to hunt on a parcel of land that Mr. Boe has spoken about on Mr. Hatch's property, which is adjacent to the Sanchez farm. I went to the field, never crossing the Sanchez farm, entered the Hatch farm and hunted. I was in an ideal location. I was located between the alleged baited field and a pond, so I was quite content. I hunted for approximately 3.5 hours before I was approached by a wildlife officer. Let me make a correction: I was not approached by him; I approached him. And let me clarify that: I was hunting approximately 100 feet away from the Sanchez farm, which was separated by a woven wire fence about 48 inches tall, a field fence. I could not clearly see that field as far as what the contents were inside the field. The field in which I was hunting was a pasture.

The wildlife officer approached about 100 yards away and called out to other members in the field: I am a U.S. Fish and Wildlife officer. The friend with whom I was hunting turned to me and said what do you think we should do? And I said, well, let us go talk to them. I only had six birds; I had a hunting license; I was clearly in no violation. I had no problem going and speaking with Mr. Pilgrim.

So, we drove about 100 yards to where Mr. Pilgrim was located, and he was taking information from the other hunters in the field. I gave all of the information he requested, and I was questioned for approximately 10 minutes by Mr. Pilgrim. He was very polite, but he was not to the point. He did not tell us why we were being questioned, and I asked: is this a license check? No. What is going on? Well, we will tell you in a minute, when you meet us at the other part of the field and we all congregate at one time. That way, we can simplify this by going over it at one time.

Well, obviously, something was wrong. We left; we went back to the barn first en route to the field, and that is where I learned from other hunters who had come out of the field that this field was baited, the field was allegedly baited. So, knowing this, as I crossed Sanchez farm and crossed that field that was allegedly baited, I knew now that the field was baited from information from other hunters. Clearly, I was looking for it. I drove through that field, and I did not see any.

When we got to the point where the questioning was going to take place and where they were going to take further information in regards to the citations, the officer took the information for the citations and told me that the district attorney would contact me in the event that I wanted to appear in court if they were willing

to press charges. And they were. He asked me if I had any questions; I did. I said can you show me the bait, please? He said I cannot right now; we are busy. He said but if you would like to, you could walk out about 100 feet into the field, and you can clearly see the bait.

Well, I did; I did not see any bait. Now, I am a student of the Agricultural College at the University of Florida. I have taken several courses in agriculture, horticulture, agronomy. I know what seed look like. I have had seed ID; I have had tests on it; I have been examined. I know what wheat seed, I know what cracked corn, I know what rye and the various seeds that were supposedly in this field are. I did not see any. I was not satisfied.

I made up my mind right then that I was not going to be intimidated, and, therefore, I was going to request that I have a court appearance, and I did; I had a court appearance. I was found not guilty by U.S. Magistrate Richard Belz, and it was on three main points that I was found not guilty. U.S. Magistrate Richard Belz—and I am quoting here: “Mr. Clemons could not reasonably see the small grains on the other field.” Then, he went on to say: “And his responsibility was not clearly defined in the law as to how large of an area he was to inspect prior to or during the hunt.” One of the other key points he said was: “Mr. Clemons has been invited to hunt at other invitational hunts where fields were clearly planted with crops bearing seeds meant to attract birds, yet he was not cited by wildlife officers present at those hunts as actually going across the grain of the law. But in this particular incidence, he was cited. Therefore, by lack of clarity and consistency with the law, I find Chadwell Clemons not guilty.” And I left the court room feeling that justice had been served.

Let me state this before I close. I realize my time is up. After I was met by the wildlife officer, after I had been questioned, after I had questioned him, I left that field very confused and felt very violated by an agency that I have a great deal of respect for. And I hope today and in the months to follow that this Committee will see fit to change a law that is ambiguous.

Mr. Miller, I would like to speak to your point about the speed limit. If a person driving a car breaks the speed limit, well, then, by God, they should be punished. But, Mr. Miller, if you are driving a car, and you are breaking the speed limit, and I am riding with you, that officer better not give me a ticket for your violating the law. I had no intent, and I had no knowledge that I had broken the law. I was there innocently hunting. And if others in the field had the same circumstances, then I think justice should be served, and these people should be refunded their money.

[The statement of Mr. Clemons may be found at end of hearing.]

The CHAIRMAN. I do thank you gentlemen for fine testimony.

The gentleman from California?

Mr. MILLER. Thank you, Mr. Chairman.

Mr. Clemons, you proceeded in court; is that correct?

Mr. CLEMONS. Yes, I did.

Mr. MILLER. What court was that?

Mr. CLEMONS. It was a U.S. court in Gainesville, Florida.

Mr. MILLER. It was Federal court?

Mr. CLEMONS. Yes, it was a Federal court.

Mr. MILLER. It was Federal court. And what happened there? You put on your case; you were represented with an attorney or without an attorney?

Mr. CLEMONS. Without an attorney; I defended myself. I came to the courthouse; the session took place; he asked me if I had seen any of the evidence; I said no, I had not. So, he gave me a brief moment to talk with the prosecuting attorney about some of the evidence that was going to be presented. We stepped out in the hall, talked about it. She told me if I paid my fine, I would not be admitting guilt. She went over the rules and regulations about \$5,000, 6 months in prison. I said too bad; I am going to fight it.

Mr. MILLER. But you put your case on, and then, who represented the other side?

Mr. CLEMONS. A U.S. prosecuting attorney. I am not sure—

Mr. MILLER. A U.S. attorney put the case on. I was not there; so, that is why I am asking the question.

Mr. CLEMONS. I do not know what her name was, but she was a U.S. attorney.

Mr. MILLER. And they put on their evidence.

Mr. CLEMONS. Yes, they did.

Mr. MILLER. And then, the finding was that you were in an adjacent field; is that correct?

Mr. CLEMONS. Correct, approximately 100 feet away.

Mr. MILLER. Was there any finding as to whether or not the other field—what I guess is being referred to as the Sanchez property—was baited or not baited?

Mr. CLEMONS. They presented evidence by the means of photographs that were blown up probably 11 by—

Mr. MILLER. Right; and did the court make a determination on that?

Mr. CLEMONS. No; that was not the intent of the trial.

Mr. MILLER. The intent of the trial was whether or not you were—

Mr. CLEMONS. I was guilty of hunting on or over a baited field.

Mr. MILLER. And that determination was not, and you were not on the Sanchez property.

Mr. CLEMONS. Correct.

Mr. MILLER. OK.

Sheriff, first of all, what capacity are you all here in? Are you here in your capacity as sheriff, or are you here as a private citizen?

Mr. OELRICH. No, no, I am here as a private citizen.

Mr. MILLER. And the gentleman from the University of Florida and from Florida Light and Power?

Mr. BOE. I am not an employee of the University of Florida; I am an employee of Pro Image in Gainesville, Florida, who primarily works with Federal clients with contaminated properties helping them—

Mr. MILLER. But are you here in that capacity?

Mr. BOE. I am here in the capacity of the advisor to the fraternity—

Mr. MILLER. OK.

Mr. BOE. [continuing]—where we had a large number of boys receive citations who should not have received citations.

Mr. MILLER. OK; and the gentleman from——

Mr. PELHAM. As an individual.

Mr. MILLER. Thank you.

Sheriff, there has been some discussion here about when the law enforcement officials acted or did not act.

Mr. OELRICH. Right.

Mr. MILLER. Did they act before, did they act afterwards or what have you. How is that discretion handled in your department when you know there is going to be a crime committed? Do you interrupt those to prevent that crime?

Mr. OELRICH. Absolutely; generally, this would be the same analogy that we are going to take someone down for five armed robberies by waiting until the end of the fifth armed robbery to be committed.

Mr. MILLER. No, this was an ongoing, continuous act. I am asking you how do you make that determination? If you know a crime is going to be committed, do you always interrupt that crime to prevent that crime from taking place?

Mr. OELRICH. I would say as a general rule, yes, we would interrupt that crime from taking place.

Mr. MILLER. You do? So, if you know someone is going to buy drugs on the street corner, you go to the purchaser and say do not do that, because that is illegal?

Mr. OELRICH. Would you restate that again?

Mr. MILLER. Well, I am asking you, then, if you observe or knowledge comes to you that somebody is going to break the speed limit or that somebody is going to shoplift or that somebody is going to make a purchase of a controlled substance, you go to that individual and tell them not to do that to prevent it from taking place.

Mr. OELRICH. Well, I think here again, we are talking about the element of intent. A better analogy might be if we know that an armed robbery is taking place, we would go in there and start——

Mr. MILLER. I am not interested in your analogy; I am interested in how that discretion is meted out. Is it policy that to prevent crime from taking place, you interrupt crimes in progress?

Mr. OELRICH. Yes.

Mr. MILLER. Or in anticipation of crimes.

Mr. OELRICH. Yes, yes, we would——

Mr. MILLER. You do that?

Mr. OELRICH. Yes.

Mr. MILLER. So you do not set up a sting operation; you do not watch people buy drugs and then arrest the purchaser and the seller? Your department does not do those things?

Mr. OELRICH. Oh, yes, we do that as well.

Mr. MILLER. So you do do that in cases. So, you do it both ways.

Mr. OELRICH. Both ways.

Mr. MILLER. And the officer on the beat has some discretion or not about how to do that?

Mr. OELRICH. Yes.

Mr. MILLER. OK; when you keep saying to go to intent, you do not have to intend to violate the speed limit.

Mr. OELRICH. Well, it is a posted speed limit. The violation, Mr. Miller, is exceeding the posted speed limit.

Mr. MILLER. Right.

Mr. OELRICH. And in other words, if we set up——

Mr. MILLER. But you neither have to have knowledge nor intent.

Mr. OELRICH. No, you do not need to have knowledge or intent.

Mr. MILLER. Right.

Mr. OELRICH. But this situation would be, if you are going to use a traffic one, is us setting up and grabbing people going 15 miles an hour near a school, and us telling them you should know that 3 blocks down the street back behind these trees is a school. That would be a better analogy.

Mr. MILLER. Well, but whatever the analogy is, you would have a right to do that too, because the law is you cannot go——

Mr. OELRICH. No, you do not; no, you do not. It is posted.

Mr. MILLER. [continuing]—a certain speed because it is a school zone.

Mr. OELRICH. No, there are certain regulations about putting——

Mr. MILLER. But those people neither require intent or knowledge.

Mr. OELRICH. It would be posted speed limits.

Mr. MILLER. I understand it would be posted. So, you impute the knowledge to them—as we do in many laws. I am not talking about you; we do this in many laws. We impute strict liability. It runs throughout our legal system. We impute knowledge to many individuals.

Mr. OELRICH. OK.

Mr. MILLER. Well, we will go into this in the second round, Mr. Chairman.

The CHAIRMAN. I still do not know what the speed limit has to do with baiting a field.

Mr. MILLER. I do not know what the lack of knowledge has to do with it when the law is strict.

The CHAIRMAN. Mr. Boe, there appear to be some contradicting statements in the written testimony that has been submitted. Did you request the Federal agent taking your license and oral statement to show you the bait?

Mr. BOE. Yes, sir, I did. I was in a field. I drove in in a car with Mr. Pelham and members of his company. We drove through the Sanchez field to the far end of the property; parked; walked about 50 feet down a dirt road. I saw no sign of grain there. And I am a native of Pahokee, Florida, where Mel Tillis is from. That is as rural as you can get. And I did not see any grain there. I walked out into the field next to some bushes; hunted for 2 hours; shot five birds; found four; and I had to hunt very hard to find the birds I shot. It was not a flat, clear ground area. And I saw absolutely no grain of an unusual nature piled up by tonnage, as described in some statements.

I saw agents drive up in an unmarked car; get out with a camouflage-type attire on, which is unusual. We were expecting Florida Game and Fish to inspect us, and we were told basically that you better be legal and you better be safe out there, because this is a scrutinized event. And when I hunt, I am both legal and safe. And I left my concealed spot in the field; walked over to where these people were obviously checking licenses. I said I have been hunting in this field; I have got four birds; here is my license. They identi-

fied themselves at that point in time as being with the U.S. Fish and Wildlife; stated that the field was baited, and that I was hunting over a baited field; they were closing the hunt; they were going to take my license and for me to go under a group of trees to give a statement.

And I asked that agent at that point in time that I gave my license, I said sir, I will certainly do that, but I have not seen any grain where I was hunting, and would you please show me the proximity of grain to where I am hunting. I am hunting over there in those bushes. And he said it is everywhere.

The CHAIRMAN. Did he show you any grain?

Mr. BOE. No, sir, the agent did not.

The CHAIRMAN. Did he make any effort to show you any grain?

Mr. BOE. He said it is everywhere, and he kept saying it is everywhere.

The CHAIRMAN. The reason I asked that, in his testimony, the Fish and Wildlife, they have photographs. Now, I do not know where those photographs were taken. Did anyone see them taking photographs?

Mr. BOE. I did not even know they were taken.

The CHAIRMAN. I mean, I could take a photograph on this floor out here and show you seeds.

Mr. MILLER. Is the gentleman suggesting perjury or something here? Why do we not swear all of the witnesses and start over?

The CHAIRMAN. It is my time.

Mr. MILLER. I have no problem—

The CHAIRMAN. It is my time, and you are not the Chairman; I want you to remember that. You are not the Chairman, and it is my time.

Mr. MILLER. And you are suggesting—

The CHAIRMAN. When it is my time—it is still my time. It is my time.

Mr. MILLER. I have a right to try to get you to yield.

The CHAIRMAN. It is my time, and I am not going to yield.

Mr. MILLER. Fine.

The CHAIRMAN. You know, you have your time later on.

Mr. BOE. Congressman, in reference to your question, I did request at the point of surrendering my license to have the bait identified in the field which they claimed was there, and they did not do so. And I might add they were trying to, I guess, collect as many licenses as possible. Maybe in their eyes, it was impractical. I made the request; it was not granted. Later, when I went under a group of trees, a different officer took my statement and he asked where do you work? What type of work do you do? Some very unusual questions, in my opinion, in relationship to what we were there for.

And I stated while you are taking this statement, do you not want to know where in this field I was hunting? And the person looked at me like I was nuts, like what do you want to know that for? And I said I do not think there is any grain around where I am hunting; I want you to specifically put in my statement exactly where I was in this field. And that makes sense. I mean, we had the O.J. Simpson trial on T.V., and evidence seems to be important, especially, proximity to the accused, and I thought that was a logical question. I do not even think that my statement probably even

identifies where I was in the field or where the grain closest to me was located.

The fact is I was guilty because I was out there somewhere, and I was "in the field," and in the field, you are guilty. I contacted Len Register, one of the three attorneys who helped prosecute serial killer Ted Bundy and send him to the electric chair. He reviewed my case, and he said Bill, this law says you are supposed to know the condition of the field for 10 consecutive days. I work four counties away. The field is 600 acres. I admit we only hunted in 200.

He said the only thing you can do is pay the fine, because if you go to court, they are going to charge you more. He said you are guilty under this law, period. He said take your time and focus on the people who write the laws so maybe they can make a law that is a little more practical to comply with.

I would like to say this too: the agents were very polite with me. And one fellow told me, he said you should not feel bad about this, Mr. Boe, because we give citations like this to judges, lawyers and congressmen. And I would like to leave you with this thought: I would not feel good going up in front of a firing squad because the person they killed first was a congressman and then a judge before they got to me, and that is basically what that gentleman was telling me out there.

The CHAIRMAN. You had that in great order: congressman first and then the judge and you.

Mr. BOE. Whatever. You folks make the laws, and if you cannot identify it, and if the—

The CHAIRMAN. Well, again, this law was not a law made by Congress. This law was made by treaty, the Migratory Bird Treaty, and the regulations were implemented by the Fish and Wildlife Service. This is not the first time we have had bills introduced 1962, 1967, 1968, 1969, 1973, 1975, and 1977, and we have never done anything about this law. This is not the first time this has happened. You are absolutely right. One of my best friends—he is deceased now—was arrested over a baited field. And he was a congressman, by the way.

I would like to ask John: what was your background? Is it my understanding you were a game warden?

Mr. PELHAM. Yes, sir; that is correct. I am a former wildlife officer, so I have been on both sides of the fence.

The CHAIRMAN. For Fish and Wildlife or for—

Mr. PELHAM. No, for Florida Game and Freshwater Fish.

The CHAIRMAN. That is what I wanted to ask you. Is it customary, or is there a working relationship between the State fish and wildlife and the Fish and Wildlife of the Federal Government?

Mr. PELHAM. There was at one time; I do not believe that exists at least favorably. I am not in law enforcement now, but I know at one time, we worked hand-in-hand in working migratory birds, whatever it may have been. And it was a very, very amicable—

The CHAIRMAN. About what time did that breakdown occur?

Mr. PELHAM. I cannot say, sir. I got out of the Game and Fish Commission in 1975, and it was in effect then. In fact, I had a card that they had given me authorizing me like I was a special agent or something, which they commonly did to the wildlife officers in Florida.

The CHAIRMAN. Well, the purpose of that question is that one of the problems we have, as I think the gentleman from Tennessee put it very well, is this idea that the government knows all and is best of all and why there is not some working cooperation between the State fish and game. And I know in your career, I think at one time, there was a difference as to what was considered a baited field; maybe that is why they do not—

Mr. PELHAM. Yes, sir. I used to work baited fields, but it was when you walked on the field, and you found the bait. They would not document a field. And by documenting that, I mean the receiving of information anonymously or even by name that a particular field was baited. This, they found, led to nefarious political activity, if you will, just by the mere placing of this bait on the field and then calling the law enforcement in when the hunt began, and boy, you have got a violation of the law.

The CHAIRMAN. My time is gone. Just, young man, I want to tell you maybe you ought to stay out of ag. I know what your major is. Unfortunately, you might make a good lawyer.

Mr. CLEMONS. My major is agricultural education. I will be teaching young people conservative methods about our resources.

The CHAIRMAN. That is very good. I just think, you know, to go forward and represent yourself is very good.

Senator, I do not have any questions at this time. I will have maybe after the second round. Same thing for you, Sheriff.

The gentleman from Minnesota?

Mr. VENTO. Well, I think that obviously, trying to raise money for good causes is great. It is just unfortunate that things unfolded. The thing that sort of surprises me is that the confrontation here is sort of between the Fish and Wildlife Service, or, for that matter, it could be the Florida Fish and Game. I mean, as I said, in my area, they work pretty closely. They are all enforcing the same law, and I assume that they would do it as evenhandedly as the Fish and Wildlife Service did it.

But the focus seems to be whose responsibility is it. Number one, it obviously is the responsibility of whoever lets you use that field after manipulating the habitat and vegetation. That is a problem. Have any of you taken any suits or action against the individuals who actually own the field, who let you use it, who actually manipulated it in that way which caused you this problem?

Senator, have you taken any action?

Mr. WILLIAMS. I have not. I have talked to him on several occasions since then. He still declares to this day that the field was not baited. I was in the field; saw no bait. The U.S. Fish and Wildlife Service says they have evidence of it. And there again, you have to understand it was a 240-acre field. To this day, we do not know where the bait was found, what kind of bait, what it was, where, so forth and so on.

Mr. VENTO. I appreciate that, but the fact is that there has been no determination of that. But obviously, that could have been pursued by pursuing a single case to demonstrate it. There was one case pursued, but that was on a different field. So, that did not establish that. So, that is a case for a court to decide, frankly. I do not think any of us, given the type of information—I mean, I have been on the bad side of—not necessarily with fish and game laws.

I probably have not done enough with it; I should do more of it. Some people suggest I ought to do it full-time, as a matter of fact.

I understand that you are very concerned, especially given the background and circumstances here, but when I pick up my hunting license, they give me out one of these brochures in Minnesota—or a fishing license, for that matter—and it has a lot of different regulations in there. You cannot take muskies over a certain size or below a certain size as an example. I know there is a lake right next to my place where we can fish and catch muskies. They have some signs posted there letting you know you cannot do it. It is public property, so they can do that. But you have a lot of different details in there about different parts of our State, and it talks about what you can do in terms of fishing and hunting, how you have to go about it. Do you all receive a brochure like that in Florida?

Mr. WILLIAMS. Yes.

Mr. VENTO. Does it deal with baiting? Do any of you know?

Mr. WILLIAMS. Yes, sir; there is a pamphlet put out by the Game and Freshwater Fish Commission, and, by the way, in your materials there, you have some recommendations that I presented to you that were prepared by the Florida Game Commission.

Mr. VENTO. Are they consistent with the Federal law? Are they consistent with this?

Mr. WILLIAMS. Well, that is part of the problem. And I have tried to avoid creating a controversial situation here between the Florida Game and Freshwater Commission and the U.S. Fish and Wildlife Service. But I can tell you that there has been a difference of opinion over what should be done relative to the migratory bird laws.

Mr. VENTO. Well, it is a broad topic, and they may not be relative—the differences may not be relative with regard to this issue. If they are, I guess that would be a further case for a court action, for a court to decide whether or not they are material, in fact, to this issue. I mean, I am not a lawyer; I am a scientist. So, I do not know anything about this.

Mr. WILLIAMS. Yes, sir.

Mr. VENTO. All I know is that if you want to pursue that, that is where you have to do it. For us to just—pardon me?

The CHAIRMAN. Hire a lawyer? \$1,000 just to hire a lawyer?

Mr. VENTO. But the issue is one of relative importance here with regard to what is going on. I mean, in terms of changing, these laws are not new laws. These regulations have been around for 60 years. I do not know how long it has been that it has been integrated into the treaty type of issue. Pardon me, Mr. Chairman. It is a treaty now. But they have been around for 60 years.

Mr. WILLIAMS. Yes, sir; and it is just the first time that most of us had ever encountered such a situation, and we have hunted all of our lives, you know. And I do not know why that field was singled out that day. It was publicized—the hunt was publicized. One of the newspapers accused me of using that for my kickoff campaign for Congress. And I came to my sense, by the way, and decided not to do that, Congressman.

[Laughter.]

Mr. VENTO. I am sure that you would have done well here helping us solve these sorts of problems. But I think whatever the rules

are, you are going to have this particular type of phenomenon occurring in terms of the responsibility. A lot of people talk about personal responsibility, but the personal responsibility issue here comes back. They always seem to counterposition that. And somehow, it is the policeman's fault that I did something wrong, or it is the game officer or somebody. And I guess I get a little concerned about that, because they are there trying to do a job; they deserve our support. Maybe some of the laws that we have them putting in place are tough to enforce, but the issue is what have we done in terms of trying to prevent the problem ourselves? You know, it seems to me that you have all tried to do some things. But have you done everything?

And in the final analysis, if you go on someone's property—it is hard enough to get on property to hunt these days. Obviously, the Sanchez field, whoever the owner was has a responsibility. And if I were any of you and I were in the position, and this had received the attention it did, I think you would have a cause for legal action if someone actually portrayed or put you in a position where you actually ended up in violation because of representations they made, because I am certain they must have some information that documents that. I do not think they would have rushed in there like that in absence of it. That is ridiculous to assume that. That would have been opened up here.

Thank you, Mr. Chairman. That would have become apparent.

The CHAIRMAN. The gentleman from Kentucky?

Mr. DUNCAN. Tennessee.

The CHAIRMAN. Tennessee; excuse me. They are very close to one another.

Mr. DUNCAN. That is a common mistake, Mr. Chairman. Mr. Chairman, first, let me say how much I admire the courage of this young Mr. Clemons going into Federal court as a college student representing himself. There are not many people who could do that.

Secondly, let me say that I think probably the best summary of this is contained in a letter to you from Sheriff Oelrich this past December, and he says toward the end of that letter: "I believe this whole episode was both unnecessary and heavy-handed. The agents stated they had observed this field for several days, determining that it was unlawful. Instead of making a telephone call or sending one agent to notify participants, a dozen agents lay in wait for unknowing citizens to arrive into their web. The field had been photographed and surveillance performed with Federal aircraft. I do not feel the birds were baited that day; I believe law-abiding citizens were baited, trapped, tried and fined and then extorted into pleading and paying for a violation of law that does not require intent or even knowledge to violate."

And I think it is a sad day when we have gotten to this point in this country. I think that too many of the Federal regulators are out to get people now instead of being out to help people, and, in fact, I doubt in the early years of the Fish and Wildlife Service they ever would have had an operation like this. They would have been more interested in trying to help people or encourage people and assist people in obeying the law instead of trying to get people with this policeman mentality.

But I can say this: I spent 7.5 years before I came into Congress as a criminal court judge trying felony criminal cases, the murders, the rapes, the armed robberies, the burglaries. That is the crime that people want something done about. To most people in this country—I would say ninety-something percent of the people, they would think this is crazy; this is ridiculous. And I would suspect, Senator Williams, that you are amazed that you are sitting here today. And I see by the smiles I think the others are feeling the same way, that you are shocked that this innocent dove hunt would end up in these Federal charges and end up in a Congressional hearing such as this. It is really unbelievable to me. And, in fact, the arrogance and high-handedness of some people in the Federal bureaucracy today is really getting totally out of hand, and something really needs to be done about it.

Do any of you have any comments?

Mr. WILLIAMS. Nothing other than to say thank you, sir, and I believe all of us agree with you. And I can tell you that the attitude of the voting public today toward government is not good. And things like this do not help. Government is supposed to be trying to help people instead of trying to hurt them at every turn, and that is what it appears that this case was. And even though there again, I am not bashing the U.S. Fish and Wildlife. Those officers were there to do what they were instructed and trained to do. It is just unfortunate that it occurred in such a Rambo-style setting with fatigues on and so many innocent people there.

If the field was baited, nobody knew it. I can tell you that. And I do not believe to this day that the field was baited. I know Mr. Sanchez, and Mr. Vento asked if we had brought suit against him. No, sir. He is a friend of ours, and he told me it was not baited, and I have to take his word for that.

Mr. DUNCAN. Yes, sir, Mr. Boe?

Mr. BOE. In reference to what you said, the main reason we are here is I consider myself a patriotic American. I was an Eagle Scout. When I was a junior at the University of Georgia, I sacrificed my college deferment to enlist in the United States infantry; requested Vietnam combat duty. I was wounded twice in the Central Highlands. I respect the country, and I consider myself a good citizen, and that is why I am here. I taught civics for 10 years, 5 years in prison, believe it or not, and 5 years at Ocala Vanguard High School. And I do believe that there is a method by which you can improve the system. You do not have to sit on the sidelines and allow a bad situation to continue to get worse. And this is what is going on: we have an unfortunate situation that needs to be improved, and we are coming here with a request that the situation be analyzed and changed so that law enforcement officers can do their job and sportsmen in good faith can hunt.

It is impractical for you to have knowledge of an undefined area for 10 days, and if you have bad laws, why keep them on the books? Whoever has the power to change this, I would hope would take the initiative and take some corrective action.

Mr. DUNCAN. My time is about to run out, and we have a vote that has started, but let me say this: I am not a hunter. I do not have anything against hunting, but I am not a hunter. And I am not coming at it from that angle. But I think that it is really sad

that you gentlemen who are law abiding citizens—even a State senator and a respected sheriff—good, law-abiding citizens of this country have been put through what you all have been put through. I think it is a real shame, and I am sorry that this has happened to you.

Thank you very much.

Mr. WILLIAMS. Thank you.

Mr. BOE. Thank you, sir.

The CHAIRMAN. The gentledady from Wyoming.

**STATEMENT OF HON. BARBARA CUBIN, A U.S.
REPRESENTATIVE FROM WYOMING**

Mrs. CUBIN. Thank you, Mr. Chairman.

It seems obvious to me that we do need to do something about the law, and I do not wish to drive a wedge between the U.S. Fish and Wildlife and anyone else, but what I do want to do is to follow up a little bit on the ranking member's discussion with Sheriff Oelrich.

I believe the ranking member asked you if you would stop a crime that you saw going on or if you ever engage in sting operations, and you have to wait until the crime occurs. I just wanted to ask would you not stop that immediately? The moment the crime occurred, would you not stop it?

Mr. OELRICH. Yes, we would stop it the first time that there was a violation. And that was one of the points that we wanted to bring out, that when that first shot went off, it seems to me the obligation of the U.S. Fish and Wildlife Service was to stop that hunt. If they say, well, no violation takes place until the hunting takes place, but yet, we are talking about getting in there at 1:00 and them coming in at 4:30.

So, number one, if you are charged with preserving the wildlife resource, do not wait 3 hours or whatever for this to go on and on and on and then come in. So, it gives me the impression that there was more to it than just stopping the hunt, and it was more like let us get some statistics here with some dead birds and those kinds of things that will be advantageous to our position.

So, the short answer to your question is absolutely, we would stop it when we had a violation. In other words, to let it go on would be worse. In fact, this has happened in several areas of the United States where they knew these robbers would go in, and they were outside waiting for them to come out. And meanwhile, they pistol-whipped and beat the people inside, and that really caught law enforcement in a very untenable situation.

Mrs. CUBIN. Right, and it is my understanding that the mission of the Fish and Wildlife Service is to protect the resource.

Mr. OELRICH. Right.

Mrs. CUBIN. So, if there had not been some other agenda, it appears that once one bird was shot by one hunter—

Mr. OELRICH. Right, or shot at.

Mrs. CUBIN. Right, that the whole hunt should have been put down at that point—

Mr. OELRICH. Right.

Mrs. CUBIN. [continuing]—rather than 300 birds later or 3.5 hours and several birds later. And that is troubling to me. I wish

that the rangers who actually made the arrests were here to be able to answer those questions for us, you know, why did you wait so long? Why did you do that? Is this the policy of the Fish and Wildlife Service.

I have nothing further, Mr. Chairman.

Mr. VENTO. Would you yield to me just briefly, Barbara?

Mrs. CUBIN. Sure, Bruce.

Mr. VENTO. Just briefly, I think one of the issues, of course, is that the responsibility resides in this case with the hunter, the license and so forth. But the question is—and I guess some states, talking to staff, suggest that some of this does reside with the landowner. In other words, if the landowner actually has gone through this action, and they give the permission to hunt, then they, then, should have a responsibility. Of course, I know what that means: more posted signs, from my own standpoint. But, I mean, I am just suggesting that if there is a solution here, because I do think that most of you are coming forth in good faith, and most of you—other than Mr. Pelham—said something about actually being in favor of baiting as a technique, but I think most of you probably agree that that is not the way to hunt.

And we do not really do that much in my State. So, I just wanted to comment, and I appreciate your yielding, Barbara, on that point.

Mrs. CUBIN. Sure.

I have nothing further. I yield back, Mr. Chairman.

The CHAIRMAN. We have a vote on, and again, gentlemen—

Mr. Boe?

Mr. BOE. Very quickly on the condition of this field. This field was of the nature that the agents could come in the day before to have access to this field and inspect the field. Public access was available to this field, as exhibited by U.S. Fish and Wildlife who came in to check the field prior to the hunt and determined that it was baited. Anybody could come out on that field. It was private property, but there were access roads coming in from a major highway to it that anybody knowledgeable of the area could have used at any time or night to come in and place anything in that field.

I do not know Herman Sanchez personally. I know he is an honorable man in Dixie County. People speak very well of him. He is a civic-minded citizen, and I do not think he went out and baited the field. But I will say people had access to his field.

The CHAIRMAN. We have a vote on.

Mr. VENTO. Well, Mr. Chairman, I think if there is entrapment or other factors that are involved, I mean, then, it is a different matter.

Mr. BOE. True.

Mr. VENTO. The law goes in a different direction, I think, then. There are a lot of lawyers here. They could tell you.

The CHAIRMAN. We have a vote on, and I apologize again to the witnesses. We will try to be back here at 15 minutes after.

[Recess.]

The CHAIRMAN. The Committee will come to order. Hello! Everybody in the back of the room, take a seat.

It has been brought to my attention that the \$5,000 fine was a result of a legislative increase in class B misdemeanors, the Fine Enhancement Act of 1988. Where that ever came from, I am sure

that it was one of those liberal acts that came out of a previous Congress.

Mr. MILLER. Signed by a President—

The CHAIRMAN. That is true, the President. But it came out of Congress; I just want to make sure.

Mr. MILLER. I cannot remember who it was.

The CHAIRMAN. Yes; but he cannot either right now.

Mr. MILLER. Right.

The CHAIRMAN. But that was the same time that they put the \$5,000 in automatically, and I do not think we ever intended to do that. It was \$500 instead of \$5,000.

Mr. Miller? Excuse me; the gentlelady from—

Mr. MILLER. Excuse me, yes.

The CHAIRMAN. Yes; the gentlelady from Idaho.

Mrs. CHENOWETH. Thank you, gentleman from Alaska; I appreciate that, Mr. Chairman.

This is a very interesting set of circumstances, and, Senator, I just do not want you to be discouraged being a politician. The only intent you had was to raise money for a very worthy cause, and I appreciate you for that, and I appreciate the grief that you have had to go through. And having gone through campaigns myself, I know how touchy these things can be. So, thank you very much.

Tell me, Senator, did anyone ever inquire as to where the information came as to how the grain got to the surface of the land? Was it only from high-flying aircraft that had flown the field from several days before, or were there other methods by which they say they determined there was grain in the field?

Mr. WILLIAMS. I really do not know that, and I did not personally talk to any of the agents. I was about a mile away at the barn when the raid took place. And I wanted to go back out and talk to them. Some of my supporters said no, they may arrest you for trying to interfere with the duties of an officer. And so, I yielded to that advice and did not go back out. So, I cannot tell you really exactly. Maybe some of the gentlemen who actually talked to some of the agents could better answer that.

Mrs. CHENOWETH. Sheriff, I would be interested in hearing your response. I do understand that among the 91 hunters arrested was yourself, another sheriff or two deputies.

Mr. OELRICH. No, there were four sheriffs in the field that day, three of whom got citations.

Mrs. CHENOWETH. My goodness.

Mr. OELRICH. Yes.

To answer your earlier question, this was not something that you would have to do a lot of investigation. This was in the newspapers. That is where the agent—who is here today and will be better able to testify—he told me that they read about it in the newspaper. And so, on what he termed to be high-profile hunts, he went out there to check it out for himself. I had a devil of a time finding this place, but he went out there sometime prior to this and determined that the field had grain on it.

Mrs. CHENOWETH. Very interesting. So, he read about it in the paper and went out and looked at the field?

Mr. OELRICH. Right.

Mrs. CHENOWETH. I wanted to ask Bruce—and then, I do want to come back to you, Sheriff. I wanted to ask Mr. Clemons in your case, did they produce evidence that the field had been baited?

Mr. CLEMONS. They produced pictures that the field had been baited, and that was the evidence submitted. It was like 8 by 11 pictures. The trial was on the adjacent field, but they were producing evidence that the field was baited—not the field that I was in, but the adjacent field was baited, and that was their evidence. And I think it was Sergeant Alvarez or Mr. Alvarez—I am not sure what his title is. He stated in his testimony that he inspected the field by plane a couple of days prior to and then on foot prior to the hunt, and it was his observation that it was baited. And that is when I think the pictures were taken. I am not positive on that.

Mrs. CHENOWETH. Thank you.

I want to say, Mr. Clemons, that I am very impressed with your testimony and your actions. I feel very good about the fact that the country will be in the hands of people like you in the future: intelligent, tenacious and someone who loves freedoms as much as we do.

Sheriff, did the Fish and Wildlife enforcement officials make any attempt whatsoever to contact you with their concerns that the field might be illegally baited or other sheriffs?

Mr. OELRICH. No, they did not. One of the other sheriffs who was there was the host sheriff, if you will. My county is some counties away. It is approximately 55 miles away. But the host sheriff there, they never contacted him as well. Certainly, if any phone call had been made to any of this group, especially Senator Williams or myself, there would have been no way that we would have gone out there. This was so publicized—and, in fact, in your packet, I put this flier that went out to some 400 people. Combine that with the fact that this was in the newspaper. Goodness; I mean, there was no secret about this whole thing. I was never contacted by anyone about the hunt, but certainly, I would not want to put myself in that position. I have got to run for re-election. This is an embarrassment to undergo this whole situation, but be that as it may.

Mrs. CHENOWETH. Sheriff, I want to say that I have introduced a law that would require any Federal agency engaged in law enforcement before coming into a sheriff's county for the purpose of physical activity such as search, seizure or arrest—now, that is outside of other peaceful activities such as investigation—but for physical activities that they be required to show evidence that they have consulted with the sheriff. This has come out of my concern about what happened at Waco. At Ruby Ridge, apparently, the sheriff did know about this. But the Fish and Wildlife Service's activities in Idaho with regard to a wolf that was apparently shot by someone, and the sheriff objected to the Fish and Wildlife Service conducting a search on a person's ranch.

So, I think that we need in the future also legislation not only to correct baiting and the definition of baiting and the area that it is to be applied to, but also, we need to think about enhancing the relationship between local law enforcement and Federal law enforcement. Unlike what Tim Russert has said, my bill does not require that Federal agents check their guns at the border; quite the opposite. But it does require that we know and we can see evidence

that law enforcement has worked with people like you. I think that is very important.

Mr. OELRICH. Well, I think that is very important, too. And one of the things here that I guess has been unsaid is that the relations between Florida Freshwater Fish and Game Commission and the U.S. Fish and Wildlife Service are not very good. And the reason that they are not very good is primarily this baiting law. The State agents have wanted to stay away from this broad interpretation and no intent factor. They would probably better be able to speak to that than me.

But I would add a caveat to your bill or proposed legislation that says unless you can show that the sheriff or the State officials are somehow in collusion or turning their backs on this or somehow letting the violations of the law go on that you contact them. And certainly, no one here in this instance, both State wildlife people nor local law enforcement, had any intent to let this go on with impunity, if you will.

Mrs. CHENOWETH. Mr. Chairman, I do hear your gavel. I just want to respond.

The CHAIRMAN. Thank you; I appreciate it.

Mrs. CHENOWETH. And I would like to simply say my proposed legislation does have that provision in it. They must appeal to the Attorney General then.

The CHAIRMAN. The gentleman from California?

Mr. MILLER. Well, Mr. Chairman, I think that what our concern is is the suggestion that somehow this case is a metaphor for the Federal officials somehow violating common sense or the reasonable man test or other suggestions that we have had here when, in fact, what they were doing was enforcing the law under the direction of the law. This law has attached to it strict liability.

Mrs. CHENOWETH. Would the gentleman yield?

Mr. MILLER. In just a minute.

This law has attached to it strict liability. The Migratory Bird Treaty, we, in fact, were in the position a number of years ago where the Secretary had to close down a wildlife refuge because, in fact, the Fish and Wildlife Service people themselves could have been arrested for continuing to conduct the activity, and farmers had to plug the drains on their lands because they were strictly liable for the taking of those migratory birds in the Pacific flyway, where thousands of birds were showing up with two heads and three wings and no feet and all of the rest of it because of the toxics in the runoff of the land. Strict liability: they did not have to know they were taking those birds; they did not have to know that they were poisoning the land. But the fact that they were doing it, and it was taking those things—

I am quite surprised in the course of our discussion last night, Mr. Chairman, to find out that no liability attaches to the landowner. I think that is outrageous. Here, the crime is shooting over land. It is not baiting the land; it is shooting over baited land. And I guess we will never know who baited this land, because nobody is going to go to court over that. But the fact of the matter is that this law is being enforced. If it is going to be changed, it is going to be changed. But we ought not to use this as a vehicle to pound law enforcement officials.

I am sure that you and the other sheriffs who were there have had their judgment challenged, and this was too gross, you know, you used too many personnel; there were too many cars; a high-speed chase. People make decisions in the course of events, and I guess they could have called up. But maybe somebody would have then attacked them for calling up the political people and telling them that someone baited the field when they did not call the guy down the road maybe. We all sit in a fishbowl here, but what concerns me is the suggestion that somehow these people who were enforcing the law were not of integrity. I think the evidence is going to show that they asked people to come together; they were trying to take licenses and IDs from people, and you know you have got a large number of people here with guns. They got them together, and afterwards, I think they said if people want to come out and see the bait, you are welcome to do this.

Well, this is all about difference of opinions, Mr. Boe. You have your opinion, OK? And they have theirs. They have their evidence, and you have yours. Unfortunately, we have two different panels here. We maybe should have had them together. But the point is this: the suggestion that somehow, these people do not have integrity; somehow, they do not care; they are here to hurt people, that that is what the view of the Federal Government is. To make this all a metaphor for me is just so unreasonable to people who are out there.

You know, we lose fish and game people all of the time. We lose them to people who harm them, who assault them, who batter them, who threaten their families. I have tried to get this Committee to hold hearings five different times. We have had their offices blown up; we have had their children threatened. We are surrounding a bunch of people in Montana who have threatened the judges of the courts there.

So, I think we have to be careful. You are here on a proper mission, I believe, to get the law changed. And the gentleman here believes in that mission, and that may work out. But to suggest that people who are charged with enforcing the law—we have this at every level of law enforcement. People do not believe it should be point one; they believe it should be point four. They believe it should be two DUIs, not three DUIs. I mean, we go back and forth all of the time. That is not the officer who, when he finds you driving under the influence, has to take you in. That is what my concern is here this morning, that this is somehow in a pattern that is developing in this Committee that somehow all of our law enforcement officials out there really do not have the interests of the taxpayer or the hunter or the fisherman or the property owner at heart.

I am sure there would have been hell to raise if they had interrupted this thing saying that we believe this field is baited. You said this is for a charity; this is for orphans; this is for this; this is for that. The IRS busts charities every day who are there in the best names, but they just do not happen to be paying their taxes.

So, that is not enough cover. And I think what we know about law enforcement more often than not is that you are damned if you do, and you are damned if you do not. And that is the problem. And that is just as big a problem for Fish and Wildlife agents as

it is for State managers, and in fact, in this case, this is a horrendous law. I believe it is the same as the Florida law. This is the law that has been adopted by Florida. So, we can point a lot of fingers around here, but for the morning, I believe, this is still the law of Florida and about 20 or 25 other states. This law speaks on baiting.

The CHAIRMAN. Is the gentleman through?

Mr. MILLER. Yes.

The CHAIRMAN. I suggest one thing. I think the gentleman is correct that I am willing to try to change this law, because this is not the first time. It has come in 1962, 1967, 1968, 1969, 1973, 1975 and 1977. It is time that we make this law more reasonable.

Now, the actions of the Department, we will have them on the witness stand next. We will question them, and there is no doubt that they were implementing the law as they saw fit. I will again be requesting this information. I want to know when the pictures were taken. I hope they are dated. I want to know the exact location; I hope you have that. I want to know who developed them just for your information. I want to know these things. And I am not attacking them. I just want to know. Because you are taking the side that they are perfectly pure. I will take the side that they are perfectly pure too.

Mr. MILLER. No, I am not taking the side that they are perfectly pure. I am saying this should not be an allegory for beating up.

The CHAIRMAN. Well, who is beating anybody up? These witnesses here were very good. In fact, I want to compliment them. If I had gone through what they have gone through, I would have been terribly disturbed and probably a lot more, I would say, vociferous in my presentation.

Mr. MILLER. Why do we not bring forward the four people who assaulted the law enforcement officers in the discharge of their duties?

The CHAIRMAN. I checked the assault out, and if you call a holering match between two people—they were charged with assault by the agents. What is the definition of assault?

Mr. MILLER. Who is going to charge them?

The CHAIRMAN. Pardon?

Mr. MILLER. Who charges a police officer when you—

The CHAIRMAN. Under that definition of assault, are you assaulting me now? Are you assaulting me now? If I am a Federal agent—

Mr. MILLER. But you have no fear of me. There is no reasonable fear in your body. You are the Chairman; you have no fear.

The CHAIRMAN. If I am a Federal agent, I can say you are assaulting me. I mean, that is what I am saying. So, assault charges? They plead guilty to the assault charges?

Mr. MILLER. Nobody went to court over those except those people, and they were convicted.

The CHAIRMAN. No, I agree; they plead it guilty.

Mr. MILLER. Right.

The CHAIRMAN. And what I am suggesting here—and I told you this yesterday—my intent is to change the law.

Mr. MILLER. Right.

The CHAIRMAN. And I hope you understand that. Now, if you do not want to change the law, say that.

Mr. MILLER. That is not the issue.

The CHAIRMAN. That is the issue. That is all I want to do is change the law. Now, if Fish and Wildlife does not want to change the law, if they still want to have this tactic, fine. But I want to change this law so that I do not have to come back before this Committee again and again, as I said, for seven times now to hear these same-type cases. There is no justification for this law when an innocent person can be convicted by innuendo without fact because an agent says he is guilty.

Mr. MILLER. It is not innuendo. Every one of these people could have exercised the rights that that young gentleman did.

The CHAIRMAN. And you have to hire a lawyer.

Mr. MILLER. I am sorry; a lot of people in life have to hire lawyers to protect their rights.

The CHAIRMAN. And that is our trouble.

Mr. MILLER. That is not our trouble.

The CHAIRMAN. It is.

Mr. MILLER. That is our system. That is the Constitution of the United States.

The CHAIRMAN. And it goes against the taxpayer.

Mr. MILLER. It does not go against the taxpayers.

The CHAIRMAN. It does.

Mr. MILLER. It goes to the Constitution of the United States.

The CHAIRMAN. We will be back.

Mr. MILLER. And banging the gavel will not change the Constitution.

[Recess.]

The CHAIRMAN. The Committee will come to order.

I want to apologize to the witnesses for these delays. We will be in and out. You will notice that we have not eaten lunch either.

The third panel is Mr. Bob Streeter and Mr. Monty Halcomb and Special Agent Joseph Oliveros, all with the Fish and Wildlife Service. Welcome, gentlemen. And I understand that there is going to be one testimony?

Mr. STREETER. No, sir, Mr. Chairman. We were asked to split it in two parts. I will begin the presentations, and then, with your permission, I will call on Mr. Oliveros to discuss for the Dixie County baiting incident.

The CHAIRMAN. OK, Mr. Streeter, you are up.

STATEMENT OF ROBERT STREETER, ASSISTANT DIRECTOR, REFUGES AND WILDLIFE, U.S. FISH AND WILDLIFE SERVICE, MONTY HALCOMB, ASSISTANT DIRECTOR, LAW ENFORCEMENT, U.S. FISH AND WILDLIFE SERVICE, SOUTHEAST REGION, ATLANTA, GEORGIA

Mr. STREETER. Thank you very much, Mr. Chairman. We appreciate the opportunity, like all of the others, to be here at this hearing, and we welcome this opportunity to provide our written comments for the record. In the interests of time, I would like to highlight four points relative to the Migratory Bird Treaty Act and the baiting issue.

