

**STATEMENT OF  
JIM LYONS  
SENIOR FELLOW, CENTER FOR AMERICAN PROGRESS  
and  
LECTURER, YALE SCHOOL OF FORESTRY AND ENVIRONMENTAL STUDIES  
Regarding  
S. \_\_\_\_\_, Agriculture Creates Real Employment Act (ACRE)**

**March 14, 2018**

Mr. Chairman and Members of the Committee, my name is Jim Lyons. I am currently a Senior Fellow at the Center of American Progress and a Lecturer at the Yale School of Forestry and Environmental Studies. Previously I served as Deputy Assistant Secretary for Land and Minerals Management in the Department of the Interior under President Obama and as USDA Under Secretary for Natural Resources and Environment under President Clinton. In the late 1980s through 1993, I was a senior staff member for the Chairman of the House Committee on Agriculture where I had the opportunity to help lead the effort to shape both the Conservation and Forestry Titles of the 1990 Farm Bill.

I have worked in conservation and agriculture for most of my career. I mentioned the 1990 Farm Bill because it was groundbreaking in many ways. It was only the second farm bill to have a conservation title and the first to have a forestry title.

Building on the establishment of the Conservation Reserve Program and the sodbuster, swampbuster, and conservation compliance programs in the 1985 Farm Bill, the Congress greatly expanded the conservation partnership between what was then the Soil Conservation Service (now the Natural Resources Conservation Service (NRCS)) and farmers and ranchers in the 1990 Farm Bill.

Former House Agriculture Committee Chairman, Kika de la Garza, from Texas, often emphasized that farmers are the original conservationists as their livelihoods are dependent upon their commitment to conserve the landscapes that they manage. His view, and clearly that of the Congress which passed the 1985 and '90 farm bills, was that the role of the federal government was to further assist private landowners in implementing practices to protect their soil, water and wetland resources, and to enhance wildlife habitat.

Kika was a great chairperson and a great conservation champion. Under his guidance – and that of then-Senate Agriculture Committee Chairman Leahy -- the '90 bill established the wetlands reserve program, the farmland protection program, the Wildlife Habitat Improvement Program, the Environmental Quality Incentive Program (EQIP) which was a cost-share assistance program that served as the precursor for similar programs utilized by millions of farmers today, the forest legacy program, and similar conservation programs that demonstrated the important partnership between farmers and ranchers and federal

conservation agencies like the NRCS, Farm Services Agency, and Forest Service in the US Department of Agriculture, and the US Fish and Wildlife Service in the Department of the Interior. Voluntary conservation made possible by the technical and financial assistance provided by federal conservation agencies, and their state and private partners, maintained and restored the health of millions of acres of farm and ranchlands, set aside lands for wildlife and water quality, and through conservation easements, preserved fragile soils, wetlands, and wildlife habitat.

Our work was bipartisan, it was thoughtful and deliberate. Though staff and Members didn't always agree and the debates were, at times, intense, the 1990 Farm Bill reflected a vision for the future of private land conservation that was founded on the recognition that the health of our Nation's natural resources is a function of our collective commitment to manage for the greatest good, for the greatest number, for the long term. After leaving the committee staff in 1993, I had the honor of serving as the first USDA Under Secretary for Natural Resources and Environment and helping to implement many of the innovative conservation measures I had worked with my staff colleagues and Members to design.

We continue to depend on the nation's farmers and ranchers not only for our food and fiber, but also for the care of our lands and natural resources. Conservationist Aldo Leopold described the conservation picture well in 1939 when he wrote that,

“[I]t is the American farmer who must weave the greater part of the rug on which America stands.”

Leopold's comments are as valid today – nearly four score years later – as then. We depend on American farmers and ranchers to remain the conservation leaders they have long been, and we have an obligation to the American people to ensure that we protect and promote the public/private partnership that has helped conserve America's soil, water, air, and wildlife resources.

The ACRE Act is an interesting amalgam of bills apparently designed, for the most part, to address a number of concerns raised by various farm and ranching interests. While I recognize the importance of responding to constituent concerns, I encourage you to consider the gains made and the lessons learned in previous Farm Bills in working to develop a thoughtful, bipartisan approach to agriculture policy issues built upon the important foundation that past farm bills have provided for improving conservation of fish and wildlife habitat across the nation.

