

ARCTIC TUNDRA HABITAT EMERGENCY CONSERVATION
ACT

JULY 29, 1999.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed

Mr. YOUNG of Alaska, from the Committee on Resources,
submitted the following

REPORT

[To accompany H.R. 2454]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the bill (H.R. 2454) to assure the long-term conservation of mid-continent light geese and the biological diversity of the ecosystem upon which many North American migratory birds depend, by directing the Secretary of the Interior to implement rules to reduce the over-abundant population of mid-continent light geese, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Arctic Tundra Habitat Emergency Conservation Act”.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds the following:

(1) The winter index population of mid-continent light geese was 800,000 birds in 1969, while the total population of such geese is more than 5,200,000 birds today.

(2) The population of mid-continent light geese is expanding by over 5 percent each year, and in the absence of new wildlife management actions it could grow to more than 6,800,000 breeding light geese in 3 years.

(3) The primary reasons for this unprecedented population growth are—

(A) the expansion of agricultural areas and the resulting abundance of cereal grain crops in the United States;

(B) the establishment of sanctuaries along the United States flyways of migrating light geese; and

(C) a decline in light geese harvest rates.

(4) As a direct result of this population explosion, the Hudson Bay Lowlands Salt-Marsh ecosystem in Canada is being systematically destroyed. This ecosystem contains approximately 135,000 acres of essential habitat for migrating light geese and many other avian species. Biologists have testified that $\frac{1}{3}$ of this habitat has been destroyed, $\frac{1}{3}$ is on the brink of devastation, and the remaining $\frac{1}{3}$ is overgrazed.

(5) The destruction of the Arctic tundra is having a severe negative impact on many avian species that breed or migrate through this habitat, including the following:

- (A) Canada Goose.
- (B) American Wigeon.
- (C) Dowitcher.
- (D) Hudsonian Godwit.
- (E) Stilt Sandpiper.
- (F) Northern Shoveler.
- (G) Red-Breasted Merganser.
- (H) Oldsquaw.
- (I) Parasitic Jaeger.
- (J) Whimbrel.
- (H) Yellow Rail.

(6) It is essential that the current population of mid-continent light geese be reduced by 50 percent by the year 2005 to ensure that the fragile Arctic tundra is not irreversibly damaged.

(b) PURPOSES.—The purposes of this Act are the following:

(1) To reduce the population of mid-continent light geese.

(2) To assure the long-term conservation of mid-continent light geese and the biological diversity of the ecosystem upon which many North American migratory birds depend.

SEC. 3. FORCE AND EFFECT OF RULES TO CONTROL OVERABUNDANT MID-CONTINENT LIGHT GEESE POPULATIONS.

(a) FORCE AND EFFECT.—

(1) IN GENERAL.—The rules published by the Service on February 16, 1999, relating to use of additional hunting methods to increase the harvest of mid-continent light geese (64 Fed. Reg. 7507–7517) and the establishment of a conservation order for the reduction of mid-continent light goose populations (64 Fed. Reg. 7517–7528), shall have the force and effect of law.

(2) PUBLIC NOTICE.—The Secretary, acting through the Director of the Service, shall take such action as is necessary to appropriately notify the public of the force and effect of the rules referred to in paragraph (1).

(b) APPLICATION.—Subsection (a) shall apply only during the period that—

(1) begins on the date of the enactment of this Act; and

(2) ends on the latest of—

(A) the effective date of rules issued by the Service after such date of enactment to control overabundant mid-continent light geese populations;

(B) the date of the publication of a final environmental impact statement for such rules under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)); and

(C) May 15, 2001.

(c) RULE OF CONSTRUCTION.—This section shall not be construed to limit the authority of the Secretary or the Service to issue rules, under another law, to regulate the taking of mid-continent light geese.

SEC. 4. DEFINITIONS.

In this Act:

(1) MID-CONTINENT LIGHT GEESE.—The term “mid-continent light geese” means Lesser snow geese (*Anser caerulescens*) and Ross’ geese (*Anser rossii*) that primarily migrate between Canada and the States of Alabama, Arkansas, Colorado, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Mexico, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, Texas, Wisconsin, and Wyoming.