First of all, all of our comments today are within the framework that the Service recognizes hunting both as a management tool and as a legitimate recreational and subsistence activity. It is important to our public. There are over 3 million migratory bird hunters in the U.S. It brings \$3.6 billion into the American economy. On our national wildlife refuges, we have hunting on over 250 of them and more are opening in the future, and we are very pleased to be implementing an executive order that highlights fish and wildlife dependent recreation opportunities when they are compatible with the purpose of a refuge.

The second point is that we recognize the importance and value of hunting. The Migratory Bird Treaty Act is the Service's authority for regulating migratory birds. It implements a 1916 Treaty with four of our neighboring countries. It requires the Secretary to determine by regulations when and to what extent and by what means hunting can be allowed. The Service, with its State partners, has subsequently regulated migratory bird hunting based first of all on the overall health of the resource. We have utilized professional judgment and scientific knowledge, and we have evolved a system for setting seasons and managing migratory birds that we believe is a model for conservation efforts worldwide.

The hunting regulations, then, which are really the point of debate at this hearing have basically been accepted and have been institutionalized as a conservation strategy. Hunting regulations, including the baiting regulations, are just one strategy that we use to ensure sustainable huntable populations. I would like to point out that habitat loss, concern about contaminants, disease and other things are a much bigger concern at this point with the regulations that have been established.

The Federal baiting regulations, specifically, were established in 1935, or 60 years ago. Federal and State biologists and the public had recognized that unacceptable practices attracted and concentrated birds, and they tried to diminish that type of activity through the regulations. Regulations are not static; they have been updated ten times since that time to try to keep them current. Baiting regs have been an issue of repeated formal, professional, Congressional, citizen and legal reviews, but the basic issue of having baiting regs has generally been supported by responsible State officials and the hunting public alike.

As a hunter, as a professional wildlife biologist as well as a manager, I think that the majority of our 3 million migratory bird hunters know and respect the regs. I have some data on that, but I will skip over that right now.

Third point. I am aware of two issues with the current regs: the definition of normal agricultural practices, specifically with the use of top sown green have been revised and are out for public review and comment; the regulations dealing with the manipulation of natural vegetation, sometimes referred to as moist soils management are in the process of being reviewed by the states and other concerned groups to review and consider any modifications that are needed and to modify those regs if they are needed. I will be glad to answer questions related to that later.

The fourth point is that our constituents expect and deserve the highest professional level of migratory bird management possible,

and we try to provide that. That includes two parts: sound biology; and fair, impartial, consistent enforcement of laws and regulations. The Service is committed first of all to protecting the migratory bird resource for the enjoyment of hunting and non-hunting publics alike. We are demonstrating renewed commitment with our State partners through cooperative habitat management efforts like the North American program; through Federal-State implementation of adaptive harvest regs; and through joint review of various things such as the natural vegetation and baiting issue.

Mr. Chairman, with your permission, I would like to call on Mr. Oliveros, a special agent, who will outline the facts relative to the Dixie County, Florida baiting issue.

The CHAIRMAN. He will be recognized for 5 minutes of his own time.

Mr. STREETER. Thank you, Mr. Chairman.

[The statement of Mr. Streeter may be found at end of hearing.]

The CHAIRMAN. Mr. Oliveros, you are up.

STATEMENT OF SPECIAL AGENT JOSEPH OLIVEROS, U.S. FISH AND WILDLIFE SERVICE, JACKSONVILLE, FLORIDA

Mr. OLIVEROS. Yes, Mr. Chairman.

The Dixie County field was like many other baited fields that we have investigated over the years. The things that made this field unique were the extent of the baiting, the flagrant nature of the baiting and the effectiveness of the baiting. Unlike most of the controversial fields that have been discussed in the past, there was no confusion on this field between an agricultural practice and the bait on the field. This was not an agricultural field. The field in question was a parcel of land that had been cleared of the forested vegetation. That vegetation had been pushed up in piles, and most of the ground was barren, making it very visible for anyone to see any seeds that were on the ground. There were no growing crops or any kind of plants growing on the ground that could be confused with the seed that was found there.

Now, as the testimony was heard earlier, we found out about the field from a newspaper clipping. The newspaper indicated there was going to be a large hunt. Whenever we see a large hunt, we know that in order to have a successful large hunt, a large number of birds are needed, and there are only two ways that I know of that you can get a large number of birds concentrated for a hunt: you can prepare a field in a legal manner, by growing a crop there and have the birds attracted to that naturally-growing crop, or you can bait an area. So, we routinely check areas when we see there is going to be a large hunt.

It was not a complicated Federal operation. To be quite frank with you, it was a situation where the agent in Tallahassee saw the article, and faxed it to the supervisor. It was forgotten about for a week and a half. It said in the paper that the hunt would be on October 13th. I was called by my supervisor, and he said would you like to take a look? I agreed. We made a quick flight of less than an hour to the area. We did not see anything that looked suspicious from the air. Only when I went to the ground to examine an area did I drive onto what I later learned to be the Sanchez field.

As soon as I drove on the field, it was obvious to me that this was a heavily-baited field. I turned around and left the area. This was about 5:30 in the evening. I returned after dark, and with the aid of a penlight, I was readily able to document large amounts of grains over the major portions of that field. There were literally tons of grain scattered throughout that field.

On the day of the hunt, it was such a large field; I wanted to have as many officers as I could have with me to approach those fields. It is traditional when you have afternoon hunts that you have big barbecues and feeds. There is usually a lot of heavy drinking that is associated with that. We have traditionally had problems when we have encountered some of those situations, and I have found in my experience that the more officers you have with you, the fewer problems that you have.

I called as many officers as I could the following morning. Most of them had to drive a couple hours to get there. I placed the field under surveillance beginning about 2:00 p.m. I had to wait for other officers to arrive on the field; hence, the wait until 4:15 p.m. At about 3:30, my supervisor called me and told me that we had a group of officers available; we then approached the field at 4:15.

What I found on the field was when I approached hunters as soon as I stepped onto the field, the bait was evident to me. When we contact hunters on the field, it is common practice for us to try to secure the situation, because as you can imagine, we had over 100 hunters. As soon as we hit the field, people started running. There were vehicles driving around shouting at Federal game wardens. The back end of the field looked like an interstate highway as people were exiting the field.

We were only able to contact a portion of the hunters on that field. There were many other violations that I personally observed when I was watching that field from a distance: things such as hunters shooting birds and hiding them. When I then contacted them, they denied they were even hunting on the field. I watched people shoot protected birds; I watched them kill over the limit; I watched them shoot obvious unplugged guns. There were all types of violations that I witnessed.

When we contacted the hunters, we had no problems with the vast majority of hunters except for a small group of individuals. I suspect there was heavy drinking involved with those individuals, and that may have contributed to that situation. When we contact hunters, many of them do request that you show them the bait immediately, but we cannot safely do that. I offered anyone who wanted to wait until we gathered up our information to accompany me out into the field to examine the bait. No one chose to take advantage of that opportunity. The documentation that we had was overwhelming on that baited field; I personally cannot understand how any person could walk across that field and not see the bait.

We took over 70 photos from all locations on that field. I have a representative sample of what was found on that field. These are just a small portion of the photographs that were presented as evidence in court in Gainesville. We took over 20 bait samples from all locations on the field. There was no doubt in anyone's mind who investigated that field that this was not only a baiting violation; this was a gross baiting violation. I have worked for the Service for

almost 23 years. I have investigated literally hundreds of baited dove fields. This was one of the worst and most effective baiting operations that I have witnessed. There was a large field with 200 and some-odd acres, well over 150 fields, and it has been my experience when you enter those type fields and people run from them, that those people have a good idea of what happened.

Thank you, Mr. Chairman.

The CHAIRMAN. I thank you.

Can I ask a question of Mr. Streeter? It is my understanding that former Kentucky Governor Julian Carroll was cited last year by the Fish and Wildlife Service for hunting doves over bait on his Kentucky farm. The U.S. attorney took 4 days to state the Federal case; Governor Carroll's defense took 20 minutes, and the judge took 5 minutes to acquit Governor Carroll; is that correct?

Mr. STREETER. Mr. Chairman, I am not aware of that case. I would like to ask Special Agent—

The CHAIRMAN. And it is also correct that the Federal Government wants to appeal this case?

Mr. HALCOMB. No, sir; I was present at that trial. The trial did go on for 4 days. The Government took approximately two to two and a half days to put on the evidence, and then, Mr. Carroll presented evidence. The difference between the Dixie County case and the Julian Carroll case is the Dixie County case was just a gross application of seeds or grains to an area with no agricultural purpose or intent whatsoever. The Julian Carroll case did have two areas with a prepared seed bed, and there were some seeds spread on part of that field, and there were dove decoys placed in the area on those prepared seed beds that the bait was located. And to my knowledge, no, they are not planning to appeal it; he was found not guilty.

The CHAIRMAN. Now, you know, this hearing is supposed to be about changing the law. Now I really, again, with all due respects to Mr. Oliveros, I have to understand it. You are the first person who had any idea that this hunt was going to take place? It had never taken place prior to this year?

Mr. OLIVEROS. No; it was in the newspaper.

The CHAIRMAN. Yes, had it been taking place a year before that? Senator, have you put this on before?

Mr. WILLIAMS. Once before.

The CHAIRMAN. Once before? So, it is not a new thing. I am just curious about—you know, you saw it in the newspaper. It should be publicly displayed. But the argument here is what is baited and what is not baited. You are saying it is baited; the people said it was not baited. We can argue those points all you want.

I want to change the law. Now, even Mr. Morehouse, who works for you, Mr. Streeter, or works for the Department, says that the language of the regulations is not consistently clear. Would you agree with that?

Mr. STREETER. No, sir, I would not agree with that. I believe the language is quite clear.

The CHAIRMAN. Well, wait a minute; you think this is clear, then? "By aid of baiting or otherwise baited. Baiting shall mean the placing or exposing, depositing, distributing or scattering of shelled, shucked or unshucked corn, wheat or other grains," et

cetera, et cetera. It never mentions the landowner and never mentions the hunter. It says shooting over.

Now, you are invited, Mr. Streeter, to go hunting with me, OK?

Mr. STREETER. Mr. Miller said I should not.

Mr. MILLER. He invites me all of the time.

The CHAIRMAN. He will not go.

But seriously, now, how do you know that field is not baited if I tell you it is not baited and it is my field?

Mr. STREETER. As a hunter, I have always checked fields myself.

The CHAIRMAN. Now, wait a minute; wait a minute; wait a minute; wait a minute; wait a minute.

Mr. STREETER. Yes, sir.

The CHAIRMAN. I am the agent, and I think that the corn has been distributed. You are a hunter, and you do not see any corn. I cite you. What is your defense?

Mr. STREETER. If I have gone out and physically walked around the field at least out to where I think is reasonable, a hundred, a couple of hundred yards—I am not sure what that is—that would be my only defense. I checked the field.

The CHAIRMAN. OK; you just answered my question. That is not clear, because you do not know what it is. That field is 200 acres; it was clear down on the other end of the field or 600 acres, and an agent decides it is planted there, you are guilty.

Mr. STREETER. If an agent charges me with that, then, I would be found guilty.

The CHAIRMAN. That is right.

Mr. STREETER. But my defense is that I made every appreciable effort to determine whether it was baited. That would be my defense.

The CHAIRMAN. And your defense would not hold up in court. You would have a choice of paying a fine or going to court and maybe paying a \$5,000 fine and being put in jail for 6 months.

Mr. STREETER. Yes, sir; that would be my choice.

The CHAIRMAN. That would be your choice. Now, what would you do?

Mr. STREETER. Sir, the first question you asked is whether I thought this was clear language, and I think the language is clear. As a biologist, I read it; I understand it. As a hunter, I read it and understand it. It does not address whether I am responsible as the hunter or as the landowner. But in terms of whether a field is baited or not, I do think that that is a clear statement.

The CHAIRMAN. Well, now, you do not think the law should be changed, then?

Mr. STREETER. I do not believe the law should be changed. Regulations, when they have been found to be unclear, should be changed such as in the case of baiting regulations right now, we are in the process of reviewing those regulations one more time, sir, and revising them.

The CHAIRMAN. Well, in all due respects, you are one agency; you are one time. This is today; it is not tomorrow. I think the Congress has to act on this. It is like you are getting great credit for recognizing the refuges. Your administration opposes my bill. Now, think about that a moment when you came in and testified before. Now, that is a little bit weird for me. My bill does exactly what the

President said he wanted to do. Now, I do not understand why—that does not make it a law.

Mr. STREETER. Sir, when we have the regulations and there are issues that have come up, we do take a look at them periodically, and we revise those regulations.

The CHAIRMAN. When is the last time you revised the baiting regulation other than raising the fine?

Mr. STREETER. The regulations have been revised about 10 times.

The CHAIRMAN. When was the last time other than raising the fine?

Mr. STREETER. Other than raising the fine, the last time was 19—

The CHAIRMAN. 1973.

Mr. STREETER. 1972, I believe it was.

The CHAIRMAN. OK; and what was that revision?

Mr. STREETER. That was revised to allow for doves to be taken over fields that are managed for wildlife management purposes.

The CHAIRMAN. Wildlife management purposes?

Mr. STREETER. Yes, sir.

The CHAIRMAN. What does that mean?

Mr. STREETER. Where a field is planted specifically for feeding and replacing natural vegetation to feed—doves in this case—migratory birds.

The CHAIRMAN. Right; OK.

Mr. STREETER. But it is not manipulated; it is not mowed; the seeds are not scattered; it is a natural-standing field.

The CHAIRMAN. The gentleman from California. My time is out, and I will come back later.

Mr. MILLER. One, I think when we talk about changing the law, and the issue may be who is liable or not liable. But I think the regulations are fairly clear on baiting. When you read that, if you engage in that practice, you are baiting. Here, apparently, they were excessively engaging in that practice, and it was readily apparent to you as enforcement agents. Did any of these cases go to court? There was one young gentleman who testified earlier on the adjacent field; that went to court. Was there any determination there as to whether or not the field was baited or not baited in that case?

Mr. OLIVEROS. Yes, there was.

Mr. MILLER. What was the determination of the court?

Mr. OLIVEROS. The Federal magistrate judge in that case, in Mr. Clemons' case, when he made his ruling, he in his ruling said that I find the field is baited and heavily baited, to use his terminology, and I find that anyone who was hunting on that field should have easily known that it was baited. He repeated that ruling at the hearing for the individuals who did the pushing. He went as far as to say that it was so heavily baited that the Government would not have to prove that element on any of the future trials in his court because of the evidence that had been submitted.

Mr. MILLER. So, in the eyes of the court, this was not an ambiguous issue.

Mr. OLIVEROS. No; the baited condition of the Sanchez field was not ambiguous at all to the court.

Mr. MILLER. In fact, they made the finding that it was in fact baited, and it was—I am trying to think of a word here—but it was easily recognizable as a baited field.

Mr. OLIVEROS. That is correct.

Mr. MILLER. And you stated that this land was cleared land, so this was not to be confused with trucks knocking seeds off of plants or grain off of a stalk or what have you; that is not what was going on here.

Mr. OLIVEROS. No; there was no confusion whatsoever about whether or not the stuff was grown on the field. It was distributed and had been distributed for some time. I know I could look at it and tell that it had been placed on that field on at least three separate occasions. When I looked at it on the day before, it was obvious that some of the grain had been put out since the last rain. It last rained on that area the day before. There was also older bait indicating that it had been out there for several weeks. So, it appeared to me to be an extensive baiting operation that had been going on for some time.

Mr. MILLER. Well, that is interesting, you know. We heard testimony that people checked the field and satisfied themselves and maybe satisfied others that it was not baited, but apparently, that evidence was not entered into court, but the court, in fact, found that it was baited in this case and apparently clearly so. Why did you not call the sponsors of this hunt?

Mr. OLIVEROS. Well, there are several reasons there. Number one, first of all, I was not real sure of what this field was. There was nothing on the field to indicate who owned it or if it was associated with any type of particular hunt. I had my suspicions, but I did not know for sure. This field was so heavily baited that my first impression was, when I saw it, that anyone who hunted on this field either knows in advance, or as soon as they step on this field, they are going to know it is baited. It was in that bad of a condition.

There were only two entrances to this field. I have a large aerial photo of the field for anyone who would care to look at it. But there are only two ways to enter the field, and all of the hunters that I know of entered from one way. As soon as they entered that field, the roads were heavily baited. All they had to do was look out the window of the vehicle they were in, and they could readily have seen it. That is how I saw it. When I first arrived on the field, I never got out of the vehicle. I just drove down the road, and it was apparently obvious to me that this place was heavily baited, because you are talking about a white sand road that looks like a beach, and then, you have corn, cracked corn, milo, millet, wheat and bahaia seed scattered all over it. There was nothing else it could have been.

Mr. MILLER. What other violations were cited? Were there gun violations?

Mr. OLIVEROS. It was obvious there were unplugged guns. I know two people whom I apprehended had unplugged guns. There were unplugged guns being shot at various places on the field. There were overlimits being taken. There were non-game birds—

Mr. MILLER. Were people in possession of overlimits?

Mr. OLIVEROS. Yes, there were people in possession overlimits. There were non-game birds taken. There were birds that were in closed season that were taken. Many doves were discarded in the field. We found many of them thrown in the field and discarded when the hunters ran. We found other doves stuffed into logs, into brush piles that were abandoned and left there by hunters. So, I personally witnessed—I was on the other side of a barbed wire fence that you could see through, and I was in the edge of the woods. Over that almost 2 hours that I was watching the field, I would estimate that 15 to 20 birds fell within 15 yards of my position, and the people who shot them on the other side of the fence were standing on the fence, and none of them bothered to cross the fence to come look for the birds.

I do not know how to describe it, but to show the effectiveness of baiting, this would be a prime example. Birds were pouring into this field with 150 guns being shot. I assumed it was 150. All we knew was that there were 80-some hunters. We know that others left. But you had this large amount of shooting going on, and you had large groups of doves that were landing in the middle of that field in spite of all the shooting—and I am not talking about one group of doves; I am talking about constant flights of doves coming into this field.

The CHAIRMAN. One thing—and I hunt dove a lot, and doves will land in a field regardless of whether people are shooting or not. But I have got to ask you a question. It goes back to the question by the lady from Idaho. Why did you not stop it sooner?

Mr. OLIVEROS. I did not feel I could safely walk on that field by myself and stop the hunt.

The CHAIRMAN. After the first shot, you could not say this is, in fact, shooting over a baited field? How many birds did you confiscate?

Mr. OLIVEROS. I do not know how many personally I confiscated, but I was in charge of holding all of the birds. We had 448 of them.

The CHAIRMAN. And there were how many hunters?

Mr. OLIVEROS. That was from 88 hunters.

The CHAIRMAN. Eighty-eight hunters? That is about five birds apiece.

Mr. OLIVEROS. That is what we recovered. Some of the hunters left the field with their birds.

The CHAIRMAN. OK; now, what I am stressing here was your main goal to apprehend people shooting over bait or to save the dove?

Mr. OLIVEROS. My job in the enforcement division is to enforce the regulations.

The CHAIRMAN. OK; why was it not enforced sooner?

Mr. OLIVEROS. I did not feel I could safely go in there by myself. I had other agents to—

The CHAIRMAN. Now, you were closer to that field than any other agent.

Mr. OLIVEROS. That is correct.

The CHAIRMAN. That is correct; is that right?

Mr. OLIVEROS. That is correct.

The CHAIRMAN. OK; when did you notify those agents?

Mr. OLIVEROS. They notified me. In other words, we had agents coming from several places.

The CHAIRMAN. But you knew it the night before, did you not?

Mr. OLIVEROS. The night before, yes.

The CHAIRMAN. And when did you notify the agents that you were going to make this baited field raid?

Mr. OLIVEROS. We started calling that night.

The CHAIRMAN. And how soon did they respond? I mean, when did you know you would have 12 people?

Mr. OLIVEROS. We did not know that until they arrived on the field.

The CHAIRMAN. They did not tell you?

Mr. OLIVEROS. No, what we did was we only had actually four law enforcement agents, but we have a refuge division, and they have refuge officers. And we called the refuges and asked for any officers that were available that day to please meet us at the area. So, for many of those refuges, we did not know how many of those officers would be responding.

The CHAIRMAN. All right; I am going to get back to that now.

Mr. OLIVEROS. OK.

The CHAIRMAN. When did they arrive?

Mr. OLIVEROS. They arrived at various times.

The CHAIRMAN. When did the first one arrive?

Mr. OLIVEROS. I imagine the first one arrived probably about 10:00 in the morning.

The CHAIRMAN. When did you have 10 people?

Mr. OLIVEROS. I do not know that, because I was on the edge of the field.

The CHAIRMAN. Well, again, my real concern here, if, in fact these pictures are true, if they are, I certainly—if you wanted to save the birds—would have acted a lot sooner. How many people really objected to this interference?

Mr. OLIVEROS. Pardon me?

The CHAIRMAN. How many objected to your interference?

Mr. OLIVEROS. Objected?

The CHAIRMAN. Yes.

Mr. OLIVEROS. What do you mean by that?

The CHAIRMAN. Said what are you doing here or get the hell out of here or do not bother me?

Mr. OLIVEROS. I would say about seven or eight people.

The CHAIRMAN. I understand there were four; is that correct?

Mr. OLIVEROS. Well, there were only four involved in the assault.

The CHAIRMAN. And what was the assault? Was there any striking of body blows?

Mr. OLIVEROS. Yes; I had one person strike me.

The CHAIRMAN. One person strike you individually.

Mr. OLIVEROS. Right.

The CHAIRMAN. Out of the four, though, one person.

Mr. OLIVEROS. One person struck me; the other ones grabbed.

The CHAIRMAN. Did you charge him with assault?

Mr. OLIVEROS. No.

The CHAIRMAN. You did not?

Well, with all due respect to the officer again, I have some real problems with not acting sooner if this field was baited as you have

said it was. We cannot change it; what has been done is done, and I hope you are very proud of yourself.

I am going to suggest again, though, what is wrong with changing this law, Mr. Streeter? It would make no difference. If this was a baited field, as the gentleman says it was, it would not make any difference, right? But why not change it so the hunter is not responsible and the landowner is?

Mr. STREETER. Mr. Chairman, there are many changes that could be made, and I think we have several levels we are talking about with the regulations.

The CHAIRMAN. Well, again, what would you recommend to change the law? Forget your regulations. What would you recommend be done to make this more acceptable to the public and protect the birds? Forget the macho stuff—protect the birds.

Mr. STREETER. The issues that have come up today are do you charge the landowner, or do you charge the hunter?

The CHAIRMAN. OK.

Mr. STREETER. That is one issue to investigate. Another would be in our operating policy, do we say to our officers as soon as the first violation occurs, implement the bust, or wait until it is safe enough to do it. Do you do it right away, or do you wait until you have observed more than one event? More than two events? Those are judgment calls that probably, we cannot really put into regulations, Mr. Chairman. It depends on the situation. Our special agent has testified that he did not feel like he could enter the field earlier in the afternoon. He did not know until nearly 4:00 that there were enough agents to go ahead and safely implement the charge, and safety is our first concern for our officers. And as soon as they felt they could safely perform this operation, they did it. And we believe, in retrospect, in looking at this, that there is not much that we would have done differently in terms of asking our officers to operate differently. We are very proud of how they handled this situation.

Now, what changes need to occur? It is a very complex situation.

The CHAIRMAN. Now, why could the agent not have gone to Senator Williams in the morning and say listen, this field is baited? What would be wrong with that? Now, you would not have made any arrests. Your record would not have gone up. You would have saved the birds, and yes, you would not have embarrassed Senator Williams but why not—

Mr. MILLER. Would the gentleman yield?

The CHAIRMAN. I do not understand what—

Mr. MILLER. Would the gentleman yield?

The CHAIRMAN. Yes, gladly.

Mr. MILLER. Well, what happens the next time they engage in the practice, and there is not a senator or a sheriff or a judge involved, and that person says gee, you called the Senator, why did you not call me?

The CHAIRMAN. I am suggesting that that should be done anyway. If, in fact, you want to save the birds—

Mr. MILLER. Well, the next time, they do not know if the hunter is involved with the landowner or not until it happens. Do you know what I am saying? Let us understand that there are people, unfortunately, in our society who intentionally engage in the viola-

tion of the law. And so, if you start selectively enforcing and warning people based on their status in our communities, you know how quick the second-guessing would start on that one?

The CHAIRMAN. No, I understand that. But let us use the example now, if I may, of the individual who notified the ATF that somebody had a stash of guns. Now, why in the world if you want to save the birds, why was there not some intent to save the birds? You lost 440 birds. And by the way, what did you do with the birds?

Mr. OLIVEROS. We used the birds for several things. Some of them were used in training; and some of them were spoiled because of the conditions that we ran into on that field. Others are being held and will be used in training facilities.

The CHAIRMAN. They were spoiled? How could they be spoiled?

Mr. OLIVEROS. Well, we had a large number of fields. It was a very hot day. And when you contact that many people, it takes us until almost dark to document the field and all. And some of the birds that were not put on ice, and the hunters had put them together in a bag, I did not feel safe in donating them. In other words, we will donate wild game if we feel it is safe for people to eat it.

The CHAIRMAN. Now, the last question before we go over to this vote: why did you cite those five young college kids in the other field?

Mr. OLIVEROS. I was not the officer there.

The CHAIRMAN. But you are in charge.

Mr. OLIVEROS. But the reason that they were cited is they were hunting by the aid of baiting. And in that case, they had access to the field; they had access to the owner to ask. They testified and told us that they did not ask anybody, they did not inspect. And the officer that watched them watched them shoot birds going to that baited field. If they had just gone over to the edge of the fence and looked—and several of them were hunting on the fence line when they were contacted.

The CHAIRMAN. But again, though, the judge did not agree with you.

Mr. OLIVEROS. He did not.

The CHAIRMAN. He did not. So that might make you raise yourself a question. Now, if the other field was not baited, you had no business citing those young people. If it was baited—now, you cannot make that definition. Again, it explains why this law has to be changed. You say it is clear. You have got a field here; you have got a field there. They are hunting 100 yards in here or 100 feet in here; you have got a field over here that you say is baited. This field is not baited. You say, oh, because the birds are flying over, he is hunting on a baited field. Is that clear to you, Mr. Streeter?

Mr. STREETER. As the situation has been explained to me, Mr. Chairman, it was a clear situation. These people were within range of shooting birds that were going into the baited field.

The CHAIRMAN. What if I was not even with this hunt, and I was hunting over there, and I had no knowledge the field was baited? You would still cite me.

Mr. STREETER. Sir, if I had not observed you or you had not told me that you had checked the field out personally, that you had

walked over to the fence and looked at it, then, I probably would cite you, sir.

The CHAIRMAN. What right have I got to go on the other person's property?

Mr. STREETER. You can go to the edge of the property and check it. If those birds were piling into that field—

The CHAIRMAN. Wait a minute; I am handicapped; I cannot see. Now, what do you do? Do you still cite me? That is why we are going to change the law.

Mr. STREETER. Sir, I think you should not be hunting if you cannot see.

The CHAIRMAN. Well, the truth of the matter is that that is why you are against the handicapped, then.

Mr. STREETER. If you cannot see, that is a safety issue.

The CHAIRMAN. That is not a safety issue. I hunt with my ears, and I am very good with my ears. I can hear baloney, you know.

Mr. STREETER. Yes, sir; I will stay out of the bushes.

The CHAIRMAN. Right; very good.

We have a vote on.

[Recess.]

Mr. HANSEN. [presiding] The Committee will come to order. Mr. Young is temporarily delayed and asked me to chair the meeting until he shows up, and I understand that we have the Fish and Wildlife Service in front of us. I am sorry I missed out on the testimony, but I have got an Armed Services bill going on on the Floor, which is very important to me as an old senior member of the Armed Services Committee.

I understand the distinguished gentleman from Minnesota, the past chairman of the subcommittee is with us, and he wants to speak.

Mr. VENTO. Yes; I am pleased to be here with the long-serving senior member of the Armed Services Committee but mighty young. Or is it the other guy's name that is Young. I get confused, Mr. Chairman.

Mr. HANSEN. That is true. Do not confuse us.

Mr. VENTO. Anyway, I had had the testimony. I regret I was not here for the formal testimony. I do not know if Mr. Halcomb and Mr. Oliveros had, in fact, offered any testimony. Did you offer any oral testimony or written testimony?

Mr. OLIVEROS. Yes, I did.

Mr. VENTO. OK; I am sorry that I had not seen it.

But my concern would be here, Mr. Streeter, does the Fish and Wildlife Service have any cause for action against the landowner that in fact permitted hunting on the land? Obviously, the violations occurred. People may disagree, but, I mean, they did not contest it, so I have no way of knowing whether sufficient evidence was there.

Mr. STREETER. Yes, sir, Mr. Vento. The Service takes the position that the hunter is the responsible party; the landowner may be an absentee landowner thousands of miles away. He has no idea of what is happening on the property. It would be very difficult to hold them responsible. So, therefore, the hunter is the one who is in the field and should be responsible.

Mr. VENTO. Well, in this case, in other words, there is no history of having actually attempted to, in fact, bring action against the landowner, even though they have given permission to hunt on the land and may have, in fact, been directly responsible for habitat manipulation, adding foods and grains and so forth in this case.

Mr. STREETER. To my knowledge, yes, sir, but I would like to call on Mr. Halcomb to respond to that too, sir.

Mr. VENTO. Yes, Mr. Halcomb?

Mr. HALCOMB. Yes, Mr. Vento, let me answer first your question in a broader perspective and then specifically with relation to Mr. Sanchez, the owner of the field in question.

First of all, sir, Fish and Wildlife law enforcement, as a special agent, we do attempt to find out who put the bait on the field. That is our primary objective. We want the person who in fact committed or caused the baiting violation to be cited. If they hunt on the field itself, they will be cited for baiting. We also would cite them for aiding and abetting baiting or placing bait on an area and then having other innocent hunters or other hunters come into that area and hunt.

Mr. VENTO. If it is an absentee landlord, and someone has management responsibility, then they would be involved on that particular basis; is that correct?

Mr. HALCOMB. Yes, sir. We want the person who put it on the field. It may not be the landowner; it may be a manager; it may be a neighbor; it may be one of the hunters themselves. And that is the problem or one of the concerns that I would have with trying to establish the landowner as the primary individual who would be charged or subject to any charges because of the intent. How do we prove what that person intended?

Mr. VENTO. Well, I guess that is a problem. But obviously, if they had given permission and had promoted this, obviously, there may be money involved. Obviously, none of this affects any artificial game farms or anything; is that correct? In other words, if they are not dealing with a game farm—can you actually have a game farm with, I do not really know the answer to this question, with ducks or geese? Not with migratory waterfowl on them. If they are stationary, it does not affect them. For instance, I know they have various ranches to hunt pheasants and so forth. But there is a special case for them; is that correct?

Let me ask another question, and you can answer that for the record. How frequent is this baiting, this particular charge? We have this incident in Florida which has received a lot of attention. There is another incident that is being talked about in Illinois. But how frequent is it? This policy has been the policy, as I read from Mr. Streeter's testimony, for 60 years. In other words, this is not a new policy. It has been a regulation. It may be new to the treaty, but how many violations of this are there in a year? It is being portrayed here as a very common problem. We are having discussions here about changing the law to modify it because there is so much misunderstanding about it. And so then, if that is the case, then I expect that there would be many, many instances and violations of this particular law. And so, do you have any numbers for any recent year as to how many violations of this actually occur in a State or region or nationwide?

Mr. STREETER. I have one that I will share with you, and perhaps the officers will have others. I know the State of Illinois had approximately 635 defendants, both Federal and State including citations by Federal officers and State officers, in about a 5-year period, and that is out of 120,000-plus hunters who are hunting each year. It is well less than a fraction of a percent of the hunters that are actually cited.

Mr. VENTO. But, I mean, in the case here of this Florida case, because there were 88 citations, that would be 88 violations; is that correct?

Mr. STREETER. Yes, sir.

Mr. VENTO. So, I mean, if you were talking about 300 violations, it may only be a half a dozen instances over this period.

Mr. STREETER. There were 35 instances, 35 Federal cases, that I recall.

Mr. VENTO. In a 5-year period in the State of Illinois; is that correct?

Mr. STREETER. There were 35 Federal cases, and there were 305 defendants in those cases. There were 330 State defendants. I do not know how many State cases.

Mr. VENTO. OK; 305. OK, Federal cases in 5 years, 35 cases. And even if we change that, are there other State laws that also are different, then, or are they compatible with the migratory game laws and baiting laws? Are they all the same? For instance, does Minnesota have laws on this? Would they be the same as what the Federal laws are?

Mr. STREETER. The states adopt laws within the framework of Federal laws. They may have them more restrictive, but they have to at least adopt the Federal laws.

Mr. VENTO. We do not preempt the State laws?

Mr. STREETER. No, sir.

Mr. HALCOMB. Only if the State law would be more liberal than Federal law.

Mr. STREETER. Yes.

Mr. VENTO. More stringent, I think you would mean. I would interpret it that they be more stringent so that they can go beyond what we do in terms of limiting hunting.

Mr. HALCOMB. Exactly.

Mr. STREETER. Yes, sir.

Mr. VENTO. Well, this is an important consideration, Mr. Chairman, as we get involved in discussing what changes to make.

Mr. HANSEN. It certainly is.

The time of the gentleman has expired.

Mr. VENTO. Thank you.

Mr. HANSEN. I apologize to the panel. I was in the Armed Services thing; I was trying to work out. So you probably repeated the things that I want to ask you specific questions about. All I know is what I have read here and what is in front of us, so excuse me for muddling through this. But I get the distinct impression that when the Senator invited these people to the area that a certain amount of media was given this; is that right? I mean, it was in the paper; it was an event of the kind that he was trying to make a big thing out of for this charity event, which is done on a regular basis. As the past speaker of the Utah House, we used to do that

stuff all the time for charity events, and they were advertised all over the place. I assume you folks were aware that this was coming; is that correct?

Mr. OLIVEROS. That is correct. We were aware of one newspaper article.

Mr. HANSEN. And so, you were also aware that there were certain people being specifically asked to be there, people of some distinction and notoriety that were brought out that you could see that they were coming to be the attraction, you know, like people come back here, and they want to have Members of Congress go to dinner with them and all of that type of stuff. You are fully aware of that; is that correct?

Mr. OLIVEROS. We were not sure who was going to be there, because there were a lot of inaccuracies in the article. In other words, there were insinuations there in the article of who might be there, but we had no knowledge of who might be at that particular hunt.

Mr. HANSEN. Did you know the location of the hunt and where it was going to be?

Mr. OLIVEROS. Only generally. The article just gave a city.

Mr. HANSEN. Did you go out and inspect the area prior to the hunt, say the day before or the week before to have the opportunity to examine the area to see a bird count or just look at it?

Mr. OLIVEROS. I went to the area that I later learned to be the Sanchez field the evening before.

Mr. HANSEN. Did you at that time indicate or find any thing that would indicate to you that there had been some type of baiting?

Mr. OLIVEROS. Yes.

Mr. HANSEN. That was before the hunt.

Mr. OLIVEROS. That was the evening before the hunt, yes.

Mr. HANSEN. At that time, do you not think it would have been proper—and I do not know what your laws, rules and regulations are—but to at that point stop it before there was any embarrassment given to any of these people who were there?

Mr. OLIVEROS. Well, we have found over the years that many states have experimented with that type of a procedure as far as warning people. And what that does, all it does is warn the people who are intentionally baiting. This field was obviously intentionally baited. Who baited it, we do not know. But it was intentionally baited. If you warn somebody—in other words, as we later learned on the invitation, there were four fields for this hunt. If we had warned them about the one field, they probably would have just gone to another field and did the same thing that we were not aware of.

And that is what we find: if we have a policy where we warn people or post areas that we find, what a person does who wants to bait is they will bait two or three areas and then wait for the game warden to call them. And if he finds this one, I will say, well, I found that one that you have in this county. But then, the day of the hunt, nobody is contacting them about the other one. They say gangbusters; let us go. No one is going to contact us.

Mr. HANSEN. In the spirit of the law, do you not see a specific difference between the situation where someone is baiting some type of game to come to an area for the idea of bringing that animal or bird there and one where there is quite a group of people

coming who would not be aware of the baiting, but they were there just to promote a charitable thing? I mean, I used to handle all of the fish and wildlife stuff in the State of Utah my years in the legislature, and I am totally against anyone who poaches or breaks the law. But we would find cases where they would bait for a bear, for example, and they would come there, and sure enough, he would entice that animal to that position and kill the animal. But it would seem to me in the spirit of this that these people were doing something of a worthwhile nature. I agree that the law is the law, and I do not want to argue that point. But whoever baited it was probably trying to enhance the quality of the hunt—I do not know.

But if I were you, and I had known it had been baited, it would seem to me that it would have been the prudent thing to do to stop it before it started and to go to the sponsors of the thing and say this looks like an illegal hunt, and it looks like someone has broken a Federal law—obviously not these people. So they walk in, and you obviously are going to catch them.

Mr. OLIVEROS. Well, first of all, there was no law broken until people entered the field to hunt. There is no law against baiting migratory birds. The law is when you take birds in association with the bait. Again, had we warned them, they would have probably just gone to one of the other fields. Each hunter who entered that field, the bait was there obvious for anyone to see. For anyone who walked around a short period of time and just made a cursory inspection, it would have been obvious to them that that area was baited. They all had the decision to make, well, am I going to stay here and hunt over this baited area, or am I going to leave?

Mr. HANSEN. Was it not obvious to you, though, that you would have an exact set-up, cannot lose type of thing, though, with all of these gentlemen and ladies going in there? I mean, true, there was no law broken. But two kids in Corvettes gunning their cars at the stop light, there is no law broken until the light changes, but everybody knows they are going to go zooming down the road. And maybe sometimes if a policeman pulls up behind them, I notice they do not go zooming down the road. Maybe I am on the wrong track here, but this is the closest thing to a sting operation I have seen for a long time.

Mr. OLIVEROS. If I can make an analogy—

Mr. HANSEN. Surely.

Mr. OLIVEROS. When you warn people, it may prevent that violation, but it does no good to prevent future violations. Think, for example, of everybody who drives and goes down the interstate. And if a State trooper stops you and says I am going to give you a warning, sure, you stop, but then, after a couple of days when you forget about it, you go on. Or if you know that they give you 5 miles per hour, everybody goes 5 miles per hour over. If you want to stop people from speeding in an area, you start giving tickets, and people will slow down.

Mr. HANSEN. What time did the hunt start, may I ask?

Mr. OLIVEROS. I am not sure of the exact time. I arrived on the field about 2:00, and it was ongoing then.

Mr. HANSEN. So the hunt maybe started when? Noon? Somewhere in there?

Mr. OLIVEROS. That, I do not know.

Mr. HANSEN. Why did you not stop it after the first shot was fired?

Mr. OLIVEROS. Well, again, it was a situation where we had well over 100 guns out there. There was a considerable amount of drinking going on. I was alone at the time, and I was waiting for other officers to arrive so that I would be in a much safer position when I entered that field.

Mr. HANSEN. How long had you planned this operation?

Mr. OLIVEROS. Well, I found the field the evening before, just before dark. I entered the field after dark and documented a large portion of it. I then began calling any available officers in the area.

Mr. HANSEN. So, you knew it the night before, before the hunt, is that right?

Mr. OLIVEROS. It was the night before, yes, sir.

Mr. HANSEN. And then, you got other officers; you waited until they got there, and then, you started making arrests; is that correct?

Mr. OLIVEROS. Well, we did not arrest anybody on the field. All we did is contact—

Mr. HANSEN. Well, issued citations; excuse me.

Mr. OLIVEROS. Right; that is correct.

Mr. HANSEN. The Senator pointed out that there were some legitimate citations: people did not have their guns plugged, their automatics or pumps, and that somebody shot over their limit. How many of those did you find? May I ask?

Mr. OLIVEROS. Of the people that we charged? I know of three unplugged guns, two overlimits, a couple of license cases, and there were numerous other types of violations that we just did not have enough evidence to tie it to a particular individual.

Mr. HANSEN. Was there any State—I do not know what you call them down there—fish and wildlife people?

Mr. OLIVEROS. With us?

Mr. HANSEN. Yes.

Mr. OLIVEROS. With the officers? No, there was one hunting on the field, but there were no officers there.

Mr. HANSEN. Oh, I see. My time is up.

Mr. Miller?

Mr. MILLER. Mr. Chairman, if we go back to this, I find it interesting when we hear so much sometimes from my colleagues on the other side of the aisle about everybody in America thinks they are a victim that now, we have people who, according to these photographs and according to a judge in a court of law, this field was knowingly, openly and readily acknowledgeable as being a baited field. And some people, apparently aware that they had an obligation as hunters, went out onto the field and checked it out and then decided that it was not baited. And then, they went out and hunted, and their friends went out and hunted.

I guess these are the same photographs that were put into court. And now, all of a sudden, you are on trial. You are on trial because you did not go out there when there were one, two or three of you to stop a hunt where later, in the process of stopping it with, I think, 12 enforcement agents, people were cited for assault and, I think, found guilty of assault. People were drinking. This was after

they had been lectured about safe hunting. They had been drinking and some apparently heavily drinking, and I think with some young people in the field were out hunting with their shotguns, people who made a conscious decision, apparently, to bag more than the limit; people who made a conscious decision to shoot birds, down the birds, and not go look for them; people who made a decision to stash birds in the clumps of brush that had been cleared from the land so that this would not be confused with a wheat field or a corn field and not go back for those birds later; people who denied they were hunting, but later, the birds were found, I think, in their vehicles, because they had been observed stashing them.

And we have a duty to do what with these people who knowingly, openly violated a whole series of laws? The baiting did not cause them to unplug their guns. Baiting did not cause them to shoot in excess of the limit. Baiting did not cause them to waste the resource. But now, we are going to put you on trial because you did not stop it after the first hunter or the second hunter or the first bird? And we are talking about a field full of people, many of whom, apparently, were willing just to shoot birds and not caring about picking them up or counting them for their limit? You are on trial for this?

I think what we have here is under the guise of a wonderful cause an operation that kind of went rogue by the participants, because they did not much care about the fish and game laws; they did not much care about the Migratory Bird Treaty; they did not much care about baiting, and they did not care much about shooting over the limit, and they did not much care about wasting the resource by letting the downed birds just go. Unfortunately, in my life, I have been around those hunters—only once. And now, we are going to hear from another panel that is going to tell us that this is about this law?

No, this is about the conduct of people in the field who supposedly know better, who chose to hunt without licenses and to hunt in other violations of the law. Not all of them, but you have some higher duty to go out there and interrupt that at the outset. I do not think so. I think you have a duty to follow prudent law enforcement and the safety of yourself and other officers who are involved in it, just like any other law enforcement agency when you are put in that position. But somehow, they want to pretend like this is a trial about the Fish and Wildlife Service. I think this is a trial about some citizens, since we are collecting evidence here and taking testimony and doing what nobody had the guts except for one young man to walk into court and suggest, maybe it now is not as Mr. Young suggested that they knew they might have to hire an attorney. Maybe they knew the evidence was so clear that it would have been a waste of money to hire an attorney.

And that is the problem, that this Committee is becoming a forum for beating on legitimate law enforcement agents when they are enforcing the law—we come here months later in hindsight. We have heard from the political people, and then, we have judgments about what you should be doing in the field on something you found out about the night before. I am sure we would all have rushed out there and said stop in the name of the law; I am Con-

gressman So-and-so, and you are firing over a baited field. I do not think so; I do not think so.

This law may or may not be right. This law may or may not need to be changed. But let us not pretend that it is this law that caused this activity, OK? And the fact is that it is hard to believe with our glasses or without our glasses that you would walk around this field that did not have vegetation, that was not being used for agricultural purposes and you would see this, and you would not tell your best friend or yourself and say I think we ought to get out of here. And this notion that somehow, you are supposed to warn them—maybe the people baiting this field decided that having all of these political people here was cover, and they could shoot it the next day. And you are supposed to selectively now decide who you warn and who you do not, if it is a good charity, a bad charity; if it is on the up-and-up; if the right people are involved, you are supposed to call or not make a call? I do not know that anybody can meet that test, and I promise you, had you made that call, you would have been roasted in the local newspaper by some editorial board telling you that here were people whom you protected who otherwise would have violated the law. Because that is the way it works in this society: everybody second-guesses everybody. And so, you sort of would have been damned if you do and damned if you do not.

I think the evidence is so compelled in this case that I am shocked that the people who want to change this law would use this as Exhibit A for changing the law. There is no ambiguity about this, and there is little ambiguity about the law. There is some question about who, in fact, should be liable when the infractions take place.

Thank you, Mr. Chairman.

Mr. VENTO. Will the gentleman yield?

Mr. MILLER. Yes, I yield to the gentleman from Minnesota. Actually, my time has expired.

Mr. VENTO. The observation that was made by Mr. Halcomb is that everyone is responsible, that the implication that the landowner or whoever did the baiting, the suggestion is that they are all liable. You know, the only question here is that if they were so concerned about the Fish and Wildlife Service judgment, did anyone ask the Fish and Wildlife Service or the law enforcement officers whether the field was baited or what their judgment was? I mean, they could have at least stopped and did that if there was a question about it, but there was no question that came to Mr. Streeter, Mr. Halcomb or Mr. Oliveros, I take it.

Mr. HANSEN. The time of the gentleman from California has expired.

The gentlelady from Idaho?

Mrs. CHENOWETH. Thank you, Mr. Chairman.

Mr. Halcomb, we mentioned earlier that there was a case involving Kentucky Governor Julian Carroll involving a baiting case.

Mr. HALCOMB. Yes, ma'am.

Mrs. CHENOWETH. And apparently, you were a witness in that case.

Mr. HALCOMB. Yes, ma'am.

Mrs. CHENOWETH. It took the Government 4 days to present their case; it took the Governor 20 minutes to present his case, and it took the judge 5 minutes to rule. I find that rather outstanding.