An important example is NRCS's Sage Grouse Initiative (SGI) which committed half a billion dollars to private land conservation and habitat restoration activities across the remaining eleven state range of the species. The SGI has led to juniper removal in Idaho restoring 50 square miles of sage grouse habitat across private and public lands; conservation easements to protect grouse habitat on private ranches in Wyoming; and conservation agreements with farmers and ranchers from Oregon and Nevada to Montana and the Dakotas. The SGI, capitalizing on policies and programs authorized in previous farm bills, made possible conservation practices for sage grouse habitat that farmers and ranchers are implementing that

will provide them certainty that their operations will not be adversely impacted should a change in the status of the species warrant listing. In this way, farmers and ranchers are demonstrating a commitment to collaborative conservation that will benefit them, their lands, and the wildlife they enjoy. “What’s good for the herd is good for the bird”, one Oregon cattleman said. All of this is based on a commitment to translate science to policy based on research derived from real-world, on the ground data. This is what conservation can and should be.

The nation’s conservation legacy will be determined by the farm bill that you build here, and in the agriculture committee, and on the Senate floor. Think about that as you proceed with this bill and other pieces of farm legislation.

This morning, I have been asked to provide comments on each of the measures in the ACRE Act and will do so to the best of my ability.

**On Section 3, taken from the FARM Act, the exemption from certain notice requirements and penalties under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA),** I understand that this would simply codify an exemption from these requirements that had been implemented since 2008. Minimizing the burden in collecting and reporting such data seems to make sense provided there remains a means to track any unintended, adverse impacts associated with the release of animal waste for non-intensive livestock operations.

**Section 4, the exemption of Exportation of Certain Echinoderms from Permission and Licensing Requirements,** would provide an exemption from inspections under the Endangered Species Act’s export requirements for sea urchins and sea cucumbers for consumption or recreational purposes. While I understand the objective, I think you recognize the importance of gathering information about the harvests of these increasingly popular delicacies. I don’t believe that the ESA is a burden in this regard. Reporting harvest data is important to ensure that these species don’t become candidates for future ESA listing. I am confident that some means can be found to monitor harvest of these species that minimizes impacts on commercial and recreational activities so that they can continue in a sustainable way.

**Section 5 would allow agricultural producers to engage in “normal agricultural activities” that may have been previously considered baiting under the Migratory Bird Treaty Act (MBTA).** I hunt and have hunted waterfowl on Maryland’s eastern shore, so I understand the intent of this measure. I will say, however, that I have been in fields where the remaining grain seems to be excessive – or maybe the harvest was not as clean as it could have been – so these judgements are important. I would suggest that the Natural Resources Conservation Service (NRCS) and the appropriate state and federal fish and wildlife agency personnel be involved in more narrowly defining what constitutes “normal agricultural activities” for this bill. I would also suggest that it might be better to address this definitional issue administratively rather than setting a “one size fits all” standard in statute. I would also suggest that NRCS, the US Fish and Wildlife Service, and the relevant state fish and wildlife agency be involved in monitoring implementation of any changes made to ensure that the intent of this bill is realized.

**Section 6 would amend the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Clean Water Act to eliminate duplicative reporting requirements for approved pesticide applications under FIFRA.** The Congress has made several attempts in recent years to find common ground in avoiding duplication, providing clarity, and reducing the burden associated with data collection and reporting while being mindful of the need to provide the data necessary to protect the public and our environment. Efficiency in data collection and reporting makes sense provided the intent of the requirements of both FIFRA and the Clean Water Act can be met. In places like Maryland, where I currently reside, this can be particularly problematic given the potential for pesticide applications to inadvertently impact waterways and the Chesapeake Bay. Simply having a pesticide registered under FIFRA, in my opinion, does not obviate the need for meeting Clean Water Act requirements where the potential for impacting water resources or water-based crops (e.g. cranberries) occurs. However, I agree with the objective of seeking the most efficient and effective way of providing the necessary data to protect the public and the environment while minimizing the burden on farmers.

**Section 7, the Farmer Identity Protection Act, would prohibit the EPA, or EPA contractors, from disclosing information under the Clean Water Act from livestock operations.** The intent of this section sounds very similar to a provision that we included in the 1990 farm bill to prevent farmer-specific information about pesticide applications from being disclosed to the public. While I understand the concern that livestock producers may have, I also believe it is important that data related to these activities be collected in a manner that permits research and analysis to benefit producers, that can help reduce operator costs, improve the efficiency of livestock operations, as well as protect public safety and the environment. And, I would recommend that if the actions of a livestock operator have resulted in or are suspected of resulting in significant harm to the public, a federally-protected species, or the environment, that the Administrator should be granted the authority to waive the prohibition on procurement and disclosure of information.