(2) SECRETARY.—The term “Secretary” means the Secretary of the Interior.

(3) SERVICE.—The term “Service” means the United States Fish and Wildlife Service.

PURPOSE OF THE BILL

The purpose of H.R. 2454 is to assure the long-term conservation of mid-continent light geese and the biological diversity of the ecosystem upon which many North American migratory birds depend, by directing the Secretary of the Interior to implement rules to reduce the overabundant population of mid-continent light geese.

BACKGROUND AND NEED FOR THE LEGISLATION

In 1916, the United States and Great Britain (for Canada) signed a Convention for the Protection of Migratory Birds. The Convention established an international framework for the protection and conservation of migratory birds. Migratory bird includes all wild species of ducks, geese, brants, coots, gallinules, rails, snipes, woodcocks, crows, and mourning and white-winged doves. Under the Convention, unless permitted by regulation, it is unlawful to “pursue, hunt, take, capture, kill, possess, offer for sale, sell, offer to barter, barter, offer to purchase, purchase, deliver for shipment, ship, export, import * * * any migratory bird, any part, nest, or egg of any such bird * * * included in the terms of the convention between the United States and Great Britain for the protection of migratory birds.” The United States has signed similar agreements with Mexico and the former Soviet Union.

In 1918, the Congress passed the Migratory Bird Treaty Act (codified at 16 U.S.C. 703 et seq.). This Act became our domestic law implementing the Convention, and it committed this Nation to the protection and management of migratory birds. In addition, the Act gave the U.S. Fish and Wildlife Service (FWS) the authority to develop regulations on the harvest or “take” of migratory game birds. Both the Convention and the Migratory Bird Treaty Act were designed to ensure proper utilization of migratory bird resources.

In the 81 years since the enactment of the Migratory Bird Treaty Act, FWS has issued numerous federal regulations on the circumstances under which a hunter may take a migratory bird. For instance, FWS annually issues regulations establishing the length of hunting seasons and bag limits (number an individual may kill) for each migratory bird species. These regulations are issued only after an extensive biological review has been conducted on population levels, reproduction rates, and habitat availability for these species.

Snow or light geese are commonly known as “white geese” in the United States, where a person is likely to see Greater snow geese, Lesser snow geese, or Ross’ geese. A typical light goose is about 29 inches long, has a wing span of 17 inches, and weighs approximately 6 pounds. The Ross’ goose is smaller in size but is comparable in appearance.

The majority of light geese nest in the spring in Arctic and sub-Arctic areas of Canada, including Quebec, Ontario, Manitoba, and the Canadian Northwest Territories. The Hudson Bay lowlands in Canada—one of the largest wetlands in the world—is the primary nesting site. Evidence indicates that the majority of light geese migrate, stage, or winter in the U.S. portions of the central and Mississippi flyways. This 24-State area includes Alabama, Arkansas, Colorado, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana,

Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Mexico, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, Texas, Wisconsin, and Wyoming.

The primary food supply and diet of a light goose includes grasses and sedge species, as well as the underground parts, roots and tubers of grasses, sedges, and other plants. A typical light goose has a voracious appetite and engages extensively in grubbing of below-ground biomass, especially after the first snow melt, which can leave behind nothing but bare mud when it is overgrazed.

Light geese share their nesting habitat in the Hudson Bay lowlands with dozens of different species of birds. These include several major populations of Canada geese, half of the Atlantic brant population, significant numbers of other game birds such as pintails, black ducks, green-winged teals, and mallards, and songbirds including American wigeon, dowitcher, Hudsonian godwit, stilt sandpiper, Northern shoveler, red-breasted merganser, oldsquaw, parasitic jaeger, whimbrel, and yellow rail. This habitat is essential to the survival of all of these species.

FWS has been monitoring light geese populations since 1948. Many species of Arctic breeding geese have increased over the last 30 years. The number of light geese has dramatically increased from 800,000 in 1969 to more than 5.2 million birds today. Assuming a 5 percent growth rate in the breeding population over the next three years, the population will grow to more than 6 million in the absence of any new management actions.