You know, in the decision, the judge cites this where you stated that in fact—this was in 1991, in July. He is referring to an article entitled “Dove Baiting Laws are a Mess,” *Southern Outdoorsman*, September 1994. The author says of Marty Halcomb, Assistant Regional Director of U.S. Fish and Wildlife Service: “Halcomb says wildlife officers know this situation, leaves hunters confused, and baiting regulations need to be simplified.” Then, he quotes Halcomb: “In fact, baiting laws are being reviewed right now,” Halcomb states. ‘Hopefully, proposed revisions will be published by late summer and then adopted by the 1995 hunting season. We need baiting laws that hunters and landowners can understand, something that gets away from this third-party interpretation about whether or not a field is baited.’” I thank you, Mr. Halcomb, for stating that on the record. You are quite right.

Mr. Oliveros, you were quoted by Karen Voyles, the Sun staff writer, when some of the people involved apparently felt that Fish and Wildlife were targeting these hunters, and you said or were quoted as saying: “We do not target groups. We only target people who bait.” Do you stand by that?

Mr. OLIVEROS. Well, I think the question that was asked was do we target elected officials was the question I was asked there, and my response was we do not target elected officials; we just target people involved with baiting.

Mrs. CHENOWETH. I think that the article says—and in the essence of time, I skip this—but it does say: “Several of those who had been at the dove hunt said they suspected that the event was targeted for Federal enforcement, a charge Federal officials deny.” And then, you said: “We don’t target groups; we only target people who bait.” Is that correct? Do you stand by that statement?

Mr. OLIVEROS. No, as I said before, the question I was asked when I gave that statement was do we target elected officials.

Mrs. CHENOWETH. OK.

Mr. OLIVEROS. And then, the answer I believe I gave was we target people who are involved with baiting.

Mrs. CHENOWETH. All right; you also testified before this Committee that the first hunter arrived at 10:00 a.m.

Mr. OLIVEROS. No, I do not recall—I do not know what time the first hunter arrived. I think the question was asked when the first other officer arrived, and the question was when the other officers arrived in the area. And I thought the question was when did the first other officer arrive, and I said about 10:00 in the morning.

Mrs. CHENOWETH. All right; when you submitted the pictures of the grain, you stated this is a representative example of what we found.

Mr. OLIVEROS. That is correct.

Mrs. CHENOWETH. Is that correct?

You know, I find it interesting, though, that there are no points of identification. We see grain, and that is all we see. We do not see any evidence that that grain was found on the property where the hunt took place and the arrests took place.

Mr. OLIVEROS. I can show you on these aerial photos if you care. I took the pictures, so I know where they were taken.

Mrs. CHENOWETH. OK; so, you can track that out?

Mr. OLIVEROS. Yes.

Mrs. CHENOWETH. OK.

Let me ask you did you have evidence that there was excessive drinking going on? And if you did, and if there was a law against that, why were people not arrested for unruly or reckless conduct?

Mr. OLIVEROS. I saw lots of people who had been heavily drinking. There is no Federal law that I enforce that prohibits that.

Mrs. CHENOWETH. You had four sheriffs there. Did you make any attempt to contact those sheriffs about any excessive drinking or behavior that may, in your judgment, endanger others?

Mr. OLIVEROS. Well, one of the sheriffs was drinking when I got there.

Mrs. CHENOWETH. And you are stating that for the record, and you can prove that one of the sheriffs was drinking?

Mr. OLIVEROS. One of the officers that contacted one of the sheriffs told me that.

Mrs. CHENOWETH. One of the officers? Is that not called hearsay?

Mr. OLIVEROS. Yes.

Mrs. CHENOWETH. Are you certain for yourself that that occurred?

Mr. OLIVEROS. I am certain that he told me that, yes.

Mrs. CHENOWETH. Because you believe the person who told you.

Mr. OLIVEROS. Yes.

Mrs. CHENOWETH. That is called hearsay, is it not?

Mr. MILLER. Yes, but not in Congress, it is not called hearsay.

Mrs. CHENOWETH. Excuse me; I did not release my time, sir.

Mr. OLIVEROS. And in response to your question, I was not aware that there were any sheriffs on the field until near the end of the hunt after we were gathering up the information. In other words, other people contacted the sheriffs. They were not identified as sheriffs. They were not wearing uniforms or anything.

Mrs. CHENOWETH. But if you had contacted the sheriffs' offices, then, you would have known that there were sheriffs out there, would you have not?

Mr. OLIVEROS. If I would have—pardon me? At that time?

Mrs. CHENOWETH. If you had contacted the sheriff's office in Dixie County, you would have known that there were other officers out there, would you have not?

Mr. OLIVEROS. At what time?

Mrs. CHENOWETH. Any time.

Mr. OLIVEROS. Oh, sure, yes; I would have.

Mrs. CHENOWETH. You heard the people who testified here that none of them or anyone they know saw the grain that was used as baiting.

Mr. OLIVEROS. Yes; I heard that.

Mrs. CHENOWETH. Well, did you make any attempt to show anyone the evidence?

Mr. OLIVEROS. Yes, I did. Each person I contacted, I told them I would be glad to show them the bait; I told them the place was heavily baited. I also contacted many of the hunters who came to a central point that were contacted by other ones, and they asked

me about it, and I told them I would be glad to show any of them. I told a large group of hunters as we were recording information any of them who wanted to follow me out there, I would be happy to show them the bait, that it was readily available. No one responded that they wanted to.

I then went out there. While I was gathering bait, I had several hunters drive by me on the road, and they acknowledged, yes, there is the bait in the road; we can readily see it.

Mrs. CHENOWETH. Did you inform the landowner that this operation was going on?

Mr. OLIVEROS. No, I did not.

Mrs. CHENOWETH. Did you make an attempt to?

Mr. OLIVEROS. No, I did not.

Mrs. CHENOWETH. Did you make an attempt to acquire a search warrant before searching his land?

Mr. OLIVEROS. No, I did not.

Mrs. CHENOWETH. Mr. Chairman, I see that my time is up, but, you know, I do want to just make a couple of observations and comments.

You know, in 1986, the Eighth Circuit Court of Appeals dealt with this, and the Congress has not dealt with the question of baiting, but the Eighth Circuit Court of Appeals did deal with it in a case involving Kenneth A. Manning. And Judge Arnold, the circuit judge, wrote in that decision that to convict the defendant of taking or attempting to take geese by aid of baiting or on the theory of abiding and abetting, the Government had to prove beyond a reasonable doubt that the field in question was baited and that the defendant aided. I mean, that is 91 defendants—that they aided, abetted, coerced or induced another to take the birds by aid of baiting. And none of these people aided or abetted in the baiting. And the fact is that in spite of all of the eloquent debate that we hear from the ranking member over there, the fact is that we have lost our focus.

And you know, Mr. Oliveros, as I sat here and listened to your testimony, I do not have a doubt in the world but that you are very sincere in your approach to your job. But the fact is that our Federal agencies are trampling over the rights of humans in a sincere attempt to be focused on something that does trample on human rights. The fact is that there was no attempt to find the person who baited the field. The courts have addressed this very clearly. The Congress has not, but the courts have. And, you know, I am just concerned about the fact that when we see this kind of excessive use of the authority that you have vested in you and the trust that you have been given, it breaks down the trust and the relationship the American people naturally should entrust to their Government.

And I would just ask that in the future, we not approach each other as adversaries but that we truly—I mean, I need to have you truly try to understand that although you were sincere in what you did, you were sincerely wrong with regards to the rights of people who should not be accused and convicted by your court without due process and without following the protections that have been set up for just this kind of a procedure.

You did not come here to be lectured by me. I am not lecturing you. I am appealing to you to take another look at the excessive

force that the Government is using, even in dove hunts, because it is not a good step. And I thank you for being here.

Mr. Streeter, I did want to ask you one question: are you a hunter?

Mr. STREETER. Yes.

Mrs. CHENOWETH. Have you ever been on a dove hunt?

Mr. STREETER. Yes, ma'am; in about five different states.

Mrs. CHENOWETH. In five different states?

Mr. STREETER. But I have not been on a hunt where there were over 100 people in the field.

Mrs. CHENOWETH. OK; thank you very much.

Thank you, Mr. Chairman.

The CHAIRMAN. [presiding] Thank you.

Do you have any questions?

Mr. MILLER. I just want to thank the——

The CHAIRMAN. No closing statements now.

Mr. MILLER. No closing statements. I was just saying thank you to the panel.

The CHAIRMAN. I appreciate the panel. You can step down.

At this time, I am going to use the Chairman's prerogative and call the Senator back to the stand.

Senator Williams? And I do apologize to the other witnesses, but there were a lot of statements made here, and I think the Senator has the ability to comment. Senator, you are on for 5 minutes.

Mr. WILLIAMS. Thank you, Mr. Chairman. I will not belabor a lot of the points. I will just say that our panel that was here today tried to approach the situation from a very professional standpoint. I do not think any of us got up and bashed the U.S. Fish and Wildlife Service. That was not our purpose in being here today. Our purpose is to try to help change a very complex law that I believe needs to be changed.

I can assure you that even though there may have been some violations that occurred that day that I did everything within my power as the host of that hunt in my talk with everyone to get them to obey the game laws and to be safe in that field. It distresses me that Mr. Oliveros—however he pronounces his name, and I apologize, sir, if I mispronounced it—says there was a considerable amount of drinking. There were a lot of vehicles that drove in that field, and certainly, we did not have a spot check of every vehicle to see that there was not beer in a cooler or whatever. I can tell you that I saw no one in that field when I was out there who was intoxicated. When people came back to the barn, I saw no one whom I believed to be intoxicated, contrary to what Mr. Oliveros would have you believe that people were out in that field drunk. I do not believe that that was true at all.

He said he felt unsafe, and that was the reason why he refused to stop the hunt earlier. I really do not understand that. The 10 or 12 agents who were there scattered out—and I was not in the field—all around the field, and none of them were very close to each other, evidently. So, I do not know how he would have felt unsafe himself walking out there before all of the other agents that he said got there that day. But I am told by many of the people who were there that the agents who talked to them said they had

been on the field for some time. I am not sure that they all arrived late in the afternoon, as you would be led to believe.

We have tried to be as truthful as we can about what happened there that day. I am distressed and almost wish, Mr. Chairman, that you had put us all up here under oath today to make sure that the truth was told. Because I heard some things coming from Mr. Oliveros that I do believe stretched the truth a good bit: tons of grain? I saw that picture for the first time today. That is obviously a picture of grain scattered on the ground, and I can only assume that it was at some point in that 240-acre field, and certainly, none of us could inspect every section of that field to determine that.

As far as the no prior notification, I do not really understand if it is the object to protect the wildlife species why someone would not have at least contacted me as the sponsor of the hunt. I can assure you that if I had thought the field was baited, I would have stopped the hunt. I do believe that it was somewhat political, Mr. Chairman, not political against me, but it was obvious because of the publicity that had taken place that if the U.S. Fish and Wildlife Service raided that field, there would be a good bit of press from that, which there certainly was, and some of it not all good.

But it was almost like it was a sting operation there, and I hate to use those words, but that is how it appeared, and that is how it appeared to everybody that I talked to. I can tell you that people were quite upset with their Government for using the resources of Government in such a manner that day.

I thank you, Mr. Chairman, for allowing us to be here today, and hopefully, something constructive can come from this, and we may end up with a glass of sweet lemonade from the lemon that we have all had to take.

The CHAIRMAN. Senator, I want to thank you, and I will assure you that we are going to do something about this law. I cannot rehash what is done. I probably could have been more strident with the officer in charge. I do not really think that he took everything into consideration of what was occurring here. He thinks he has done that professionally; that is his prerogative. I know this, that there have been an awful lot of bridges burned because of this action. It could have been avoided; it could have been enforced; it could have been one person; it could have been two persons. The whole thing could have been—I can imagine if I was that agent; when the first shot was fired, go arrest that one individual; close the hunt down; you could do that. To my understanding, there was an alternative to the dove hunt, if you had actually been able to set up a fishing event, some way to raise this money.

Mr. WILLIAMS. Yes.

The CHAIRMAN. Now, I have read some testimony from other people in this room who say this is a good old boys' club. The law stinks, and I think it is up to this Congress to change this law. And again, my biggest drive in sitting in this chair—the gentleman from Minnesota and the gentleman from California do not agree with me—I do not like what I see occurring in this Government today. I go down the street, and I challenge anybody in this room to go down the street and ask anybody are you happy with the Federal Government today? And I will pay you a dollar for every per-

son who says yes if you will give me a dime for every person who says no, and you will go broke, and I will be a rich man.

That means we are doing something wrong somewhere with these agencies. And where we are interfacing—you had better learn a lesson here. You are not God. The people will respond. And when you lose that trust relationship, there is something that will happen in this country that is not good for anyone. And we see it in the Forest Service. We are saving the spotted owls and losing thousands of jobs. We save 6 percent of the timber in the Northwestern area of the United States for habitat for the spotted owl. Guess what? Do you know how much we have got left now? Two percent. What happened to 4 percent? It fell down.

Now, when the rest of the 2 percent falls down, where are those little spotted owls going to go? They are going to nest in the new trees. So, what have the agencies done? They have made the people of the Northwest very upset.

So, I just hope that those: Mr. Streeter, Mr. Oliveros, the rest of you in this room understand. You are not isolated. You are not God unto itself. Only the people who support you will make you active and be a good, sound agency. If you are isolated by yourselves, you are nothing, and you will be eliminated.

I want to thank you, Senator, for being here.

Mr. WILLIAMS. Thank you, sir.

The CHAIRMAN. Yes.

Mr. WILLIAMS. If I might just add that I have always believed in government and that the people ultimately get what they want, and I believe that that is happening in our country today. And just for the record, I would like to state that it was not a paid hunt. No one paid to come to that charity hunt, sir.

Thank you.

The CHAIRMAN. The next panel: Mr. Cooper, Mr. Manning, Mr. Taylor, Mr. Horn and Mr. Inkley. We have an assorted group of individuals with many differences of opinions. I want to thank you, the witnesses, for hanging around this long. Hopefully, we can pass some revisions of this law where we will not have to have you back again.

Mr. Manning from Illinois, the Illinois Department of Natural Resources, Director of. Mr. Manning, there you are.

STATEMENT OF BRENT MANNING, DIRECTOR, ILLINOIS DEPARTMENT OF NATURAL RESOURCES, SPRINGFIELD, ILLINOIS

Mr. MANNING. Yes, sir, Mr. Chairman. Thank you very much for the opportunity to be here. I am Brent Manning, director of the Illinois Department of Natural Resources, and I appreciate the invitation to testify today on behalf of the department and on behalf of Illinois waterfowl hunters.

Larry Closson, my chief of law enforcement, was with me and co-authored this paper; however, he had to return to Illinois for other business. Jeffrey Ver Steeg, my chief of wildlife, is here with me, and I would ask that you please commit my written testimony to your records, and I will try to provide a very short verbal synopsis.

I commend the members of this Committee for their interest in the waterfowl resource on this continent and for their interest, in

particular, in the common waterfowl hunter. I would like to direct my remarks this afternoon to the specific issue of Federal waterfowl baiting regulations as they pertain to the management of wetland vegetation. First, let me say that I am not a proponent of waterfowl baiting. Rather, I seek a revision of Federal rules that will permit certain non-baiting management practices that are, in my opinion, inappropriately prohibited. Federal regulations prohibiting the use of bait for hunting waterfowl have not been significantly revised for decades, however, waterfowl management practices have been steadily evolving, and as a result, baiting regulations today create a disincentive for waterfowl hunters to develop and manage certain important wetlands in a way most beneficial to waterfowl.

I am referring specifically to wetland habitats dominated by species commonly referred to as moist soil plants. Stands of moist soil plants like millets, smart weeds, pig weeds and chufa are valuable for a number of reasons and provide a great benefit to a variety of wildlife in addition to waterfowl. Unfortunately, practices like mowing or disking that are designed to facilitate hunter access, decoy placement and duck retrieval in stands of moist soil plants can, according to existing Federal law, create a baited situation.

This same law makes it possible for hunters simply walking through vegetation to inadvertently scatter seed or create a "baited" situation or hunters pulling boats in an area like Minnesota or Wisconsin through wild rice and knocking the heads off of mature plants to create a baited situation. Waterfowl hunters on this continent pride themselves on being conservationists. We in the Federal and State agencies and academia should not encourage them to apply practices like moist soil management that benefit the resource and then prohibit these conservationists from responsibly using those habitats.

In Illinois and elsewhere, hunters often ask law enforcement officers why creating paths through vegetation to a hunting site or creating a small opening to place decoys is considered baiting. The standard answer is that the Federal regulations prohibit distributing or scattering of feed so as to constitute a lure, attraction or enticement to areas where hunters are attempting to take waterfowl. Hunters feel trapped by regulations that bind them so tightly that regardless of intent, it is nearly impossible to avoid violating the letter of the law. Our well-intentioned intent to prevent legal loopholes has resulted in a law that can easily make criminals out of honest people.

Let me emphasize that it is not my desire to criticize the fine enforcement agents of the Fish and Wildlife Service. Most are merely enforcing rules in a book whose pages have yellowed with time. I am critical, however, of the regulations. It is time to improve the law. And, as you will hear later from Secretary Cooper, I am confident that we can continue to protect the waterfowl resource that we treasure without imposing regulations that discourage the protection and management of valuable waterfowl habitats by well-meaning sportsmen and sportswomen.

It is my belief that today's prohibition of baiting was primarily intended to prevent people from hunting over areas where corn, wheat or other grain crops were deposited in unnatural or additive

quantities to attract waterfowl. In the years prior to the imposition of Federal baiting restrictions, some duck clubs were putting out an estimated 6 million bushels of corn per season. I think most waterfowl hunters would agree that depositing food in such quantities or in areas where it was not grown is and should be prohibited.

Mowing wetland vegetation with developed seed does not create the same kind of attraction as dumping bushels of corn, wheat, or other grain. The waterfowl experts I have consulted agree. Dr. Frank Bellrose, the father of modern waterfowl biology, who is also an Aldo Leopold Award recipient and recognized worldwide as a pioneer in waterfowl research, in his long career as a waterfowl scientist, he tells me that he has seen no evidence to suggest that mowing moist soil plants will increase waterfowl harvest. He believes that mowing openings around hunting blinds is a sound practice that should be continued and aids in the retrieving of downed birds.

Dr. Lee Fredrickson of the University of Missouri, also a most respected leader in the field, believes that under certain circumstances, dabbling ducks select unmowed areas over the mowed areas. It is his opinion that it should be continued, that mowing mid to late summer does not necessarily make natural seeds more available in a way that would attract waterfowl. In Illinois, we compared hunters' success rates on 13 public hunting areas over the 10-year period from 1983 to 1992. Hunters on one group of those sites were required to mow around their blinds, while hunters on the other were not. We found no difference statistically in the number of ducks harvested per hunter trip. This suggests to me that mowing did not create a lure or attraction characteristic of a baited area. And it is interesting: this practice was allowed for 30-some odd years, yet in 1994, it was declared baiting through a change in "the interpretation."

Again, I am not, as I have suggested, an advocate of baiting. If I believed for one minute that mowing natural vegetation created an unnaturally attractive condition for waterfowl, I would not support it. I do advocate changing the law to clarify which practices are truly baiting and which are not. We need consistency, clarity, and above all, common sense.

In summary, I wish to go on record in support of the regulations that protect our natural resources. However, I believe that such regulations should be based on common sense and science. And I am aware my time is up; I thank you very much for this opportunity.

[The statement of Mr. Manning may be found at end of hearing.]

The CHAIRMAN. Thank you, Mr. Manning, and before I get to the next witness, I read your testimony, and if you can put down in different form what you suggest should be done, I would gladly accept that and work with it, because you have come up with some good suggestions that go beyond, and I showed it to my staff too. But as the gentleman from California and the gentleman from Minnesota, I want to solve this problem, and you bring up some good ideas. And you are in this; anybody knows you should know it.

Mr. Taylor, you are up.

**STATEMENT OF GARY TAYLOR, LEGISLATIVE DIRECTOR,
INTERNATIONAL ASSOCIATION OF FISH AND WILDLIFE
AGENCIES, WASHINGTON, DC**

Mr. TAYLOR. Thank you, Mr. Chairman. I am Gary Taylor, legislative director of the International Association of Fish and Wildlife Agencies, and I appreciate the opportunity to share with you our perspectives on the baiting regulations under the Migratory Bird Treaty Act.

As you are aware, Mr. Chairman, the association represents the public agencies charged with the conservation of fish and wildlife resources in North America. All 50 of our State fish and wildlife agencies are members. Also, as you are aware, Mr. Chairman, the State fish and wildlife agencies are public trustees of the fish and wildlife resource within their borders and have statutory authority to ensure their vitality and stewardship of these resources for the use and enjoyment of their citizens.

State jurisdiction for migratory birds is thus concurrent with that of the U.S. Fish and Wildlife Service. And as you are also aware, Mr. Chairman—and it is in my written statement—our association, which dates back to 1902, has long been interested and involved in the conservation of migratory birds. We were active in pushing for the Migratory Bird Treaty; we were involved in its ratification, the subsequent passage of the Migratory Bird Treaty Act; Duck Stamp Act; Pittman-Robertson Act; North American Wetlands Conservation Act, et cetera. So, we do have a long history of interest and involvement in migratory bird resources.

At the request of the U.S. Fish and Wildlife Service, the president of our association is in the process of appointing a special committee to facilitate review of the baiting regulations. Mr. Manning, on my right, will chair this Committee, on which will sit other State directors, biologists and law enforcement officers with recent, on-the-ground experience. Without preordaining the work of our committee, we do believe that there could be some modernization of our baiting regulations to improve their clarity, understanding and consistency of enforcement while at the same time ensuring that they continue to address migratory bird conservation goals. We look forward to the work of this committee.

The association does support the need for baiting regulations to ensure the sustainability of the migratory bird resource but also to ensure equity for sportsmen in the pursuit of their sport. Practices that diminish the element of fair chase in hunting should be appropriately regulated. We do not believe that the application of season and bag limits alone is sufficient to ensure wise use of this sustainable resource.

I would just like to quickly summarize five standards or considerations that we believe our review of the regulations should take into account, and most of these are pretty self-evident, Mr. Chairman, but let me quickly go through them. First, the regulations should clearly contribute to the sustainability of the resource. This is particularly important in times of diminished migratory bird populations. As you are aware, recently over the past 2 to 3 years, because of the restoration of water on the breeding grounds, we have flourishing waterfowl populations, particularly ducks. Many species are above long-term averages. But, as you are aware, for

many years prior to that, species populations were significantly depressed. During those times particularly, regulation of means and methods of take are important to ensure the sustainability of the resource and equity of hunting opportunities.

Second, the regulations should be clearly and consistently understood by sportsmen in the field. Our review will focus on bringing some clarity and more certainty to some of the baiting regulation language, such as "normal agricultural practices," while realizing that baiting regulations cannot necessarily be written in black and white and recognizing the need for appropriate officer discretion in enforcement of these regulations.

Number three, the baiting regulations should be able to be clearly and consistently enforced by both Federal and State law enforcement officers. There simply are not enough conservation law enforcement officers at both the Federal and State level to effectively enforce our fish and wildlife conservation laws. We will, in our review, look for ways to improve the consistency of application of baiting regulations, however, by both our Federal and State law enforcement officers.

Number four, the baiting regulations should reflect changing agricultural practices for both crop production and wildlife conservation purposes. One of the instances as addressed by Mr. Manning was the moist soil management practices. There are other practices that 20 years ago would not have been considered normal agricultural practices which are now being recommended by conservation agencies and organizations to enhance wildlife habitat, and we recommend that those circumstances—a prime example is CRP lands, which 20 years ago, would normally have been hayed or grazed which are now not hayed or grazed because they are being used to enhance wildlife—these circumstances suggest that there is a need for a contemporary review of the baiting regulations.

And then finally, Mr. Chairman, the baiting regulations should not discourage legitimate sport hunting because of ambiguities in language or application. We do believe that there is a balance that can be achieved between regulations that are adequate to protect the resource but not so ambiguous that sportsmen and women set down their firearms and stop hunting. We believe that our review of the regulations can contribute to the appropriate balance.

With that, Mr. Chairman, I will close, and thank you again for the opportunity to be here.

[The statement of Mr. Taylor may be found at end of hearing.]

The CHAIRMAN. I thank the gentleman for your testimony, and again, I have just told my staff, because Mr. Manning handed it up, and whatever input—I have instructed him to write a piece of legislation. Even Mr. Miller has agreed that we ought to change the responsibility. Now, we have to go forward and see where the regulations—like I said, the last time we addressed these was in 1972, and things have changed. Land set-asides have played a major role; wetlands set-asides have played a major role, and we are going to do that.

Mr. Secretary Horn, you are up. Bill Horn?

**STATEMENT OF WILLIAM P. HORN, WASHINGTON COUNSEL,
WILDLIFE LEGISLATIVE FUND OF AMERICA, WASHINGTON, DC**

Mr. HORN. Thank you, Mr. Chairman. I appreciate the opportunity to appear today before you on behalf of the Wildlife Legislative Fund of America.

Going quickly to the central issue, it is our opinion that the existing regulations and enforcement policies regarding the use of bait are simply too subjective, too obscure and put thousands of law-abiding hunters at risk for potential violations, which, frankly, they will not know about until they happen. And please understand our position: we do not support baiting as a technique for the hunting of migratory birds, but we do support the establishment of clear, objective rules that a diligent hunter can understand and can comply with. No one can say that the existing regulations and policies satisfy this rather reasonable requirement and good public policy.

Now, the sporting community, as well as the U.S. Fish and Wildlife Service, have long recognized the need for clarification and simplification of these rules and policies. The Fish and Wildlife Service Director's 1990 Law Enforcement Advisory Commission report specifically proposed a revisitation of the regulations at 50 CFR 20.21, and I commend you to Recommendation 6, found in Section 4 of that report.

Unfortunately, no action has been taken in the intervening years to implement this recommendation, although now, we understand that things are beginning to stir, and I commend the Committee for having this hearing. I think that might have stirred the pot a little. We are persuaded that the Committee ought to push the Service very hard and push the community as a whole to pursue actively the original recommendations made by the 1990 commission report.

Now, reform of these regulations and associated policy should focus on three goals. First, the purpose of the baiting regulations ought to be clearly stated, and conservation of migratory birds must be the fundamental goal. The second goal must be the creation of objective rules and policies that hunters can comply with. Now, in my personal case, I have overseen the Fish and Wildlife Service; been a practicing wildlife lawyer for years; hunted ducks, doves and geese for many years; and still hunt these birds with a great deal of trepidation. I scrupulously examine fields, as recommended by Mr. Streeter, make pointed inquiries about agricultural practices. Yet, I still cannot be sure when I walk into a field that I am complying with the regulations and the enforcement policies.

I will give you an example. There was one farm I used to hunt on the Eastern Shore where subsequent hunters were arrested and fined. One of them was sent to jail for 30 days and convicted of violating the baiting regulations because the farm had a goose feeding station situated 4,899 feet from where the blinds were located. Now, I presume that that type of prosecution indicates that the diligent hunter must scout and scour an area covering 3 square miles before he can safely step into the blind, and I submit that that is absolutely absurd. That type of overreach needs to be corrected.

We are also disturbed that it has been difficult to get Fish and Wildlife Service enforcement to assist people in affirmatively complying with the law. We are aware of various hunt organizers contacting Fish and Wildlife Service agents to ask them to examine a field the day before a hunt to give it a clean bill of health, to state that yes, this field is not baited so people can come safely and know that they are not going to get arrested by someone jumping out of the weeds. These citizens have been turned down flat, and we, frankly, are perplexed by that. Even the IRS is willing to help us fill out the tax form, and I do not understand why the Fish and Wildlife Service cannot help us with migratory bird regulation compliance.

Now, our greatest concern is focused on the attempts by the Service to either close hunting or to prosecute hunters within very, very large zones proximate to areas where feeding or baiting is occurring, much like the Eastern Shore case I cited. The apparent policy rationale is that the baited site or the site where feeding occurs, even if it is not hunted, constitutes an illegal lure that will bring birds into a very, very large area. Our worry in addition to the fairness and equity issues created by putting hunters at risk is that this could easily become a tool available to animal rights extremists to shut us down. What would stop one of these extremists from going over to the Eastern Shore, strategically acquiring a few parcels, feeding the heck out of them and beginning to put big, mile-wide circles all over the Eastern Shore? It would not take too long to put a whole heck of a lot of waterfowl operations and clubs completely out of business.

We urge the Service to be extremely careful and not provide the anti-hunting zealots with a weapon to be used against America's waterfowl hunters.

Let me close and say that I think much of the problem here can be addressed with the exercise of prudent discretion by the agency and U.S. attorneys. The Service ought to target the knowing perpetrators of prohibited baiting activity, but it ought to proceed with great care and caution when it goes after hunters who did not know or could not know of these baiting or feeding activities that may have occurred. Prosecuting hunters shooting within a mile of a feeding station strikes me as an abuse of discretion, and I think much of the problem that we have heard about here today could be cured by action within the agency. Obviously, we commend action by this Committee as well.

Thank you very much.

[The statement of Mr. Horn may be found at end of hearing.]

The CHAIRMAN. I thank the gentleman, and I can assure the gentleman that his testimony strikes home. I remember that case in the Eastern Shore area. That is an example again of why people want to defend the Fish and Wildlife Service. That type of indiscretion, I think, is inappropriate. And we are going to change that. For the Fish and Wildlife people in this room, we are going to change this law if you do not. Mr. Manning, I commend you for being the chairman of this, but believe me, you are just the chairman of an advisory committee. And you make some great recommendations, and if Mr. Streeter and his superiors do not want to do it, it is not going to happen, and apparently, they do not want

to, because they have gotten into bed, a lot of them, with the anti-hunting group. And I have tracked this very closely.

The next witness—and then I have to go vote—Dr. Inkley, Wetlands Team Leader, National Wildlife Federation. Do you work out on Route 7?

Mr. INKLEY. No, I do not; I work in the downtown office of the National Wildlife Federation.

The CHAIRMAN. I was wondering; that is a beautiful location out there. But go ahead.

STATEMENT OF DOUGLAS B. INKLEY, WETLANDS TEAM LEADER, NATIONAL WILDLIFE FEDERATION, WASHINGTON, DC

Mr. INKLEY. Well, thank you, Mr. Chairman. We do appreciate the opportunity to testify today. Before I get into the testimony and the subject of this hearing, I would also like to make special mention and to thank you for your efforts on behalf of the Sikes Act reauthorization. That will certainly improve natural resources management on military lands, and we support that. Thank you.

I am Doug Inkley; I am not only a wetlands team leader for the National Wildlife Federation, but I am also the director of our fish and wildlife resources division. To put my comments into context, it would be appropriate that I give you a little bit of information about the National Wildlife Federation. We are the nation's largest conservation education organization, with millions of members across the country. In other words, we have a very broad and diverse constituency. We have affiliates in nearly every State, including most members of this Committee. We determine our policies through the annual consideration of resolutions by our affiliated organizations, so the policies that we take and that I expand upon today were adopted by our affiliated organizations through a resolution process.

In 1991, we passed a resolution specifically endorsing properly and professionally managed hunting, trapping and fishing. Indeed, we have been supportive of that position throughout the entire 60-year history of the National Wildlife Federation and I am sure will be continuing that position for the next 60 years, hopefully. I have included a copy of that resolution endorsing hunting and trapping and fishing in the comments that we have provided for the record.

Today's hearing is just one aspect of conservation, enforcement of the Migratory Bird Treaty Act. I would be remiss to omit mention of our other efforts related to waterfowl conservation. Some of those efforts include support of the 1996 farm bill, which included programs such as the Conservation Reserve Program and the Wetlands Reserve Programs. We also supported the North American Wetlands Conservation Act because of the benefits to all wildlife but especially to waterfowl, and we also support continued appropriations for our fish and wildlife conservation laws.

Regarding the Migratory Bird Treaty Act enforcement, in March of this year, the National Wildlife Federation passed a resolution entitled "The Interpretation of Fish and Wildlife Laws." In that resolution, we recognized the need for strong enforcement of our fish and wildlife laws. Furthermore, we urged that fish and wildlife conservation regulations be clear, concise, easily interpreted and uniformly enforceable. To put all of that into just two words, we

would say that these regulations should be as user-friendly as possible.

Agencies can ensure that regulations are user-friendly by making sure that these regulations are science-based; they conserve the resource, and they are easily enforceable. To facilitate these regulations, the agencies should also be involved in education, education to make sure that the hunter knows why these regulations are there; to make sure that the hunter knows what the regulations are; and we think that if these two things happen, the hunter, then, will be much more willing to comply with the law because of his understanding of it, and it will ultimately be better for wildlife conservation.

While calling upon the agencies to provide clear and concise and user-friendly regulations, we also recognize that it is the responsibility of the persons who are involved in wildlife-associated regulation to be diligent in trying to learn about the law and do their activities within the confines of the law.

On March 22 of this year, the Fish and Wildlife Service published a notice of intent to review the so-called moist soil management regulations. What they are talking about is the cutting of native vegetation to bait waterfowl, thereby perhaps enhancing opportunities to take birds. We commend the Service for their intent to review these regulations to ensure that the regulations are user-friendly. We urge the Service not to liberalize the regulations in a manner that would create a baiting situation. Unfortunately, baiting makes waterfowl inordinately susceptible to take, and it can have localized and even national impacts on populations. In technical terms, we believe that baiting can produce conditions of additive mortality.

We also urge the Service not to liberalize the regulations because we think that it is an unnecessary change. Currently, regulations do allow the cutting of mature weed seeds and weed vegetation before the hunting season, so already, this vegetation can be cut. The third reason that we urge the Service not to liberalize the regulations is the anticipated law enforcement problems. An area could easily be baited with wild seeds, and then, what is and is not baiting becomes even more ambiguous and difficult to enforce.

In conclusion, let me say that the National Wildlife Federation supports the Migratory Bird Treaty Act. We support the hunting of migratory birds when in compliance with that act and consistent with sound conservation practices. We oppose the liberalization of baiting regulations, as scientifically unjustified and unnecessary, and we urge all agencies to adopt user-friendly regulations.

Thank you for this opportunity to testify.

[The statement of Mr. Inkley may be found at end of hearing.]

The CHAIRMAN. Thank you, Dr. Inkley, and may I say this as a compliment—it may hurt you—this is probably one of the better testimonies I have heard from the National Wildlife Federation. There has been a change since you changed the head of your agency, believe me, and I do appreciate it, because you have recognized some things that are very dear to my heart. And for a long time, your association lost sight of that, and I think it did hurt your membership, so you have come a little bit of a ways my way. I may not go too far your way but—

Mr. VENTO. I might say I always like their testimony, Mr. Chairman.

The CHAIRMAN. Well, I know you like it, but you are you.

Mr. VENTO. Before and after, right down the line.

The CHAIRMAN. It may be, but one individual is not one of my great environmentalists or great conservationists—I think you know who I am talking about.

Mr. VENTO. Well, you must have a short list, then.

The CHAIRMAN. Yes; I have got a short list, about that short.

I have a vote on, and if you gentlemen will stay put, we will be back hopefully no later than 4:00, and hopefully, we will be through with this by 4:30. I do thank you if you will hang around, please.

[Recess.]

The CHAIRMAN. The gentleman from Minnesota.

Mr. VENTO. Thanks, Mr. Chairman.

Mr. Manning and Mr. Horn, our former assistant secretary who had responsibility for this particular topic, we appreciate your being here. You did not solve it then; we are still apparently working on it.

You know, I sort of just wanted to reiterate for the benefit of the Chairman, who was out of the room, but I do not remember the period of years, but I would ask Mr. Streeter about the number of incidents where this occurred, and he said 35 over quite a few years nationwide, 35 instances. And I do not remember the number of years, but it would be good if we could just have that entire background data.

The CHAIRMAN. Well, without objection, I am going to ask the Fish and Wildlife Service to submit the data and who the individuals were who were cited.

Mr. VENTO. And I think the other thing we would like is to know who it was, in other words, if landowners or managers or others, accessories, were actually, because we think that is part of the issue here. My job is not to take anyone off the hook. In other words, everyone is responsible, not just, for instance, the hunter. But I think diligence in terms of hunting, whether you can take a buck or a doe or, you know, there are all sorts of responsibilities that go back to a hunter, like those brochures that they have that they put out each year, and that I have to look at for fishing and hunting and all of my other sportsmen brothers and sisters must have to look at.

So, Mr. Manning, I understand that in the State of Illinois, the last 5 years, there have only been two Federal cases involving violations of baiting regulations in the entire State; is that correct?

Mr. MANNING. Our records show that we have had 332 cases of baiting. Some were federally-issued tickets; some were not.

Mr. VENTO. Well, I am talking about the Federal, because I guess right here, we are talking about Federal laws. What we are talking about is the Migratory—

Mr. MANNING. Migratory Bird Treaty Act.

Mr. VENTO. Yes.

Mr. MANNING. My chief of law enforcement was here earlier; he had to go back to Illinois. He feels that there are enough significant problems that it should be changed.

Mr. VENTO. Sure; if you have got a hunting area where there are 100 people on it or 88, as in the case here, that I understand what your views are, but I am not asking you in this particular instance of your view. I am just trying to get some information in terms of numbers. Do you understand? And so, that is what we are dealing with, the number of cases. When we talked about the 35 cases, there were 300 and some instances, individuals, cited in there. And so what we are trying to do is get down to—because these laws have been around for a long time, and everybody disagrees with baiting.

The CHAIRMAN. These regulations, please. These regulations.

Mr. VENTO. Did I say rules?

The CHAIRMAN. You said laws.

Mr. VENTO. Well, a regulation has—

The CHAIRMAN. I understand, but I—

Mr. VENTO. These are the wheels by which laws are carried into effect, Mr. Chairman.

The CHAIRMAN. These are the wheels that cause us great concern.

Mr. VENTO. Well, I understand that, but changing the law here is what you are talking about doing.

And the other is that it is not really the baiting; it is just that they do not understand the science. In other words, there is a difference or disagreement about the science involved in this, Mr. Manning.

Mr. MANNING. Yes.

Mr. VENTO. So, I mean, the issue is that you want us to make that. You want to make that decision, or you want us to make that. But is it not your State—how would your State or service enforce baiting regulations if we allow mowing and other forms of manipulation, habitat manipulation, on moist soil management areas? In other words, if seed is in the area, how can the Service discriminate between seed resulting from mowing and seed added to the area intentionally, especially since at least some of the seed types—in fact, I think most of them—planted in moist soil areas are available to buy?

Mr. MANNING. I would say that we would be able to discriminate between the two seed types in the same fashion or the same manner that they do now. In fact, there is nothing to prevent someone who is unscrupulous from adding or providing additive seed to moist soil management units that we now have.

Mr. VENTO. I think that is my point.

Mr. MANNING. Well, from a science standpoint, we know that moist soil management is far better for the waterfowl resource than planting cereal grains such as corn. That is proven. Dr. Bellrose, Dr. Fredrickson, everyone agrees with that.

Mr. VENTO. You are arguing the science of what you are doing, but I am just suggesting if we were to enforce this and to change the regulation in light with your view of what the science is—and you are entitled to that, you know, but how would we, in fact, then, enforce this?

Mr. MANNING. In the same fashion we do now. If there is additive seed there, we will have to do that.

Mr. VENTO. Well, it seems that we have the problem, I guess. We do it now because we say if there is seed on the heads that are cut that in fact you are in violation. And the assumption is that the seed comes from the grass or whatever that has been cut. I understand how we do it. You can do it now if you say you can cut it, and then, if the seeds on the ground are all right, and you say we are going to enforce it in the same way. I am left a little perplexed. I am an enforcement officer out there now; I am not Bruce Vento the biologist.

Mr. MANNING. Let me answer it in this fashion: We are not talking just about cutting seeds. We are talking about any manual manipulation. For instance, in your great State, which I have visited on several occasions, you have vast quantities of wild rice. If, in fact, you pull a pirogue or a boat through that wild rice and through that manipulation cause mature seed heads to fall off, you are baiting. I have seen waterfowlers in your State do that by the thousands. Now, should they be charged with baiting? I do not think so.

Mr. VENTO. Well, I do not know. It depends upon the degree and the amount, whether the grass is cut or not. I mean, there obviously are some—obviously, if I were conducting a case, and I was the attorney, or I was the wildlife officer, I would obviously try to go beyond what is reasonable doubt and what is negligence. Those are questions for a court, not necessarily for me. But I would try to, at least. Any law enforcement officer knows you have to have certain procedures in order to satisfy whatever the rules of law are with regard to this. You know, you are changing or proposing to change those by suggesting it be all right to cut this and have it down and have that seed in there, and I am just suggesting that you would not know by looking at that. I think you would completely blur the addition of additional seed being added under those circumstances. That is my point. At the very least, I think, you have to give at least recognition that you are creating more of a problem under those circumstances than we already even have today.

Whether it is the right science, the wrong science, or whatever science it is.

Mr. MANNING. Mr. Chairman, may I address that very briefly? The CHAIRMAN. Sure.

Mr. MANNING. Sir, whether you mow, disk, burn, just about any manual manipulation that you can imagine, if you do not add a seed source to a particular area, you are only going to produce so much seed. There will only be X amount there. That X amount is what constitutes an attractant to waterfowl. If, in fact, you leave the seed standing, a mallard feeds, for instance, very efficiently 18 inches below and 18 inches above the surface of the water. If, in fact, you mow that area, some of that seed will remain on the stem and on that mowed area on the bottom. Other seed will rise to the surface. You have no more seed than you did without mowing by doing that.

Mr. VENTO. Well, I understand that, but obviously, you are arguing over the regulation of mowing versus non-mowing versus the addition of additional seed. Obviously, the seed in terms of consumption will vary in how it is added and when it is added. But,

like, in the case of wild rice, the seed matures up and down the stem over a long period of time, so there is no way of telling as to maturity.

Mr. MANNING. Correct.

Mr. VENTO. This is not all ripe at the same time. See, we do know a little bit about this.

Mr. Chairman, I just want to add—I have to go, but I just want to say that I appreciate them bringing forth these particular questions. These are not easy questions. But I do think that the bottom line is that whether you happen to be a State senator, representative or whatever it is that we are subject to the same laws as everybody else.

The CHAIRMAN. And nobody is arguing that point, but this law is a rotten law, and we are going to change this law. It is that simple.

Mr. VENTO. Or the regulation.

The CHAIRMAN. You just said a law; I am mimicking you; but this regulation.

Mr. VENTO. I do not want to confuse you.

The CHAIRMAN. This regulation has been put into place, and as I say, this is not the first time this has happened, and we will look at these cases individually, but this is going to change. I have told the Fish and Wildlife Service; they have got an opportunity; if they do not do it, I am going to do it. It is the wrong way to do this.

And by the way: may I suggest one thing? Scientists—and you are a biologist—will show you that it makes no difference whether the milo is cut in the field or not cut in the field. The fact is that the mallard duck will do better in an uncut field. But if it is cut, you can be cited for baiting. Now, I mean, wait a minute, guys; there is something wrong. This law is not clear, and it is up to the agency.

Mr. VENTO. If we spend as much time as those scientists do in terms of making that determination, we will see where we come out. I mean, I am just not so certain because there is a difference of opinion here that we need to come down on the side of those factors that make it more difficult to administer and implement laws regarding baiting.

The CHAIRMAN. No, I know you have to go, but even the Fish and Wildlife Service says it has to be changed. Now, Mr. Streeter does not want to change it; some other people do not want to change it; they like this hammer.

Mr. VENTO. I do not know that they said they did not want to change it. I think that it does complicate the ability to enforce the law. I mean, this case in Illinois is not one—I mean, this is 50 yards around the entire line. This is not just an accident that it is occurring there.

The CHAIRMAN. Well, anyway, this gentleman is in charge of enforcing the law, and he knows a little more about it, I think, than the gentleman, although he is a congressman, knows about it, and I think we ought to listen to these people and their advice.

Mr. VENTO. I appreciate it.

The CHAIRMAN. All right; I have no further questions. Does anyone have any comment? I did not see you come in. I am sorry. The gentlelady from Idaho, please.

Ms. CHENOWETH. Mr. Chairman, I just wanted to say for the record that I feel that this testimony that we have heard from the last panel is very instructive, and I really appreciate your comments. I do want to say that I think that out of this little soiree that occurred down there in Florida, if my math is right, the Fish and Wildlife Service earned a total amount of fees of about \$22,000. And that also needs to be addressed, I believe, Mr. Chairman. I do not think anybody should have to pay a fine—oh, at \$500, it would be \$44,000. They were fined \$500 each, was it?

Mr. OELRICH. It varied.

Ms. CHENOWETH. Oh, OK. Well, if they were fined on an average of \$250, they made out with about \$22,000. So, I hope that we can also look at that as we look at this baiting issue. I thank you, Mr. Chairman.

The CHAIRMAN. I thank you, and I want to thank the panel. With unanimous consent, I ask that Mr. Cooper, Secretary, Department of Fish and Game in the State of South Dakota, that his testimony be submitted for the record.

Gentlemen, I do thank you, and I am serious about do not take too long. Get that group going; submit it to the Fish and Wildlife Service as quick as possible, and then, submit it to this Committee. Because I have found out in this business that the only way you are ever going to make this agency do anything right is to rag on them. And I am not talking about just this administration. All the way through, they have got this mindset about they know what is best for everything instead of working with the people, and that bothers me a great deal. So, get it done as soon as possible.

I do thank you for being before us today.

[The statement of Mr. Cooper may be found at end of hearing.]

The CHAIRMAN. The last panel—and I do apologize for the lateness of it, as you can see. Do not run off on me yet, Ms. Chenoweth.

Mr. George Reiger, editor of *Field and Stream*, Locustville, Virginia and Mr. Steve Boynton, vice president and general counsel, Henke and Associates, Vienna, Virginia. Steve, is it Henke or Hecht?

Mr. BOYNTON. Henke.

The CHAIRMAN. Henke.

Mr. BOYNTON. Yes, sir; thank you.