**Section 8 would prevent enforcement of the Clean Water Act for agricultural operations resulting from aerial surveillance without express written consent of the owner/operator.** Regarding this section of the bill, I fully understand agricultural operators concerns, however I question if any use of aerial surveys would be possible with the permissions required. Aerial photography and assessments, by their very nature, are intended to cover a large landscape, making it difficult if not nearly impossible to gather permission from all those owners/operators who may be in the area that is the focus of aerial surveys. I would point out that aerial surveys are an important tool for monitoring wildlife populations – e.g., migratory bird counts; for tracking changes in important habitat such as the status of wetlands in the prairie pothole region which provides critical nesting areas for ducks and other migratory waterfowl; and gathering data for research that can improve management practices that can benefit farmers and ranchers as well as wildlife and the environment. For this reason, I question the ability to implement this bill in a way that permits the continued collection of management information that is essential to continue to make progress in improving resource management and wildlife conservation goals.

**Section 9 would allow the continued take of Double-Breasted Cormorants with respect to freshwater aquaculture facilities.** I am also a fisherman and I recognize the impacts that cormorants can have on fish populations, especially when concentrated as in aquaculture operations. Rather than codifying this exemption, I would suggest that the industry work with the US Fish and Wildlife Service and USDA to develop appropriate administrative measures to remedy the industry's concerns.

**Section 10, would provide an exemption to the EPA's Spill Prevention, Containment, and Control rule for certain farms and permit an increase in volume of fuel that can be stored on farm for self-certification.** Like my comments regarding cormorants, I question the need to codify these changes. The administration has ample authority to propose a change in rules applicable to fuel storage requirements and seeking changes in the law for each "limited exemption" seems unnecessary and inappropriate. If warranted, the administration should use its existing authority to make these changes administratively.

**Section 11 seeks to reaffirm the respective authorities of the US Fish and Wildlife Service and APHIS in the US Department of Agriculture regarding animal damage control.** This, too, seems like an unnecessary change in the law although there is no harm in reaffirming the importance of collaboration between the Fish and Wildlife Service and APHIS regarding animal depredation issues.

In closing, Mr. Chairman, I want to reaffirm the importance of coordination and collaboration between the US Fish and Wildlife Service, state fish and wildlife agencies, and USDA, EPA, and other relevant federal and state agencies in implementing farm bill programs and practices that benefit farmers and ranchers and the conservation of our nation's wildlife and natural resources. In my experience, the working relationships between these agencies was good provided they had adequate resources and continued their efforts – at all levels – to coordinate and collaborate. Encouraging that continued working relationship is valuable, but legislating "fixes" for each perceived incidence of inadequate coordination or collaboration can be counterproductive.

I also want to emphasize the importance of ensuring that measures intended to protect farmers and ranchers from the perceived threat of enforcement using data collected from various sources, including aerial surveys, satellite imagery, and other advancing technologies is a double-edged sword. Going back to my experience with the 1990 Farm Bill, we sought to protect the identity of individual producers to prevent use of data for enforcement actions in part to ensure that farmers and ranchers would not be afraid to avail themselves of the technical and financial assistance provided by USDA agencies. We think it worked well as evidenced by the substantial gains in conservation on private lands we've seen in the past 25 years. But gathering data is an important part of measuring success, of improving the delivery of conservation assistance and resources, and further refining and improving our conservation efforts. It is essential that the agencies of the federal government provide technical and financial assistance in the most efficient and cost-effective manner and that the intended benefits of this assistance – be they financial or environmental – be realized. Data are essential to ensure that this objective is achieved, and the taxpayers' investments are made wisely.

I fear that the fear of data – and of government agencies collecting data -- is adversely impacting our ability to improve our conservation programs and do a better job of conserving the soil and water resources that are essential for producing the food and fiber, fish and wildlife habitat, clean air, water resources, and outdoor recreation opportunities that come from our farms and ranches. It is interesting how much some people fear the data collection efforts of government agencies when private businesses are collecting data and information from us constantly and, often, without our knowledge – every time we use our cell phone, make a purchase, or ask Google or Alexa the weather forecast.

We live in a time of “big” data. Information is a powerful tool that we should embrace in working together to ensure a sustainable future. In this regard and given the conservation legacy of our prior Farm Bills, government agencies should be viewed as partners, not adversaries.

Thank you for the opportunity to testify before you today.

# # #