According to FWS biologists, there are primarily four reasons why there has been such a population explosion. The first is the expansion of agricultural areas in the United States that provide light geese with abundant food resources. There are 2.25 million acres of rice farms in Arkansas, Louisiana, and Texas. In addition, there are millions of acres of cereal grains crops being grown in the Midwest region of the United States. Second is the establishment of sanctuaries along the U.S. flyways, in particular a number of National Wildlife Refuges visited by thousands of migrating light geese. Third, there has been a significant decline in harvest rates. Light geese, which travel in huge flocks, are difficult to successfully hunt. This has not been a significant population control method. Fourth, because of these factors, especially the abundance of food, mortality rates have decreased, adult geese are larger and healthier, and the number of breeding adults returning to nesting areas has dramatically increased.

This huge population growth of light geese has reduced thousands of acres of once thickly vegetated salt and freshwater marsh to a virtual desert. The Hudson Bay lowlands salt-marsh ecosystem is comprised of a 12,000-mile strip of coastline along west Hudson and Jones Bays, Canada. This ecosystem contains approximately 135,000 acres of coastal salt-marsh habitat. According to biologists, grazing light geese have destroyed one-third of this delicate habitat for the foreseeable future. Another third is on the brink of devastation, and light geese are currently eating their way through the remaining third. In fact, there is a genuine fear that we are beginning to see the collapse of this ecosystem which is critical to many bird species. Scientists have conducted enclosure experiments that indicate it may take at least 15 years for vegetation to begin to re-

grow and that would require a total absence of goose foraging. Since ecological recovery of cold tundra habitat is extremely slow, it is essential that some type of remedial action immediately be undertaken.

As a further illustration, 60 percent of the salt-marsh vegetation in the La Prouse Bay in Canada, which is a critical nesting site, is now either destroyed or damaged to the point where it is unable to nourish birds. At some bird colonies, habitat destruction has been so severe that young geese are malnourished and, because of this, have smaller adult body size, reduced growth rates, and lower gosling survival. The population is shifting to older adults and there are fewer young, strong light geese. If there is a population crash brought on by avian diseases, there will be fewer young light geese to begin the rebuilding process.

During the past few years, FWS has worked closely with the Canadian Wildlife Service; Ducks Unlimited; the Louisiana, North Dakota, Oregon and Virginia Departments of Fish and Game; the National Audubon Society; and other nongovernmental entities as members of the Arctic Goose Habitat Working Group. In 1997, the Group issued a report entitled "Arctic Ecosystems in Peril." The fundamental conclusion was that the light geese population should be immediately reduced by at least 5 percent a year and by 50 percent by 2005. In that report, there were a number of suggestions on ways to alleviate the destruction of the Arctic tundra including:

- Reduce the availability of food along the major migratory flyways of the light geese;
- Expand hunting opportunities for individuals to shoot light geese in various wildlife refuges in the United States;
- Allow year-round hunting of light geese with unlimited daily bag limits;
- Permit hunters to use electronic bird calls, live decoys, and to "bait" light geese to help reduce the population;
- Hire professional sharpshooters to kill light geese and donate the birds to food banks for the poor; and
- Undertake some type of aggressive government sanction program to reduce the number of light geese at their nesting areas in the Hudson Bay lowlands.

On February 16, 1999, FWS issued two final rules that authorize the use of additional hunting methods and established a conservation order to reduce the population of mid-continent light geese. These rules were crafted after reviewing over 1,100 comments from flyway councils, Alaska Native Corporations, nongovernmental organizations, State wildlife agencies, and private individuals. The comment period was open from November 9, 1998, to January 15, 1999. Both rules became effective on February 16, 1999.

Under the terms of the first rule, found at 64 Federal Register 7507-7517, an individual could use an unplugged shotgun and an electronic caller to hunt light geese during a normal hunting season when all other waterfowl and crane hunting seasons are closed. These methods are normally prohibited by the Migratory Bird Treaty Act. The second rule, which is a conservation order, found at 64 Federal Register 7517-7528, authorized certain States to implement actions to harvest mid-continent light geese outside of the regular hunting framework. Once again, this activity can only

occur when other waterfowl seasons are closed and it is limited to the 24 affected States.