The CHAIRMAN. And I do thank you, gentlemen. It has been a long day for you, and I do apologize for that and for the interruption by the votes. But this is part of this animal that we are dealing with right now. And as you can see, I myself and the great lady from Idaho are still here, and we will be listening attentively, and if you would like to proceed, George, you are perfectly welcome. And I read your magazine every month.

**STATEMENT OF GEORGE REIGER, CONSERVATION EDITOR,
FIELD AND STREAM, LOCUSTVILLE, VIRGINIA**

Mr. REIGER. Thank you, sir.

My name is George Reiger. For 22 years, I have been the conservation editor of *Field and Stream*, a magazine read by between 10 and 12 million sportsmen in the USA and Canada. During the past two decades, I have watched the languid leadership of the

U.S. Fish and Wildlife Service improvise management policies that brought many migratory bird species, and ducks in particular, to historic population lows. At the same time, I have seen Federal law enforcement agents increasingly pursue policies that have done little or nothing to increase the flocks but which have succeeded in driving many ordinarily law-abiding hunters from the field, including landowners who once invested considerable assets in migratory bird management but who are no longer willing for fear of violating a law no one understands.

The Migratory Bird Treaty Act gives the Federal Government the right to tell sportsmen when they can hunt migratory birds and how many per day or season they can shoot but not the time of day, gauge of gun or other, what are normally considered, ethical options. Such matters should be for sportsmen's clubs and personal conscience to determine. Unfortunately, we live in a legalistic society, and lawyers have little faith in the power of personal conscience.

As a result, beginning in the 1920's, we have created a spectrum of moralistic rules to regulate migratory bird hunters which have had little, if any, value for scientific management of the birds. The most arbitrary and capricious of these rules concerns baiting. Incredibly, the Fish and Wildlife Service is now considering expanding baiting rules to include "the manipulation of native vegetation and moist soil habitats." Thus, pasture owners in the Southeast who have been burning hydric soil areas for more than 130 years to attract snipe for hunting may shortly be prosecuted for doing so under Federal regulation. Likewise, duck hunters in the West who cut cattails and bulrush in order to open up holes in the marsh and to provide themselves with material for making blinds could be charged with baiting.

Although career opportunism undoubtedly underlies some abuses by Federal law enforcement agents, I am willing to give most agents the benefit of the doubt by assuming their excessive zeal is a function of their having watched the Fish and Wildlife Service underwrite the collapse of continental duck populations in the 1980's and now claim that only partially recovered stocks are so fully recovered that we can shoot them at daily rates exceeding those we had even in the 1950's, when we really had ducks.

One result has been a no-warning law enforcement policy. Agents stake out allegedly baited ponds and fields and then wait until the maximum number of ducks or doves are killed before beginning to write summonses. Should the agents themselves not be liable for prosecution when they have the authority to stop illegal shooting but do nothing until the worst-case scenarios are acted out?

Since many of the people cited for baiting are hunting as guests and are not even aware of the subtle difference between feeding, which is legal, and baiting, which is illegal, they often give up hunting, and the conservation dollars they once generated through their purchases of hunting licenses, bird stamps and excise taxes on firearms and ammunition is lost to wildlife management. Adding insult to injury, the reputation of hunters gets another kick in the head every time a sensational headline about a baiting bust hits the evening news. That is why I recommend that Congress replace the dead-end law enforcement policies of the Fish and Wild-

life Service with a requirement that Federal agents must notify landowners of properties managed for wildlife in advance of the hunting season, when and if there is some question of baiting.

To prevent these Federal agents from shutting down properties willy-nilly, they must work with and have the approval to post a property off-limits to hunters by a State conservation officer. If bait is merely dumped out after the season begins, State and Federal agents will continue to have the right to cite such violations but always in close conjunction with State conservation officers.

This prevention-oriented approach would have several positive results. First, the policy constitutes genuine conservation. Commando tactics do not. With few, if any, innocent bystanders caught up in stings, the hunting tradition will be better-served and its wellspring of conservation dollars better-preserved. Second, by avoiding confrontation and headlines, Federal agents would recover some measure of the respect they have lost among many sportsmen. Third, a policy of prevention will ultimately result in fewer baiting violations, because the states will develop a clearer interpretation of the rules than Federal agents, many of whom feel that they have no need to maintain good relations with local citizens.

For too many decades, hunters have been haunted by baiting regulations in which they have borne a burden of strict liability. It is long past time, both for the sake of hunting as well as for the birds themselves, to make diplomacy the number one priority of wardens and to shift the burden of proof and of intent back to the Government where it belongs.

I would like to add two items in response to Congressman Miller's driving analogy. First of all, hunting is not something we have to do. Driving, our license to drive, is working papers in this society. We have all been caught in entrapment cases involving driving offenses, where speed limits go from 55 to 30, and there is a cop waiting behind the bushes to collect his share.

In hunting, when someone is caught in that situation, he may give up hunting. He feels humiliated. In many cases, he did not know he was violating the law. If he gives hunting up, we lose those conservation dollars. In the case of a driving violation, we simply grin and bear the fine.

The other thing that occurs to me in response to the driving analogy is to ask Federal law enforcement agents how much of a threat to their well-being is the ordinary hunter, compared to the speeding motorist that a State trooper stops in the middle of the night? I dare say that most wardens would admit they feel a lot safer around hunters, who are normally law-abiding people. Let us be honest, the days of the great outlaw hunters are pretty much over. Mainly, the cases being made today have to do with baiting irregularities. But coming up on somebody in the middle of the night, and you do not know what he is carrying in the car or how sauced up he is, that may be a real threatening situation. For wardens to say that a field of hunters represents the same threat, I resent that as a hunter, and I think that is part of our image problem, part of the problem between hunters and law enforcement agencies.

Thank you very much, sir.

The CHAIRMAN. Thank you. You know, I can agree with you 100 percent on your presentation. Hopefully, you will write articles for this magazine so that the people understand what is happening. As I said earlier, the breakdown between the agency and the people is very serious, and I am not convinced in my own mind that there was not a little cowboy involved in here. I have been around this business a long time, and I could sense that. And, you know, they have got the right. They have got so-called the Government on their side.

But, you know, the fence that they burned down, the house that they burned down, the relations they burned down is dramatically, I think, exposed in this case. And I am not going to argue this case again, but I am going to suggest one other thing, George. A real lawbreaker in game will continue to break the law. The poacher who is in the business of poaching will continue to poach. But to the hunter who really takes this seriously to his heart, it is an emotional thing that is part of—you know, I hate to say it, because I believe in it: it is part of your quasi-religion. To have, then, yourself impugned by a Government agency accusing when you know full good and well to your knowledge that you are innocent, that is devastating. Like you say, most of them do not go back. Then, we lose them, lose the dollars. We lose their participation, and they lose faith in the Government. That is the biggest thing.

Steve?

Mr. REIGER. Sir, I just wanted to add that I've worked with Federal agents. In fact, I helped ferret out the schedule of the last great outlaw in our area at some risk to myself, a man who was shooting between 3,000 and 5,000 ducks a season and selling them. I helped the local Federal agent make this bust. But what sickens me is the dozen to 15 letters I receive each year from readers who are just bewildered. They have been caught in a situation they don't understand. They were guests at a hunt, and they feel so humiliated that they just have to tell me, a perfect stranger, that they are giving hunting up.

The CHAIRMAN. That is right. And you can understand that feeling, because they have been, their whole life has been impugned by an agency. Now, if they had knowledge of it, that is a different story, and they are knowledgeably breaking the law. But most of the time, this is not the case, and we will find that on those review cases. A lot of them were thrown out.

Steve, you are up. I do thank you for waiting so patiently.

STATEMENT OF STEPHEN S. BOYNTON, VICE PRESIDENT AND GENERAL COUNSEL, HENKE AND ASSOCIATES, LTD., VIENNA, VIRGINIA

Mr. BOYNTON. Mr. Chairman, I am not unmindful of the hour, and I will be as brief as possible.

My name is Stephen S. Boynton; I am an attorney in private practice in Washington, D.C., and vice president and general counsel of the conservation consulting firm of Henke and Associates. I cannot tell you how much I appreciate the opportunity to appear before this Committee today. Congress has not looked at this issue since 1985, when there were oversight hearings. And sadly, nothing of a positive nature has developed regarding that issue since that

time. Rather, in point of fact, the baiting issue has become more exacerbated, due, unfortunately, to the twin prongs of unreasonable administration of the regulations by the U.S. Fish and Wildlife Service, Division of Law Enforcement, and the unyielding position of the Federal courts, including U.S. attorneys, and a joint rush to convict under the doctrine of strict liability in baiting cases.

In my considered judgment, the time has truly come for Congress to act. I laud the International Association of Fish and Wildlife Agencies for their task force committee and their recommendations, but it is quite clear that the courts are not going to change the strict liability doctrine, and the Fish and Wildlife Service will not and cannot regulate themselves, even based on recommendations from the 1990 Law Advisory Commission that was cited by Mr. Horn. There is an attitude factor which that commission noted. And quite frankly, the way the laws are administered, if the bait is there, and you are there, you are guilty. It is a "slam dunk" for the Fish and Wildlife Service. So why should they want to change?

My vantage point of experience to testify before you today, Mr. Chairman, is that as an attorney in private practice, I have been involved in representing many individual sportsmen and an incorporated sportsmen's club in baiting cases throughout the nation, including several in Mr. Miller's State. In addition, in the theme of physician, "heal thyself," I was a defendant in a baiting case that I unsuccessfully took to the Court of Appeals in the Fourth Circuit, which was a question that was similar in nature to the Beauchamp case that was brought up today as to whether or not something was a bona fide agricultural practice.

First and foremost, the point needs to be underscored that sportsmen, the law enforcement officials and, indeed, Members of Congress all share the basic concern reflected in the Migratory Bird Treaty Act that renewable migratory bird resources must be protected from overexploitation by the implementation of appropriate management and enforcement policies. No sportsman that I know disagrees with that premise. The disagreement and frustration are due to the absence of clear and appropriate regulations coupled with reasonable wildlife law enforcement.

Mr. Chairman, I have a lengthy statement, which I ask to be inserted in the record, which goes through the history of the law. But basically, when the regulations were implemented in 1935, the first case that came on was in 1939. That case was a Kentucky case. It was followed very quickly by another Kentucky case, and they established the doctrine of strict liability: that if the hunter is there, the Government does not have to prove that he knew or should have known that the bait was there.

Now, on that inverted pyramid point of law, a large body of case law has developed. Cases are disputed on the facts. The Representative from Idaho mentioned the Manning case, *United States v. Manning*. That was a question of geese flying over a bluff to alleged bait 1,500 feet away from the hunters. The case that Mr. Horn cited was a case that I handled on the Eastern Shore, where the blind was 4,899 feet from the alleged bait. Now, the presumption is that the hunter knew or should have known the alleged bait was there. Does that mean that if a hunter comes to a blind in the dark of night where he has never been there before, and he is re-

quired to walk within a mile radius of that blind to find out if there is alleged bait? The courts have said yes; that is a legal fact.

Now, this is a basic violation of Anglo-American jurisprudence that a man ought to be proven guilty beyond a reasonable doubt. Many hunters have been driven from the field, as Mr. Reiger has said, because they do not want to be tainted with the idea of "I have got a violation against me." I think the saddest thing that came up in this hearing was that young lad who was precluded from going into the ROTC because he had a Federal misdemeanor against him. That is absurd. I might also add that the lad who testified was very, very lucky that he was not found guilty, because it is a no-knowledge question. If you are there, you are guilty.

The second area, the biggest issue that has to be reviewed is the "zone of influence": how far is far? In the case that was the 4,800 feet, I had an aerial photograph of that area. I went up to the top of the photograph asking that the Fish and Wildlife agent how far was the zone of influence. It was 7 miles to the top of that photograph. He said yes, that was still within the zone of influence. That is absurd.

Mr. Chairman, I think it is very, very important that this Committee undertake the responsibility—I noticed in the last panel, you said if the Fish and Wildlife Service does not do it, this Committee will. I suggest you do not wait. I think the task force ought to be appointed. Whether you do it through the Congressional Sportsmen's Caucus or you do it by committee staff and outside consultants, that is the way it should be done. There is a wealth of talent out there, from judges to attorneys to fish and wildlife managers, and indeed, law enforcement agents. The agents need the guidance as much as the sportsmen.

Thank you, Mr. Chairman.

[The statement of Mr. Boynton may be found at end of hearing.]

The CHAIRMAN. Thank you, Steve. And I can suggest that my direction to the staff is that we are going to immediately start writing the bill. We have had our hearing. But I want the input of people like yourself and George and the previous panel. I need legitimate suggestions when we write this legislation, because you watched Mr. Miller, and you watched Mr. Vento. They like the status quo, as well as the Fish and Wildlife Service loves the status quo. And my goal is to try to change the status quo, because there is some more acceptance in what is occurring under our Federal Government.

Which reminds me: Mr. Reiger, do you believe that there is an incentive for the Fish and Wildlife Service to conduct stings and grab headlines, to build maybe possibly a bigger enforcement part?

Mr. REIGER. I think that has possibly occurred in the past. I think that certainly happened under not quite a related situation, under Operation Falcon is what the Service called it, in which falconers, who are a particularly vulnerable group—they are a very small number of people in our society—and a very elaborate sting was set up for them, which, I believe, cost the Federal Government about \$3.5 million, and the only major falcon dealers that anybody could find was the U.S. Fish and Wildlife Service itself.

That sort of thing is, obviously, the Service looking for headlines. If you have weak leadership, as I have often observed before, if you

do not have a strong man in charge, the sergeants will run the Army every time. And sergeants are great at what they do, but they are not meant to set policy.

The CHAIRMAN. Well, again, I happen to agree. I am not picking on this administration; I do think this administration is probably as bad as any of them. But there has been sort of a change in the role of Fish and Wildlife Service. We have a lot of people within the Fish and Wildlife Service who try to discourage hunting. I mean, there is no doubt in my mind now. The President makes a big pronouncement; why did he have to make that pronouncement? He had to make it because it was being more evident that there is a group within the Fish and Wildlife Service who believe that hunting and possibly even fishing are no longer compatible with the refuge areas which they have supervision over, let alone the migratory birds. But that is just a side comment.

Mr. REIGER. One thought troubles me. I do not know any Federal agents who are members of local sportsmen's clubs. There may be, but I doubt it. Another thing that bothers me is to know, at least in my generation, many people working in the Fish and Wildlife Service who have given up migratory bird hunting, because they are so afraid of the laws themselves. And that is a very sad comment that people within the agency, even hunters within the agency, no longer want to participate, because they're afraid of being apprehended under this amorphous law.

The CHAIRMAN. In your experiences with these baiting violations, do either one of you see a trend about those who were prosecuted? On the whole of the different cases, were they prominent people or people of recognition, or is it just the average Joe being caught on this baited field problem?

Mr. REIGER. Well, over the years, I have received letters from butchers, bakers, candlestick makers as well as doctors, lawyers, and Indian chiefs. These letters of despair have covered the social spectrum. They also mention this business of an intimidation letter that goes with the citation. I have been aware of this letter for a number of years now and have written about it in *Field and Streams*. It is very hard for someone receiving such a letter to feel very confident about going to question a judgment against him when he is looking at a loss of hunting privileges, perhaps time in jail, and a very sizable fine as his option.

The CHAIRMAN. Mr. Boynton, in your experience, is the enforcement of the baiting regulations uniform?

Mr. BOYNTON. No, it is not. There is a division within the courts of the United States. The Beauchamp case that was referred to, the Kentucky case here today, it cites the case of the *United States v. Brandt* as the basis of their decision. That decision is in conflict with all other jurisdictions. There is a case in Delaware that is in conflict with all jurisdictions; there is another case in the Fifth Circuit, the *Delahoussaye* case. And then, indeed, also in the First Circuit in Puerto Rico, they had a baiting case. In that case, by the way, the hunters were 2,500 feet from the bait.

The CHAIRMAN. What were they baiting in Puerto Rico?

Mr. BOYNTON. Doves.

The CHAIRMAN. Doves?

Mr. BOYNTON. Doves, whitewing.

The CHAIRMAN. Whitewing doves.

Mr. BOYNTON. And so there is, in fact, a division within the jurisdictions, which causes some problems for Congress, because Congress is enforcing a treaty. Now, a lot of these cases have been appealed to the Supreme Court, and the Supreme Court has refused to hear them. But in one case, *United States v. Catlett*, Justice White dissented, and he said we have a problem since the enforcement ought to be uniform in all of the states, because we have an international obligation by treaty. But the Supreme Court is not going to do it; the Fish and Wildlife Service is not going to do it. It has to be the Congress.

The CHAIRMAN. Yes; the other thing, too, I was telling one of the staff a few minutes ago that one of the most deplorable things I have seen—here, we are worried about our Fish and Wildlife Service arresting 80 people or 100 people in Florida, and they shot 420 birds. I saw a picture of dove hunting in Mexico the other day. They had 11,000 birds in the back of a truck. This is supposed to be an international Migratory Bird Treaty. I get a little concerned about that, you know. I want you to know that I do not know how we can solve that problem, but the Fish and Wildlife Service had better recognize that this problem goes far beyond getting somebody in Florida.

Which reminds me, Mr. Boynton, based on the legal experience you have had, do you believe that the problems associated with law enforcement with the baiting regulations can be resolved by regulatory reform?

Mr. BOYNTON. No, I do not.

The CHAIRMAN. You do not?

Mr. BOYNTON. I think there has to be a law that is pretty specific. The entire basis of the Secretary's authority is three words: "The Secretary shall promulgate." That is all the guidance he has in those regulations.

The CHAIRMAN. A free license, then.

Mr. BOYNTON. Pardon me?

The CHAIRMAN. I mean, the Secretary and the agency has a free license, then.

Mr. BOYNTON. That is exactly right. But I think we have 60 years of experience to show that it is not working in this area, and I think that Congress has to be specific, talk about "zone of influence" in terms of yards or miles or whatever it may be. And that is not only for the hunter; I think the law enforcement people need it too. But I do not think it is going to be self-regulating by the Executive Branch of Government.

The CHAIRMAN. Last question, Mr. Boynton. Do you have any specific suggestions or resolutions to the strict liability doctrine to hunters?

Mr. BOYNTON. I think there ought to be consideration of strict liability for the landowner or the lessor, and I think there ought to be a benchmark of negligence on the hunter. Now, if the Government can prove that he should have known, he was negligent in not finding the alleged bait, they have to prove it. There ought to be a burden of proof on the Government.

The CHAIRMAN. Now, in my case, in reality, what other laws, Steve, do we have on the books other than the IRS where you are guilty until you prove yourself innocent?

Mr. BOYNTON. Well, the one that comes to mind—everybody has been talking about driving today, but I think if a driver is drunk driving down the street the wrong way with his lights off, they will impute intent to violate the law. He may in fact have no intent, because he is “blotto”. But they impute intent. There may be some areas in toxic waste. And that is another thing, Mr. Chairman, is that these migratory regulations are picking up other areas of non-hunters. A fellow puts out pesticides on his crops. If it kills migratory birds, he is guilty of violating the migratory bird laws.

The CHAIRMAN. Of baiting or destruction of migratory birds?

Mr. BOYNTON. If he is putting out seed that contains poison to migratory birds, and they are killed, they can get him under the regulations of the Migratory Bird Treaty Act.

The CHAIRMAN. But to be specific, Steve, to my knowledge, I cannot think of any other area—

Mr. BOYNTON. No.

The CHAIRMAN. [continuing]—where you are guilty, and you have to prove your innocence before the agency. That is what that letter says: you can appeal this to the court, but you are guilty until you do appeal it.

Mr. BOYNTON. The problem is, Mr. Chairman, there is no “proving” you are innocent. If you are there, and the bait is there, you are guilty.

The CHAIRMAN. Even if you are not knowledgeable.

Mr. BOYNTON. Knowledge has nothing to do with it. It is no scienter. They say if you are there, and the bait is proven to be there, and you have a loaded gun, you are hunting over or with the aid of bait. Pay your fine or “do hard time.”

The CHAIRMAN. The lady from Idaho?

Ms. CHENOWETH. Thank you, Mr. Chairman. I want to thank you for encouraging me to stay. I did not realize that there was another panel on the agenda, and this testimony has been extremely interesting.

Mr. Reiger, there was a time, I remember, when the employees of the Fish and Wildlife Service, the Fish and Wildlife Service agents, were an integral part of the communities. It does not seem like they are part of the communities any longer?

Mr. REIGER. Well, I have two personal memories involving law enforcement in which I was an allegedly guilty party. When I was 13, I was stopped by a State warden. I was running my trap line, and he asked if I had my license. I said I had a license; I did not have it with me. I was liable. He did not say that, though. He did not write me a ticket. He said I will meet you at the drug store in town at noon; bring your license with you. I did; he saw it; he gave me a Coke; we talked about trapping. I thought the guy walked on water.

Then about 1972, Maryland introduced a State duck stamp, and I was a guest of the National Geographic Society that day hunting at a blind on Kent Island, Maryland. And I picked up my non-resident license in transit. I signed my State non-resident license and I had my Federal duck stamp already signed, but I did not know

that there was a State duck stamp. Lo and behold, two wardens appeared—a Federal warden and a State warden—and I was asked to pass out my shotgun, license and so forth. I noticed as I was passing out, the license, a stamp fluttered out. I asked if I could have a pen. Apparently, I said, you have a State duck stamp this year, and I'd like to sign it. At that point, I was humiliated—that would be the best way to describe it—in the way I was treated, the way I was brought out of the blind. I thought if there were passing motorists on Route 50, they would think there was a big drug bust going on, and that the wardens had collared some capital criminal.

And I realized, my gosh! Why would you use such tactics for something as essentially innocent of wrongful intent as an unsigned State duck stamp? When the fine was levied, the head of Fish and Wildlife Service law enforcement called me, and he said he would let it go; he was waiving it. I said, no, you don't. I don't care what you do with the agent, but I said I am paying the fine, because I want to write a story about it. I want to write a story about how far we have drifted in our law enforcement perspectives from what should be prevention and cooperation between the sportsman and law enforcement people for the benefit of the birds to this kind of commando distortion of what the relationship should be. Yes, it has deteriorated mightily in my lifetime.

Ms. CHENOWETH. That is very interesting. And, you know, you brought out the point that at one time, they were educators and people who trained us.

Mr. REIGER. Oh, they worked with the community. You still find parts of the country where that is true, I believe. I know it is certainly true of the State wardens. When I travel to Maine, I find that local sportsmen have excellent relations with the State wardens. They are members of local clubs and regularly show up for meetings. In Minnesota and elsewhere, I see this happening. To some degree it's regional. But in most cases, the Federal folks, since they are transferred around a good deal, they never do develop the kind of community rapport that the State people necessarily have, and there is a sense of alienation that certainly is not leavened at all by the no-fault attitude of law enforcement: no warnings allowed; just get in there and write the tickets up. That is a very unfortunate situation.

As I said, one of my concerns in having a preventative policy is that we restore some measure of respect between the sportsmen and the wardens. They do essential work. There are times when the work they do is truly unsung glory. But so much of the kind of thing I see happening now and the kind of correspondence I get—my constituents are the readers of *Field and Stream*, after all—reflects a growing unhappiness with the role of government and the part particularly that Federal law enforcement policies on baiting play in all of this.

Ms. CHENOWETH. Thank you. I also wanted to ask Mr. Boynton—both of your testimonies are outstanding. This is a great piece of work, and I am looking forward to getting into my office and studying it.

Mr. BOYNTON. Thank you.

Ms. CHENOWETH. I thank you for the depth of research and the information you have provided us.

I felt it was interesting when I asked Mr. Oliveros why he did not arrest the sheriff if he felt that there was a sheriff who was intoxicated. Of course, he arrested them for hunting in a baited area, but something that might really be dangerous, he did not arrest them. And he answered that question properly: he said I do not have the jurisdiction. And he is quite right, I believe. I am not instructing you, but it is my understanding that he is quite right. He does not have the jurisdiction.

But this is my question to you: I just wonder where they arrived at the jurisdiction even under the Federal Migratory Bird Treaty Act, where they arrived with the kind of jurisdiction that would allow them to get into the kind of law enforcement activity that they have, in other words, are they not overstepping the bounds that Congress laid out for them in their authority to engage in law enforcement activities?

Mr. BOYNTON. Unfortunately, I do not think they are. I think Congress has given the full authority to the Secretary of the Interior through the Fish and Wildlife Service to promulgate those regulations which allow them to trespass and properly so to go on land and check guns and do the things that they should do. One of the problems that is hard to legislate is attitude. I think the gentleman answered the jurisdictional problem properly, that he did not have the enforcement authority. But if he thought that there was reckless endangerment because of that—and apparently, he felt personal safety problems—he would have the authority to do that. And I believe there were State officials on that bust, as I understand it, and they have broader jurisdiction. They have the same jurisdiction as a State trooper. And even though he may not have the Federal authority, the State people did, and if he felt that was a problem, they could have removed those firearms from those people whom they felt might be endangering the lives of others. You cannot just walk away from it.

Ms. CHENOWETH. I just want to say something personally here, and that is that I am not convinced that a law enforcement officer in the State of Florida was intoxicated, as was represented here in this Committee, and I think that is one of the saddest things that we have heard offered to this Committee in the way of testimony. I think that law enforcement officers—and certainly Federal agents—have a standard that is higher than the average citizen of setting the standard and not making wild accusations, as I believe that probably was.

But I look forward to working with you in the future. This is a very interesting subject to me. And I sincerely hope, Mr. Chairman, that this is the bottom of the trough, and I hope we can reach back to when you were a young man, and you sat at a drug store over a Coke with a fish and game officer, and that man was 7 feet tall in your eyes. I hope we can return to that point, because Americans will respond best when they are educated, just told of the facts. We really are a people who want to do what is right, and Americans will.

And Mr. Chairman, before you finish the hearing, I wanted to ask Mr. Boe with his influence at the University of Florida if there is not some way that we can make sure that that young man is admitted back into the ROTC program.

The CHAIRMAN. Well, you asked the question; Mr. Boe is there. Mr. BOE. Well, I do not know if he would be able to or not. It was a decision made by the United States Armed Forces to deny him the waiver.

Ms. CHENOWETH. Thank you. I will continue to work with Representative Stearns on this.

The CHAIRMAN. I think that is a good idea too, Helen, and we will work with him to see if there is any way to rectify that.

Unfortunately, by admitting—and those who did pay their fines, George, you will recognize this. I doubt if many of them go hunting any more. Because if they get a second offense for anything, it is huge.

Mr. REIGER. It doubles.

The CHAIRMAN. Yes, it is big time.

And again, if they go out hunting, and if this baiting law is not changed, that cowboy can just decide we are going to go get those guys.

Steve?

Mr. BOYNTON. Mr. Chairman, just one comment to follow up on a statement that was made. One of the problems that you have—and this is true with our judicial system, but allegations that are made in a court of law by the Fish and Wildlife Service, my experience is—and this is on a lot of cases in a lot of different states—is that the judge is more acquainted with the U.S. attorney, who is representing the Government, and he is going to believe the Fish and Wildlife Service more than that candlestick maker who comes in. It is just like going in before the judge: I was not speeding, Your Honor; the policeman said you are speeding. Well, you better get out your checkbook.

The CHAIRMAN. Right.

Mr. BOYNTON. And it is that sad situation. And what has happened because of these baiting laws—and Mr. Reiger's experience is—when I was a boy, they were conservation officers, and they were your friend. And now, it has become "them and us," and I think that that is terribly unfortunate and somehow has to change. And I think they need the guidance as well as the sportsmen.

The CHAIRMAN. Yes, I agree. And Sheriff Larry Edmonds, for instance, was cited, and he said: "I was only on that field today because I felt obligated to support youth ranches. I do not intend to shoot any more doves, because it is too hard to do it legally when they have laws like this, and it is a bad law."

And I cannot agree more. And that is the whole intent of these hearings, regardless of what Mr. Miller has said and Mr. Vento. We are going to change this law. I may not get the President to sign it this time, but it will be changed. It will move out of the House, and it is the right thing to do. And we are working on it.

And I happen to agree with the gentlelady from Idaho about the accusations made by the arresting officer about people being drunk in the field. That is a terrible thing to say in the Committee, and yet, you cannot dispute what he said, because he made the statement, and nobody can deny it other than those people directly involved. If there were some bad things going on, he should have spoken up. As far as it being a question of safety, I am worried about

the songbirds that were killed. People think about that: he sat there and watched songbirds.

You know, this officer, very frankly, I hope they review him and just find out where attitudes are. Like you say, you cannot legislate attitudes, unfortunately, but you can cut their money off. And we are reviewing that budget right now.

I want to thank you two gentlemen for being so patient.

Ms. CHENOWETH. Mr. Chairman?

The CHAIRMAN. Yes?

Ms. CHENOWETH. I know the hour is late, but I just have one small comment that I wanted to make. In the Manning case—with your permission.

The CHAIRMAN. Go ahead.

Ms. CHENOWETH. In the Manning case, the court ruled that the Court of Appeals must view the evidence in the light most favorable to the Government, giving the Government the benefit of all reasonable inferences which may be drawn from the evidence. And, you know, I just have to say that this is one reason why I have joined with Mr. Riggs. Whether you agree or not, I have agreed with Mr. Riggs in putting forth a bill that will limit the terms of years that a Federal judge can hold that position. Because I think they get in that position, and they are not accountable to anyone any longer. And so, they have fun fashioning laws to their own personal pleasure.

The CHAIRMAN. I thank the gentelady.

And thank you, gentlemen. This does, at this time, close this hearing. I hope we see some results from it.

[Whereupon, at 5:01 p.m., the Committee was adjourned; and the following was submitted for the record:]

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Statement of
Congressman Bill K. Brewster (D-OK)
before the
House Committee on Resources
May 15, 1996

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Thank you Mr. Chairman. I appreciate the opportunity to testify before your Committee on this important issue.

As you know, I served as Chairman of the Congressional Sportsmen's Caucus in the 103rd Congress and I continue to be very active in legislative issues affecting hunting and fishing. I am also a very avid outdoor sportsman. As such, I opposed to baiting, as any true hunter would also be. However, Mr. Chairman, as the Florida incident so clearly displays, we have a problem with the current law.

Mr. Chairman, it is my belief that a crime cannot be committed without intent. Herein lies the basis of my complaint with the current regulations governing the enforcement of federal baiting laws. Current regulations do not require the proving of intent for an enforcement procedure to occur. Another concern I have with the current regulations include the vagueness of several key definitions which opens to door for a broad range of interpretation by enforcement agencies.

Regarding intent, I am not aware of the specifics of the Florida incident, but I am aware of several other cases in which individuals were accused of hunting over a baited field although they had no knowledge that the field was in any way altered in an illegal manner. A hunter can inquire of the landowner as to the legality of a field, and still be held liable should the landowner lie to him. This is not right. Some, if not all of the responsibility should lie with the landowner. Many of America's hunters do not own their own land on which to hunt. They must acquire access to hunting lands through simple permission or payment of a daily or seasonal lease.

Many of these hunters are at the mercy of the landowner. They are not resident to the land. They are not present to view every "farming practice" that has occurred on the land in the past ten days. I am not saying that hunters should be free from all responsibility. However, they can do all within their power to maintain a legal standing and still be found guilty of hunting over a baited field even if the hunter has no knowledge of the field being baited and no intention of hunting over a baited field. We need to work together to reform the current regulations to protect the innocent sportsman in a situation such as this.

Mr. Chairman, we need to maintain strict fines for those individuals guilty of purposefully baiting a

field. We also need to develop strict penalties for landowners who purposefully bait a field and then mislead hunters as to the status of that field. Intent should be present, and those who had the intent to bait should be severely punished.

My other concern with the current regulations is the vagueness of several definitions. This vagueness creates the opportunity for a broad range of individual interpretation by enforcement personnel. For example, most anyone would say that baiting is the act of distributing loose grain in an area in an effort to attract migratory wildlife. However, the law states that *bona fide* agricultural practices will not result in a baiting violation although such practices may result in loose grain being distributed in a field. This creates a very confusing situation for the landowner, hunter, and enforcement officer.

Let me lay out a scenario for you Mr. Chairman. On my land back home in Oklahoma, I do all that I can to create better habitat for wildlife. My land is such that I have habitat suitable for wildlife ranging from white-tailed deer to waterfowl to dove and quail. In the fall and winter, I put out a mixture of corn and commercially produced deer feed to help the deer and wild turkeys build up their stamina for the winter months. Sometimes these efforts overlap with dove or waterfowl seasons. I put this food out by the woods or otherwise in such a way to make it easily accessible to the deer and turkey. In some cases, it's actually in feeders designed for wildlife. Now Mr. Chairman, if I were to hunt dove in an open field of mine on the other side of my property, almost a mile away, would this be baiting. Based upon current regulations, I don't know. I am in no way intentionally trying to attract dove to my open field or any other part of my property. However, I do have loose grain and feed out for other wildlife on the other side of my place.

Or another concern, if my neighbor up the road were to clean out his grain bin and throw the spoiled grain out in a bar-ditch or the edge of his field, would this act constitute baiting. Or would my hunting of dove on my land a half a mile away be considered illegal although I have no knowledge of what my neighbor has done on his land, and I know my land is free of any loose grain or feed. Again Mr. Chairman I do not know. However, based upon previous actions across the country, such as with Mr. Clemons of the Florida Sheriff's case, it would not surprise me to have some enforcement agency make an interpretation saying I had committed a criminal act.

Mr. Chairman, our nation's wildlife needs the support of our hunters and landowners. However, our federal wildlife management agencies are making it very difficult for them to give that help. The urbanization of this great country has taken much habitat away from wildlife. Our agriculture industry, after years of efforts from sportsmen's groups, is just beginning to realize the importance of maintaining minimal amounts of unspoiled habitat on their property. Through cooperative efforts we have been able to create and maintain programs such as the Crop Reserve Program. We need to protect these efforts and encourage other such efforts to occur.

Mr. Chairman, our current regulations are threatening to destroy those efforts. I encourage you and your Committee to work to reform our current regulations governing baiting. I encourage you to do so in such a way as to maintain the illegality of baiting while protecting the innocent sportsman or landowner. It will not be an easy job, but it is one which must occur if we are going to protect our nation's wildlife and the sportsman's community which works so hard to protect and fund programs which benefit all species.

STATEMENT OF
THE HONORABLE RICHARD T. SCHULZE
FORMER MEMBER OF CONGRESS

BEFORE THE
U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON RESOURCES

MAY 15, 1996

Mr. Chairman, Members of the Committee,

My name is Dick Schulze. I am a former Member of Congress, having been privileged to represent the 5th District of Pennsylvania as a Republican for 18 years.

During my time in the House of Representatives, I served on the Armed Services, Banking, Ways and Means, and Interior Committees. I am the founder of the Congressional Sportsmen's Caucus and the Congressional Sportsmen's Caucus Foundation. I have also been involved with international wildlife issues as a member of the Migratory Bird Commission and as a Director of the National Fish and Wildlife Foundation.

Before coming to Washington in 1975, I served 4 years in the Pennsylvania State Legislature, where I was a member of the Game and Fisheries Committee.

My legislative involvement in wildlife issues was the natural outgrowth of a lifetime of sporting activity. I have been shooting, hunting, fishing, bird watching, camping, and hiking for more than 55 years, and I also have been involved in the issues affecting those activities for much of that same period.

As a result, I am very familiar with the Migratory Bird Act and the problems related to baited fields. And while I cannot speak to the details of the specific cases before this committee -- involving the charity dove hunt conducted by the Florida Sheriffs Youth Ranch last October or the subsequent actions of the U.S. Fish and Wildlife Service -- I would like to share my thinking on these issues in general.

As committee members are aware, the problem centers on the use of bait to attract migratory fowl for hunting purposes. This is expressly forbidden by Federal law. And the U.S. Fish and Wildlife Service has a responsibility for enforcing the law when its agents encounter willful violations. They also have the right to determine when and where supplemental feeding should cease before an area can be hunted.

I would add that any hunter worthy of the name of "sportsman" both honors this law and appreciates the role of the Fish and Wildlife Service in its enforcement.

It is also important to understand that supplemental feeding -- whatever name we give it -- can be beneficial to many forms of wildlife. Properly employed, it can be an important tool in wildlife management, especially when we are attempting to encourage increases in certain animal populations. And I would note that private landowners make an important

contribution to government-sponsored wildlife programs when, at their own expense, they provide supplemental wildlife feeding.

A problem arises, however, when hunters inadvertently hunt in an area where supplemental feeding is an ongoing or recent practice. There have been many instances where so-called "innocent hunters" have found themselves on the wrong side of the law simply because they were unaware that supplemental feeding had been practiced in a particular area.

Almost 10 years ago -- when I was still in Congress -- my concern over these cases led me to develop a simple proposal that would protect the innocent hunter from prosecution in baiting cases. I suggested that use of a simple, triplicate form to indicate supplemental feeding of wildlife, by citing the date, area, and amount and type of grain or feed being used.

One copy of this form would be posted at the site of the feed distribution. A second copy would be mailed to the relevant wildlife agency. And the third copy would be retained by the legal owner or farm manager.

This simple requirement would provide the necessary information to law-abiding hunters and wildlife agents, and it would give landowners documentary evidence for their feeding activities.

I continue to think that it represents the simplest solution to a wholly avoidable problem:

- * It would keep legitimate hunters out of feeding areas.
- * It would save law enforcement resources for cases involving real violations.
- * And it could help to protect landowners from charges of baiting when what they are doing amounts to legitimate supplemental feeding.

It is my suggestion that this proposal be adopted in a limited area on a trial basis. Let us determine whether it eliminates the problem. And if it does, then let it be applied nationwide.

Mr. Chairman, I would be pleased to answer any questions you or the other members of the committee may have.

HEARING STATEMENT

Submitted to:

COMMITTEE ON RESOURCES

U. S. House of Representatives
1324 Longworth House Office Building
Washington, D. C. 20515

Submitted in conjunction with invited testimony on May 15, 1996 by:

Senator Charles Williams
State of Florida
250 Senate Office Building
Tallahassee, Florida 32399-1100

The following hearing statement is submitted in conjunction with invited testimony before the U. S. House of Representatives, Committee on Resources, regarding regulation of migratory bird hunting. These statements specifically pertain to the interpretation, enforcement, and improvement of regulations that deal with taking migratory game birds over bait or baited areas (50 CFR 20.21) that are promulgated by the Fish and Wildlife Service pursuant to the Migratory Bird Treaty Act (16 USAC 703). Proposed changes to regulatory language are submitted as Attachment 1.

Hunters have a long tradition in this country of supporting wildlife conservation. Through the Wildlife Restoration Act alone, hunters willingly contribute \$76 million per year to wildlife enhancement. Efforts to conserve wildlife and our natural environment for future generations would be well served by encouraging lawful participation in this sport as provided for in state and federal regulations. Federal regulations that restrict hunting migratory birds over bait, however, are currently interpreted and enforced to discourage such participation. Hunters are subject to arrest and fines for unknowingly hunting over areas that are considered baited; it is not clear what specific practices constitute baiting, and practices that should not be considered baiting are prohibited. Migratory bird hunters are abandoning their sport as a result.

I experienced first hand how federal regulations are unfair and unclear in what constitutes hunting over a baited field. On October 13, 1995, I hosted a dove hunt to benefit a popular charity in Florida, The Florida Sheriffs Youth Ranches. Several hundred individuals were invited to the event, and around 150 people arrived for the hunt, which was held on a farm in Dixie County, Florida. Many in attendance did not hunt, but socialized with the group. After lunch, I addressed the hunters and stressed the importance of safety and observing all game laws. In addition, signs were conspicuously placed urging them to be safe and legal. Hunters began entering the field around 1:00 pm. The actual field hunted was a small area in a large tract of land. Many of the hunters, before hunting, checked out the area for any signs of bait, and according to those hunters, no bait was found. If anyone had notified me that they had found bait, I would have stopped the hunt immediately. The hunt had been in progress for about 3 hours when around 3:30 pm to 4:00 pm, agents from the U.S. Fish and Wildlife Service entered the field and declared that the hunters were hunting over a baited field and in violation of migratory game-bird baiting laws. Approximately 88 hunters were detained and later issued a citation. Some of the hunters left after being instructed by the Federal agents on the matter, but most remained to have dinner and socialize.

Since the event, I have grown more outraged in how the event was handled. Most importantly, I felt that something must be done to correct and clarify the regulations relating to "baiting". In researching, I have discovered several simple ways in which Congress can clarify and simplify federal regulations pertaining to hunting migratory birds, specifically, dove.

Under the current regulations, an area is considered baited for ten days after any bait is removed. This is warranted because birds will return to an area for a period of time after the food is gone. A hunter is considered guilty of baiting, however, for unknowingly hunting over such an area even after he has made every attempt to determine if it is, or had been, baited. Similarly, a hunter can be arrested if doves are flying over him to bait that was on adjacent land. This is the case even if that land is posted, and the hunter could not know the area was baited without breaking trespassing laws. Sportsmen should not be subject to arrest for breaking a regulation that they cannot be reasonably expected to comply with. Hunting doves or ducks over bait is not such an egregious offense that we should have to prosecute innocent people in order to discourage the lawless from doing it.

The U.S. Fish & Wildlife Service stated that the hunters involved in our charity dove hunt should have taken the initiative to find out whether or not the field was legal. The fact is, many of the hunters inspected the area being hunted and found no sign of bait. The hunters took the initiative and asked questions, but apparently this was not sufficient for federal regulations.

These problems could be simply addressed by specifying in the regulation that a hunter must "knowingly and intentionally" be hunting baited birds to be guilty. This would be consistent with recent federal court cases that held that knowledge is a necessary element of a baiting offense (*United States v. Delahoussaye* 573 F.2d 910 [5th Cir. 1978] and *United States v. Sylvester* 848 F.2d 520 [5th Cir. 1988]). These decisions have been followed by the magistrate for the United States District Court in the Northern District of Florida (e. G., *United States v. Love et al.*, Case No. P93-032-042 [Order dated November 8, 1993]). To preclude a person from facilitating the taking of migratory birds by others over bait (for example, by removing bait less than ten days before others are invited to hunt), the regulations should also specify that it is a violation to knowingly and intentionally cause others to take migratory birds by the aid of baiting. This would help eliminate the problem of baiting and help protect the hunter from unscrupulous persons.

The current regulations specify that taking migratory game birds is not prohibited over "grains found scattered solely as the result of normal agricultural planting or harvesting." The definition of "normal" as referenced in this regulation is not clear, and this provision is not being enforced consistently or with proper consideration of local farming practices. "Normal" has been interpreted by the Fish and Wildlife Service to mean what the state cooperative extension service "recommends." Under this interpretation, hunter can be prosecuted for hunting over an agricultural planting that was done for agricultural purposes and is an accepted agricultural practice in the area but is not specifically identified by the state cooperative extension service cooperative

extension service as a recommended practice..

Normal agricultural planting or harvesting should include what is practiced for agricultural purposes in the state and should not be restricted to what is "recommended." Extension service recommendations represent the optimum or most desired practices. These recommendations do not, however, always represent the most practical or feasible planting and harvesting strategies for local conditions, and statewide recommendations do not always recognize practices that are employed by farmers for agricultural purposes on a local or county level.

In Florida, farmers routinely employ planting practices that are outside of or not included in extension service recommendations. As long as these practices are being employed for agricultural purposes, they should be considered to be "normal," and taking migratory birds over areas similarly harvested or planted should be legal. The regulation should be changed to clarify that "normal" refers to planting and harvesting practices employed by agricultural operators for agricultural purposes in the state or hunting zone. Hunters and landowners should also be provided information to let them know what planting and harvesting practices are considered "normal," so that they can comply with the law.

Management of native vegetation for waterfowl has increased in recent years. Problems with determining what constitutes baiting where native vegetation is manipulated (e.g., burning, mowing, disking) for waterfowl management and hunting have increased commensurately. The vagueness of the current rule has even led to the absurd interpretation that mowing boat lanes and decoy pools is baiting. Construing such manipulations as baiting transgresses the intent of baiting regulations for ducks, that intent basically being to prevent someone from carrying in and depositing corn or other food as lure to concentrate birds within shotgun range. Management of native vegetation is beneficial for waterfowl and other wetland wildlife. The Fish and Wildlife Service should be encouraging, rather than discouraging, the stimulation and management of native vegetation for waterfowl habitat. The overall benefits to waterfowl and other wetland wildlife that would derive from encouraging management of native vegetation would far outweigh the minimal increase in waterfowl harvest that would result. The regulations should specifically provide for the taking of waterfowl over native vegetation that has been manipulated provided that the vegetation was grown on the area as result of natural regeneration or site preparation.

A final point of confusion is that the current regulations provide for the taking of migratory game birds, other than waterfowl, over lands where crops have been manipulated "for wildlife management purposes." The intent of this provision was to allow the taking of migratory game birds other than waterfowl over areas where standing crops or naturally occurring vegetation has been manipulated (i.e., mowed, disked, or burned.). The current language suggests that the crop or other feed must

have been grown or manipulated "for wildlife management purposes." This would require the hunter to know for what purpose the crop was grown or manipulated. This requirement inserts confusion into the regulation, places an unreasonable burden on the hunter, and serves no useful purpose. This problem can be resolved by deleting the words "for wildlife management purposes" from 50 CFR Section 20.21 (l)(2).

In summary, the situation could have handled more effectively. According to the Fish and Wildlife Service, they do not have the legal authority or Congressional direction to declare a field off limits when bait is found or take other measures to more clearly and fairly enforce the baiting regulations. The intent of the baiting regulations is to provide hunting opportunities while protecting migratory bird populations from over harvest. The intent is not to make it so difficult for a hunter to know if he is hunting legally that he quits his sport. The regulations as currently written, however, are being interpreted in such way that this is the result. The regulations, and enforcement policies that derive from those regulations, need to be changed such that this is the result. The regulations, and enforcement policies that derive from those regulations, need to be changed such that they clearly prohibit only those practices that would result in negative impact on migratory bird populations. They should also clearly let hunter know what is allowed and what is not. The regulations and published policies should allow the hunter to pursue his sport with the reasonable assurance that, if he makes every attempt to comply with the law, he will not be arrested for something that was outside of his control and he had no way of knowing about. This could be accomplished by changing the regulations to: 1) require that hunters have "knowingly and intentionally" taken migratory birds by the aid of bait to be in violation; 2) define "normal agricultural planting and harvesting" to include planting and harvesting practices employed by agricultural operators for agricultural purposes in the area; 3) specifically allow hunting waterfowl over native, manipulated "for wildlife management purposes" for hunting migratory birds other than waterfowl. Specific wording that should be added to 50 CFR 20.21 (l) to accomplish these objectives is indicated on Attachment 1.