The goal of these two measures was to give affected States a better opportunity to increase their light goose harvest. FWS believes that removing adults is the most effective approach in reducing the population.

On March 17, 1999, the U.S. District Court for the District of Columbia rejected a motion by the Humane Society of the United States for a preliminary injunction blocking further implementation of the two final rules. In *Humane Society of the United States, et al. v. Jamie Clark, Director, United States Fish and Wildlife Service, United States Department of the Interior* (Cv. No. 99-424), the court indicated that “the scientific evidence regarding the overpopulation of snow geese strongly favors FWS. FWS’s EA (environmental assessment) represents a ‘hard look’ at the proposed action that comports with the spirit of NEPA [the National Environmental Policy Act], though not its letter.”

In response to the court order, FWS withdrew its regulations on June 17, 1999, and is currently in the process of completing an Environmental Impact Statement under NEPA to address the various options to reduce the expanding population of light geese. It is estimated that this process will take between 12 to 18 months to finish. During that time, the remaining fragile Arctic tundra habitat will continue to be systematically consumed.

H.R. 2454 will reinstate the FWS rules in their identical form. In addition, the legislation will sunset when FWS completes its Environmental Impact Statement and issues a new rule on the management of mid-continent light geese or by May 15, 2001. The Committee believes that this should provide FWS sufficient time to complete its analysis and to issue new rules to replace this temporary solution.

COMMITTEE ACTION

H.R. 2454 was introduced on July 1, 1999, by Congressman Jim Saxton (R-NJ). The bill was referred to the Committee on Resources. While the Full Committee did not hold a legislative hearing on H.R. 2454, the Subcommittee on Fisheries Conservation, Wildlife and Oceans did conduct an oversight hearing on the FWS’s two final rules on mid-continent light geese on April 15, 1999. Testimony was heard from Congressman Collin C. Peterson (D-MN); Congressman Chip Pickering (R-MS); Dr. John Rogers, Acting Director, U.S. Fish and Wildlife Service; Mr. Gary Taylor, International Association of Fish and Wildlife Agencies; Dr. Vernon Thomas, Humane Society of the United States; Mr. Tom Adams, National Audubon Society; Dr. Bruce Batt, Ducks Unlimited, and a public witness. Each witness, except the Humane Society, strongly supported FWS’s efforts to save the fragile Arctic tundra habitat.

On July 21, 1999, the full Resources Committee met to consider the bill. Congressman Saxton offered an amendment in the nature of a substitute that made a number of clarifications in the “Findings” section of the bill and established a termination date of May 15, 2001. The amendment was adopted by voice vote. The bill, as amended, was then ordered favorably reported to the House of Representatives by voice vote.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

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

CONSTITUTIONAL AUTHORITY STATEMENT

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

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974.

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

3. Government Reform Oversight Findings. Under clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee has received no report of oversight findings and recommendations from the Committee on Government Reform on this bill.

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

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 28, 1999.

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

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2454, the Arctic Tundra Habitat Emergency Conservation Act.

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

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

H.R. 2454—Arctic Tundra Habitat Emergency Conservation Act

H.R. 2454 would codify two regulations that were promulgated by the U.S. Fish and Wildlife Service related to the use of hunting to reduce the population of mid-continent light geese. Those regulations were withdrawn pending completion of an environmental impact statement. This provision would be effective until May 15, 2001, or until other regulations are issued.

CBO estimates that enacting H.R. 2454 would have no impact on the federal budget. The bill would not affect direct spending or receipts; therefore, pay-as-you-go procedures would not apply. H.R. 2454 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would have no significant impact on the budgets of state, local, or tribal governments.

The CBO staff contact is Deborah Reis. This estimate was approved by Robert A. Sunshine, Deputy Assistance Director for Budget Analysis.

COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

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

CHANGES IN EXISTING LAW

If enacted, this bill would make no changes in existing law.