The purpose of my event was to raise money for a good cause and bring together a large contingency of friends, acquaintances, and political supporters to socialize and enjoy the outdoors; not to break any laws. This was not a paid hunt. It was sponsored, financially, by several individuals and businesses. Those in attendance were not there to slaughter doves, but to support a good cause and enjoy fellowship with one another. Many characters and reputations have been tarnished by this ordeal. It is unfair that hunters who were not intentionally breaking the law were not allowed the protection they deserve. If one of the main purposes of the Federal Wildlife Service is to protect migratory birds, they should have halted the hunt before the first shot was fired. Instead, the group felt as if their only goal was to collect as much in fines as they could. I hope this Committee will take in consideration the recommendations that have been made to correct this injustice.

Attachment 1. Proposed changes to 50 CFR 20.21 Hunting methods.

Migratory birds on which open seasons are prescribed in this part may be taken by any method except those prohibited in this section. No persons shall take migratory game birds:

(a) With trap, snare, net rifle, pistol, swivel gun, shotgun larger than 10 gauge, punt gun, battery gun, machine gun, fish hook, poison, drug, explosive, or stupefying substance;

(b) With shotgun of any description capable of holding more than three shells, unless it is plugged with one-piece filler, incapable of removal without disassembling the gun, so its total capacity does not exceed three shells;

(c) From or by means, aid, or use of sinkbox or any other type of low floating device, having depression affording the hunter means of concealment beneath the surface of the water;

(d) From or by means, aid, or use of any motor vehicle, motor-driven land conveyance, or aircraft of any kind, except that paraplegics and persons missing one or both legs may take from any stationary motor vehicle or stationary motor-drive land conveyance;

(e) From or by means of any motorboat or other craft having motor attached, or any sailboat, unless the motor has been completely shut off and/or the sails furled, and its progress therefrom has ceased: *Provided*, That craft under power may be used to retrieve dead or crippled birds; however, crippled birds may not be shot from such craft under power except in the seaduck area as permitted in subpart K of this part;

(f) By the use or aid of live birds as decoys; although not limited to, it shall be violation of this paragraph for any person to take migratory waterfowl on an area where tame or captive live ducks or geese are present unless such birds are and have been for period of 10 consecutive days prior to such taking, confining within an enclosure which substantially reduces the audibility of their calls and totally conceals such birds from the sight of wild migratory waterfowl;

(g) By the use or aid of recorded or electrically amplified bird calls or sounds, or recorded or electrically amplified imitations of bird calls or sounds;

(h) By means or aid of any motor driven land, water, or air conveyance, or any sailboat used for the purpose of or resulting in the concentrating, driving, rallying, or stirring up of any migratory bird;

(i) Knowingly and intentionally By the aid of baiting, or on or over any baited area, nor shall any person knowingly and intentionally cause other persons to take migratory birds by the aid of baiting, or on or over any baited area. As used in this

paragraph, "baiting" shall mean the placing, exposing, depositing, distributing, or scattering of shelled, shucked, or unshucked corn, wheat or other grain, salt, or other feed so as to constitute for such birds lure, attraction or enticement to, on, or over any areas where hunters are attempting to take them; and "baited area" means any area where shelled, shucked, or unshucked corn, wheat or other grain, salt, or other feed whatsoever capable of luring, attracting, or enticing such birds is directly or indirectly placed, exposed, deposited, distributed, or scattered; and such area shall remain baited area for 10 days following complete removal of all such corn, wheat or other grain, salt, or other feed. However, nothing in this paragraph shall prohibit:

(1) The taking of all migratory birds, including waterfowl, on or over standing crops, flooded standing crops (including aquatics), flooded harvested croplands, grain crops properly shucked on the field where grown, or grains found scattered solely as the result of normal agricultural planting or harvesting where normal agricultural planting or harvesting shall include planting or harvesting practices otherwise employed by agricultural operators for agricultural purposes in the state or, in states where hunting zones are established, in the hunting zone; and

(2) The taking of all migratory game birds, including waterfowl, on or over native vegetation that has been manipulated provided that such native vegetation has grown on the area as result of natural regeneration or site preparation and was not planted and provided that manipulation does not include the distributing or scattering of grain or other feed once it has been removed from or stored on the field where grown; and

(3) The taking of all migratory game birds, except waterfowl, on or over any lands where shelled, shucked, or unshucked corn, wheat or other grain, salt, or other feed has been distributed or manipulation of crop or other feed on the land where grown for wildlife management purposes: *Provided*, That manipulation for wildlife management purposes does not include the distributing or scattering of grain or other feed once it has been removed from or stored on the field where grown;

(j) While possessing shot (either in shotshells or as loose shot for muzzle loading) other than steel shot or such hot approved as nontoxic by the Director pursuant to procedures set forth in 20.134, *Provided*, That:

(1) While this restriction applies only to the taking of Anatidae (Ducks, geese [including brant] and swans), coots (*Fulica americana*) and any species that make up aggregate bag limits during concurrent seasons with the former in areas described in 20.108 as nontoxic shot zones, and

(2) Nontoxic shot restrictions for muzzle loading (loose shot) become effective on September 1, 1988.

[38 FR 22021, Aug. 15, 1973, as amended at 38 FR 22896, Aug. 27, 1973; 44 FR 2599, Jan. 12, 1979; 45 FR 70275, Oct. 23, 1980; 49 FR 4079, Feb. 2, 1984; 52 FR 27364, July 21, 1987; 53 FR 24290, June 28, 1988]

SHERIFF



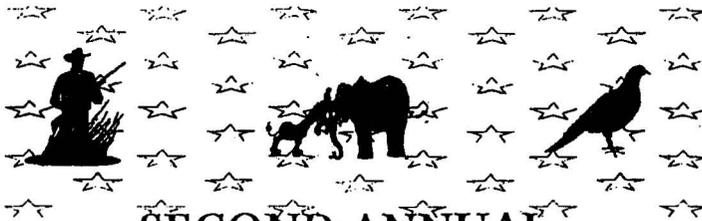
STEPHEN M. OELRICH

Alachua County Sheriff's Office
Post Office Box 1210 • Gainesville, Florida 32602-1210

ATTACHED IS THE STATEMENT MATERIAL FOR SHERIFF STEPHEN M. OELRICH,
ALACHUA COUNTY SHERIFF'S OFFICE.

ATTACHMENTS INCLUDE:

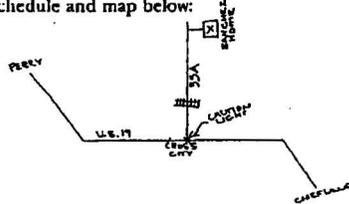
- ORIGINAL INVITATION TO THE OCTOBER 13, 1995 SECOND ANNUAL
PREDATORS DOVE HUNT EVENT
- ORIGINAL CITATION ISSUED 10/13/95
- LETTER FROM SPECIAL AGENT JOSEPH OLIVEROS OF THE U.S. DEPARTMENT
OF THE INTERIOR
- LETTER FROM SHERIFF OELRICH TO REP DON YOUNG, CHAIR, U.S. HOUSE
COMMITTEE ON RESOURCES
- STATEMENT FROM SHERIFF STEPHEN M. OELRICH



SECOND ANNUAL PREDATORS' DOVE HUNT 10-13-95

You are cordially invited to attend the Second Annual Predators Dove Hunt hosted by Senator Charles Williams. Senator Williams has invited Senate President Jim Scott and House Speaker Peter Wallace as his special guests for these events. Also invited are Senator Kirkpatrick, Senator Thomas, Representative Mackey, Representative Crady, Representative Boyd and Representative Albright. County officials, lobbyists and members of the Williams' Campaign Team will converge upon the Herman Sanchez Farm near Cross City on Friday, October 13, 1995. Please see schedule and map below:

1:00 to 2:00	Lunch
3:00 to 6:00	Hunting
6:30 to 8:30	Supper



We will be using 4 different hunting fields for the day's activities. The fields are located in Dixie, Levy, Lafayette and Suwannee Counties. After lunch all hunters will be escorted to the fields. Bring your own gun, shells, current hunting license, appropriate attire and equipment. We recommend a hunting seat. Refreshments will be provided.

Sponsors for the Second Annual Predators Dove Hunt are:

- | | | | | |
|--------------------------------------|--------------------|----------------------------------|---------------------------|------------------------|
| Patrick Bell | Earl Henderson | Paul Hamilton | Ken Towell | Florida Association |
| Wilbur Brewton | CSX Transportation | Calder Race Course, Inc. | Steve Whinn | of Insurance Agents |
| David Rogers | Bruce Conington | Henry Vinson | Larry J. Overton & Assoc. | Linda Cox |
| Bob Flora-Dog Tracks | Susan Marks | Florida Power Corp. | Wine & Spirits Dist. | Ted Ouzis |
| Robert Coker | Sam Ard | Katz, Kutter, Haigler | of Florida, Inc. | Bryant, Miller & Olive |
| Florida Electric Cooperatives Assoc. | Bonnie Basham | Associated Industries of Florida | Louis Parrish | David Moore |
| | Beth Doody | | Jack Cory | Danny Hayes |

Please RSVP by Wednesday, October 11, 1995, at 5:00 PM to either Jennifer in Tallahassee at (904) 487-5017 or Ray in Live Oak at (904) 364-7777.

Best regards.

Form 3-900
Rev. Dec. 1974

65

FIELD INFO. REPORT - INV.

Name (Last-First-Middle-Initial):

OEL RICH, STEPHEN MICHAEL

Address: 4816 N.W. 50th TERRACE
GAINESVILLE, FL 32606

Home Tel: (904) 372-4208

Bus. Tel:

Race	Sex	Ht.	Wt.	Eyes	Hair	D.O.B.
M	M	6-2	190	BRN	GRY	9/29/45

Scars and marks

S.S.#

License types and numbers

FL.D.# 0462-793-45-349-0

Employer's name and address: SHERIFF
ALACHUA COUNTY

Type of business:

Occupation:

Date and hour of violation: 10/13/95

Place of violation:

SANCHEZ FARM

Date and hour of arrest/apprehension:

1630

Place of arrest/apprehension:

Offense: TAKING DOVES OVER
B.A.T.

Seizures: 11 DOVES

U.S. Dept. of the Interior - Fish and Wildlife Service

Vehicle:		Make	Year	Registered tax
Model	Style	Color		

Lic. plates (No., State, Yr.):

Make of Gun	Type	Gage	Number
	50.010 Ruger		

Additional Information: WAS SITTING IN...
 DRIVING P.C.A. WITH WILLIAM...
 WILKINSON USING RUGER...
 SHOT IN DOWN IN 5 GAL BUCKET...
 LOOKED AROUND BUT DID NOT...
 SEE MY CAR...

ASKED TO TALK TO ME &
 STATED SEVERAL TIMES THAT...
 "THIS IS A LAW ENFORCEMENT...
 THING. I COULD LOSE MY...
 CERTIFICATE FOR THIS."

WAS STANDING WITHIN...
 30 FEET, OF CRACKED CONCRETE...
 WHEEL & USMALL GRASS TYPE...
 SEED.

Initials and Date:

TIM BALLARD
 10/13/95



IN REPLY REFER TO:

United States Department of the Interior

FISH AND WILDLIFE SERVICE

6620 Southpoint Drive, South
Suite 310
Jacksonville, Florida 32216-0912

Stephen Michael OELRICH
4916 N.W. 50th Terrace
Gainesville, FL 32606

November 8, 1995

Mr. OELRICH:

The enclosed Violation Notice has been issued to you and charges you with a violation of 16 USC 703; 50 CFR 20.21(i). As stated on the face of the Violation Notice, the charge is for taking migratory game birds by the aid of baiting or on or over a baited area. The collateral forfeiture amount is set by the United States District Court and is based on the number of birds illegally taken. In this case, the court has set a forfeiture amount of \$250.00 plus \$25.00 for each bird taken.

Payment of the collateral forfeiture will signify that you do not wish to contest the charge and the matter will be concluded. You may pay the established forfeiture amount that appears on the lower left of the violation notice by mail using the enclosed envelope. You must do so within seven (7) days of your receipt of this notice.

If you wish to contest the charge and do not submit the collateral forfeiture, you will be notified of your assigned court date. Under the provisions of Title 16, United States Code 707a, if you enter a guilty plea or are found guilty after trial, the maximum penalty you can be sentenced to includes a fine of up to \$5000.00 and six (6) months imprisonment. You may also be placed on supervised probation for up to five (5) years which may include a suspension of your hunting privileges.

If you have any questions, please call me at 904-232-2580.

Sincerely,

Joseph A. Oliveros
Special Agent

SHERIFF**STEPHEN M. OELRICH**

Alachua County Sheriff's Office
 Post Office Box 1210 • Gainesville, Florida 32602-1210

December 8, 1995

The Honorable Don Young
 United States Representative
 Chairman, House Committee on Resources
 Room 805
 House Annex Building Number One
 Washington, D.C. 20515

Dear Representative Young:

On Friday, October 13 of this year, I, along with some 90 plus other citizens of Florida, had a very negative experience with agents of the U.S. Wildlife Service which needs to be brought to the attention of your committee.

In September, I, along with some 300-400 other citizens, received an invitation through the mail from State Senator Charles Williams regarding his second annual benefit dove hunt. The invitees included sheriffs of several surrounding counties, local ranchers, utility managers, state officials and local elected county office holders as well as college students and just folks. The hunt also involved the donation of funds by sponsors and any money left over was to benefit the Florida Sheriffs Youth Ranches; a charitable organization devoted to assisting troubled young people throughout Florida. Several fields were to be utilized as well as a lunch and cold drinks provided. In short a wholesome family-style outdoor experience was anticipated by all.

Instead, what the participants encountered as the hunt was about over can only be described as a heavy handed, over-reaction by agents of the U.S. Wildlife Service. As the hunt wound down, over a dozen wildlife agents wearing camouflage and military boots descended upon us. The agents demanded hunting licenses and even driver licenses, confiscated birds, took information of anyone on the field and stated we all were in violation of Federal Law. Was this murder, mayhem or assault? What warranted this intense focus of federal force on an agricultural field in Dixie County, Florida? The agents stated that the wrong kinds of seeds were on the ground. The violation was of shooting over a baited area. Later, I heard that words were exchanged as the realization as to what the federal people were up to sunk in. I would describe the mood on the field that day as ugly and tense. I never knew there was any bait on this field.

Representative Don Young
December 8, 1995
Page Two

Approximately 30 days later I received a letter and citation through registered mail (copy attached) charging me with taking migratory birds over a baited area. The fine was for \$525 unless I wanted to go to court in which I could face 6 months in prison, \$5,000 fine, and five years probation with my hunting privilege revoked. All this for what started out as outdoor recreation with good people serving a charitable organization. Four Florida Sheriffs were on the field that day along with the Regional Director of the State Game and Fish Commission, Clerks of the County Courts and several people in leadership positions in their communities all sharing in their embarrassment at this treatment from federal officers. Newspaper coverage was extensive throughout the state concerning both the raid and the reaction by its victims. I believe this whole episode was both unnecessary and heavy handed. The agents stated they had observed this field for several days determining that it was unlawful. Instead of making a telephone call or sending one agent to notify participants a dozen agents lay in wait for unknowing citizens to arrive into their web. The field had been photographed and surveillance performed with federal aircraft. I don't feel the birds were baited that day, I believe law abiding citizens were baited, trapped, tried and fined, then extorted into pleading and paying for a "violation" of a law that does not require intent or even knowledge to violate. The reason the federal agents say they use such tactics; because they can!

I urge your committee to review both this law and the tactics of a federal agency that appears to be out of control. I would be pleased to provide additional information.

Sincerely,



Stephen M. Oelrich
Sheriff

Enc.

c Honorable Cliff Stearns
Honorable Charles Williams

During the past two months I have been in contact with U.S. Representative Cliff Stearns and Mr. Harry Burroughs, Special Assistant to U.S. Representative Don Young. Congressman Young chairs the House Resources Committee. My contact with the members of Congress concerned the actions of the U.S. Wildlife Service on October 13, 1995, in which I and 87 other citizens were confronted at a charity dove shoot event in Dixie County which later resulted in citations being issued for shooting over a "baited" field. The House Resources Committee oversees the U.S. Wildlife Service and concerns throughout our area resulted in requests for an inquiry into tactics used by federal wildlife officers. Earlier this month both Representative Stearns' and Representative Young's office assured me that congressional hearings will take place regarding this unfortunate incident. I am personally encouraged by the opportunity to express to Congress my deep reservations about the judgment and tactics displayed by an agency of the federal government.

As Sheriff of Alachua County, I realize the importance of maintaining good working relationships with other levels of the criminal justice system. We have several successful investigations and prosecutions in cooperation with the local U.S. Attorney's Office. The issuance of a citation by the U.S. Wildlife Service to me for hunting on a "baited" field places the U.S. Attorney's Office in the awkward position of having to defend the actions of U.S. Wildlife Officers and the prosecution of a charge which requires no intent or even knowledge to violate. My position remains that I had no intent or even knowledge if any regulation was violated.

My argument is not with the U.S. Attorney's Office nor with the U.S. Magistrate but with the U.S. Wildlife Service. In an effort to maintain our excellent relations with the U.S. Attorney's Office and carry out the important work of public safety I have decided to mail in the forfeiture amount as a "donation" to the U.S. Government and to carry on with my dispute with the heavy handed and unnecessary tactics of the U.S. Wildlife Service with the United States Congress.

William K. Boe

**Chapter Advisor, Alpha Gamma Rho Fraternity
University of Florida**

**5531 NW 32nd Street
Gainesville, Florida 32653**

**352/377-1572 (residence)
352/371-0333 (work)**

Hearing Statement
William K. Boe to
U.S. House Committee on Resources
May 15, 1996

Within the agricultural community it would be said, "There's something rotten in the cotton." This term is applied when a situation is of an undesirable nature, when something is profoundly wrong or inappropriate. That agricultural cliché can be applied to the actions of the U.S. Fish and Wildlife Service, October 13, 1995, when their agents intervened in a dove hunt in Dixie County, Florida, sponsored by Florida State Senator Charles Williams. The cliché also applies to the federal law used to justify their actions.

The annual dove hunt provides comradery for community leaders from the North Central Florida counties represented by Senator Williams. It is a widely-publicized event in that political, economic, civic, and professional leaders are present. Revenues beyond event expenses are provided to the Florida Sheriff's Youth Ranch, a facility for disadvantaged children and orphans.

I attended the event as the invited Chapter Advisor of the Alpha Gamma Rho agricultural fraternity at the University of Florida, Gainesville, Florida. Senator Williams' legislative aide is a chapter member, and fraternity members were present to assist with refreshments and to hunt. Most of the University of Florida students hunted in an adjacent field to the scheduled event, a field owned by one of the students' parents.

Prior to hunting, we were served lunch in a barn and briefed by Senator Williams to be "legal and safe." He said guests were not to hunt unless they had a current Florida hunting license and were prepared to honor hunting laws including game limits. We expected to have the hunt inspected by the Florida Game and Freshwater Fish Commission. I rode into the field with five employees of a company sponsoring the event. We drove to a corner of a 100 acre (plus) field and walked 50 yards down a dirt road. I went about 200 feet into the field and hunted next to a small clump of bushes. At no time did I observe grain on the road, or in the area in which I hunted. During the next two hours I shot five doves, recovering four. While searching for downed doves, I did not see any grain on the ground of any type. If corn or other grains used as "bait" were present, I would have seen it. The volume of doves flying near me was unimpressive. I fired about 15 shells the entire afternoon.

About two hours into the hunt I observed several persons drive up, park, and begin talking with hunters along the dirt road. They wore hunting attire and military style camouflaged fatigues. I observed hunters emptying their shotguns and being directed to a cluster of trees. I thought the persons were Florida Game and Freshwater Fish Commission officers, although state officers wear uniforms and drive vehicles with department emblems on the doors. I decided to join the officers and have my license and bag limit checked so I could resume hunting.

I left the field, introduced myself, and offered by license for examination. The person inspecting my license said he was with the U.S. Fish and Wildlife Service, also stating that the field was being closed because it had been determined to be illegally baited, that I must give him my hunting license, and go to the clump of trees to be questioned. I was surprised and disappointed. Surprised at being told the field was baited, since I knew there was no

Hearing Statement

William K. Boe
to U.S. House Committee on Resources
May 15, 1996
Page 2

illegal grain within the area I had hunted; and disappointed in that an afternoon of fellowship had been abruptly ended.

I asked the agent where the bait was located -- it was a large field! He said it is "scattered everywhere." I requested that he identify the location of the grain in relationship to where I had been hunting. The agent said, "It's everywhere!" I again requested he physically show me the "bait." I pointed to where I had been hunting, and asked "Where is the grain in proximity to where I have been hunting?" The agent did not and would not show me.

I went to the clump of trees where about 50 hunters were detained for questioning. All of the agents wore hunting attire or military type fatigues. As a twice-wounded Vietnam combat veteran, I considered their dress inappropriate and provocative. Combat fatigues are for combat. Were the hunters to be considered "the enemy" justifying combat attire by federal agents? Questions asked included place of employment and profession. The agent continued to write a report on the event. I requested my report identify the specific location of where I had been hunting and the proximity of alleged "bait" to that site. The agent appeared confused at that request -- I later learned why. That information is actually irrelevant! After an hour of being detained, our birds were confiscated as evidence, our license returned, and we were released and told our individual case would be investigated and we may receive citations.

In reality, we had already been collectively indicted, tried, and convicted.

Following the hunt I was never contacted by anyone from U.S. Fish and Wildlife. My next contact would be the citation stating I must pay \$350.00 or go to court and face more serious penalties. The citation letter was intimidating and more like an extortion letter.

Following the hunt, I learned several of the University of Florida students had been detained for questioning, including students hunting in the adjacent field, a field separated by a fence from the alleged "baited field." Why would the students hunting in a different field also be detained? The agents did not inspect that field or find "bait" there, yet they too would receive citations and fines! Two of the students, unable to afford the intensive fines, would defend themselves in federal court in Gainesville, Florida, and would be acquitted. Why did they ever receive citations when hunting in a separate field? Is accountability required from the agents for this action?

Upon receiving my citation, I retained legal counsel from Len Register of Davis and Register, PA, Gainesville, Florida. Mr. Register investigated the "baiting law" and recommended that I pay the fine in that the law does not require the hunter to have intent of hunting on a baited field. I was told the size of the field can be a few acres or hundreds of acres. If bait is determined to have been in the field (size of field undefined) anytime during

Hearing Statement

William K. Boe
to U.S. House Committee on Resources
May 15, 1996
Page 3

a 10 day period of time, the hunter is guilty! The hunter is responsible for knowing the condition of the entire field the day of the hunt and for ten consecutive days. This, of course, is impractical and a physical impossibility!

The current "baiting law", as enforced, is impossible to comply with. No one can inspect for ten consecutive days an undefined area! Any hunter, in any state, no matter how conscientious, can be a victim of this law. Basically, you are guilty for being at an alleged "crime scene" even though, to the best of your knowledge and intentions, you were not a participant in the crime.

In my opinion, the mission of the U.S. Fish and Wildlife agents October 13, 1995, was to collect maximum penalties in fines, not to protect wildlife or help hunters comply with a law they had no intention of violating. One of the agents could have told hunters prior to entering the field that the field had been determined inappropriate for use, and hunters risked citations. We would have then hunted in a different field or journeyed to nearby Fanning Springs, and have been totally content to fish for "red bellies" and catfish in the Suwannee River.

The outcome of the massive citations has increased suspicion of the motives and methods of the U.S. Fish and Wildlife by the citizens of North Central Florida, and lessened respect for that agency. Wildlife was not protected and the "raid" occurred only after the hunt had proceeded several hours, obviously to maximize individual fines. Combat attire by agents was intimidating and confrontational. A volatile environment was created needlessly. The incident is referred to as "Little Ruby Ridge," "Dixie County's WACO," and "Feds and Feathers '95."

The current "baiting law" is flawed. There need not be an adversarial relationship between agents of the U.S. Government and its citizens. Laws should be specific enough to enable compliance by persons wishing to be responsible citizens. The "baiting law" should be revised to state: hunters are responsible for knowledge of the condition of the field only during the day they use the field to hunt; and, the size of the field requiring knowledge of condition should be restricted to two acres. "Baiting" should not apply to any crop planted by owners of the field. Additionally, the role of U.S. Fish & Wildlife should be to protect wildlife, not to allow hunters to unknowingly violate a law just so the agency can issue citations/fines. I consider this law, as enforced, an example of a federally created adversarial relationship that can only alienate the government from the people it serves.

STATEMENT IN SUPPORT OF TESTIMONY BY WILLIAM K. BOE BEFORE
THE UNITED STATES HOUSE OF REPRESENTATIVES RESOURCES COMMITTEE
ON MAY 15, 1996

Before going to law school, I worked as a Correctional Officer at Florida's worst maximum security prison. As a member of the Florida Bar since 1978, it has been my privilege to serve as a prosecutor for 15 years of that period. From 1978 to 1984, I served as an Assistant State Attorney in the 3rd and 8th Judicial Circuits of Florida and was one of three prosecutors who tried the case against Ted Bundy which provided him a richly deserved experience in Florida's electric chair. From 1984 through 1988, I served as an Assistant United States Attorney with the Department of Justice and was assigned to an Organized Crime/Drug Enforcement Task Force for the Florida-Caribbean region. In 1988, I received a gubernatorial appointment as State Attorney for the 8th Judicial Circuit of Florida and was re-elected without opposition in 1990. During that tenure, I was the chief prosecutor for a six county area in North Central Florida with a staff of 100, including 38 prosecutors. In 1993, I served as the Felony Bureau Chief for the Tampa, Florida State Attorney's Office supervising 7 felony trial divisions. I have served as faculty adviser to the National College of District Attorneys in Houston, Texas. Over the course of my career as a prosecutor, I was fortunate to receive awards from the United States Department of Justice, the Florida Cabinet, the Florida Council on Crime and Delinquency, Parents of Murdered Children, the Florida Prosecuting Attorneys Association, the United States Drug Enforcement Administration, and Mothers Against Drunk Driving. I share this background with you to demonstrate that I am no bleeding heart opponent of law enforcement and further, that I have a keen appreciation for the work of those charged with protecting our natural resources.

While in private practice in Gainesville, Florida, I recently represented several of the individuals charged by Special Agents of the U.S. Fish and Wildlife Service in the incident described in Mr. Boe's testimony. During the course of representing those clients, I had an opportunity to review a letter from Noreen K. Clough, Regional Director for the Service in Atlanta, Georgia, addressed to the Honorable Cliff Stearns, of Florida's 6th Congressional District, on or about November 17, 1995. I have several observations in response to points raised in Director Clough's letter and wished to share them with the Committee.

Director Clough questioned the knowledge of hunters in the Dixie County charity hunt, concerning the legality of the field, in that some hunters left the area when agents of the Service finally made their presence known and began to issue citations. I think it is safe to say that most hunters very strongly believed the hunt to be completely in compliance with state and federal game laws because of the participation in the hunt by Colonel Larry Martin of the Florida Game & Fresh Water Fish Commission, along with the Sheriffs of Alachua, Nassau, Dixie, and Union Counties. My understanding is that Colonel Martin even addressed the group of hunters prior to the hunt and it is certainly reasonable to assume that four elected sheriffs and one of the state's top game enforcement officers would not be putting their careers on the line

with misdemeanor convictions if they had the slightest clue that the field in question was baited.

Director Clough makes the point that Service agents have no legal authority to "declare a field off limits" or to "prevent hunting" on the field. They do however have a responsibility to use every reasonable means to protect the game resource and I was therefore amazed to hear testimony from the primary Special Agent in this enforcement action to the effect that agents allowed hunters to shoot for approximately an hour before making their presence known. This was ostensibly done to "apprehend more violators" to "maximize the deterrent effect". As a result of the agents allowing the hunt to go on for an hour after they had probable cause to intervene, some 480 dove were recovered. It is safe to assume that many others were killed, but never found. For the life of me, I fail to understand why the agents could not have advised hunters entering the field of their suspicions that the field was baited and reminding them of their individual duty to inspect the field to ensure it was in compliance with state and federal game laws. This would have avoided the whole situation without "declaring the field off limits" or "preventing the hunt". The hunters could have made their own assessment of the field and suffered the consequences if game laws were violated during a subsequent hunt. Such proactive intervention with hunters would have certainly been more effective in protecting the game resource. Thank God street cops don't wait until the convenience store or the bank is robbed if they believe an armed robbery is planned and about to take place. Would the Service suggest a burglar be allowed to enter a residence and plunder and steal for an hour prior to making an arrest simply to maximize the deterrent value by catching the thief red-handed? I seriously doubt it, and an earlier intervention was called for in this case.

One of the most serious difficulties posed for the law abiding hunter is the strict liability provisions of 16 U.S.C § 703, known as the Migratory Bird Treaty Act (MBTA or Act), and 50 CFR §20.21(i). Under the MBTA and this regulation, a field is deemed "baited" for a full 10 days after the removal of all corn, wheat, grain, salt, or other feed. Thus, even though a conscientious hunter carefully inspects the field being hunted, on the day of the hunt, he or she risks violating the MBTA (resulting in a federal misdemeanor conviction) unless they have inspected the field in question for each of the 10 days preceding the hunt. Director Clough, in fact, admitted the impracticality of "constant surveillance for a full 10 days prior to the hunt" as a reason the Service itself does not inspect fields at the request of the public. Director Clough stated in her letter to Congressman Stearns, "the practice itself is flawed". How can hunters be treated fairly being held to a standard the Director acknowledges is practically impossible to guarantee compliance with?

Director Clough seeks to reassure Congressman Stearns that the Service is giving hunters a break by not applying the "strict liability" standard of the MBTA, but rather applying the more relaxed "duty to inspect" standard (also known as the "should have known" standard) enunciated by the United States Fifth Circuit Court of Appeals in United States v. Sylvester, 848 F.2d 520 (5th Cir. 1988) and United States v. Delahoussaye, 573 F.2d 910 (5th Cir. 1978). Director Clough refers to the salient language of the Sylvester decision which says "...with little effort, they

(hunters) could have made a zig zag inspection and discovered the presence of wheat...". Director Clough suggests to avoid violating the MBTA in the eyes of the Service, hunters need only conduct a "zig zag inspection" to discover if "bait" is present. The only problem with the Director's analysis is that not only are hunters required to inspect the immediate area to be hunted, they must inspect an area which might later be construed by a United States District Court Magistrate Judge as within the "zone of influence" of any baited area, if they are to be completely free from the risk of being issued a citation by the Service. See United States v. Dize, 839 F.Supp. 1170 (D.Md. 1993) where hunters were convicted for hunting geese "within the zone of influence" of a baited area, with the court noting geese approached the feeding area "from all directions".

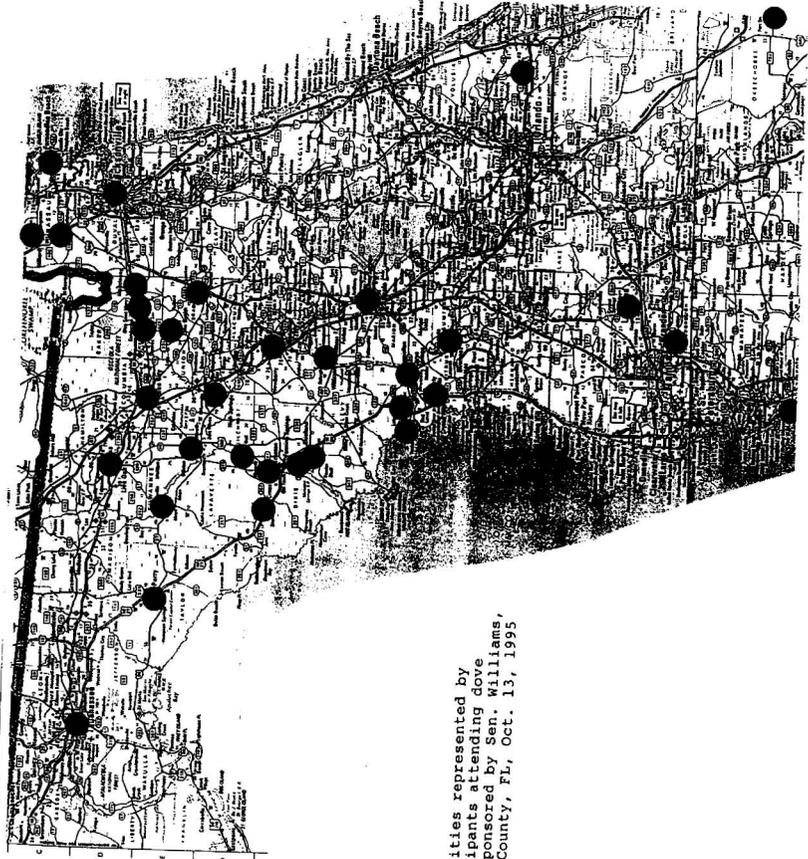
What constitutes a "zone of influence"? How can hunters guard against an inadvertent violation? How large an area are they required to inspect? In Yandell v. U.S. By and Through Dept. of Interior, 550 F.Supp. 572 (D.Miss. 1982), a landowner was cited for hunting 3,700 feet (7/10 of a mile) from an area construed to be baited. How far away from the "baited" area would Mr. Yandell have had to travel before he would have been allowed to hunt under the MBTA? The Yandell court only tells us that 3,700 feet (7/10 of a mile) is not far enough away from a "baited" area to be lawful. The Act gives no guidance, and it is impossible for hunters to guess, as to what distance would be beyond the "zone of influence". Accordingly, they are subject to the whim of a Service agent and any sympathetic magistrate. Perhaps Director Clough would have hunters "zig zag" across an area with a radius greater than 7/10 of a mile (over 1.5 square miles) to be completely sure they were not hunting within the "zone of influence" of a baited area for each of the 10 days preceding a hunt. Of course, requiring such an inspection by hunters is would destroy the sport and would make sense only to a self-perpetuating government bureaucracy.

I respectfully suggest that the Committee consider amending the MBTA in a manner that will accomplish the goals of the Act in conserving migratory bird resources, yet provide reasonable guidance to the nation's hunting public as to what conduct is proscribed. As a minimum, the strict liability provisions of the MBTA should be abolished and replaced with a reasonable "duty to inspect" standard applied to limited geographic area. No prosecutor should be allowed to convert law abiding sportsmen into convicted criminals based on ambiguities and variations in enforcement, without proving a knowing violation of or an intent to violate the Act beyond every reasonable doubt.

I wish to thank the Committee for allowing me the opportunity to provide input during these important proceedings and want you to know how much I appreciate the vigilance each of you have shown in the protection of our migratory bird resources.

May 9, 1996


 LEN REGISTER
 Davis & Register, P.A.
 1927 NW 13th Street
 Gainesville, FL 32609
 (352) 376-1100



Communities represented by
participants attending dove
hunt sponsored by Sen. Williams,
Dixie County, FL, Oct. 13, 1995



IN REPLY REFER TO:

United States Department of the Interior

FISH AND WILDLIFE SERVICE

6620 Southpoint Drive, South
Suite 310
Jacksonville, Florida 32216-0912William Kent BOE
5531 N.W. 32 St.
Gainesville, FL 32653

November 6, 1995

Mr. BOE:

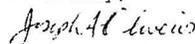
The enclosed Violation Notice has been issued to you and charges you with a violation of 16 USC 703; 50 CFR 20.21(i). As stated on the face of the Violation Notice, the charge is for taking migratory game birds by the aid of baiting or on or over a baited area. The collateral forfeiture amount is set by the United States District Court and is based on the number of birds illegally taken. In this case, the court has set a forfeiture amount of \$250.00 plus \$25.00 for each bird taken.

Payment of the collateral forfeiture will signify that you do not wish to contest the charge and the matter will be concluded. You may pay the established forfeiture amount that appears on the lower left of the violation notice by mail using the enclosed envelope. You must do so within seven (7) days of your receipt of this notice.

If you wish to contest the charge and do not submit the collateral forfeiture, you will be notified of your assigned court date. Under the provisions of Title 16, United States Code 707a, if you enter a guilty plea or are found guilty after trial, the maximum penalty you can be sentenced to includes a fine of up to \$5000.00 and six (6) months imprisonment. You may also be placed on supervised probation for up to five (5) years which may include a suspension of your hunting privileges.

If you have any questions, please call me at 904-232-2580.

Sincerely,


Joseph A. Oliveros
Special Agent

The Gainesville Sun, Thursday, January 18, 1996

Judge acquits first defendant in dove-hunting case

■ Two local sheriffs face trial on the same charges in February.

By KAREN VOYLES

Sun staff writer

The federal government on Wednesday lost its first dove-hunting case stemming from an October fundraiser in Dixie County.

An agriculture student at the University of Florida, Chad Clemons of High Springs, defended himself in

federal court and was acquitted of hunting over a baited dove field.

Alachua County Sheriff Steve Oelrich and Dixie County Sheriff Larry Edmonds hope for the same result when they are tried on the same charges in February.

The sheriffs and 86 others were cited for hunting on land owned by Herman Sanchez in Dixie County — land that U.S. Fish and Wildlife Service officers claim was illegally baited to attract doves. Under federal and state laws, it is illegal to hunt over a field where feed has been placed to attract migratory birds.

Clemons, who had been hunting from a field next to the Sanchez field, testified that he had inspected about 15 feet around the tailgate of the truck he was hunting from and that he saw no bait. Clemons he did not inspect the Sanchez field because he never crossed that field to get to his hunting spot.

"I wasn't aware of it being my duty to check the entire field, but I knew I was to check my area where I was hunting," Clemons said.

The Oct. 13 event was a fund-raiser sponsored by state Sen. Charles Williams for Florida Sheriff Youth Ranches Inc.

U.S. Magistrate Richard Belz, acquitted Clemons, ruling he "could not reasonably see the small grains on the other (Sanchez) field. This is a close call, and on close calls, the defendant wins."

Most of those who received citations have already paid their fines, which began at \$250 and increased \$25 for each dove in their possession.

Before hearing Clemons' case, Belz called out the names of several hunters in court because his records showed that they had not paid their fines.

The names of everyone cited in the hunt still were not available Wednesday because the federal government has not released them.

Dixie County Advocate, Cross City, Florida - Thursday, January 25, 1996

1st Fundraising Hunt Case
Tried In Federal Court
UF Student
Acquitted Of
Hunting Illegally
On A Baited Field

by Terri Langford

University of Florida student, Chad Clemons, of High Springs went before federal court several weeks ago, January 17, 1996 and was acquitted by U.S. Magistrate Richard Belz, of hunting over a baited dove field.

Clemons, along with five other UF agriculture students were invited guests for a fundraising hunt hosted by state Senator Charles Williams on behalf of the Florida Sheriff Youth Ranches, Inc. which was held on October 13, 1995. During the hunt federal agents issued numerous citations to persons participating in the hunt, alleging that the area had been baited.

The six students involved in the hunt are members of the Alpha Gamma Rho, the national fraternity for agriculture students. According to William Boe, Fraternity Advisor, the students were approach by a Dixie County resident and fellow UF student, Rob Hatch, about hunting on his family's land which adjoins the land being used for the hunt, owned by Herman Sanchez. Because of the large number of participants, approximately 91, the students took Hatch up on his offer. Boe noted that all these students possessed a legal license, legal weapons, and the only drinking being done was that of soda.

During Clemons' trial, in which he defended himself, the fact that the Hatch land was fenced and was several hundred feet from the alleged "baited" field was brought to the magistrates' attention. Clemons stated that he never crossed over into the Sanchez field because he had no reason to and therefore never inspected the ground for possible baiting.

Boe stated, "I am extremely pleased that the magistrate could distinguish between justice and just the bare bear mechanics of the law." Boe continued by saying that there had seemed to be no effort on the part of any of the ten U.S. Fish and Wildlife Service officers to distinguish between the two parties from the different fields.

According to Boe, several of the parents of the students have already paid their sons' fine on the grounds that they (the parents) did not wish for their son to have a federal offense against them and not because they felt that they (their sons) had done anything wrong. These parents added that they felt the citations were issued unfairly. Many others who were issued citations with fines ranging from \$250.00 and increased \$25.00 for each dove in their possession, also have paid.

"This raid had absolutely nothing to do with the protection of migratory birds," stated Boe. The fact that the officers waited for such a long time before stopping the hunt and issuing the citations brought questions as to

why the officers were there if not to protect the birds.

Because of the many questions being raised in this case, U.S. Representative, Cliff Stearns, 6th District, Florida, has written a letter to Don Young, Chairman of the House Resources Committee. The letter asked Young to have the House Resources Committee review documents concerning the hunt, investigate and determine if congressional hearings are appropriate. If you should have any comment on this case you may call Congressman Stearns office at 202/225-5744.

Dixie Sheriff, Larry Edmonds and Alachua County Sheriff, Steve Oelrich are both scheduled to be tried on the same charge in February.

The Gainesville Sun

Saturday, May 18, 1996 *

Dove hunt stifles man's Army career

By KAREN VOYLES

Sun staff writer

A charity dove hunt that caused Sheriff Steve Oelrich some mid-career embarrassment has stopped another hunter's career before it started.

University of Florida student Mark Cobb has been told the U.S. Army is no longer interested in him because he participated in the hunt.

Cobb, 20, of Lake City was among several members of the Alpha Gamma Rho fraternity who were asked to help serve dinner following

Please see HUNT, 2B

continued from 1B

the Oct. 13 dove hunt in Dixie County. Until dinner time, the fraternity members were allowed to participate in the hunt, which was a benefit hosted by State Sen. Charles Williams for the Florida Sheriffs Youth Ranches. Several hours after the hunt began, agents from the U.S. Fish and Wildlife Service entered the field and told hunters it had been illegally baited, ending the hunt.

Cobb had not shot any doves, but he was cited for hunting over a baited dove field along with 87 others, and he paid the federal government \$250 instead of pleading his case in court, hoping that would be the end of the matter.



Cobb

In January, Cobb entered UF's Army ROTC program, truthfully answering a question on the application form that he had a federal misdemeanor on his record as a result of the dove hunt.

ROTC officials accepted him into the program.

The junior in agricultural operations management needed to catch up with ROTC cadets who started as freshmen, though, by attending a six-week summer camp called Fort Challenge in Fort Knox, Ky.

Before Cobb could be admitted to the camp, he would have to get a waiver from an Army committee because of the federal misdemeanor.

On Monday, ROTC instructors gave Cobb the bad news — the Army would not admit him or anyone else needing a waiver to the camp. Without the camp experience, Cobb could not catch up and could not be commissioned as an officer.

"I've been told that if that could be removed from my record, there would be no problem with getting a commission," Cobb said. "I've been dove hunting since I was probably 5 or 6, and I've seen baited dove fields, but I never saw any bait in the field we were in. I paid the \$250 because it would have been expensive to get a lawyer and fight it, but it's a bad law and this is a bad deal."

The law that Cobb and others were cited under was the subject of a six-hour hearing by the U.S. House Resources Committee on Wednesday. The law prohibits hunting over a baited field even if the hunters do not know the field is baited.

Wildlife officers claimed the field was heavily baited, while Oelrich and other hunters said they saw no bait at all.

After Cobb's situation was outlined during the hearing, staff aides to U.S. Reps. Cliff Stearns, R-Ocala, and Pete Peterson, D-Marianna, said their offices would look into the matter to see if they could help.

What Cobb wants is to have the baiting law rewritten, the misdemeanor removed from his record and the Army to accept him as an officer.

"I'm not going to give up, but I'm not sure what I'll do next," Cobb said.

**Response by John W. Pelham
to Chairman Don Young
and the U.S. House of Representatives
Committee on Resources
re: Charity Dove Hunt for
Florida Sheriff's Youth Ranch, Inc.
Dixie County, Florida
and
U.S. Fish and Wildlife Service
October 13, 1995**

Honorable Chairman Young, Committee members,

Thank you for the opportunity to be here today to discuss the October 13, 1995 dove hunt. I am a fifty-five year old Florida Cracker and have hunted migratory game every hunting season since I was six years old. I consider myself a law abiding citizen, an outdoorsman and a conservationist.

Mr. Chairman, in response to your request, I submit the following:

1. The citing officer was courteous and professional.
2. It appeared to be a set-up. Statement was made to me by the agent that the field had been flown three days before and it appeared to be baited. He had not observed any bait, nor could he tell me where it was.
3. Why were we asked where we worked and what our title was? Would it have made any difference who I was?
4. I never saw any bait. This rule is vague at best.
5. If the Department of Interior is charged with protecting migratory birds, they did not fulfill their obligation.
6. The letter accompanying the citation (See attachment) was intimidating and coercive. It left no logical choice but to pay.

Changes for your consideration :

1. Allow fields to be baited.
2. In my opinion, it is far more important to monitor the number of birds killed than whether there is bait on the field. Along with this, vigorously enforce bag limits and increase fine for violations.
3. Stop the documenting of fields.
4. Allow the States the opportunity to enforce migratory game violations and remove law enforcement from the Department of Interior. A terrible waste of tax payers dollars and a monumental duplication of equipment and effort.
5. Would like to see sports planting rules rather than normal agriculture process rules.
6. Save intimidation and coercion for real criminals. We are not criminals.

I am neither an attorney or a biologist, but as a conservationist and sportsman, I would like to provide input or help any way that I may. You have a tough job and there are a lot of issues as you have heard or will shortly. Thank you very much for your time and interest.

John W. Pelham

Attachment

Chadwell Bruce Clemons
Student of the University of Florida
Representing Himself
5/9/96

Hello, I would like to take this time to thank the committee chairman and committee members for the opportunity to present testimony concerning a charity dove hunt for the Florida Sheriffs Youth Ranch, Inc. that occurred on October 13, 1995. It is my hope that through testimony the Migratory Bird Treaty Act will have clearer and more consistent laws. Giving hunters both knowledge and freedom to hunt ethically.

I was a guest to the function by invitation from Ray Hodge, fraternal brother and aid to Senator Charles Williams. Ray made it clear that all the Alpha Gamma Rho brothers would be assisting him in making the guests at the function comfortable during lunch, the hunt, and dinner hours. If time allowed, we would be welcomed to join the hunt. It was in this capacity that I attended the charity dove hunt on October 13, 1995.

Following the lunching, I was invited to hunt on a parcel of land adjacent to the accused baited field. The invitation came from another Fraternity brother, Rob Hatch, whose father owned the land on which I was to hunt. The fields were only separated by a field fence which is made of woven wire that stands approximately 48" in height. While in route to the hunting location, I entered on the Hatch's land and never crossed over the field in question. Therefore, there was no need to inspect the other field or to even cross the fence to hunt. The location in which I hunted was ideal. I was placed between a large pond located on the Hatch's land and the adjacent field. It was my impression that there were more birds flying to the water than to the alleged baited field.

I arrived at my location at approximately 12:45 and was not questioned by the wildlife officer, Mr. Pilgram, until approximately 4:00. When the officer crossed the fence from the alleged field into the Hatch's field, I heard him call out to other hunters he was a U.S. Fish and Wildlife Officer. Because of my respect for the law and knowing that I had not broken any laws, I approached the officer who was about 100 yards away. Mr. Pilgram was very polite but never told me why I was being questioned. He took all the necessary information to complete a citation and told me to report to a specified location in the adjacent field. I left the Hatch's property the same way I had arrived, and while going to the specified location, I stopped by the barn where the luncheon had taken place. It was there that I found out from other hunters that the adjacent field was allegedly baited; as a result, I inspected the road in the field while being driven to my assigned location. Even after knowing the field may be baited, it was my observation that there was no bait present.

While at the specified location in the alleged baited field, I was told that if the State's District Attorney wished to press charges I would be sent a citation with information about payment or court appearances. The officers then collected my birds and entertained any questions I had. To say the least, I was stunned and could only think of one question. "Could you show me the bait in the field please?" He chose not to, but said, if I just walked around a little bit, I could see plenty of it. I could not. I left the area feeling confused and victimized by an agency I have a great deal of respect for. Was I guilty by association? It seemed as though I was. It did not make sense that I could be held accountable for another person or persons alleged unethical behavior; furthermore, I concluded that whatever the district attorney decided I would stand up for what I felt was right and just.

In the months to follow, I defended myself in federal court, and I was found not guilty by U.S. Magistrate Richard Belz on the charges of hunting on or over a baited dove field. He ruled "Mr. Clemons could not reasonably see the small grains on the other field," and his responsibility was not clearly defined in the law as to how large of an area he was to inspect prior to or during the hunt. He went on to say, Mr. Clemons testified to hunting at previous invitational hunts where fields were clearly planted with crops bearing seeds meant to attract birds, yet he was not cited by wildlife officers present for hunting on or over a baited field. The lack of clarity and consistency in the law is why my case was acquitted on all charges.

For these reasons, I am here today. My purpose is to bring clarity and consistency to a law that is ambiguous. The hunters across this Nation deserve to know clearly what is expected of them, and how to safely stay within the freedom of a law. For laws are created to free mankind not to bind them.

Thank you Mr. Chairman and committee members for your time today and your ability to change this law.

TESTIMONY OF ROBERT STREETER, ASSISTANT DIRECTOR FOR REFUGES AND WILDLIFE, U.S. FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR, BEFORE THE HOUSE RESOURCES COMMITTEE, OVERSIGHT HEARING REGARDING MIGRATORY BIRD TREATY ACT, "BAITING" AND FISH AND WILDLIFE SERVICE'S LAW ENFORCEMENT ACTIVITIES DURING THE DIXIE COUNTY, FLORIDA, DOVE HUNT.

May 15, 1996

Thank you for the opportunity to be here today to discuss the Migratory Bird Treaty Act; "baiting;" and the U.S. Fish and Wildlife Service's law enforcement activities during the Dixie County, Florida, dove hunt. Accompanying me today from the Service's Southeast Regional Office in Atlanta, Georgia, are Assistant Regional Director for Law Enforcement, Monty Halcomb, and Special Agent Joseph Oliveros. They will assist me in responding to your questions about the Dixie County Dove hunting incident.

First, all comments are within the framework that the Service recognizes sustainable hunting and other harvest-related activities as useful management tools. The Service also recognizes that hunting is a legitimate recreational and subsistence activity. Revenues from migratory bird hunting activities contribute about \$3.6 billion to the U.S. economy each year. Fifty percent of the units of the National Wildlife Refuge System are open to regulated hunting and more have been proposed. We take seriously our responsibilities to provide continuing recreational opportunities that are compatible with the purposes of our wildlife refuges.

The Migratory Bird Treaty Act of 1918 implements treaties with four of our neighboring countries to protect and conserve this valuable international resource. The Act requires the Secretary of the Department of the Interior to determine, by regulation, "...when, to what extent, if at all, and by what means, it is compatible with the terms of the conventions to allow hunting..."

Implementing regulations for the Migratory Bird Treaty Act are found in Title 50 of the Code of Federal Regulations. Our Federal law enforcement agents are authorized to enforce the Migratory Bird Treaty Act and the regulations codified therein. The baiting regulations are found at section 20.21(i) under the Hunting methods section. Section 20.21 (i) reads:

"Migratory birds on which open seasons are prescribed in this part may be taken by any method except those prohibited in this section. No person shall take migratory game birds: [(a)-(h)] (i) By the aid of baiting, or on or over any baited area. As used in this paragraph, 'baiting' shall mean the placing, exposing, depositing, distributing, or scattering of shelled, shucked, or unshucked corn, wheat or

other grain, salt, or other feed so as to constitute for such birds a lure, attraction or enticement to, on, or over any areas where hunters are attempting to take them; and 'baited area' means any area where shelled, shucked, or unshucked corn, wheat or other grain, salt, or other feed whatsoever capable of luring, attracting, or enticing such birds is directly or indirectly placed, exposed, deposited, distributed, or scattered; and such area shall remain a baited area for 10 days following complete removal of all such corn, wheat or other grain, salt, or other feed. However, nothing in this paragraph shall prohibit:

(1) The taking of all migratory game birds, including waterfowl, on or over standing crops, flooded standing crops (including aquatics), flooded harvested croplands, grain crops properly shocked on the field where grown, or grains found scattered solely as the result of normal agricultural planting or harvesting; and

(2) The taking of all migratory game birds, except waterfowl, on or over any lands where shelled, shucked or unshucked corn, wheat or other grain, salt, or other feed has been distributed or scattered as the result of bona fide agricultural operations or procedures or as a result of manipulation of a crop or other feed on the land where grown for wildlife management purposes: Provided, that manipulation for wildlife management purposes does not include disturbing or scattering of grain or other feed once it has been removed from or stored on the field where grown."

Service baiting regulations have been in place for more than 60 years. The baiting issue has been around longer. Baiting became more popular after the turn of the Century when waterfowl numbers declined dramatically. Baiting conditions and concentrates migratory game birds to a specific location, making them easy marks for shooters.

Hunting regulations are just one important part of the overall strategy to protect migratory bird populations. Many migratory bird populations are being depleted because of the cumulative impacts of contaminants, diseases, loss of habitat and illegal take. Loss of habitat is, arguably, the most important of these factors.

The Service believes baiting is rare among sportspersons. Most consider the practice to be unethical and unsporting. Most hunters know what baiting is, and they do not violate the law.

Mr. Chairman, I know that you are interested in the Dixie County, Florida, dove hunt, and I would like to provide you with the details of that particular incident.

The Dixie County dove hunt was announced to the public in an article in the September 26, 1995, edition of the *Tallahassee Democrat* entitled, "Hunters also hope to bag Capitol goodwill." One of the Service's special agents saw the article. That article was the first information we received about this hunt which was to take place at the Sanchez field, in Dixie County on Friday, October 13, 1995.

On October 12, 1995, a Florida special agent located the Sanchez field. While looking over the field, he noticed cracked corn, kernel corn, millet, wheat, milo, and bahia seeds placed in heavy amounts on the field and on roads leading into the hunting area. The special agent took samples of the contents of the field for evidentiary purposes and left the field.

On Friday, October 13, 1995, at approximately 2 p.m., two special agents entered the hunting area. The agents observed the hunters' actions only for the period of time necessary to obtain evidence of the violations and to reach locations that allowed them access to the field. At approximately 4:15 p.m., two additional special agents and eight Service refuge officers reached the field and began contacting the hunters. Some of the hunters fled the field when the agents appeared.

The majority of the hunters were cooperative, although a group of four men pushed and shoved one of our agents; and another hunter verbally threatened an agent. The agents observed beer containers on and near the hunting area, some of the hunters had the odor of alcohol on their breath, and a "bar" was open before and during the hunt. One hunter told an agent he was concerned about safety on the field because of the drinking that was occurring before and during the hunt. The agents obtained personal information from the hunters and offered to show the hunters the bait. None of the hunters present expressed any interest in being shown the bait. It was clearly present in large amounts.

During the first week of November 1995, after consulting with the U.S. Attorney's Office in Gainesville, Florida, the Service law enforcement case agent mailed notices of violation to 88 adult hunters. A total of 88 individuals were charged with baiting. In addition, three were charged with unplugged shotguns; two (2) for exceeding the daily bag limit; and two (2) for not having a Florida State hunting license. No arrests were made, including of the hunters who assaulted our agent. This clearly demonstrates the professionalism and low-key approach Service law enforcement personnel routinely display as they perform a difficult and dangerous job on behalf of our nation.

All of the 84 hunters had the opportunity to either pay a fine or to appear in Federal District Court in Gainesville, Florida, to

contest the charges. The four individuals who assaulted our agent were issued mandatory appearances before a Federal Magistrate Judge, after the case agent consulted with the U.S. Attorney's Office in Gainesville, FL.

Eighty-two of the hunters forfeited collateral in the amount \$31,475. Another four hunters pled guilty to a total of five violations and were fined a total amount of \$7,375. They also were ordered to undergo supervised probation totaling 5 years, with the provision they not hunt during their probation period. Two hunters were acquitted by a Federal Magistrate Judge of the baiting charges. One hunter's violation notice for hunting without a state hunting license was dismissed after he produced a valid license.

There have been other results of the Dixie County, FL, dove baiting incident that have been very disturbing to the Service. Derogatory comments were made to the media, distorting a straightforward law enforcement case. The local Sheriff in Dixie County, Florida revoked the authority of a local National Wildlife Refuge to continue using the radio frequency. Service law enforcement personnel use the radio frequency to protect the lives and safety of law enforcement officers and members of the public. The refuge manager of the Lower Suwanee National Wildlife Refuge has been threatened with physical harm and verbally threatened by the same sheriff.

Service law enforcement personnel involved in the Dixie Co., FL, dove baiting case have been accused of targeting the Sanchez field because prominent persons were present. This accusation is totally unfounded, and untrue. Service agents absolutely have not, do not, and will not "target" violators based on political, social, racial, gender, or any other considerations. They will pursue any and all individuals violating wildlife laws.

The overwhelming majority of sportsmen in this country are law-abiding citizens who practice sound ethics, conduct their hunting in a responsible and safe manner, and demand the same from their peers. They also expect the Service's law enforcement personnel to perform wildlife enforcement duties in an impartial, equitable, and fair manner. We appreciate the cooperation and support of these sportspersons, and we strive to meet or exceed their expectations.

The manner in which most wildlife violations, including baiting, are handled by Service agents is very similar to the way local police officers, deputy sheriffs, and state troopers handle traffic enforcement.

Citations carrying nominal fines are routinely issued for both traffic and wildlife violations, and persons are not arrested unless there are clearly aggravating circumstances, such as an

outstanding arrest warrant, intoxication, serious interference with a law enforcement officer, assault, etc. Both driving a vehicle and hunting require a valid state license, which now entails some form of training before the licenses are issued. Drivers and hunters are responsible for knowing and abiding by the laws and regulations governing the privileges they exercise. The public at large has a right to expect fair, impartial, and equitable enforcement and treatment from those persons commissioned to exercise the authority the public has entrusted to them. Those cited may appear in court to challenge the charges.

We also do not warn dove hunters about a baited field for the same reason police officers do not place portable signs on the roadside to warn speeders that a radar unit is over the next hill. To follow such a practice would negate the deterrent effect of radar on speeders. Speed limits are clearly posted for drivers, and the drivers are expected to abide by the limit as part of their licensed driving privilege. The same situation held true for the dove hunters present on the Dixie Co., FL, field. The hunting regulations are published and made available to dove hunters, our enforcement agents willingly explain the regulations whenever asked, and the hunter is expected to assume responsibility to know and abide by the published regulations.

Another issue raised concerned the authority of the Service Special agents to enter the Sanchez field. The agents conformed to well-established legal authority when they entered the Sanchez field. Beginning as early as 1924 in *Hester v The United States*, the Supreme Court and the lower Federal courts have ruled consistently that persons have no reasonable expectation of privacy in open fields. Therefore, provisions of the Fourth Amendment do not extend to observations or seizures made in open fields.

A Cross City, Florida, newspaper article dated December 7, 1995, quoted a letter written by Congressman Cliff Stearns to Chairman Don Young. In the letter, Congressman Stearns echoed the hunters' complaint that the agents waited an unreasonably long period of time before they entered the field. This implies that the agents lacked concern for the dove resource because they allowed birds to be killed for an hour and a half after the hunt started.

The schedule for the hunt, as published in the flyer entitled "Second Annual Predators Dove Hunt," set hunting hours from 3-6 p.m. The agents entered the field to check the hunters at approximately 4:15 p.m., which is less than an hour and a half after the published shooting hours began. The prime dove hunting hours at that time of year are generally between 4-6 p.m. The agents stopped the hunt almost two full hours before the scheduled termination of the event, within a reasonable time

period of their arrival, and before the time of day that doves should have been most active. By entering the field when they did, the agents probably prevented more overlimit violations, which is a major management concern on baited fields.

The Migratory Bird Treaty Act (MBTA) carries a strict liability standard, which means that a person does not need to know they violated the law in order for an agent to issue a citation. The Fifth Circuit has issued two important decisions that liberalized the standard for violations of the MBTA. The first was *Delahouysse* and the second was *Sylvester*. Both decisions require agents to show that the hunters either knew or should have known the hunting area was baited. Equally important, both decisions placed responsibility for inspecting the hunting area on the hunters.

In the Dixie County, FL, case, there were substantial amounts of cracked corn, kernel corn, wheat, millet, milo, and bahia seeds present on the field and roads leading into the field on the day of the hunt. Had the hunters made even a minimal effort to inspect the field, they could have readily determined that the field was baited. The agents asked the hunters they contacted if the hunters had inspected the field prior to beginning the hunt. In every case, the hunters said they had not inspected their hunting area.

Congressman Stearns also implied, in the previously cited letter to Chairman Young, that the agents should have warned the hunters about the baited field before the hunt commenced and prevented the hunt.

The Service does not warn hunters, inspect fields, or post fields for the reasons stated below.

First, Service agents do not have the legal authority to declare a field off limits or to prevent hunting on a baited field. In *Allen v. Merovka*, C.A.N.M. 1967, 382 F.2d 589, Service agents posted a field as baited, and they were successfully sued because they had no statutory authority for their actions. In *Merovka*, the court essentially found the agents had "confiscated" the individuals' property rights without due process by denying them the opportunity to hunt.

Second, from a legal standpoint, a baiting violation does not occur until a hunter attempts to kill birds "by the aid of baiting, or on or over any baited area." [50 CFR, Part 20.21(i)]

A person may legally feed doves or any other migratory bird, if he or she makes no attempt to take them. It should be noted that a baiting violation does not occur unless a hunter takes or attempts to take doves over or on the field where the birds are being lured, attracted, or enticed by bait.

Third, perhaps the most important reason we do not stop hunts relates directly to the issue of a hunter's legal and ethical responsibilities. Inherent with any type of hunting or fishing activity, the sportsperson involved is expected to know and to abide by the regulations governing their actions. In wildlife law enforcement, like all other forms of enforcement, the key element to achieving legal and ethical behavior is obtaining voluntary compliance by those persons engaging in the activity.

If agents stopped hunts, many hunters would expect law enforcement agents to regulate their actions. This would not only be impractical but it also would run counter to hunters traditional responsibility for knowing how to hunt in a lawful ethical manner.

In addition, agents in the Southeast Region receive numerous requests to inspect dove fields prior to and during the dove hunting season to "certify" that the fields are not baited. However, we physically cannot meet the public's current number of requests for agents to inspect fields, and the number of such requests would increase substantially if we began an inspection program. We should not undertake such a program unless we can fully meet all requests and, at the same time, continue conducting higher priority wildlife investigations. To do otherwise opens the door to appearances or allegations of favoritism by agents and contributes to diminishing the landowners' and the hunters' legal and ethical responsibilities to ensure that the area hunted is not baited.

Finally, we do not inspect fields because the practice itself is flawed, unless the specific area to be hunted is placed under constant surveillance for a full 10 days prior to the hunt. Federal and state regulations require an area to be totally free from bait for 10 days prior to a hunt. We know from experience that some state officers have inspected fields several days prior to a hunt and no bait was present. The field then was found baited on the day the hunt occurred, which clearly indicated the bait was placed on the area after the officers' inspection.

The Service and the vast majority of the states' are consistent in their baiting enforcement practices. A survey of the 10 state game and fish agencies in the Service's Southeast Region revealed that 80 percent of the states do not warn hunters about baited fields, inspect fields, or post baited fields. All of the southeastern states issue citations for hunting over a field baited under the conditions our agents found on the Sanchez field.

The Service believes the majority of our constituents expect and deserve the most professional level of migratory bird management possible, which includes sound biology and fair, impartial, and equitable enforcement of the laws and regulations governing the

sport hunting of doves and other migratory game birds. These laws and regulations ensure viable, sustainable wildlife populations for the enjoyment and use of generations of Americans to come.

They also support the American tradition of ethical hunting. This tradition is predicated on the spirit of fair chase and a hunter's knowledge of and respect for their quarry. Those hunters who exhibit, practice, and teach the spirit of fair chase in their pursuit of wild game traditionally have been considered true sportsmen and sportswomen, and there is a large number of these sportspersons in the United States.

Mr. Chairman, I would also like to briefly address the habitat management practice known as "moist soil management." The practice involves manipulating water levels to encourage natural vegetation to produce foods for waterfowl. Over the last several years the practice increased substantially in parts of this country, often at the encouragement of Federal State, and private partners managing to compensate for the loss of waterfowl habitat in those areas.

Currently, waterfowl hunting is not prohibited over any area where crops or natural vegetation have been artificially manipulated such as mowing, "bush-hogging," or similar operations as long as the practice does not result in the scattering of seeds that would constitute an attraction for birds. On March 22, 1996, the Service published a Notice of Intent in the Federal Register advising the public that artificial manipulation of natural vegetation aspect of the waterfowl baiting issue was being opened for further review and input by the public. The comment period for this Notice closes on June 20, 1996.

The Notice of Intent lays out four concerns relating to the possible changing of regulations. They are:

- a). What are the potential impacts on available habitat;
- b). What are the potential impacts on waterfowl populations
- c). What is the potential effect on law enforcement efforts; and
- d). What is the potential effect likely to be on existing case law?

In March, the Service contacted the International Association of Fish and Wildlife Agencies and requested their assistance in ascertaining the nature and the magnitude of the problem, if any. The International is now initiating a broad-based environmental ad hoc group to consider the issue, and ultimately make recommendations to the Service. The group will include all

sectors of the interested and affected public during the course of its deliberations. I understand the International will help the Service seek relevant data and information on the practice of manipulating natural vegetation to attract waterfowl for hunting purposes. Subsequent to receiving these recommendations and other information, the Service will publish a proposed rule with findings prior to the 1997 hunting season.

The Service is committed to a fair and objective review of this potential baiting issue. Hunters and non-hunters alike have a critical interest in what we are discussing here today and their concerns must be factored into the final regulations.

That concludes my prepared Statement. I appreciate the opportunity to testify before this Committee today.

TESTIMONY BEFORE THE HOUSE COMMITTEE ON RESOURCES REGARDING THE
NEED TO CHANGE FEDERAL WATERFOWL BAITING REGULATIONS
by Brent Manning, Director
Illinois Department of Natural Resources
May 15, 1996

Good morning, Mr. Chairman. I am Brent Manning, Director of the Illinois Department of Natural Resources. I appreciate the invitation to testify today on behalf of the Department and Illinois waterfowl hunters.

I commend the members of this committee for their interest in the magnificent waterfowl and wetland resources of this continent and for their interest in the plight of the common waterfowl hunter. Although several aspects of federal migratory game bird baiting regulations deserve review, I would like to direct my remarks this morning to the specific issue of federal waterfowl baiting regulations as they pertain to the management of wetland vegetation. Let me say first that I am not a proponent of waterfowl baiting. I am seeking a revision of federal rules governing the taking of waterfowl that will permit certain non-baiting management practices than are, in my opinion, inappropriately prohibited.

The state of Illinois has a long history of waterfowl management and protection. The first public waterfowl refuge in the state was established by the Department of Conservation at Horseshoe Lake, Alexander County in 1927. Waterfowl baiting began in the prairie state early in this century. Old-time duck hunters believe the practice began in central Illinois as an effort to compensate for a loss of natural foods caused by the diversion of water from Lake Michigan into the Illinois River valley. The first Illinois law restricting the use of bait to attract waterfowl dates back to 1909. Federal regulations prohibiting the use of bait for hunting waterfowl were adopted 26 years later in 1935. These federal regulations have not been significantly revised for decades. However, the science of wildlife management has not been as static. Waterfowl management practices in particular have been steadily evolving. As a result, baiting regulations today create a disincentive for waterfowl hunters to

develop and manage certain important wetland habitats.

I am referring specifically to wetland habitats dominated by plants that germinate on exposed mudflats or in other moist habitats -- species commonly referred to as "moist-soil" plants. Moist-soil plants are valuable for a variety of reasons. These species produce seeds for waterfowl that are often more nutritionally complete than common agricultural crops like corn, soybeans or sorghum. Furthermore, energy for migrating and wintering waterfowl in the form of moist-soil plants can generally be produced more efficiently and economically than can energy from row crops, particularly in areas frequently flooded. Communities of moist-soil plants and other natural vegetation also provide benefits to a great variety of wildlife in addition to waterfowl.

Unfortunately, practices like mowing or discing that are designed to facilitate hunter access, decoy placement and duck retrieval in otherwise dense stands of moist-soil plants or other natural vegetation can according to existing federal law create a "baited" situation. On one hand the federal government, specifically the Fish and Wildlife Service, encourages the adoption of moist-soil management by waterfowl managers and on the other hand enforces regulations that prohibit hunters and managers from employing practices like mowing or discing that allow them to expeditiously retrieve downed waterfowl. Waterfowl hunters pride themselves on being conservationists. We should not be discouraging hunters from applying scientifically proven management practices that benefit the resource.

In Illinois and elsewhere, hunters often ask our law enforcement officers why creating paths through vegetation to a hunting site or creating a small opening to place decoys is considered baiting. The standard answer is that federal regulations prohibit the placing, exposing, depositing, distributing, or scattering of feed so as to constitute a lure, attraction, or enticement to, on, or over any areas where hunters are attempting to take waterfowl. Hunters feel trapped by regulations that bind them so tightly that regardless of intent, it is nearly impossible to avoid violating the letter of the law.

Let me emphasize that it is not my desire to criticize the fine

law enforcement agents of the Fish and Wildlife Service. These devoted men and women are merely enforcing rules in a book whose pages have yellowed with time. My criticism is directed at the regulations. It has been argued that officer discretion can minimize the number of citations issued. However, if we must rely upon officer discretion to compensate for a law that is outdated, then it is time to change the law. I am confident that we can continue to protect the waterfowl resource we treasure without imposing restrictions that discourage the protection and management of valuable waterfowl habitats by well-meaning sportsmen and women.

Creating reasonable lures and attractants for waterfowl is an integral part of waterfowl management and in and of itself is not baiting. It is my belief that today's prohibition of baiting was primarily intended to prevent people from hunting over areas where corn, wheat or other grain crops were deposited in "unnatural" quantities to attract waterfowl. In the years just prior to the imposition of federal baiting restrictions, Illinois duck clubs were putting out an estimated 6 million bushels of corn per season. In central Illinois, some clubs were putting out as much as 430 bushels of corn per acre each fall. I think most waterfowl hunters would agree with me that depositing food in such quantities or in areas where it was not grown is and should be prohibited. Again, I am not, as some have suggested, an advocate for baiting. If I believed for one minute that mowing natural vegetation created an unnaturally attractive condition for waterfowl I would not support it. I do advocate changing the law to clarify which practices are truly baiting and which are not. We need consistency, clarity and common sense.

It has been suggested that mowing natural wetland vegetation with developed seed creates the same kind of attraction as dumping bushels of corn, wheat or other grain. I do not agree. Nor do the waterfowl and wetland experts I have consulted. My good friend Dr. Frank Bellrose is author of many publications on waterfowl including the classic book "Ducks, Geese, and Swans of North America". Dr. Bellrose is recognized world-wide as a pioneer in waterfowl research. In his long career as a waterfowl scientist, he tells me he has seen no evidence to suggest that mowing moist-soil plants will increase waterfowl harvest. He believes that mowing openings around hunting blinds is a sound practice that aids in attracting ducks and retrieving downed

birds. In his opinion, it makes no difference whether or not the plants have seeds on them when mowed. Any attraction caused by mowing is generally due to the alteration of vegetative structure rather than the redistribution of seeds.

Dr. Leigh Fredrickson, of the Gaylord Memorial Laboratory at the University of Missouri, is a respected leader in the study of moist-soil management for wildlife. Dr. Fredrickson believes that under certain circumstances, dabbling ducks select unmowed over mowed moist-soil areas, particularly if dabbling ducks can glean seeds directly from fall-flooded unmowed plants. It is his opinion that mowing in mid- to late-summer does not necessarily make natural seeds more available in a way that would attract waterfowl. Furthermore, factors other than seed production and availability of seeds are important in determining whether waterfowl use an area of natural vegetation and to what extent and how the area is used. Mowing scheduled before the end of the growing season retards or halts the development of seed. When these sites are not flooded immediately, insects, birds and small mammals consume some of the seeds and the seeds begin to deteriorate reducing the amount available to waterfowl.

Federal baiting regulations make no distinction between methods of, or motives for, scattering seeds or feed. Nor do these regulations address the kind or volume of feed scattered. Therefore, it is possible for hunters simply walking through natural vegetation with developed seed to inadvertently scatter seed and create a "baited" situation.

Only by applying common sense based on an appreciation for the intent of the law can a law enforcement agent spare the unfortunate hunter. Unfortunately, discretion in the field has not always been consistent. For example, for nearly 30 years we in Illinois required hunters to mow vegetation around their blinds on several of our public hunting areas. This practice was not challenged by federal law enforcement agents until 1994. Our hunters believe they are victims of a change in interpretation of the law. In Illinois, we have attempted to educate our hunters about waterfowl baiting regulations. Despite our attempts, a recent survey revealed that about 80% of our waterfowl hunters still do not understand or are concerned about these regulations. That tells me our laws are not clear enough. Our well-intentioned attempt to prevent legal loopholes has resulted in a

law that, when applied without good judgment, makes criminals out of honest people.

In summary, I wish to go on record in support of regulations that protect our precious natural resources. However, I believe such regulations should be based on common sense and science. I am not aware of any scientific report demonstrating that mowing moist-soil plants creates an attraction to waterfowl similar to the attraction created by the concentrated dumping of grain. We compared duck hunter success rates on 13 Illinois public hunting areas over the 10 year period from 1983 to 1992. At one set of those sites hunters mowed around their blinds, while at the others they typically did not. We found no difference in the number of ducks harvested per hunter trip between these two groups of sites.

I also believe that regulations designed to protect natural resources should not create barriers to responsible and voluntary stewardship of those resources. Today's federal waterfowl baiting regulations do not meet these criteria.

I again wish to thank this Committee for devoting valuable time to consideration of this issue. I can assure you that it is an issue of importance to many people in this nation. I can conclude no better than did John P. Rogers of the U.S. Fish and Wildlife Service in his presentation at Ducks Unlimited's International Waterfowl Symposium in 1981 -- 15 years ago-- entitled "Waterfowl Baiting Regulations -- A Government View." I quote,

"We believe firmly that as with most waterfowl management questions, decisions about this should be made in full consultation with the other management agencies involved, with adequate opportunity for public review and comment by all interested persons, and in full consideration of what is best for the resource and for waterfowl hunting."

Thank you.

**TESTIMONY BEFORE THE HOUSE COMMITTEE ON RESOURCES
ON BAITING REGULATIONS UNDER THE MIGRATORY BIRD TREATY ACT
GARY J. TAYLOR, LEGISLATIVE DIRECTOR
INTERNATIONAL ASSOCIATION OF FISH AND WILDLIFE AGENCIES
May 15, 1996**

Thank you, Mr. Chairman, for allowing us to share with the Committee the perspectives of the Association regarding baiting regulations under the Migratory Bird Treaty Act (MBTA). Our Association has had a long affiliation (dating back to our origins in 1902) with migratory birds and their conservation. As you are aware, the State fish and wildlife agencies are public trustees of fish and wildlife resources within their borders and have statutory authority to ensure the vitality and stewardship of these resources for the use and enjoyment of their citizens, both present and future. State jurisdiction for migratory birds is concurrent with the U.S. Fish and Wildlife Service. The conservation of migratory birds is thus of vital interest to our Association and the citizens of this country who enjoy these resources.

The Association, founded in 1902, is a quasi-governmental organization of public agencies charged with the protection and management of North America's fish and wildlife resources. The Association's governmental members include the fish and wildlife agencies of the states, provinces, and federal governments of the U.S., Canada, and Mexico. All 50 states are members. The Association has been a key organization in promoting sound resource management and strengthening federal, state, and private cooperation in protecting and managing fish and wildlife and their habitats in the public interest.

During the early years of our Association, we were instrumental in calling for and contributing to the drafting of the Migratory Bird Treaty with Great Britain on behalf of Canada, which was ratified in 1916. We saw then the need for federal involvement in the conservation and regulation of the take of migratory birds. The Migratory Bird Treaty Act was subsequently signed into law in 1918. This was followed up by the passage of the Duck Stamp Act in 1934 and the Pittman-Robertson Act in 1937, both of which established funding for the conservation of these resources, and in which the Association was intimately involved. Since then, we have been closely involved in the establishment of the four administrative flyways in 1947 to coordinate information and recommendations from the States and Canadian provinces to the U.S. federal regulatory process, and acts such as the North American Wetlands Conservation Act, Farm bill, and others to facilitate habitat conservation. We thus have a long listing of key involvement in issues regarding migratory birds.

As you are aware Mr. Chairman, the FWS has asked us to facilitate a review of the migratory bird hunting regulations that pertain to baiting (50 CFR 20.21). Our President is in the process of appointing a broad based working group including representatives from each of the four Administrative Flyway Councils across the country along with representatives from other conservation and sportsmen's organizations to accomplish this task. This will include both biologists and law enforcement personnel with recent on the ground experience. Brent Manning,

our Illinois department director, will chair this committee. Without pre-ordaining the work of the committee, which has not yet begun its task, we do believe that there could be some modernization of the baiting regulations to improve their clarity, understanding by both the sportsmen and law enforcement community, and their consistency of application/enforcement by both Federal and State fish and wildlife officers, while at the same time ensuring that these regulations continue to address waterfowl conservation goals. We look forward to the work of the committee toward this end.

The Association supports the need for regulations (such as baiting) regarding the means and methods of take, in addition to the regulation of season length and bag limits. Although we agree that, for several reasons, its practice is not as wide-spread as during the market hunting era, there are certain activities that inappropriately enhance the opportunity to take migratory birds. These practices, if left unregulated, would not only contribute to a decrease in the sustainability of migratory bird populations, but also create a significant inequity for sportsmen in pursuit of their sport. Practices that diminish the element of fair chase in hunting should be appropriately regulated. Therefore, we don't find much credence in the argument that regulation of season and bag limit alone is sufficient to ensure "wise use" of this sustainable resource.

Let me suggest five tests or standards that the review of the baiting regulations should consider.

1. The regulation should clearly contribute to the sustainability of the resource. As you are aware, Mr. Chairman, we have seen over the last two years what the restoration of water (through adequate precipitation) in the prairie pothole breeding habitat of the US and Canada has done for many of our duck populations. Some species populations are above long term average. This obviously substantiates the vital need to maintain the appropriate quality and quantity of habitat in these areas in order to ensure long term sustainability of the duck resources for the enjoyment of both sportsmen and all of our citizens. However, for years prior to this recent population increase, most duck populations, as you are also aware, were significantly depressed. The significance of regulations pertaining to the means and methods of take is particularly important during these times of reduced populations to ensure sustainability of the resource and equity in hunting opportunities.

2. The regulation should be clearly and consistently understood by sportsmen in the field. The baiting regulation does contain some words and phrases that lend themselves to expansive discretion in their meaning. We fully understand the need for enforcement discretion and are not suggesting that the baiting regulations could be rewritten in language that is "black and white". We also fully appreciate that the circumstances of the particular hunt, the behavior of the birds, and the experience and discretion of the law enforcement officer in interpreting these factors are necessary "subjectivities" associated with enforcement of this regulation. We are hopeful, however, that a thorough review by the Association's Special Committee may recommend language which gives greater certainty to phrases such as ". . . so as to constitute for such birds a lure, attraction or enticement to, on, or over any areas". Also, the phrase "normal agricultural practices" could benefit from clarity. It does neither hunting nor resource conservation any good to make sportsmen inadvertent violators of conservation regulations.

3. The regulation should be able to be clearly and consistently enforced by Federal and State law enforcement officers. As you are aware, Mr. Chairman, there are simply not enough USFWS or State law enforcement officers to effectively enforce federal and state fish and wildlife conservation laws and regulations. In most States through a cooperative agreement between the USFWS and the State fish and wildlife agencies, State conservation officers are granted the authority to enforce Federal conservation laws and regulations. Often times, they are supplementing a Federal law enforcement staff of only one or two officers per State. State conservation officers are frequently thus more familiar with local agricultural practices, bird populations and landowners. It seems important to us that the baiting regulation language be of such clarity and certainty that State and Federal law enforcement officers apply it with a significant amount of consistency. We would support improvements in the language to meet this objective.

4. The baiting regulations should reflect changing agricultural practices for both crop production and wildlife conservation purposes. When market hunting was in its heyday, the planting of agricultural crops was almost exclusively for commodity production. In the last 20 years or so, however, there has been increased use of agricultural practices specifically designed and applied to benefit wildlife. These wildlife conservation practices frequently are recommended by wildlife conservation agencies and organizations. For example, the 36 million acre Conservation Reserve Program normally involves management which does not include grazing or haying of those lands - not a normal agricultural practice prior to the 1985 Farm bill. Fish and wildlife organizations actively promote the planting of species of grass, shrubs and trees on these acres that provide food and cover for wildlife. Under what circumstances certain of these practices could constitute "baiting" could benefit from review of the regulations by the Association's special committee. As another example, moist soil management of crops which provide food for waterfowl provide circumstances where hunting in the vicinity of these crops may or may not be construed as baiting under certain circumstances. A clarity of the "rules" and definitions regarding this could be helpful.

Also "normal agricultural practices" vary from state to state and sometimes even within the state, depending on climatic factors. In some parts of the Southeast, for example, it is normal agricultural practice to top sow (by airplane) winter wheat into standing soybeans, and without further attention, the seed germinates. Conditions in that part of the country where this occurs should be treated differently regarding dove hunting over these fields than in parts of the country where top-sowing winter wheat on "bare" ground is not a normal agricultural practice, i.e., additional discing to cover the seed is required in order for the seed to germinate. Our Committee's review of the baiting regulations will focus on areas such as these, and endeavor to make recommendations that will allow for regional specific differences and will lead to greater understanding of and consistency in enforcement of the baiting regulations.

5. The baiting regulations should not discourage legitimate sport hunting because of ambiguities in language or application. This seems rather self-evident, Mr. Chairman, but it is helpful to remind everyone in this discussion of the tremendous contribution sportsmen and woman in this country have made to fish and wildlife conservation. Their license dollars,

income from excise taxes on sporting arms and ammunition, purchase of duck stamps, etc. have been, and continues to be, the engine that powers fish and wildlife conservation efforts in this country which all of our citizens benefit from. If our hunting regulations become so complex and ambiguous that sportsmen and women stop hunting simply because they are concerned about violating these regulations, then the resource agencies aren't adequately doing their job, and the resource and all who enjoy it in this country will be done a huge disservice. We believe that there is an appropriate balance between baiting regulations that are adequate to protect the resource, but not so ambiguous that sportsmen and women, through a sense of frustration, set down their firearms and stop hunting. We are hopeful that our special committee's review will help to achieve this balance.

Mr. Chairman, the Association looks forward to the work ahead of us in reviewing the baiting regulations, and I would be pleased to answer any questions you might have.

grt/c/gary/baiting.msg



THE WILDLIFE LEGISLATIVE FUND OF AMERICA
To protect the Heritage of the American Sportsman to hunt, to fish and to trap.

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STATEMENT OF WILLIAM P HORN
WASHINGTON COUNSEL FOR
THE WILDLIFE LEGISLATIVE FUND OF AMERICA
BEFORE THE COMMITTEE ON RESOURCES,
U.S. HOUSE OF REPRESENTATIVES
MAY 15, 1996

Mr. Chairman:

My name is William P. Horn and I appreciate the opportunity to appear before the Committee on behalf of the Wildlife Legislative Fund of America (WLFA). The WLFA is an association of sportsmen's conservation organizations established to protect the heritage of American sportsmen to hunt, fish, and trap. Through its associated organizations, the WLFA represents an aggregate membership of more than 1.5 million sportsmen-conservationists.

We thank you for scheduling this hearing to address a wildlife regulatory issue that is overdue for reform. Existing regulations regarding the use of bait for the take of migratory birds are too subjective, too obscure, and put thousands of law abiding hunters at risk for potential violations. Please understand our position, however, we DO NOT support baiting as a technique for the hunting of migratory birds -- we DO support the establishment of clear objective rules that a diligent hunter can understand and comply with. No one can say that the existing regulations and policies satisfy this reasonable requirement.

Let me add that the WLFA position on this issue arises from three perspectives. First, our President, Richard Pierce, is the former head of the Ohio Division of Wildlife and former Chair of the Mississippi Flyway Council. Second, I had the privilege to serve as Assistant Secretary of the Interior for Fish, Wildlife, and Parks. Third, and most important, we and our members are hunters who struggle with these rules every time we step into a duck blind or set up in a dove field. Regulatory reform is needed to end, or at a minimum, reduce the level of "struggle".

The sporting community, and the U.S. Fish and Wildlife Service (FWS), have long recognized the need for clarification and simplification of these rules. The Director's 1990 Law Enforcement Advisory Commission specifically proposed a revisit of the regulations at 50 CFR 20.21 (see Section IV, Recommendation 6). Moreover, the Commission raised the issue of "strict liability" and the Service's discretion to not prosecute unknowing violations.

Unfortunately, no action was taken to implement this recommendation. We are persuaded that the Committee ought to push FWS to pursue actively the original recommendations made by its own 1990 Commission.

Reform of the 20.21 regulations and associated policy should focus on three goals. First, the purpose of the baiting regulations ought to be clearly stated. We would recommend that this purpose be as follows: to restrict the use of bait in order to guard against excessive take of migratory birds and to enhance sporting conduct, recognizing the principles of fair chase, by protecting against practices that turn otherwise wild migratory birds into unwary targets on par with barnyard chickens. Conservation of migratory birds is the goal -- not the compilation of arrest statistics or the execution of high profile busts.

The second goal must be the creation of objective rules and policies that hunters can comply with. I have overseen the FWS, practiced law in this field for years, hunted doves, ducks, and geese for years and still hunt these birds with a great deal of trepidation. I scrupulously examine fields before hunting and make pointed inquiries about agricultural practices. Yet I still cannot be sure that I am complying with FWS regulations and enforcement policies. Can an agent find some tiny amount of leftover grain from an earlier legitimate feeding program? Does the agent agree that the agricultural practices used in the field are bona fide? Can the agent determine that baiting has occurred on an adjacent field that I have never seen and cite me for taking birds on their way to that field? All of these determinations are so subjective that even the most diligent and careful hunter can be cited for a violation. We are convinced that is bad public policy. The rules must be remade in a way that the diligent and careful hunter who makes the effort can be assured that he or she is in compliance with those rules.

Objectivity regarding the determination of bona fide agricultural practices is also necessary. The WLFA commends the Southeast Region of the FWS for its policy decision to defer to the states regarding what constitutes agricultural practices within each respective state. This is clearly an area where one federal prescription cannot fit all the circumstances. Moreover, deferral to the states does assist the diligent hunter to comply with the rules. We have found state fish and wildlife personnel generally willing to offer specific guidance and advice regarding what are legitimate agricultural practices. This enables the diligent hunter to take to the field with a high degree of assurance that they are following the law.

In contrast, in our experience, FWS enforcement personnel are unwilling to provide similar advice or guidance. I am aware of hunt organizers contacting FWS to ask agents to examine a field and give it a clean bill of health in an effort to fully satisfy the 20.21 regulations. These organizers have been turned down flat. Even the IRS is willing to help citizens with tax compliance -- why can't FWS help with migratory bird regulations compliance?

The WLFA is also extremely concerned with attempts by FWS to close hunting in very large zones proximate to farms where waterfowl feeding is occurring. The apparent

policy rationale is that the baited farm, even if it is not hunted, constitutes an illegal lure that brings birds into an area. This kind of policy could easily become a tool of animal rights extremists. Aggressive feeding/baiting on a few strategically located parcels on Maryland's Eastern Shore could close down hundreds of waterfowl hunting locations. In the strongest terms, we urge FWS to be very careful and not provide anti-hunting zealots a weapon to be used against America's waterfowl hunters.

Lastly, FWS needs to exercise greater discretion regarding those who unknowingly and unwittingly violate the baiting proscriptions. If illegal baiting is going on, the perpetrators -- organizers, hosts, guides, etc. -- should be the targets. They ostensibly are the ones engaged in the illegal activity as they would have knowledge of the baiting. The unknowing but otherwise diligent hunter should not bear the brunt of the prosecution.

We have heard FWS complain that it lacks discretion in these cases; we respectfully disagree. It managed to exercise enormous discretion for over 60 years in Alaska regarding spring harvest of migratory waterfowl; the number of prosecuted violators can be counted on your fingers. If FWS has this discretion for direct contravention of the Migratory Bird Treaty Act, it clearly has the discretion not to prosecute unknowing violations of regulations or enforcement policy.

Thank you again for the opportunity to address this issue. The WLFA reiterates that it supports REFORM of the 20.21 regulations and related policies to achieve greater objectivity so that the diligent and careful hunter can comply with the law and applicable regulations and policies.

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TESTIMONY SUBMITTED TO

The Committee on Resources

U.S. HOUSE OF REPRESENTATIVES

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May 15, 1996

We appreciate this opportunity to testify before the House Committee on Resources regarding the Migratory Bird Treaty Act and its enforcement. The National Wildlife Federation (NWF) is the nation's largest conservation education organization. Founded in 1936, NWF works to educate, inspire and assist individuals and organizations of diverse cultures to conserve wildlife and other natural resources and to protect the Earth's environment in order to achieve a peaceful, equitable, and sustainable future.

The conservation of this nation's migratory bird resources has long been of interest to NWF. We have worked with the U.S. Fish and Wildlife Service (Service) to prohibit the use of toxic shot in waterfowl hunting, and we annually provide comments to the Service in the setting of the Federal Migratory Bird Frameworks for late season waterfowl hunting. Furthermore, we have taken a lead role in the conservation of this nation's precious but dwindling wetlands - a resource critical to the well-being of migratory waterfowl populations.

NWF is here today not only because of our interest in the migratory bird resource, but also because of our support for properly regulated hunting, trapping and fishing. In 1991, NWF supported a resolution entitled "Fish and Wildlife Management" (copy attached). In that resolution, we recognized hunting, fishing and trapping as "legitimate recreational pursuits, and important to the conservation and management of our nation's fish and wildlife resources."

In this testimony, we briefly review the importance of the migratory bird resource, and then comment on enforcement of the Migratory Bird Treaty Act - the principal means by which this precious resource is protected and managed.

THE MIGRATORY BIRD RESOURCE

This nation has a rich diversity of birds including over 600 native species, ranging from hummingbirds and warblers, to ducks and geese, to our national symbol, the magnificent bald eagle. Rich in species number, some species are common. The Service estimated the fall flight of ducks alone to be about 80 million birds.

The migratory bird resource has tremendous historic, aesthetic, recreational and economic importance to the United States and its citizens. Essential to settlers of North America, birds provided food, fuel (oil from Great Auks) and comfort (down clothing and pillows). According to the National Survey of Fishing, Hunting, and Wildlife-Associated Recreation conducted by the Service, over three million people hunted for migratory birds, over 51 million people participated in bird watching, and over 63 million people fed wild birds in 1991. The importance of these activities to our economy is tremendous. In 1991 alone over \$686 million was expended on trips and equipment for migratory bird hunting, and over \$2 billion on the feeding of wild birds. Birds are an important part of our cultural heritage as well.

The migratory bird resource must be properly protected to provide a continuing rich and diverse avian heritage for future generations. It is imperative that we succeed in

recovering the 90 threatened and endangered birds in the United States, and properly manage all of our native avian species to ensure their well-being, and the continuation of their contribution to the quality of life of our citizens.

THE MIGRATORY BIRD CONVENTIONS

The Conventions on Migratory Birds with the United Kingdom (for Canada), Japan, Mexico and what was formerly the Soviet Union, are the backbone for the proper management and conservation of the migratory bird resource. Without this international cooperation, the migratory bird resource could quickly be over-exploited and decline, to the detriment of the citizens of all these countries. The continuation and enforcement of these Conventions, which is implemented in the United States through the Migratory Bird Treaty Act (MBTA), is critical for the well-being of a natural resource, that by the nature of its migratory patterns, is truly an international one.