A P P E N D I X

LIGHT GEESE CHRONOLOGY

- Dec. 1969 U.S. Fish and Wildlife Service (USFWS) announces that the winter index for light (snow) geese is 800,000 birds.
- 1980's USFWS works with Flyway Councils and Canadian Wildlife Service to liberalize the harvest of snow geese in the Mid-Continent area. These efforts fail to reduce the population.
- Early 1990's Researchers and biologists notice extensive degradation of the Hudson Bay Lowland Salt-Marsh Ecosystem in Canada.
- Oct. 1995 Fifty scientists and wildlife managers form the Arctic Geese Joint Venture. This group concludes that the Arctic tundra is severely impacted at various locations and a comprehensive scientific review is warranted.
- Feb. 1996 The 17-member Arctic Goose Habitat Working Group meets in Memphis, Tennessee, to formulate a plan. The group consists of the USFWS, the Canadian Wildlife Service, various State and Provincial fish and game agencies, university-based research scientists, and nongovernmental organizations (Ducks Unlimited and National Audubon Society). The population of light geese is estimated at 3 million birds.
- Feb. 1997 Arctic Goose Habitat Working Group issues its final report entitled "Arctic Ecosystems in Peril". The report concludes that the population of light geese must be immediately reduced by at least 5 to 15 percent each year and that "this habitat damage is increasing and will not be corrected or reversed by any known natural phenomena".
- Apr. 6, 1998 USFWS publishes notice of intent to prepare environmental assessment (EA) under NEPA to evaluate alternatives for reducing the Mid-Continent light goose population.
- Apr. 23, 1998 Subcommittee on Fisheries Conservation, Wildlife and Oceans holds an oversight hearing on Arctic snow geese and "Arctic Ecosystems in Peril" report.
- Nov. 9, 1998 USFWS issues two proposed rules to increase the harvest of Mid-Continent light geese. The Director states that "too many light geese are descending each year on nesting areas that simply cannot support them all. If we do not take steps now, these fragile ecosystems will continue to deteriorate to the point that they can no longer support light geese or the many other species of wildlife that share this Arctic habitat."

- Feb. 10, 1999 USFWS issues 98-page final environmental assessment.
- Feb. 16, 1999 USFWS issues two final rules to increase the harvest of Mid-Continent light geese to conserve the remaining fragile Arctic habitat. The Service received more than 1,100 comments on these rules. The Director states that "if we do not take action, we risk not only the health of the Arctic breeding ground but also the future of many of America's migratory bird populations." These rules allow: electronic goose calls and unplugged shotguns when other waterfowl and crane seasons are closed. They also allow 24 affected States to allow the taking of light geese outside of the normal hunting framework (September 1- March 10).
- Mar. 17, 1999 U.S. District Judge Thomas F. Hogan denies the request of the Humane Society for a preliminary injunction blocking implementation of the final rules. In his ruling, the Judge suggests that the Service should have completed an Environmental Impact Statement before issuing its final regulations.
- Apr. 2, 1999 USFWS announces its plans to prepare an Environmental Impact Statement to evaluate long-term options for managing Mid-Continent light geese populations. In his ruling, Judge Hogan notes that: "It is clear that FWS acted in good faith. FWS's EA (environmental assessment) represents a 'hard look' at the proposed actions that comports with the spirit of NEPA, though not its letter. Additionally, the scientific evidence regarding the overpopulation of snow geese strongly favors FWS."
- Apr. 15, 1999 Subcommittee on Fisheries Conservation, Wildlife and Oceans conducts a second oversight hearing on the environmental impact of an exploding population of Mid-Continent light geese.
- June 17, 1999 USFWS withdraws its two regulations to reduce the Mid-Continent light goose population pending completion of an Environmental Impact Statement.
- July 1, 1999 Arctic Tundra Habitat Emergency Conservation Act introduced by U.S. Representatives Jim Saxton, Don Young, John Dingell, Saxby Chambliss, Collin Peterson, Chip Pickering, Duncan Hunter, Duke Cunningham, and John Tanner. This bipartisan bill, H.R. 2454, reinstates the two final rules developed by the USFWS to reduce the population of light geese, which is now estimated at 5 million birds. This is a temporary solution that will sunset with the completion of the Environmental Impact Statement and the issuance of new management rules by USFWS.