The Conventions include provisions listing avian species that may be hunted and the general conditions under which hunting may occur. It is within these described parameters that the Service then determines the appropriate 'frameworks' for the taking of migratory birds each year. NWF has participated in this annual determination of frameworks because we believe there must be a sound scientific basis for properly managed consumptive use of wildlife.

Modification of the Convention

On December 14, 1995 the United States and Canada signed a carefully crafted protocol to amend the 1916 Convention Between the United Kingdom and the United States. The intent of the protocol, which must now be approved by the United States Senate and signed by the President in order to be enacted, is to provide indigenous residents of Alaska and northern Canada the opportunity to participate in customary and traditional subsistence hunts throughout the year. Importantly, the protocol for the first time places these hunts within a legal conservation and regulatory scheme. NWF endorses this protocol. In the interest of providing professional and scientific management of migratory birds, as well as an opportunity for indigenous peoples to participate in traditional activities within the scope of the legal framework provided by the Convention and the MBTA, NWF urges the Senate and the President to move forward expeditiously to enact the protocol.

Clarity of Regulations

NWF in 1996 approved the resolution "Interpretation of Fish and Wildlife Laws" (copy attached). The resolution "urges federal and state agencies charged with the responsibility for conserving, managing, and protecting fish and wildlife resources to develop clear, concise, easily interpreted and uniformly enforceable fish and wildlife regulations..."(emphasis added). The genesis of this resolution is the fact that "the strong

enforcement of fish and wildlife laws is an essential component of fish and wildlife conservation" and "the public has the right to expect that fish and wildlife regulations will be unambiguous, relatively easy to interpret, and applied consistently in all areas across the country." In short, the regulations must be "user friendly." Accordingly, we urge that all wildlife enforcement agencies strive towards user friendly regulations to facilitate compliance by people involved in wildlife related recreation and, ultimately, to enhance wildlife conservation.

Another critical component of law enforcement is education. Fish and wildlife agencies and their law enforcement branches should be engaged fully in educating the public about fish and wildlife regulations, and the reasons for those regulations. This will enhance the desire of wildlife associated recreationists to comply with the regulations, decrease violations, and improve conservation.

Moist Soil Management

On March 22, 1996 the Service published (Federal Register 61 [57] 11805-11806) a notice that it is beginning to review and may later propose to change the regulations governing the "manner in which, or if at all, natural vegetation in moist soil areas may be altered or manipulated artificially to attract waterfowl for hunting purposes." We commend the Service for its intent to review these regulations to ensure that they are working as intended and are "user friendly."

We are deeply concerned that allowing cutting of mature vegetation will, in essence, create "baited" areas sufficiently attractive to waterfowl to inappropriately enhance their susceptibility to hunters. This would essentially reverse a policy of prohibiting baiting in waterfowl hunting because of greatly increased vulnerability of birds to harvest.

Furthermore, the use of bait seems to violate the rules of fairness, as all hunters certainly are not equally capable of bearing the cost of baiting operations. It is easy for a few heavy baiters to attract waterfowl away from other nearby areas, thereby decreasing hunting opportunities for other hunters. Waterfowl hunting should be available to all hunters, not just to those who can afford costly baiting operations.

The Service notes that some people allege mowing of vegetation around duck blinds should be allowed because habitat is being lost when landowners, finding that the current rules cause economic hardship, simply forego hunting as a source of income and convert waterfowl habitat to other uses. However, as the Service notes in the proposal, losses of waterfowl habitat because current regulations are not economical is unproven. Also, it is unproven (as well as unlikely) that simply changing vegetation management would make an unprofitable operation into a money-maker. Furthermore, there are federal statutes (Section 404 of the Clean Water Act) that protect wetlands, thereby reducing the degree to which waterfowl habitat is converted to other uses. In short, there is very little, if any, evidence that mowing regimes determine whether or not a wetlands habitat will be converted or lost.

An additional justification sometimes given for mowing is to provide for boat access. Current regulations, however, adequately address this issue, allowing vegetation to be mowed prior to development of mature weed seeds, thus preventing the indirect baiting of waterfowl. Thus, new and more liberal mowing regulations are unnecessary.

Another concern is that by allowing the cutting of vegetation and the associated knock-down of natural food sources, it would be much more difficult for law enforcement officers to discern when individuals actually violate regulations by obtaining and distributing weed seed to lure waterfowl. With agency enforcement budgets being stretched thinner and thinner, creating situations where the result of legal manipulation of vegetation would be nearly indistinguishable from violating the law by baiting, is inadvisable.

For these reasons, NWF believes that waterfowl baiting regulations should retain the prohibition against luring or enticing waterfowl through direct or indirect deposition of feed, including the mowing of mature seed-bearing vegetation.

CONCLUSION

In conclusion, let me reiterate that the National Wildlife Federation supports the Migratory Bird Treaty Act. We support hunting of the migratory bird resource where it is in compliance with the MBTA and is consistent with sound conservation practices. And we oppose liberalization of baiting regulations as scientifically unjustifiable as well as unnecessary. Finally, we urge all fish and wildlife agencies to facilitate compliance with game regulations through education and the use of "user friendly" regulations.

Thank you.

NATIONAL WILDLIFE FEDERATION

RESOLUTION NO. 13
1996

INTERPRETATION OF FISH AND WILDLIFE LAWS

WHEREAS, the strong enforcement of fish and wildlife laws is an essential component of fish and wildlife conservation; and

WHEREAS, the complexity of fish and wildlife laws and the involvement of many agencies in fish and wildlife enforcement can lead to misunderstanding and difficulty for the law-abiding sportspersons to comply with; and

WHEREAS, the joint management and enforcement of migratory birds by both federal and state agencies increases this complexity even more; and

WHEREAS, sportspersons may be abandoning hunting and fishing activities for fear of unwittingly violating fish and wildlife laws or policy; and

WHEREAS, the public has the right to expect that fish and wildlife regulations will be unambiguous, relatively easy to interpret, and applied consistently in all areas of the country;

NOW THEREFORE, BE IT RESOLVED that the National Wildlife Federation in its Annual Meeting assembled March 1-3, 1996 in West Palm Beach, Florida, urges federal and state agencies charged with the responsibility for conserving, managing, and protecting fish and wildlife resources to develop clear, concise, easily interpreted and uniformly enforceable fish and wildlife regulations within their respective jurisdictions.

NATIONAL WILDLIFE FEDERATION

Resolution No. 21
1991

FISH AND WILDLIFE MANAGEMENT

WHEREAS, the National Wildlife Federation is the nation's largest conservation/education organization and is dedicated to protecting our environment and conserving and restoring fish and wildlife species; and

WHEREAS, members of the National Wildlife Federation have broad and diverse opinions on the consumptive use of fish and wildlife, yet are united in their dedication to the conservation of fish and wildlife and their habitats; and

WHEREAS, hunting, fishing and trapping have long been recognized by the National Wildlife Federation and its affiliates as legitimate recreational pursuits and important to the conservation and management of our nation's fish and wildlife resources; and

WHEREAS, properly regulated hunting, fishing and trapping have never caused the extinction of a species or caused any species to become threatened or endangered; and

WHEREAS, hunters, anglers and trappers make significant contributions to the protection, habitat improvement, restoration and management of fish and wildlife through the payment of license fees, excise taxes on certain outdoor equipment, conservation stamps, private contributions and cooperation with law enforcement agencies; and

WHEREAS, efforts to curtail and/or eliminate scientifically-regulated hunting, fishing, and trapping on lands of the National Wildlife Refuge System and the National Park Service continue to be promoted by a number of animal welfare and other organizations; and

WHEREAS, certain anti-hunting, anti-trapping and anti-fishing groups have engaged and continue to engage in activities that disrupt hunters, anglers and trappers from engaging in legally-sanctioned hunting, fishing and trapping which, in turn, limit the ability of natural resource agencies to effectively manage fish and wildlife resources; and

WHEREAS, certain anti-hunting, anti-trapping and anti-fishing groups have mounted nationwide publicity campaigns which inaccurately depict activities regarding the consumptive use of wildlife;

NOW, THEREFORE, BE IT RESOLVED that the National Wildlife Federation in annual meeting assembled March 21-24, 1991, in Memphis, Tennessee, reiterates its dedication to the conservation of fish and wildlife and their habitats; and

BE IT FURTHER RESOLVED that the National Wildlife Federation supports hunting, fishing and trapping on lands of the National Wildlife Refuge System and the National Park Service when such activities are scientifically-regulated and are shown to be compatible with the primary purpose of these lands; and

BE IT FURTHER RESOLVED that the National Wildlife Federation reiterates its support of all interested citizens to lawfully engage in hunting, trapping, fishing and other outdoor activities without unlawful interference from anti-hunting, anti-trapping and anti-fishing groups; and

BE IT FURTHER RESOLVED that the National Wildlife Federation endorses adoption of appropriate statutes and/or regulations which establish penalties for any person or persons who unlawfully impede or attempt to impede any persons from lawfully engaging in hunting, trapping and fishing; and

BE IT FURTHER RESOLVED that the National Wildlife Federation will play a greater role in providing educational programs to inform the general public about the importance of professional wildlife management, the sound scientific basis for properly managed consumptive use of fish and wildlife, and the important role of hunters, anglers and trappers in the restoration, maintenance and well-being of the nation's fish and wildlife resources and to encourage greater general public support for wildlife management activities.

**Testimony Before the
U.S. House of Representatives
Committee on Resources**

by

**John L. Cooper
Secretary
Department of Game, Fish and Parks
State of South Dakota**

Mr. Chairman and Members of the Committee on Resources:

My name is John Cooper and I appear before you to offer my perspectives on the controversial issues related to the "baiting" of migratory birds. More specifically, I wish to offer testimony in regards to the legal and ethical issues involved in the enforcement of the current migratory bird hunting regulations contained in 50 CFR Part 20.

Personal Background:

To more fully understand my testimony, I believe it would be helpful to the Committee to provide a brief background of my experience: I am currently the Secretary for the State of South Dakota's Game, Fish and Parks Department. I took my present position two days after retiring from a 22-year career as a Senior Resident Agent (Special Agent) with the Law Enforcement Division of the U.S. Fish and Wildlife Service. During my career as a USFWS Special Agent, I participated as either case agent or as supporting agent on a minimum of 50 "baiting cases" involving the unlawful hunting of waterfowl and/or doves. I have taught numerous training classes concerning wildlife laws, including the enforcement of 50 CFR Part 20, to new Special Agents, state wildlife officers, tribal wildlife officers, and other federal wildlife/natural resource personnel. In 1990, I was appointed by then Director of the USFWS, John Turner, to serve as the Service liaison officer to a six-person Law Enforcement Advisory Commission convened by Director Turner to review and evaluate Law Enforcement Division programs and policies, including the enforcement of "baiting".

During my career, I was honored to receive several professional awards, including the South Dakota Wildlife Federation Award as Conservationist of the Year (1991); South Dakota Chapter of the Wildlife Society Award as Wildlife Professional of the Year (1981); North Dakota United Sportsman Award as Law Enforcement Officer of the Year (1977); National Fish and Wildlife Foundation Guy Bradley Award for Professionalism in Wildlife Law Enforcement.

Finally, I consider it a privilege to have been raised as a hunter and fisherman by a father and two grandfathers who were great role models as sportsmen and outdoorsmen. I have been a hunter all my life and I treasure hunting as an integral part of my personal lifestyle and value system. I am a longtime sponsor of Ducks Unlimited and a member of the National Wild Turkey Federation and the North American Hunting Club. My son and daughter are both hunters and fishers and I believe they will continue to carry forth my families' strong passion and commitment for fair chase, ethical hunting and quality outdoor experiences. That said, let me turn my attentions to the issues of the Migratory Bird Treaty Act, Part 20 Hunting Regulations, and "baiting".

Background/Historical Perspectives Regarding the Baiting Regulations:

Controversy over the wording, prohibitions, and enforcement of the federal baiting regulations is nothing new. First established by rule in 1935, prohibitions on baiting have been changed approximately 17 times over the past 61 years. However, no substantial changes have occurred over at the last 23 years and the regulation (50 CFR 20.21 (i)) has been frequently and substantially upheld by District and Appeal Courts throughout the country. Baiting cases constitute the most substantial body of case precedent and judicial review of any migratory bird hunting regulation contained in Part 20.

In 1969, a Special Citizen Committee on Baiting Regulations was convened by then Director John Gotschalk, Bureau of Sport Fisheries and Wildlife. That ad hoc committee was tasked to conduct a critical review of the existing baiting regulations and make recommendations for changes and improvement. The similarity of that effort in 1969-70 to your present Committee efforts are remarkable. In 1969, the Committee was responding to "an increasing incidence of baiting violations and mounting complaints by hunters". Principal contentions by the hunters in 1969 were that: 1) the regulations are ambiguous and insufficiently definitive; 2) the regulations permit excessive latitude in judgment by wildlife enforcement personnel; 3) the regulations, coupled with arrest-oriented, over-zealous enforcement tactics, allow the arrest and conviction of innocent hunters; 4) the regulations emphasize the liability of the hunters without imposing equal liability on the actual baiters and/or landowners; and 5) the current regulations support, and even inspire inequities. Sounds familiar relative to the same issue(s) in 1996, doesn't it? (Note: I would be happy to make a copy of the 1969-70 Committee report on Baiting available to your Committee for reference).

Ever-present Issues Related to Baiting:

The 1969-70 Committee had to deal with the same basic questions the current Committee on Resources will have to deal with in regards to the overall baiting issue:

1. Should the current baiting regulations be repealed or substantially altered to allow baiting of birds by hunters as a "legal" hunting method.
2. What is the "Cost/benefit Ratio" of more permissive baiting regulations related to:
 - A. Harvest impacts on the migratory bird resource.
 - B. Hunting ethics related to "fair chase".
 - C. "Clarifying" the baiting regulations.
 - D. Impact on Wildlife Enforcement Officer's effort to deal with illegal baiting.
3. Is there a way to improve the present baiting regulations so they are more clearly understood and more consistently enforced without being more liberal.

These three major issues and the 4 sub-issues are usually at the heart of the matter when any baiting controversy arises. Most often, the issues are propelled to light by a hunter or group of hunters, or a commercial hunting club who was "done wrong" by an "over-zealous, jack booted, Gestapo, anti-hunter, Communist" Wildlife Agent(s) who cited them into court. Much ado is made to the press, friends, state legislators, and, believe it or not, to you members of Congress, as to the bad taste and bad judgment of the offending officers. The usual outcome is that the offending hunters are actually found guilty by the court system for baiting violations, but continue to seek solace and support to relax baiting regulations so that they are "not confused" and they further have the opportunity to "make the area more attractive to the ducks (doves) (geese)."

We also hear hysterical cries that the enforcement of baiting regulations is "creating violators out of sportsmen" or that "it is driving hunters away from the sport of waterfowling". George Reiger, an outdoor writer with Field and Stream, is fond of saying that mean-spirited wildlife officers, without virtue and common sense, roam the woods in search of the "cheap case", preying on sportsmen like they (we) are the enemy. He puts forth the notion that ethical behavior will (should) somehow just happen as sportsmen become more morally responsible. Any attempts to regulate behavior in the field by "enforcing" law and order will only hurt the hunting tradition, according to Mr. Reiger.

Sometimes, along with the media pressure, comes direct and indirect political pressure, especially if those cited consider themselves "privileged" hunters because of their political, economic, social, or occupational status, or because they have "connections" with someone in the administration of a state or federal agency. Sometimes, these political pressures can get ugly as administrators search for ways to placate their constituencies. I have observed some major examples of institutional hypocrisy as directors and administrators publicly profess their great concern for the welfare of the migratory bird resource while they suffer a major "spinalectomy" when it comes to backing up their enforcement personnel who are involved in a politically sensitive case.

Your Committee is now involved with all of the issues I have pointed out above and your very tough job is to sort through all the chaff in the hopes of finding a few grains of solid wheat!

Getting to the Heart of the Matter:

During my tenure as a hunter, USFWS Special Agent, and now the Secretary for a state agency, I have heard of and seen various schemes used to legitimize the baiting of migratory birds. I have been told that the seeds, corn, wheat, etc. was present on the field or near the hunters as the result of "combining failure"; "farm spill"; "corn boar"; "green bug infestation"; "hail storms"; "green manure programs"; "set-aside crop blown down by the wind"; and so on.

The new proposal on the scene, as yet somewhat undefined, is "Moist Soil Management". The USFWS is currently seeking public comment on a proposed rulemaking which will govern the manner in which "natural vegetation" in moist soil areas may be altered or manipulated artificially to attract waterfowl for hunting purposes. My agency is currently in the process of commenting on this proposal.

Regardless of the rhetoric and semantics used, at the heart of all these disguises is one pretty simple fact: the more bait (food) a hunter or club can get on the ground or in the water, the greater number of birds he/she can kill with less effort and skill!! Please make no mistake about it, baiting controls birds as surely as if they are drugged. They lose all natural wariness and it almost insures a supply of birds at the baited area. Consequently, one who baits an area does so with the expectation of improving his/her/the club's success rate on birds killed by the gun; The justification will be given that "feeding" is for the benefit of the birds, and/or the bird's habitat, but the honest fact is that baiting is used to produce a live target at the end of a shotgun barrel. It works! And, that's what makes it so attractive to killers and shooters who haven't made the effort to learn how to properly hunt migratory birds.

Despite Mr. Reiger's assertions, I truly believe that for the sport of hunting to continue, the ethical principles of fair chase must continue to be closely connected to the regulatory process. They serve as public guidelines for participants. It is not enough to concern ourselves only with daily bag limits. Regulations, such as those against baiting, tell hunters that they must conduct themselves properly and promote the fact that hunters must develop certain skills in order to be successful.

The real skills in waterfowling are the dog training, blind building, decoy placement, calling, waterfowl identification, and habitat development by belonging to organizations like Ducks Unlimited. Putting out bait and shooting a limit of ducks or doves has nothing to do with hunting skills or the hunting experience. No one should pretend it does.

Summary of My Concerns:

Earlier in my testimony, I mentioned that the Committee would basically have to deal with some long standing basic issues relating to the baiting regulations. Let me offer my summary of perspectives related to those issues based upon my experiences as a hunter and Wildlife Enforcement Officer.

1. Hunting is a privilege - not a right. In the 1942 4th Circuit Court of Appeals Case, *Bailey vs. Holland*, the Justices wrote "Permission to hunt is merely a grant of a privilege". This refers to the judicially recognized fact that the USFWS has a primary responsibility for the conservation and enhancement of an international resource.
2. The basic prohibitions against baiting have been in place for 61 years. The current regulation is not perfect, but under the vast majority of circumstances, it provides the necessary balance between conservation needs, hunter opportunity and ethics, and enforceability. It doesn't take much to tip that balance.
3. If we are really interested in providing long term benefits to our migratory bird resource, we should concentrate our efforts on preventing loss of habitat and related environmental problems. Baiting/feeding of our migratory birds is, at best, an artificial, short term manipulation which has proven to increase shortstopping and mortality, especially in the northern climes.
4. The ethical reality of baiting is that it cheapens the hunter experience. There is nothing "sporting" about birds killed over bait. As a devoted hunter and a wildlife resource professional, I defend my privilege to hunt based upon my commitment to fair chase and respect for the wildlife I pursue. I simply cannot look an anti-hunter in the face and try to justify hunting over bait!
5. Baiting tilts the distribution of harvest toward the wealthy and the entitled. It also results in over exploitation of the resource. Baiting simply concentrates birds to the detriment of other hunters who do not/cannot afford to bait. It also results in unwarranted high hunter success and commercial exploitation of a public resource.
6. Current regulations allow for the management of habitat for migratory birds and the hunting of those birds on both privately-owned and publicly-owned lands. The regulations allow a wide variety of management options which are attractive to both waterfowl and doves, including the hunting of waterfowl over flooded standing crops. Deposition, scattering, or exposing seeds and/or grains steps over the line, both legally and ethically.
7. We need to quit killing the messengers! Wildlife enforcement officers do not unilaterally write, enact, enforce nor interpret the migratory bird hunting regulations as some outdoor writers and other critics suggest. Enforcement officers want clear, understandable, impartial regulations which accomplish biological and ethical objective. Wildlife officers do expect a high standard of behavior from our hunters and they also expect hunters to know and obey the laws. I can assure you that the enforcement personnel I know and work with enforce the regulations in as fair, impartial, and equitable manner possible.

Every recreational activity has a set of rules, written and unwritten, which govern conduct. The enforcement officers I know are in support of ethical hunters and ethical hunting skills. The unethical "killer" who judges his/her success by body count is a liability for those of us who care deeply about our outdoor pursuits.
8. If the Committee chooses to deal with the tough issue of the hunter being aware or having some knowledge of the bait being present (the element of scienter), it must be extremely careful of how the regulation changes are written. As the 1969-70 Committee found out, "clarifying and improving" the regulations to more effectively protect the truly innocent is indeed not a simple task.

Whoever is assigned to review the regulations will have to be extremely careful to not throw the baby out with the bathwater and any task force assigned to "rewrite" the baiting regulations will be faced with a truly difficult task, unless, of course, they just choose to legalize baiting and are willing to accept the consequences for that action.

If it is decided to establish a "reasonable care or due diligence" standard of proof for a criminal conviction of baiting laws, we all need to also be aware that this has the distinct potential to open up certain loopholes in enforcement and produce a different set of inequities than the ones already in place.

9. I am not opposed to objective review of the current baiting regulations. Indeed, I believe review of any regulation is a healthy legislative process as long as the issue is dealt with factually and not done with a pre-determined bent toward special interests. Any review conducted must consider the practical aspects of implementing and enforcing proposed changes.
10. Any review of the baiting regulations should also address the possibility of closing and posting land and water found to be baited. It is most likely this will require a revision to the Migratory Bird Treaty Act to include a civil action involving due process. Closing land/water to hunting will protect hunters from innocently shooting on/over a baited area. Furthermore, the deterrent effect is also realized against landowners, club operators and lessees that baiting is a serious breach of hunting regulations and they are subject to losing the privilege of hosting such hunting.

Procedures would have to be established to permit closing and posting a baited area within 24 hours in order to make this an effective process.

Florida Dove Baiting Case:

You also asked me to comment on the recent dove hunting case involving the Florida Sheriffs Youth Ranch, Inc. It is my understanding that the hunters involved with that case were shooting doves on a former woodlot which had been timbered and then cleared for pasture. No farming and/or planting of crops had occurred. However, just prior to the hunt, a combination of milo, wheat, millet and other food grain screenings were dumped and scattered over the field to attract doves to the hunters. At one point a fertilizer spreader was reportedly used to distribute the various grains.

The Florida case is a clear case of greed and a clear case of a baiting violation! I'm surprised the Committee is wasting it's valuable time on this particular case unless it's for some of the reasons I stated earlier in relation to the political, social, or economic status of those apprehended. If those involved are trying to justify their baiting activity as being done for "a worthy cause", the Committee should certainly turn a deaf ear. If their issue is that some of the individual hunters had no knowledge of the bait being present and therefore were "wrongly" accused and/or convicted, I have already provided my viewpoints on that issue.

I have no sympathy for a group of the "good ol boys" who haul a bunch of grain out on a field in order to have a "good dove shoot". Their actions are especially disturbing being that at least some of the participants were law enforcement officers and other local officials. I hold them to an especially high standard and it certainly would be no loss to the hunting fraternity if these embarrassing slobes would just stay home and play checkers during hunting season. We can no longer afford these folks out in the field!

Concluding Remarks:

Thank you for allowing me the time to testify before your committee. As you can see, baiting of game birds and the accompanying regulations which govern baiting are a tough and controversial issue. I hope my comments have helped shed some light on the matter from a practical enforcement standpoint.

I certainly would be willing to assist the Committee with this issue in any way I can.



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TESTIMONY

before the

RESOURCES COMMITTEE

of the

U. S. HOUSE OF REPRESENTATIVES

on

BAITING REGULATIONS UNDER

THE MIGRATORY BIRD TREATY ACT

by

STEPHEN S. BOYNTON
Vice President and General Counsel
Henke & Associates, Ltd.
Conservation Consultants

MAY 15, 1996

MR. CHAIRMAN:

My name is Stephen S. Boynton, an attorney in private practice in Washington, DC and Vice President and General Counsel of the conservation consulting firm of Henke & Associates, Ltd. I sincerely appreciate the opportunity to appear before the Resources Committee to present testimony on the subject of the baiting regulations under the Migratory Bird Treaty Act (MBTA). 39 Stat. 1702 (Aug. 16, 1916), T.S. 628, 16 USC §§703 *et seq.*; 50 CFR §§20.1 *et seq.* The Congress has not reviewed this issue since oversight hearings in 1984 before the former Subcommittee on Fisheries, Wildlife Conservation and the Environment of the House Merchant Marine & Fisheries Committee. U.S. House of Rep., 98th Cong., 2d Sess., Serial No. 98-44 (Fish & Wildlife Misc.-Part 5) (Feb. 28, 1984). Sadly, *nothing* of a positive nature has developed regarding the issues raised at that time. Rather, in point of fact, the baiting issue has become more exacerbated due, unfortunately, to the twin prongs of unreasonable administration of the regulations by U.S. Fish & Wildlife Service Division of Law Enforcement and the unyielding position of the federal courts—including U.S. Attorneys—in a joint rush to convict under the doctrine of strict liability in baiting cases.

In my considered judgment, the time has truly come for the Congress to address this issue in a positive fashion and to provide guidance to the sportsman, the law enforcement officials, and the courts. The judicial record and wildlife law enforcement history has graphically demonstrated that the courts and the law enforcement officials have not, and in far too many cases, conscientiously will not, provide the clarity necessary to disentangle the puzzle of baiting regulations that face the sportsmen in their attempts to legally gun for migratory birds.

My vantage point of experience to make these observations is that, as an attorney in private practice, I have been involved in representing many individual sportsmen and incorporated sportsmen's clubs in baiting cases throughout the nation. In addition, in the theme of "physician,

heal thyself,” I was a defendant in a baiting case that I unsuccessfully took to the court of appeals. *United States v. Boynton, et al.*, 63 F.3d 337 (4th Cir. 1995).

First and foremost, the point needs to be underscored that the sportsmen, the law enforcement officials and, indeed, the Members of the Congress, all share the basic concern reflected in the MBTA that renewable migratory bird resources must be protected from over exploitation by the implementation of appropriate management and enforcement policies. No sportsmen I know would disagree with that premise. The disagreement and frustration are due to the absence of clear and appropriate regulations coupled with reasonable wildlife law enforcement.

It would be useful to review the background of the MBTA and the cases that have addressed the issue of baiting. First of all, in 1920, the Supreme Court upheld the constitutionality of the MBTA as well as the Act implementing it. *Missouri v. Holland*, 252 U.S. 544 (1920). Various challenges have been made to the Act since that decision¹ but none so consistently as the attacks on the regulation that prohibits hunting “[b]y the aid of baiting, or over a baited area.” 50 CFR §20.21(i). The controversy centers on a basic departure from Anglo-American concept in the common law that the government must prove criminal intent beyond a reasonable doubt before a conviction can take place. However, since 1939, it has been determined that no *scienter*, or guilty knowledge, that the area has been baited is required to prove a violation of the regulation:

There appears no sound basis here for an interpretation that the Congress intended to place upon the Government the extreme difficulty of proving guilty knowledge of bird baiting on the part of persons violating the express language

¹See, e.g.; *Bailey v. Holland*, 126 F.2d 317 (4th Cir. 1942)-challenge that closing hunting on private property next to a federal wildlife refuge was a “taking” of private property; *Cochrane v. United States*, 92 F.2d 623 (7th Cir. 1937)-challenge of authority to limit the means of taking waterfowl; *National Rifle Ass’n v. Kleppe*, 425 F.Supp. 1101 (D.D.C. 1976)-challenge of non-toxic shot regulation. There was also a marathon of litigation challenging the closing of lands to hunting next to a preserve in Illinois. See, *Landsden v. Hart*, 168 F.2d 409 (7th Cir. 1948), *cert.den.*, 335 U.S. 858 (1948); *Landsden v. Hart*, 180 F.2d 679 (7th Cir. 1951), *cert.den.*, 340 U.S. 824 (1951); *Sickman v. United States*, 184 F.2d 616 (7th Cir. 1950), *cert.den.*, 314 U.S. 939 (1951); *Bishop v. United States*, 126 F.Supp. 449 (Ct.Cl. 1954).

of the applicable regulations...but it is more reasonable to presume that Congress intended to require that hunters shall investigate at their peril conditions surrounding the fields in which they seek their quarry. *United States v. Reese*, 27 F.Supp. 833, 835 (W.D.Tenn 1939); *see also*, *United States v. Schultze*, 28 F.Supp. 234 (W.D. Ky 1939).

Based upon this single point of reasoning, a vast inverted pyramid of law has developed following this case regardless of various factual patterns or, indeed, the innocence, in fact, of the defendants involved². Even though the innocence may be established by the evidence and recognized by the court that a defendant did not know, or could not have reasonably known, the alleged bait was present, guilt will attach. For example, the court in *United States v. Catlett*, 747 F.2d 1102 (6th Cir. 1984) recognized that the defendants did not intend to hunt over bait and had not placed any bait in the gunning area. The court, however, did not hesitate to “reluctantly” affirm a conviction of the “unfortunate” defendants.³ (Emphasis added) *Id.* at 1103.

There have been a few cases that have departed from the strict liability doctrine. In *Allen v. Merovka*, 382 F.2d 589 (10th Cir. 1967) certain private land owners who were surrounded on three sides by a state waterfowl refuge where a bird feeding program was undertaken, brought an action to stop the state from prohibiting hunting on their land. They were successful in obtaining an order restraining state officials from prohibiting hunting on their land. *Allen v. McClellan*, 75 N.M. 400, 405 P.2d 405 (1965). Thereafter, the federal officials sought to post the land as “baited” since the adjoining refuge area had corn crop that had been knocked down to feed migrating waterfowl. The landowners went to federal court to restrain the federal officials from

²See, e.g., *United States v. Orme*, 51 F.3d 269 (4th Cir. 1995) aff’d. without a pub. opin. *United States v. Diez*, 851 F.Supp. 708 (D.Md., 1993); *United States v. Van Fossan*, 889 F.2d 636 (7th Cir. 1990); *United States v. Engler*, 806 F.2d 425 (3d Cir. 1986), *cert.den.*, 481 U.S. 1019 (1987); *United States v. Green*, 571 F.2d 1 (6th Cir. 1977); *United States v. Wood*, 437 F.2d 91 (9th Cir. 1971); *Rogers v. United States*, 367 F.2d 998 (8th Cir. 1966), *cert.den.*, 386 U.S. 943 (1967); *United States v. Ardoin*, 431 F.Supp. 234 (W.D.La. 1977).

³It must be noted that a jury trial is not available to the defendants in these cases since the offense is statutorily considered a “petty offense”. 18 USC §1(3). The Supreme Court has held that a jury is only required when the offense is considered to invoke “serious” consequences. *Duncan v. Louisiana*, 391 U.S. 145 (1968). *See, United States v. Ireland*, 493 F.2d 1208 (4th Cir. 1973).

preventing hunting on their land. The court avoided the constitutional issue of state property rights versus federal regulatory authority by rejecting the strict liability doctrine. They held that the hunters should not be liable for the acts of third parties by stating that “[t]he prohibited acts refer to those of the hunter, not to the independent and unrelated acts of others.”⁴ 382 F.2d at 591.

The *Allen* decision was followed, in part, in the case of *United States v. Bryson*, 414 F.Supp. 1068 (D.Del. 1974) as far as prohibiting the taking of migratory birds “by the aid of baiting” but followed the strict liability for taking “on or over a baited area.” The phrase “on or over a baited area” is vague in definition but the courts have risen to the occasion by speaking of a “zone of influence” that defines a geographical extent of the “baited area.” See, *United States v. Manning*, 787 F.2d 431, 437 (8th Cir. 1986). In terms of “how far is far,” the “zone of influence” is limited “only by the capacity of bait placed anywhere within it to act as an effective lure for the particular hunter charged.” *United States v. Chandler*, 753 F.2d 360, 363 (4th Cir. 1985). Thus, when a wildlife official says that, in his or her opinion, the alleged bait influenced the birds to come to the gunning site of the hunters, since the “bait” is there, you are guilty of violating the regulations--regardless of intent or knowledge.

In *United States v. Jarman*, 491 F.2d 764 (4th Cir. 1974) the defendants hunted doves in a field that was separated from three others by a road and a hedgerow. It was undisputed that the hunting field was not “baited” but there was grain on the other fields. The court had no trouble in finding that the division by a road and hedgerow was not a factor and that all four fields were in the “zone of influence.”

⁴But see, *Bailey v. Holland*, 126 F.2d 317 (4th Cir. 1942) noted above and cases cited in note 1 *infra*. The baiting regulations were changed after the *Allen* case to exclude the taking of migratory game birds *other than waterfowl* over areas where feed has been distributed as a result of manipulation of a crop for wildlife management purposes. 38 Fed.Reg. 22021 (Aug. 15, 1973). The Fish & Wildlife Service presently has a Notice of Intent and Request for Comment to remove the waterfowl regulations from the general regulations regarding migratory birds and seek public comment regarding “artificial manipulation” of any vegetation to attract waterfowl for hunting purposes. 61 Fed.Reg. 11805 (Mar. 22, 1996).

In *United States v. Orme*, 51 F.3d 268 (4th Cir. 1995). *aff'ing without a pub. opin.* *United States v. Diez*, 851 F.Supp. 708 (D.Md. 1994), the hunting venues were stipulated to be 4,899 feet and 2,790 feet from the alleged bait. The court determined on the basis of the agents testimony that the hunters were in the "zone of influence." Based on the strict liability that the hunter knew, or should have known, the alleged bait was present, this case now stands for the proposition that a hunter has a duty to reconnoiter one-half to one mile around his blind to determine if there is a baiting problem.⁵ As another court has observed, " 'the baited area' is as exact as the subject matter permits" and "[t]here is no *scienter* requirement to mitigate the indefiniteness of the term 'baited area' or the 'zone of influence' concept..." *United States v. Manning*, 787 F.2d 431, 438 (8th Cir. 1987). Unfortunately, under the current state of the law, this imprecise "guideline" is "as good as it gets." It is respectfully submitted that this should not be the state of affairs for the sportsmen who wants to hunt legally.

Only one court has had the presence to at least put reason into the regulatory scheme by holding "that a minimum form of scienter-the 'should have known' form-is a necessary element of the offense." *United States v. Delahoussaye*, 573 F.2d 910, 912 (5th Cir. 1978).

We conclude that at a minimum [the bait] must have been been so situated that [its] presence could have been reasonably ascertained by a hunter properly wishing to check the area of his activity for illegal devices. There is no justice for example, in convicting one who was barred by a property line from ascertaining that birds were being pulled over him bybait.... If the hunter cannot tell which is the means next door that is pulling birds over him, he cannot justly be penalized. *Any other interpretation would simply render criminal conviction an unavoidable occasional consequence of duck hunting and deny*

⁵There was also grain found on a public road that divided the blind sites. The court ignored the public road issue by sating, again, that how it came to be there was irrelevant. 831 F.Supp. at 711. This case now stands for the proposition that the hunter knew *or should have known* that there was "bait" on public road. First of all, no hunter would think of looking on a road for possible grain. Secondly, this offense took place on the Eastern Shore of Maryland where most blinds are in walking distance from a paved road. Now to have anyone arrested for gunning over or with the aid of bait, all one has to do is go down a road, find a blind in a field, shovel out some corn, and call the wildlife law enforcement officials.

*the sport to those such as, say, judges⁶ who might find such a consequence unacceptable.*⁷ (Emphasis added). *Id.* at 912-913.

The observation of the court that criminal conviction becomes an “unavoidable occasional consequence” of hunting migratory birds has become, sadly, an established pattern. So much so that many hunters have left the field because of the *uncertainty* of the “what and where” that constitutes bait in their hunting venues and the *certainty* that they will be convicted regardless of their innocence.⁸ The latter point under the majority case law is irrelevant. This is an extremely sad state of affairs given the time and treasure sportsmen have given to the conservation of renewable resources in this nation.

In the case I mentioned above where I was a defendant, the issue concerned the exception under the regulations where hunting is permitted when grain is “scattered solely as the result of normal agricultural planting or harvesting” or “distributed or scattered as the result of *bona fide* agricultural operation.” 50 CFR §20.21(i). In this case, the landowner had distributed grain “screenings”⁹ around a pond in early August in an effort to help bind the soil of a leaking pond. This was a practice was followed for six (6) years. Due to lack of rain, the grain was still present when the field was hunted a month later. Defendants maintained that this was a *bona fide*

⁶Although one could readily insert “Congressmen” here, the appropriate insertion would be “men, women and young people.”

⁷The *Delahoussaye* case has been followed in the Fifth Circuit by *United States v. Sylvester*, 848 F.2d 520 (5th Cir. 1988). In *United States v. Angueira*, 951 F.2d 12 (1st Cir. 1988), the court stated that “[w]e assume for the present purposes that *scienter* is required [for violation of the baiting regulation].” 951 F.2d at 15. However, in this case it was found that the defendants knew of the “bait” and, consequently, left “for another day a determination of that issue.” *Id.*

⁸See, *Beware of the Baiting Laws*, Reiger, George, *Field & Stream* (Dec. 1994); *Dove Hunting By Seedy Standards*, Phillips, Angus, *The Washington Post* (Sept. 10, 1995); *Waterfowl-Baiting Laws Should Be Re-examined*, Bonner, Fred, *Washington (N.C.) Daily News* (Dec. 20, 1992).

⁹Screening: a. an undesirable material that has been separated from usable material by means of a screen or sieve: *screening of imperfect grain*. (Emphasis in the original) Random House Dict. of Eng. Lang. (2d ed.) Although “imperfect” for sale, the seeds were capable of germinating.

agriculture practice and introduced evidence that such top seeding was normal for the area. Although the courts said that this was a “close case,” (which is about as comforting as being “reluctantly” found guilty and considered an “unfortunate” defendant as in *Catlett* mentioned above) and specifically found that the land owner had no intent to spread bait as the word is used, the defendants were found guilty. The court agreed with the Fish & Wildlife Service that the method used by the landowner was not *bona fide* or normal *since it was not the “best” method to retard erosion as defined by the local County Soil Conservation Service*. Thus, in the collective wisdom of the court of appeals it was determined that after several thousand years of use, the Latin phrase *bona fide*” does not mean the good faith of the person doing the act, but means good faith and without fraud as determined by a third party. In this case, what is the best agriculture practice as the Fish & Wildlife Service as determined under guidelines prescribed by the County Soil Conservation Service. The legal leap in logic was admittedly done to keep a consistent ruling that baiting cases must be determined on a strict liability doctrine. *Untied Sates v. Boynton, et al.*, 63 F.3d 337 (4th Cir. 1995).

In the case of *United States v. Brandt*, 717 F.2d 955 (6th Cir. 1993), the court made an appropriate and logical distinction for interpreting the regulations when a *bona fide* agriculture practice is being considered by stating:

[I]t is not to distinguish between orthodox and unorthodox practices, but to distinguish between areas to which birds are attracted as a consequence of farming, and areas to which birds are intentional lured by baiting. *Id.* at 958

In sum, the intent of the person undertaking the agricultural act *is* relevant. The Magistrate Judge in the *Boynton* case, however, took the position that it would be a problem on “how to prove it; how the government would ever prove a case to this.” *United States v. Boynton, et al.*, Doc. No. 94-005K/S94-0131, TR., p. 33 (Mar. 24, 1994). The court of appeals was not as subtle; they just said they declined “to follow a subjective measure of the grain

scatterer's intent to determine if the planting or operation is 'normal' or '*bona fide*' and blithely imposed strict liability that basically renders the exceptions meaningless. 63 F.3d at 345.

Although the *Boynston* case is a perfect example of trying to put the round peg of strict liability into the square hole of reasonable regulation enforcement, there are several other points in the case that bear review.

First of all, the Magistrate Judge agreed with the Fish & Wildlife Service that a crop for harvesting must be contemplated to come under the exception. The district court overruled that position and was upheld by the court of appeals. Strike one for the Fish & Wildlife Service.

In further confusion, the court of appeals found that the pamphlet entitled *What Is Legal*, issued by the Fish & Wildlife Service to supposedly make clear what the regulations actually meant, was "to some degree contradictory." 63 F.2d at 342-343. Strike two for the Fish & Wildlife Service. And, "[b]ecause the [FWS] has interpreted its own regulations in an ambiguous manner, [the court] must resolve the ambiguity." *Id.* This was strike three for the Fish & Wildlife Service but the defendants still lost the game.

It would seem a pertinent inquiry that if the Fish & Wildlife Service and the courts cannot agree on what the regulations means, how the h— is sportsmen expected to know?

Unfortunately, the answer is that he or she is not; it is what the court or the Fish & Wildlife Service Law Enforcement officials say it is at any given time in any given situation. As was said in the first case that ever considered the issue, "hunters shall investigate at their peril..." *United States v. Reese*, 27 F.Supp. 833, 835 (W.D.Tenn 1939). The only problem with that statement is that today there is no uniform guideline as to exactly what is, and where is, the "peril" they are to investigate.

In another baiting case, an action was brought against an incorporated duck club and two individual hunters where thirteen (13) kernels of corn were found in a pond over which they were hunting. *United States v. Lonergran*, No. Misc. 89-0468 (E.D. Cal. 1989). There are two interesting points in this case. First of all, the pond was in the approximate center of a 3400 acre working farm where corn was the main crop.. A fresh water stream flowed into and out of the

pond and a beaver dam had been constructed where corn stalks were used in construction. Obviously, it would not be surprising to find *some* corn in the pond. Clearly a question of reasonableness in wildlife law enforcement is at issue. The President of the Club was, however, Baron Hilton, of Hilton Hotels, and many of Club's members were well-known West Coast personalities. I am confident this case was brought because of the high visibility of the defendants and, since the "bait" was there, under the strict liability doctrine, it was expected that a plea would be entered or conviction would take place at trial. The defendants chose to go to court, however, and the Magistrate Judge appropriately issued a "not guilty" order at the conclusion of the trial. Such a circumstance is, however, rare.

Another case I believe was brought, in part, because of the high visibility of the one of the defendants was *United States v. Orme*, 851 F.3d 268 (4th Cir. 1995), *aff'ing without a pub. opin.*, *United States v. Diez*, 851 F.Supp. 708 (D.Md. 1994). Osbourn "Os" Owings owned a farm on the Eastern Shore of Maryland where many prominent state and federal officials and other prominent guests had hunted over the years. *For over thirty (30) years*, Mr. Owings had a feeding program for waterfowl where he placed grain on his farm from the time waterfowl migrated in the fall until they left in the spring. He also left standing corn in his fields and built two fresh water ponds on his farm that was surrounded on two sides by the Choptank River. In short, an ideal hunting venue. He was very proud of his feeding program and even wrote about it in a hard cover autobiography. *The Wizard Is Os* (1990). For years, federal and state law enforcement officials were aware of his feeding program. They even banded waterfowl on his property over the years. As mentioned earlier in this testimony, the hunting venues were stipulated to be 4,899 feet and 2,790 feet from the feeding program.

The last day of the waterfowl season in 1993, federal and state wildlife law enforcement officials arrested all hunters gunning from the two blind areas. Mr. Owings was 81 years old and did not hunt that day but was charged with aiding and abetting in the baiting. He passed away prior to trial but the person helping Mr. Owings was found guilty under the "since-it-is-there, you're -guilty-of-hunting-over-bait" strict liability doctrine. The "zone of influence" in this case

was, according to the witnesses for the government, basically from horizon to horizon. All the other issues of legal standing crops, fresh water ponds, lack of hunting pressure, and other attributes that made the farm attractive to waterfowl were irrelevant to the imposition of the strict liability doctrine. Intent of the hunters was ignored and the person helping Mr. Owings place the feed on the property was fined \$5000.00 and required to spend thirty (30) days in prison on a work release program. Justice? Hardly.

It is unfortunate that at present, the Fish & Wildlife Service Division of Law Enforcement's recipe for these cases is basically the philosophy of the Queen of Hearts in Lewis Carroll's *Alice's Adventure in Wonderland*: "Sentence first-- verdict afterward." Under the strict liability doctrine, the verdict is all too predictable.

The issue before this committee, then, is where do we go from here? The above cases clearly indicate there is a problem. There are many, many other instances where hunters are, in fact, innocent of actual wrong-doing but choose to pay the fine rather than incur the costs and time in contesting the charges that they feel they will lose anyway. Even the Fish & Wildlife Service would concede there is a problem. Dr. Keith Moorehouse, a biologist with the Fish & Wildlife Service, has been recently quoted as saying that "[t]he language in the regulations is not consistently clear" acknowledging that "[i]nterpretation varies from one law enforcement agency to another."¹⁰ *Conservation News From Washington* (April 15, 1996).

¹⁰During the litigation in the *Boynton* case, I received an anonymous telephone call from someone identifying himself as being with the Fish & Wildlife Service. He stated that as a result of the case, at least one Regional Director instructed the staff to determine what were "normal agricultural practices" actually undertaken by the farmers in that area. That information would be the basis of "normal agricultural practices" and not what an outside agency might say is the "best" agricultural practice that was the determining factor in the *Boynton* case. Again, a conflict in enforcement of the regulations.

Many commentators have also recognized the problems. See, e.g., *Illegal Waterfowl Hunting*, Gray, Brian and Kaminski, 48 *Journ of Wild. Mgt.* (Supp. July 1994); *The Anti-Baiting Regulation Pursuant To The Migratory Bird Treaty Act: Have the Federal Courts Flown the Coop, Or Is The Regulation For The Birds*, Schmatz, Arthur E., 14 *Geo. Mason Law Rev* 407 (1991); *Of Birds and Men: The Migratory Bird Treaty Act*, Sjoström, Craig D., 26 *Idaho Law Rev.* 371 (1990); *The Resurrection and Expansion of the Migratory Bird Treaty Act*, Coggins, George C. and Patti, Sebastian T., 50 *U. Colo. Law Rev.* 165 (1983);

The answers for regulatory reform may not be easy but they *must*, in my judgment, be addressed by the Congress as soon as practicable. In fact, since the Supreme Court has declined to address the problem of a uniform application of the regulations in the courts, the Congress may have an independent duty relative to the appropriate implementation of the Migratory Bird Treaty. In *United States v. Catlett*, 747 F.2d 1102 (6th Cir. 1984), a petition for ^{certiorari} *certiorari* was filed in the Supreme Court but was denied. *Catlett v. United States*, 471 U.S. 1074 (1985). Justice White, however, supported the petition by quoting with approval the language in *United States v. Delahoussaye* that noted that, since the baiting regulations were founded on an international treaty entered into by *all* the United States, the regulations “ ‘should not mean one thing in one state and another elsewhere’ ” 573 F.2d at 913 (5th Cir. 1978). I believe this Committee has the opportunity to initiate a constructive and substantive effort to establish order where confusion now reigns. The majority of courts have clearly indicated they will not alter their position on strict liability. The Fish & Wildlife Service will not, or cannot, correct the problem through regulatory reform. In fact, I would suggest that the Division of Law Enforcement has no interest in addressing the problem since convictions are readily made for any factual pattern involving a question of bait. But, I submit, this circumstance should not continue.

I would, therefore, recommend that the House Resources Committee appoint a task force study committee to thoroughly review the issue and report *with specific legislative recommendations* for the next Congress. Issues that should be addressed would include, but certainly not limited to, the strict liability doctrine on hunters, landowners, and lessors; the issue of normal and *bona fide* agriculture practices and procedures; the issue of “manipulated” crops; the issue of a negligent standard as to “knew, or should have known;” and the issue of a practical standard relating to hunting “on, or over a baited field” and the “zone of influence.”

I would further suggest that the Fish & Wildlife Service not promulgate any further regulations on the subject until the task force completes its work.

Such a task force should seek the counsel of all persons who would care to participate in a good faith effort to address the problem, including state and federal officials, lawyers, Members

and staff of the Congress and representatives of the conservation organizations and the hunting community. It is my belief that with the practical information that can be developed from such an inquiry, specific and workable guidelines can be developed for the benefit of wildlife law enforcement officials, the hunting community and, most importantly, the migratory bird resources.

Thank you, again, Mr. Chairman, for the opportunity of presenting this testimony. I, of course, stand prepared to offer any assistance to the Committee or staff on this most important issue.



AMERICAN BIRD CONSERVANCY

CONSERVING WILD BIRDS AND THEIR HABITATS THROUGHOUT THE AMERICAS

STATEMENT OF THE AMERICAN BIRD CONSERVANCY TO THE COMMITTEE ON RESOURCES OVERSIGHT HEARING ON THE ENFORCEMENT OF THE MIGRATORY BIRD TREATY ACT

MAY 15, 1996

The American Bird Conservancy is a national organization dedicated to the conservation of wild birds in the Americas. We have 52 member organizations from across the U.S. engaged in bird conservation. These groups include the Environmental Defense Fund, World Wildlife Fund, Florida Audubon Society, American Ornithologist Union, and the Peregrine Fund. We thank you for the opportunity to submit comments concerning the hearing on the Migratory Bird Treaty Act and its enforcement. Since we are dedicated to the conservation of wild birds, we are vitally concerned with any attempts to weaken the Migratory Bird Treaty Act and its enforcement.

The Migratory Bird Treaty of 1916 was adopted between the U.S. and Canada because of substantial declines in many species of birds from overharvest. It was enacted for the purposes "...of saving from indiscriminate slaughter and of insuring the preservation" of migratory birds. In 1936, Mexico was added by treaty as a full partner in trying to stop the decline in migratory species. The Migratory Bird Treaty Act was enacted pursuant to the 1916 Treaty and has served as our basic law governing the protection of avian species. We believe that the Treaty and the Act are essential to the conservation of birds in North America and we would vigorously oppose any weakening in their implementation and enforcement. As incredible as it may seem, one of the most abundant birds in America was exterminated by indiscriminate hunting earlier in this century. The Passenger Pigeon will never fly again as it once did in flocks of millions, blackening the sky. Shot, packed in barrels, and shipped by the boxcar, the last Passenger pigeon died in 1914. Shortly thereafter, the Carolina Parakeet became extinct (1918), another victim of overharvest and the failure to properly manage a resource.

Today, there are approximately 9,040 species of birds on Earth with more than 850 found in the U.S. Of these U.S. birds, 90 are listed as endangered or threatened while 124 additional species are listed by the U.S. Fish and Wildlife

Service as being of management concern, meaning they are declining and that special management attention is needed to assure population viability. The California Condor, Stellar's Eider, Piping Plover, Whooping Crane, Aleutian Canada Goose, and the Everglade Snail Kite, are a few of the species and subspecies in serious trouble. And, many species of our neotropical migratory song birds are in serious decline with documentation of an overall 50% decline in their volume in their annual flights over the Gulf of Mexico in the last twenty years.

Historical and continuing declines of so many of our avian species dictate that we should exercise extreme caution in weakening our basic laws and regulations designed to protect our migratory birds, both nongame and game species. We are opposed to any weakening of the present regulations governing the baiting of waterfowl and other game species or their enforcement. These baiting regulations (50 CFR Part 20) were first enacted under the Migratory Bird Treaty Act in 1935 and are an essential part of the strategy to properly manage waterfowl and other game species including doves.

The October 13, 1995 Predators Dove Hunt near Cross City, Florida that the Committee is examining today is an example of the necessity to continue the ban on baiting and to support the efforts of U.S. Law Enforcement Officers in enforcing the law. The hunting fields were baited with grains and Mourning Doves were attracted to the bait and shot. U.S. Fish and Wildlife Officers charged 88 people with various violations including shooting over bait, hunting without licenses, hunting with unplugged shotguns, exceeding the 12-bird bag limit, shooting a Snipe out of season and killing a Black-billed Cuckoo (a nongame bird).

In addition, the Federal Agents were assaulted by four of the hunters. Of the 88 people charged, 82 forfeited their collateral thus admitting guilt and paid \$31,475 in fines. Four men charged with assault stood trial and were convicted and given five years probation and fines totalling \$7,375. Two college students stood trial and were acquitted.

We believe these Law Enforcement Officers were carrying out their responsibilities and properly doing their jobs. All of the defendants could have stood trial to contest their innocence but 86 of 88 people charged were convicted.

Are our Federal agents expected to look the other way whenever the rich and powerful gather and violate gaming laws? While Mourning dove populations are stable, other species of doves are in decline such as the Common ground dove. And remember that indiscriminate hunting exterminated the Passenger pigeon. When dealing with hunters who are obviously armed, Federal Law Enforcement Officers must use prudent tactical methods in effecting arrests. This was the case in Florida.

As to the overall issue of baiting and, specifically, to the manipulation of natural vegetation in moist soil areas to attract waterfowl for hunting, we would urge the Committee to allow the U.S. Fish and Wildlife Service to continue with the rational and normal course of review it has undertaken. On March 22, 1996, the U.S. Fish and Wildlife Service published a notice in the Federal Register at Vol.61, No.57 at pp.11805-11806 soliciting comments and advice on the issue of baiting and moist soil management vegetative practices. The comment period is open until June 20, 1996 and comments may be made on the overall issue of baiting. While there may be a need for better education of some hunters and landowners on Federal Regulations and the enforcement of anti-baiting practices, the basic anti-baiting Regulations and their enforcement are sound and readily understandable.

The Courts have interpreted the current regulations in a number of cases and these give clarity to the existing law. Again, what is needed is better education not a weakening of present regulations. Allowing the mowing of vegetation once the seed heads have been established in moist soil areas and then hunting waterfowl over these areas clearly is baiting now and should remain such. We must act to prudently manage our waterfowl resources, permitting lawful and sustainable hunting, but not allowing overharvest. Liberalizing anti-baiting regulations could lead to overharvest, could alter the distribution of migratory waterfowl, and could alter migratory behavior. Additionally, baiting brings into question the "sportsmanship" of hunting. We would encourage the Committee to support the U.S. Fish and Wildlife Service's current enforcement efforts and to allow them to proceed in their solicitation of comments and review of anti-baiting regulations under the process as published in the Federal Register.

Unfortunately, a number of our traditionally hunted migratory waterfowl are in steep declines. The Waterfowl Breeding Survey, conducted by U.S. and Canadian

officials since 1955, indicates that the long-term population of Northern Pintails is down 39%; Scaups down by 20%. The American Black Duck population has experienced a significant long-term decline as well. For the first time in history, the Canada Goose hunting season in the Atlantic Flyway was closed for the 1995-1996 season because of a steep decline in their breeding population. The breeding survey for these geese revealed a decline from 180,000 nesting pairs in 1988 to 29,000 pairs in 1995. These declines in waterfowl populations buttress the case against any weakening of anti-baiting regulations and enforcement.

We also are very concerned with the decline of many bird species in this nation due to the loss of habitat. We would encourage you and your colleagues to support the continued acquisition of essential bird and wildlife habitat in our National Wildlife Refuges and National Parks as well as supporting increased funding for the Land and Water Conservation Fund for State land acquisition.

With our nation growing and sprawling and consuming huge chunks of open space, it is imperative that we assure our citizens that we will not continue to erode our natural heritage and directly contribute to the decline in game and nongame species. With over 50% of America's wetlands gone, with over 95% of our prairie grasslands gone, and with the continued fragmentation and conversion of forest land, our wildlife resources are at risk.

If we can be of assistance in providing you with any information, particularly related to the data cited in this statement, please let us know. Gerald W. Winegrad, our Director of Government Relations, would be glad to work with the Committee. We look forward to working with you in enhancing opportunities for the enhancement of our avian resources.

STATEMENT FOR THE RECORD
by
THE NATIONAL RIFLE ASSOCIATION OF AMERICA
for
THE HEARING BEFORE THE COMMITTEE ON RESOURCES
U.S. HOUSE OF REPRESENTATIVES
on the
BAITING REGULATIONS UNDER
THE MIGRATORY BIRD TREATY ACT
May 15, 1996

The National Rifle Association of America (NRA) appreciates the opportunity to comment on the baiting regulations under the Migratory Bird Treaty Act (MBTA). The NRA, with over 2 million hunter members, has an abiding interest in the sound conservation of this nation's migratory bird resources. With this interest comes our commitment to assist the Committee in the development of recommendations for refining the baiting regulations which will continue to protect migratory bird populations from excessive harvest while concomitantly providing the hunting community with standards that are less ambiguous and confusing.

II
Background

The use of corn, wheat or other food attractant to aid the hunter in the harvest of waterfowl, more commonly referred to as "baiting," became popular before the turn of the century when "market" gunning was widespread. Because a market shooter's ability to provide for his family was tied directly to his ability to harvest waterfowl, the use of live decoys, sink-box blinds, and bow-mounted battery guns were widely used methods of take. In much the same way, baiting waterfowl with agricultural grains was seen as a sure and efficient way to improve the harvest.

Market gunning was outlawed in 1900 with passage of the Lacey Act¹. However, many of the methods employed by the market shooter were accepted and used by the sporting hunter. Popular gun clubs along the East Coast, including many within the Chesapeake Bay area, employed many of the same methods used by the market shooting to aid in the harvest of waterfowl.

Due to severe climatic changes and loss of habitat, waterfowl populations experienced a noticeable decline in the 1920's and 30's. It was at this time that waterfowl managers began to restrict the manner and method of take for migratory game birds. These restrictions were put

¹ 16 U.S.C., Section 701, 3371-3378; 18 U.S.C., Section 42.

into place to reduce the individual harvest success rates of hunters and thereby reduce overall harvest levels. It was during this period that baiting as an aid to harvest migratory game birds became illegal under federal law².

Although a small number of intentional violations of the baiting regulations continue to occur even today³, the vast majority of America's waterfowl hunters now view the use of bait in waterfowl hunting as an unethical manner of take.⁴

The baiting regulations themselves are but one subset of the overall regulations governing the manner and method of take of migratory game birds⁵. While many regulations adopted through the Secretary of the Interior's authority under this chapter have proved contentious, none have been more so than 50 CFR § 20.21(i) which prohibits the taking of migratory birds "by the aid of baiting, or on or over any baited area."

The baiting regulations consist of three parts. The first section contains the general prohibition quoted above and defines what "baiting" and "baited area" mean⁶. The second and third parts then provide limited exceptions to the general prohibition. For waterfowl hunting, 50 CFR § 20.21(i)(1) exempts standing crops⁷ and grains scattered as a result of "normal agricultural

² Restrictions were put upon the use of bait in 1934, with an all-out prohibition placed in 1935. Incidentally, the use of live-decoys was also banned in 1935.

³ "Illegal Waterfowl Hunting." Brian Gray and R. Kaminski. Suppl. The Journal of Wildlife Management. Vol. 58, No.3, July 1994. The survey conducted by Gray and Kaminski found that in the Mississippi Flyway, a small percentage of the waterfowl hunters intentionally harvest ducks over bait at least once a year. The percentage varied among states within the flyway with Mississippi having the greatest percentage of intentional violators at over 11%, and Iowa having the lowest percentage of violators at less than 3%.

⁴ Like all statements regarding "ethics," no hard evidence exists for this proposition; it is inferred from general observation.

⁵ In 1918, the United States entered into the Migratory Bird Treaty Act (MBTA) with Canada for the protection of waterfowl resources. Congress then enacted Chapter 7 of Title 16, which includes § 703 and § 704 granting to the Secretary of the Interior authority to implement regulations to ensure U.S. compliance with the MBTA. Today, the United States Fish and Wildlife Service is responsible for the formulation and implementation of these regulations.

⁶ "Baiting" shall mean the placing, exposing, depositing, distributing, or scattering of shelled, shucked, or unshucked corn, wheat or other grain, salt, or other feed so as to constitute for such birds a lure, attraction or enticement to, on, or over any areas where hunters are attempting to take them; and "baited area" means any area where [bait] is directly or indirectly placed, exposed, deposited, distributed, or scattered; and such area shall remain a baited area for 10 days following complete removal of all such [bait]"

⁷ Aquatics, flooded harvested croplands, and grain crops properly shocked on the field where grown are also exempted under this section.

planting or harvesting.” For the hunting of other migratory game birds⁸, 50 CFR § 20.21(i)(2) exempts scattered grains that result from “*bona fide* agricultural operations or procedures or as a result of manipulations of a crop or other feed on the land where grown for wildlife management purposes.”⁹

III *Enforcement--The Problem*

As stated, the migratory bird baiting regulations are generally accepted by the hunting community as a necessary means to control the harvest. In recent years, however, the enforcement of these regulations have caused considerable confusion, disagreement, and consternation within the hunting community. This is due to the following factors:

- A violation of the regulations requires no showing of intent or knowledge that the violator is hunting within a baited area. It is a *strict liability* crime.
- The regulations are vague as to what constitutes a “baited area” or what the act of “baiting” entails. This not only leads to unknowing violations by conscientious hunters, but is difficult to consistently enforce.
- There is a qualitative difference between what is considered baiting for waterfowl and what is considered baiting for other migratory birds. This dichotomy adds yet another layer of confusion and vagueness.

On the first point, the regulations are written and enforced in such a way that a lack of knowledge that the area hunted is “baited” is not a defense to the crime. Nor can an individual hunter escape prosecution under the regulations by proving his or her lack of involvement in the act of “baiting” itself. Rather, the act of hunting over a baited area, irrespective of knowledge or intent, is a violation of the regulations and an individual who does so is subject to prosecution.

Secondly, because the regulations provide an explicit exemption for activities related to agricultural “planting or harvesting” and “*bone fide* agricultural operations or procedures,” without further explanation, violations are based upon an enforcement official’s subjective determination of whether a specific site has been baited. Even if waste or scattered grain exists at a site due to agricultural cultivation or harvest, an individual game warden can still find that a violation has occurred. The conscientious hunter is therefore discouraged from surveying his or her surroundings to ensure compliance with the law because the difference between baiting and

⁸ *E. g.*, mourning doves.

⁹ The wildlife management exemption cannot be used, however, if the grain or feed being scattered has been “removed from or stored on the field where grown.”

nonbaiting is not quantifiable. The only time that one can be sure that a harvested grain field is in fact “baited” is after it is assessed as such by a law enforcement official.

Finally, a significant disparity exists between what is considered illegal activity for waterfowl hunting and what is illegal for hunting other migratory game birds, including mourning dove. Waterfowl hunting requires scattered or waste grain to be the result of harvesting or planting, while dove hunting requires the scattered or waste grain to be the result of a *bone fide* agricultural operation. This disparity results in confusion within the hunting community regarding which standards should be followed to ensure compliance with the law. And because a general lack of consistency exists with respect to individual enforcement, the hunting and farming communities have little or no guidance to help them in avoiding liability under the regulations.

The combination of these three factors can lead to enforcement actions in which the individual hunter is adjudged guilty of a federal offense without ever having a reasonable opportunity to comply with the law. Unless a hunter is intimately aware of “normal” farming practices within a given region, meticulously dissects a hunting area for grain not associated with such practices, and can expertly define what differentiates an agricultural “operation” from agricultural “harvesting or planting,” he or she can be subject to federal prosecution. As said, even under these questionable assumptions, a hunter would still be guilty of a violation if an individual fish and wildlife officer’s subjective determination is that baiting has occurred. Clearly, the regulations are in need of refinement.

IV

The Solution

The task is to develop refinements to the baiting regulations which are fundamentally fair to the individual hunter and also recognize the importance of protecting migratory game birds from excessive harvest. With these overarching goals in mind, the NRA recommends that a task force be established to review the migratory bird baiting regulations and identify ways in which to improve clarity of definitions and fairness and consistency in enforcement. This task force should be composed of representatives of the FWS, state fish and wildlife agencies, and the hunting community.

In 1990, the FWS’ Law Enforcement Advisory Commission recommended that “a task force ... be established to review 50 CFR Part 20 (migratory bird hunting regulations) in an effort to clarify and simplify the existing regulations.” Unfortunately, the FWS has yet to act on the Commission’s advice. The NRA urges the Committee on Resources, through its vision and leadership, to ensure the establishment of such a task force as soon as practicable. The NRA would suggest that any legislative proposals to amend the Act or refine the baiting regulations be postponed until such a task force has the opportunity to address the identified problems.

Statement of Randy L. Vogel

Chairman Young and members of the committee. Thank you for the opportunity to comment on the federal hunting regulations regarding baiting. It is my understanding that these regulations date back to the 1930's when the dumping of large quantities of corn in marshes and backwater lakes resulted in a terrible overharvest of waterfowl. Today, however this regulation is being interpreted to cover a wide variety of management practices and the original intent appears to have been lost. Worse yet, the interpretations appear to be constantly changing.

Moist soil management for waterfowl is a practice which over the past several years has been strongly encouraged by State and Federal waterfowl biologists and managers alike. Last year here in Illinois, the Fish and Wildlife Service even sponsored and held workshops to teach private land managers (primarily duck clubs) how to use moist soil management on their property and offered a grant program to assist in utilizing the practice. I will not take the time to extoll the virtues of moist soil management as there appears to be unanimity of opinion regarding it's value. Unfortunately at the same time this promotional effort is taking place, sites employing this practice are being shut down and hunters arrested for mowing the vegetation in front of their duck blinds to facilitate hunting even when the practice does not result in waterfowl being more susceptible to the gun or in increased harvests.

This regulation is written, as many are, in very broad terms to allow for a wide range of circumstances. What has happened, however, is that literal interpretations of the verbiage are now being made with no consideration as to the original intent of the regulation. I personally have suffered the consequences of such an interpretation. On October 27, 1994, on opening day of the waterfowl season 9 people including myself were arrested for hunting in an area where openings had been mowed in front of the duck blinds. These openings, which constituted far less than one percent of the total area were mowed in late August and early September while the

vegetation was green and immature. The remaining ninety nine percent of the area was left to grow to maturity. These unmown areas, which contained fully mature vegetation with seeds readily accessible to feeding waterfowl, were deemed perfectly legal while the mown areas which contained a minute amount of seed (hundreds of times less than like sized unmown areas) were deemed to constitute baiting. Such interpretations defy logic. The mowing certainly did not make the ducks more susceptible to the gun or threaten the resource in any way. In fact, the bag limit was 3 ducks per person and when we were arrested, after a little more than an hour of hunting the nine of us collectively had bagged only 3 ducks total. This is hardly characteristic of a "baited" area. Our hunting area was shut down for ten days (one third of the total season) and after a bench trial our fines totalled over \$10,000.

In another situation, a manager of a state run waterfowl area seeded grass on a recently completed levee to prevent soil erosion. He was informed that hunting in the blinds in the vicinity of this levee would be considered a violation of the federal baiting law. Apparently once the grass sprouts it is no longer considered baiting, unless of course you mow it at which time I assume it would again be considered baiting. In reality, none of these things; seeding, growing, or mowing has any effect on hunting success in the area.

As a result of all this, sportsmen are left wondering what tomorrows interpretation of this regulation will be and if they will be the next to be arrested. This is a very strong disincentive for implementing moist soil management, or managing for waterfowl at all and is very divisive. It is pitting sportsmen against the Fish and Wildlife Service when they should be working together to preserve and enhance the waterfowl resource by providing high quality wetland habitats.

I strongly urge you to reform this law. Common sense regulations which are clear,

concise and easily followed by waterfowl hunters are desperately needed. We can no longer afford to allow interpretations to be made at the field level at the discretion of individual officers.

Thank you for the opportunity to provide this testimony.

Randy L. Vogel

524 East Mill Street

Rochester, IL 62563.

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ADVENTURE
HUNTING • FISHING • BOATING

Congressman Don Young, Chairman
Resources Committee
U.S. House of Representatives
1324 Longworth House Office Building
Washington, DC 20515

5/21/96

Dear Congressman Young:

I'd like to add my comments to the hearings on the Migratory Bird Baiting Regulations and the hearings that were held on May 15, 1996.

I am a wildlife biologist, freelance outdoor writer and editor of a hunting and fishing magazine (Carolina Adventure). I have worked for many years in the wildlife management field as a biologist, deputy game warden and as a writer.

I'd also like to say that I have never been charged with any game law violation especially a baiting violation. I'm saying this so that I will not be accused of "sour grapes."

I feel very strongly that the existing migratory bird baiting laws are wrong. I realize that they were supposedly set up to protect the resource (migratory birds) and are covered under treaty but--- at whose expense.

The baiting laws are the only laws I know of where a perfectly innocent person can get into trouble no matter how hard he tries to stay legal. The federal regulations are written so loosely that the interpretation of the law is left entirely up to the U.S. Fish and Wildlife Service's

Enforcement Officers. What this amounts to is that a lot of very innocent and well meaning hunters get caught up in violations that should have never been charged.

Many hunters simply pay their fines and hope that the whole matter will be soon “swept under the rug” and forgotten. In many instances the publicity-hungry enforcement officers notify the press to be absolutely sure that there IS press on the incident. This holds particularly true if the people who are charged are well known or important.

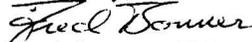
The “antics” of the law enforcement personnel are driving many hunters away from the sport because they’re afraid of inadvertently getting caught up in some violation. The attitude of the enforcement officers seems to be that if a person is having fun in the field, then he must be doing something wrong.

I have written many columns and editorials about the unjust baiting laws. I, as well as most hunters, can tell of instance after instance where the baiting regulations have entrapped innocent persons. Books could be filled with the cases!

I’d like to volunteer my services to serve on a task force to draw up the new regulations if Congress decides that this needs to be done. My experience as a wildlife manager as well as an enforcement officer gives me a great deal of insight into the baiting question and I feel that I could be an asset to such a task force should one be set up.

I sincerely hope that your committee will recommend that the baiting laws be re-written and set up to protect the innocent as our American laws are supposed to.

Sincerely,


Fred Bonner, Editor



DELTA WATERFOWL

P.O. BOX 3128 • BISMARCK, ND 58502 • PHONE: 701-222-8857 • FAX: 701-223-4645

May 14, 1996

The Honorable Don Young
Chairman, Resources Committee
United States House of Representatives
1324 Longworth Office Building
Washington, D.C. 20515

Dear Representative Young:

Please include this statement for the record in the Oversight Hearing on the U.S. Fish and Wildlife Service (FWS) actions and on the Migratory Bird Treaty Act in relation to the issue of baiting.

Delta Waterfowl is a long standing, private, non-profit waterfowl organization being founded in 1911. We have a world renowned research program that has been instrumental in building the science and understanding of waterfowl biology and application of management practices. We are very well qualified to comment on a review of activities that effect waterfowl.

In regards to actions of the FWS we urge the Committee to focus on the original intention of the regulation and then to factual actions of the Service. We urge caution on the reaction to emotional, subjective and unsubstantiated claims that are commonly fostered in this time of anti-federal attitudes. We encourage the Committee to wade through the expected rhetoric and focus on the intent of the law and the facts surrounding any action taken by the FWS.

Related to the above issue is the specific attention to the baiting regulations. First, please review the original intent of the Migratory Bird Treaty Act in terms of avoiding the unnatural lure of baiting. Any consideration for modification or adjustment to current regulations must be based on whether those actions will be consistent or inconsistent with the original intent of the Act.

Second, carefully weigh the impact of any potential change on the long term ability for compliance. Adding confusing and complex adjustments to potentially placate what is possibly now an overall minor issue could result in greater problems and subsequent impact to waterfowl than expected.

And thirdly, we support greater attention be given to standardizing application of regulations and most importantly to education of the public on baiting regulations. We feel that a more concerted

TOGETHER WE CAN BRING BACK THE DUCKS

effort in education will address current and avoid future conflicts with baiting. We feel that a commitment is necessary on education before any consideration is given to adjustments or modifications of the baiting regulations.

Delta Waterfowl is greatly interested in these issues and will follow with great interest any actions by Congress. We appreciate the opportunity to provide these comments and please call upon us if we can provide any additional information or answer any questions. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Lloyd A. Jones". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Lloyd A. Jones
Vice President



Wildlife Management Institute

1101 14th Street, N.W. • Suite 801 • Washington, D.C. 20005
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ROLLIN D. SPARROWE
President

LONNIE L. WILLIAMSON
Vice-President

RICHARD E. McCABE
Secretary

May 20, 1996

The Honorable Don Young, Chairman
House Resources Committee
2331 Rayburn House Office Bldg.
S. Capitol St. and Independence Ave., SE
Washington, D.C. 20515

Dear Chairman Young:

I am writing to comment for the Hearing Record concerning the Florida Charity Dove Hunt and Migratory Bird Treaty Act and Baiting which was the focus of your Oversight Hearing on Wednesday, May 15, 1996. The Wildlife Management Institute is a nonprofit organization dedicated to improving wildlife management in America. Our organization has been involved in migratory bird treaties, legislation, implementation of management programs, past citizens committees on baiting and waterfowl feeding, and other aspects of migratory bird management for many decades.

The first part of the hearing reviewed the Florida Charity Dove Hunt and the actions taken by the U.S. Fish and Wildlife Service concerning that hunt. We at the Institute know nothing other than what we heard in testimony before you at the hearing. All that we heard leads us to believe that a group of persons hunting on a heavily baited field were cited for breaking the baiting laws, and that the events regarding the Florida situation have no relationship to confusion by the public regarding wording of Fish and Wildlife Service regulations. Statements made by Fish and Wildlife Service agents and representatives at the meeting, photographs and descriptions of activities, and responses to questioning by your committee, all lead us to the inescapable conclusion that an illegal and inappropriate hunt was intercepted by the Service and appropriately shut down. The circumstances which led to entering the field with 10 Service Agents, their acknowledged courteous treatment of those they apprehended, and their careful explanation of the circumstances which led to a several hour delay before acting at the site, seem plausible and responsible based on everything we heard from all participants. We suggest that the circumstances surrounding the Florida Charity Dove Hunt as presented at your hearing offer no reason to move to change, or justify congressional intervention in, the law enforcement processes of the Fish and Wildlife Service.

There are issues concerning the baiting laws that may need clarification to assist the public in understanding and obeying them, and to enhance the job of law enforcement. These relate to changes in agricultural practices, innovations in management of natural vegetation for waterfowl, and regional

The Honorable Don Young
May 20, 1996
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differences in both habitats and hunting activities around the country. Many of us who regularly participate in migratory bird management programs have been involved in discussions of the need to modify some of the wording in 50 C.F.R., Part 20.21 which deal with baiting regulations. The established process for changing these regulations is through open public dialogue initiated through Federal Register Notices, with orderly comment periods and processes for exchange of information. These are the same processes which allow appropriate setting of migratory bird hunting regulations on an annual basis. That public process was opened by the Service on Friday, March 22, 1996. This is the legal process we think should be used to consider any changes in regulations. It is open to everyone on an equal basis.

The International Association of Fish and Wildlife Agencies presented testimony that a committee is being formed to ensure wide professional input into consideration of any changes that need to be made. The intent is to continue to provide for positive and effective law enforcement as necessary, to help sustain the resource. An equally important objective is to provide the hunting public clear language and clear regulations which allow them to enjoy the migratory bird resource with full understanding of the laws. We urge you to allow the process, which is already begun, to run its course, and let professional managers and citizens provide the direction for the Fish and Wildlife Service to proceed.

We have extensive experience with migratory bird hunting programs, land management related to them, past baiting and feeding controversies, and the existing processes for adjusting regulations to assure both protection and management of the migratory bird resource. If we can be of help to you with additional perspectives on these issues, please call on us.

Sincerely,



Rollin D. Sparrowe
President

RDS/ksl

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May 30, 1996

The Honorable Don Young
Chair
House Resources Committee
1324 Longworth House Office Building
Washington, D.C. 20515

Dear Chairman Young:

On behalf of The Humane Society of the United States (HSUS) and its three million members and constituents, I would like to thank you for the opportunity to express our views regarding ongoing deliberations about the Migratory Bird Treaty Act as it pertains to issues of "baiting" migratory birds. A recent enforcement action of the U.S. Fish and Wildlife Service in this regard was the focus of a May 15, 1996 oversight hearing. I request that these comments be included in the record of this hearing.

The HSUS is unalterably opposed to changes in the Migratory Bird Treaty Act which would weaken the critical and traditional protections of migratory birds from attempts to lure large numbers for shooting purposes using bait such as corn, wheat, or other grains. Baiting prohibitions have been in place for decades, and are accepted by the vast majority of hunters as necessary for the protection of migratory bird populations.

Moreover, the populations of many migratory game bird species, such as mourning doves in the West, pintails, black ducks and even mallards remain below long-term averages. Such species are vulnerable to overharvest associated with baiting; relaxation of baiting prohibitions will assuredly slow, and perhaps prevent, the recovery of these populations.

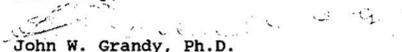
The Humane Society of the United States
2100 I. Street, NW, Washington, DC 20037
(202) 452-1100 FAX (202) 775-6132

The Honorable Don Young
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Page Two

Mr. Chairman, our members, and, we are confident, the public at large would oppose any weakening of baiting prohibitions contained in the Migratory Bird Treaty Act and its implementing regulations. Baiting wildlife to increase the likelihood of harvest is widely viewed as unfair and unethical. We urge you in the strongest possible terms to retain baiting prohibitions as they currently exist.

Thank you.

Sincerely,


John W. Grandy, Ph.D.
Vice President
Wildlife and Habitat Protection

Testimony of the National Fish and Wildlife Foundation
Amos S. Eno, Executive Director
Submitted to the House Subcommittee on Fisheries, Wildlife, and Oceans
Regarding the Teaming with Wildlife Hearing of May 1996

July 3, 1996

I appreciate the opportunity to share with the Chairman and members of the Subcommittee the insights we've gained from our experience with conservation funding for non-game wildlife. With more than 10 years of experience and a grant portfolio of over 1,300 conservation projects, the National Fish and Wildlife Foundation (NFWF) has had first hand experience addressing the conservation needs of both game and non-game species of wildlife.

As you know, NFWF is a 501(c)(3) nonprofit organization, created by Congress in 1984, and dedicated to the conservation of natural resources: fish, wildlife, plants, and their habitats. Congress created NFWF to pioneer the idea of conserving the nation's resources through partnerships and to provide an interface with the private sector. NFWF provides for enhanced management of the nation's fish and wildlife resources through a competitive grants program, using federally appropriated funds to challenge private sector funds. Among our goals are species habitat protection, environmental education, natural resource management, habitat and ecosystem rehabilitation and restoration, and leadership training for conservation professionals. NFWF achieves these goals through five project initiatives: Fisheries Conservation and Management, Wetlands and Private Lands, Wildlife and Habitat Management, Conservation Education, and Neotropical Migratory Bird Conservation.

Many of the early projects in NFWF's grant portfolio were dedicated toward conserving migratory waterfowl and associated wetland habitat, as well as the full assemblage of upland game species and their habitat. Using our federal appropriation as seed money, NFWF jump-started the North American Waterfowl Management Plan (NAWMP). Precipitous declines in waterfowl numbers throughout the 1980s made clear the need for action, and it had become apparent that hunting regulations and existing federal acquisition programs alone could not reverse the trend. These species need habitat throughout their migratory routes, but both their breeding and wintering habitats were rapidly disappearing. NFWF funding of the "Step" programs in the late eighties provided funding for the protection of approximately 350,000 acres of wetlands and critical migratory waterfowl habitat in Canada and the lower 48 states. Congress, recognizing the value of this approach, subsequently created and funded the North American Wetland Conservation Fund to continue the conservation effort that NFWF pioneered.

With the success of NAWMP, NFWF began looking for other conservation issues where we could address species facing decline but not yet threatened with extinction. The Partners in Flight Neotropical Migratory Bird Conservation Program is one direct result. Although relatively few species of migratory non-game birds are perilously close to extinction, the combined effects of habitat loss and degradation on breeding grounds in the U.S. and Canada and on their wintering range in Mexico, Latin America and the Caribbean Islands have begun to erode the population levels of many bird species. Urbanization in North America continues

to fragment and replace forest habitats, while tropical forests throughout Latin America are being eliminated at a rate of nearly 50 acres per minute. Declines in some species have been gradual, while losses in other species have been more precipitous. The wood thrush, scissor-tailed flycatcher, prairie and cerulean warblers, bobolink, and Baltimore oriole, to name a few, are all showing long term declines. Over the last quarter century, numerous species of shorebirds have declined sharply. Mountain plovers have declined by 3.5 percent annually and lesser yellow legs have declined by 6 percent annually over the last 25 years.

In its five year history, the Neotropical Migratory Bird Conservation Initiative has made 229 grants dedicating over \$20.2 million for non-game migratory bird conservation. By bringing together federal, state and provincial wildlife agencies; universities and forest products companies; and countless bird conservation groups, the Foundation's Neotropical Migratory Bird Conservation Initiative is developing solutions that integrate the needs of both non-game birds and people.

I should point out that NFWF does not lobby or litigate, and does not take positions on specific pieces of legislation. Our focus is solving conservation problems through grant making: bringing together diverse interests to benefit fish, wildlife, and their habitats. Since 1987, at the request of Congress, and at private expense, NFWF has produced an annual series of *Fisheries and Wildlife Assessments*. These documents attempt to identify successful programs of the federal agencies with primary responsibility for the management of fish and wildlife resources, and provide recommendations for funding and programmatic changes. Our recommendations directly reflect the insights we've gained from our grant portfolio. Past *Fisheries and Wildlife Assessments* have included recommendations to increase funding for Partners in Flight, an interagency program to conserve Neotropical migratory birds, and increase funding for Partners for Wildlife, the Fish and Wildlife Service's voluntary program to restore habitat on private land, for non-game as well as game species. While the most recent *Assessments* have made deficit neutral funding recommendations reflecting the efforts of Congress efforts to balance the budget, one theme has run through nearly all the *Assessments*: "It continues to be our view that in the larger context of the entire federal discretionary budget, natural resource management programs are severely under-funded and under-represented."

Many fish and wildlife species, including migratory waterfowl and other game species enjoy strong financial support from hunters and anglers through revenues generated from the sales of hunting and fishing licenses, and excise taxes on hunting and fishing equipment and motor boat fuels. Through federal excise taxes alone sportsmen and women contributed over \$525 million in fiscal year 1995 through the Pittman-Robertson and Wallop-Breaux programs to support fish and wildlife conservation. NFWF counts as valued partners groups such as Ducks Unlimited, the Rocky Mountain Elk Foundation, Quail Unlimited, Pheasants Forever, the National Wild Turkey Federation, and Trout Unlimited, as well as our corporate partners Bass Pro, Budweiser, Chevrolet, Georgia Pacific, Orvis, Exxon, and Phillips Petroleum to name a few. We sincerely appreciate the significant contributions sportsmen and women have made toward fish and wildlife conservation.

Unfortunately, there is currently no similar mechanism in place to allow non-game wildlife

enthusiasts to contribute to fish and wildlife conservation. While non-game wildlife recreational expenditures contribute significantly to the economy, little if any of this money supports any conservation effort. It has been estimated that Americans spend over \$18 billion annually to watch wildlife, of which more than \$5 billion is spent on bird watching and feeding alone, yet none of the proceeds of this economic activity support fish and wildlife conservation. Recently the International Association of Fish and Wildlife Agencies (IAFWA) has sought to bring greater attention to this funding disparity. I commend those efforts and the efforts of IAFWA Executive Vice President, Max Peterson in particular.

NFWF will continue to pioneer new conservation strategies for the benefit of both game and non-game species. The Neotropical Migratory Bird Conservation Initiative is just one example of NFWF's efforts to address often under-funded fish and wildlife conservation problems. While we are making progress, we believe increased non-game and non-endangered species funding will be critical to successful conservation of our nation's fish and wildlife resources. For this reason, we support efforts to develop additional dedicated sources of funding for fish and wildlife conservation, including "Teaming with Wildlife." Thank you for the opportunity to comment on this important topic.



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- Scott Phillips**
Old Town Canoe
- David Rose**
Dagger Canoes, Inc.
- Dick Schubert**
Go With The Flow

The Honorable Jim Saxton
Chairman
The Fisheries and Wildlife Subcommittee of the
House Resources Committee
H1-805 O'Neil House Office Building
Washington, DC
20515

Dear Sir,

I am the Executive Director of the North American Paddlesports Association (NAPSA). We are a trade association representing manufacturers, retailers, distributors, and outfitters of canoe, kayak, and rafting products and services throughout North America.

I regret that no representative from our organization was able to attend your recent hearings on the proposed excise tax on outdoor recreation equipment. I apologize for our absence in this important process.

I understand that we may submit materials on how the proposal could affect our trade for the record. I have included a brief position paper that NAPSA has developed and with input from our membership and the paddlesports trade in North America.

Thank you for your time and attention. Please do not hesitate to contact me if I may be of additional assistance to you or your staff.

Best Wishes,

Neil Wiesner-Hanks
Executive Director
The North American Paddlesports Association

12455 North
Wauwatosa
Road
Mequon, WI
53097-2711
414/242-5228
fax
414/242-4428

NAPSA
Serving the
Paddlesports
Specialty Trade

This is not true in the case of Teaming With Wildlife, where the funds collected from paddlers and hikers are likely to be spent on a variety of projects and items that would not primarily benefit the individuals who are paying the tax. Historically, the various fish and game management agencies have been unresponsive to those interests and users pursuing non-game or interests. It poses a significant problem for our participants that little of the moneys that would be raised by the proposed tax would be spent on issues of value to our constituency. Additionally, this proposal does nothing for other agencies and non-profits groups such as the National Parks, local and state parks, Forest Service that play a major part in managing and protecting public lands and trusts. Tax proponents have chosen to benefit only their constituency and failed to demonstrate to our members that their proposal would significantly expand their programs to include our constituency.

- Effectiveness

The members of the IAFWA claim that this proposal will solve the myriad of financial and organizational problems facing the state fish and wildlife management agencies. Instead, it would contribute significantly to the cost of our goods, threaten our economic competitiveness, raise significant barriers to our efforts to increase participation and sales of our products and services, fail to benefit either our members or our customers, and to address the real needs of the myriad of agencies managing our public lands and waterways.

To express your opposition to the proposed excise tax, please contact:

1. Rep. Jim Saxton (R-NJ), 3rd district , central New Jersey, Chairman Fisheries and Wildlife Subcommittee of the House Resources Committee. Fax # (202) 225-0778
2. Rep. Gerry Studds (D-MA), ranking Democrat for Subcommittee, Fisheries and Wildlife Subcommittee of the House Resources Committee. Cape Cod, MA. Fax # (202) 225-2212
3. Rep. Don Young (R-AK), Chairman of Resources Committee, Fax # (202) 225-0425
4. Rep. George Miller (D-CA), ranking Democrat Resources Committee Fax # (202) 225-5609
5. Sen. Dirk Kempthorne (R-ID), Chairman, Committee on Drinking Water, Fisheries & Wildlife, Small Business Committee Fax # (202) 224-5893

The International Association of Fish and Wildlife Agencies (IAFWA) a non-profit association whose membership is comprised of the various state fish and game management agencies has worked over the past several years to implement and introduce legislation that would impose an excise tax on all types of outdoor equipment including canoes, kayaks, paddles, and all types of paddlesports equipment and clothing.

Named "Teaming With Wildlife" the initiative being pushed by IAFWA over the past several years as the current budgetary cutbacks and restraints on a wide variety of wildlife projects and program at the state level by assessing what the IAFWA calls a "user fee" of up to 5% of the manufacturer's cost of goods on the equipment raised by outdoor recreation participants. The money raised by this proposed tax would go to state fish and wildlife agencies to fund a broad array of projects, projects as yet unnamed by the proponents of the tax.

The North American Paddlesports Association, the paddlesports industry trade association, is opposed to the proposal for the following reasons.

- Burdens on Small Businesses

Since the IAFWA introduced their program several years ago, they have maintained that this is a "user fee" in their literature and materials circulate dot the trade and consumer. This would not be a "user fee" but a true excise tax collected on a wide variety of outdoor equipment at the point of manufacture. For manufacturer of paddlesports equipment, the majority of which are small independently owned businesses, this tax would place a significant burden on the time and resources of those businesses as they attempt to comply and remain competitive in the marketplace.

Our manufacturers often give "dating" to their retailers, allowing their additional time to pay for their goods until the business season is well underway. A tax collected at the time of manufacture, would have to be financed by the manufacturer and eventually the increased costs of carry that amount on their books would be passed along to the retailer and the consumer.

- Barriers to participation and purchasing

In the current legislative and financial climate, a variety state, federal, and local agencies are all looking for ways to increase their revenue stream. Individually, these programs may be small and relatively inexpensive to consumer. Combined their effect could be devastating to our industry.

For example, the United States Coast Guard is considering the implementation of a national registration program and user fee to fund a variety of valuable coast Guard programs. At the same time, the Texas

Department of Fish and game is considering adoption of a user fee on canoes, kayaks, and paddlecraft to enhance their state programs, while at the same time, the state has the power to mandate registration of those craft in the state, and if a resident travels to a wide variety of state, local and federal wilderness areas, she may well be required to pay yet another set of user fees. Potentially, our participants could have to pay fees to four or more agencies, creating a significant barrier to not only participation but future sales of paddlesports equipment as well.

IAFWA claims to the contrary, it would be exceedingly difficult, if not impossible for manufacturers to simply pass the 5% tax along to consumers as a straight 5%. Instead, it would become yet another factor of the total over cost of that item and be incorporated into the final retail price of the item and adjusted upwards accordingly.

For example, a typical purchase of a touring kayak, our fastest growing market segment would be affected in the following manner -

Average	Wholesale	Average Retail
: composite touring kayak-	\$2200	\$2800
: paddle	\$110	\$180
: flotation	\$25	\$45
: spare paddle	\$40	\$65
: bilge pump	\$10	\$17
: transportation rack	\$100	\$160
: sprayskirt	\$45	\$70
: misc. guidebooks	\$10	\$20
Total	\$2540	\$3357

On this purchase, the proposed tax would add a minimum of \$127 to the purchase price, creating a significant barrier to purchasing and participation now and in the future.

- Benefits to participants

Despite the tax proponents claims, this proposal is not like the Pittman-Robertson and the Dingell Johnson/Wallop-Breaux funding initiatives for the hunting and fishing communities. The Sport Fish Restoration Act (Dingell-Johnson) and the Federal Aid in Wildlife Restoration Act (Pittman-Robertson) are both funds that are targeted specifically towards projects directly impacting the constituency who pays the tax. These excise taxes raise \$5 Billion in federal excise taxes for state programs. The IAFWA fails to detail that both acts were started by hunting and fishing interests, and that the money is spent completely on dedicated hunting and fishing programs.

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Thank you for your time and attention. Please contact the Association Offices if you require additional information on the Association, our mission for the paddlesports industry and programs.

Neil Wiesner-Hanks
Executive Director
The North American Paddlesports Association
12455 North Wauwatosa Road
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53097-2711
414/242-5228
fax 414/242-4428



Conserving Nature To Help Conserve Mankind

Courthouse - Maquoketa, Iowa 52060
 Office Phone 319-652-3783
 Shop Phone 319-672-3521 7 a.m.-3:30 p.m.

BOARD MEMBERS

Rick Small	Bernard-319-679-3207
David B. Kendall	Bellevue-319-672-5652
Dennis Stange	Maquoketa-319-652-3022
Bill Halstock	Delmar-319-652-2276
Gene Welch	Sabula-319-687-2527

The Honorable Jim Nussle
 United States House of Representatives
 Washington, DC 20515

June 13, 1996

Dear Representative Nussle:

We would like to submit the following statement of support for the record of the oversight hearing on **Teaming With Wildlife** before the Subcommittee on Fisheries, Wildlife and Oceans on June 6, 1996.

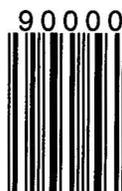
The Jackson County Conservation Board supports the funding for nongame wildlife research, education, and recreation as proposed by the **Teaming With Wildlife** effort. One of the purposes of the Jackson County Conservation Board is to provide adequate programs of recreation. Another is to encourage the orderly development and conservation of our natural resources. Both of these purposes would be greatly enhanced through the research, education and accessibility projects that could be funded through the excise fees paid by the users of nongame wildlife resources.

Sincerely,

David B. Kendall
 Chairman, Jackson County Conservation Board

JUN 26 1996

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