

115TH CONGRESS
2D SESSION

S. _____

To modify and improve provisions relating to environmental requirements for agriculture and agricultural producers, and for other purposes.

IN THE SENATE OF THE UNITED STATES

_____ introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To modify and improve provisions relating to environmental requirements for agriculture and agricultural producers, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Agriculture Creates
5 Real Employment Act” or the “ACRE Act”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) ADMINISTRATOR.—The term “Adminis-
9 trator” means the Administrator of the Environ-
10 mental Protection Agency.

1 (2) DIRECTOR.—The term “Director” means
2 the Director of the United States Fish and Wildlife
3 Service.

4 **SEC. 3. EXEMPTION FROM CERTAIN NOTICE REQUIRE-**
5 **MENTS AND PENALTIES.**

6 (a) AMENDMENT TO CERCLA.—Section 103 of the
7 Comprehensive Environmental Response, Compensation,
8 and Liability Act of 1980 (42 U.S.C. 9603) is amended
9 by striking subsection (e) and inserting the following:

10 “(e) APPLICABILITY TO REGISTERED PESTICIDE
11 PRODUCTS AND AIR EMISSIONS FROM ANIMAL WASTE AT
12 FARMS.—

13 “(1) DEFINITIONS.—In this subsection:

14 “(A) ANIMAL WASTE.—

15 “(i) IN GENERAL.—The term ‘animal
16 waste’ means feces, urine, or other excre-
17 ment, digestive emission, urea, or similar
18 substance emitted by animals (including
19 any form of livestock, poultry, or fish).

20 “(ii) INCLUSIONS.—The term ‘animal
21 waste’ includes animal waste that is mixed
22 or commingled with bedding, compost,
23 feed, soil, or any other material typically
24 found with that waste.

1 “(B) FARM.—The term ‘farm’ means a
2 site or area (including associated structures)
3 that—

4 “(i) is used for—

5 “(I) the production of a crop; or

6 “(II) the raising or selling of ani-
7 mals (including any form of livestock,
8 poultry, or fish); and

9 “(ii) under normal conditions, pro-
10 duces during a farm year agricultural
11 products the total value of which is not
12 less than \$1,000.

13 “(2) APPLICABILITY.—This section shall not
14 apply to—

15 “(A) the application of a pesticide product
16 registered under the Federal Insecticide, Fun-
17 gicide, and Rodenticide Act (7 U.S.C. 136 et
18 seq.) or the handling and storage of such a pes-
19 ticide product by an agricultural producer; or

20 “(B) air emissions from animal waste (in-
21 cluding decomposing animal waste) at a farm.”.

22 (b) APPLICATION.—Nothing in this section or the
23 amendment made by this section affects, or supersedes or
24 modifies the responsibility of any Federal official or em-
25 ployee to comply with or enforce, any requirement (as of

1 the date of enactment of this Act) under the Comprehen-
2 sive Environmental Response, Compensation, and Liabil-
3 ity Act of 1980 (42 U.S.C. 9601 et seq.), other than the
4 hazardous substance notification requirements under sec-
5 tion 103 of that Act (42 U.S.C. 9603) with respect to air
6 emissions from animal waste at farms.

7 **SEC. 4. EXEMPTION OF EXPORTATION OF CERTAIN**
8 **ECHINODERMS FROM PERMISSION AND LI-**
9 **CENSING REQUIREMENTS.**

10 (a) EXEMPTION.—Not later than 30 days after the
11 date of enactment of this Act, the Director shall amend
12 section 14.92 of title 50, Code of Federal Regulations, to
13 clarify that—

14 (1) fish or wildlife described in subsection (b)
15 are fishery products exempt from the export permis-
16 sion requirements of section 9(d)(1) of the Endan-
17 gered Species Act of 1973 (16 U.S.C. 1538(d)(1));
18 and

19 (2) any person may engage in business as an
20 exporter of fish or wildlife described in subsection
21 (b) without procuring—

22 (A) permission under section 9(d)(1) of the
23 Endangered Species Act of 1973 (16 U.S.C.
24 1538(d)(1)); or

1 (B) an export license under subpart I of
2 part 14 of title 50, Code of Federal Regulations
3 (or successor regulations).

4 (b) COVERED FISH OR WILDLIFE.—The fish or wild-
5 life referred to in subsection (a) are members of the phy-
6 lum Echinodermata that are commonly known as sea ur-
7 chins and sea cucumbers (including any products of those
8 members of the phylum Echinodermata) that—

9 (1) do not require a permit under part 16, 17,
10 or 23 of title 50, Code of Federal Regulations (or
11 successor regulations);

12 (2)(A) are harvested in waters under the juris-
13 diction of the United States; or

14 (B) are processed in the United States; and

15 (3) are—

16 (A) exported for purposes of human or ani-
17 mal consumption; or

18 (B) taken in waters under the jurisdiction
19 of the United States or on the high seas for
20 recreational purposes.

21 **SEC. 5. BAITING OF MIGRATORY GAME BIRDS.**

22 Section 3 of the Migratory Bird Treaty Act (16
23 U.S.C. 704) is amended by striking subsection (b) and in-
24 serting the following:

25 “(b) PROHIBITION OF BAITING.—

1 “(1) DEFINITIONS.—In this subsection:

2 “(A) BAITED AREA.—

3 “(i) IN GENERAL.—The term ‘baited
4 area’ means—

5 “(I) any area on which salt,
6 grain, or other feed has been placed,
7 exposed, deposited, distributed, or
8 scattered, if the salt, grain, or feed
9 could lure or attract migratory game
10 birds; and

11 “(II) in the case of waterfowl,
12 cranes (family Gruidae), and coots
13 (family Rallidae), a standing,
14 unharvested crop that has been ma-
15 nipulated through activities such as
16 mowing, discing, or rolling, unless the
17 activities are normal agricultural prac-
18 tices.

19 “(ii) EXCLUSIONS.—An area shall not
20 be considered to be a ‘baited area’ if the
21 area—

22 “(I) has been treated with a nor-
23 mal agricultural practice;

24 “(II) has standing crops that
25 have not been manipulated; or

1 planting, harvest, post-harvest, or soil
2 conservation practices; and

3 “(II) is recommended for the
4 successful harvest of a given crop by
5 the applicable State office of the Co-
6 operative Extension System of the De-
7 partment of Agriculture, in consulta-
8 tion with, and if requested, the con-
9 currence of, the head of the applicable
10 State department of fish and wildlife.

11 “(ii) INCLUSIONS.—

12 “(I) IN GENERAL.—Subject to
13 subclause (II), the term ‘normal agri-
14 cultural practice’ includes the destruc-
15 tion of a crop in accordance with
16 practices required by the Federal
17 Crop Insurance Corporation for agri-
18 cultural producers to obtain crop in-
19 surance under the Federal Crop In-
20 surance Act (7 U.S.C. 1501 et seq.)
21 on land on which a crop during the
22 current or immediately preceding crop
23 year was not harvestable due to a nat-
24 ural disaster (including any hurricane,
25 storm, tornado, flood, high water,

1 wind-driven water, tidal wave, tsu-
2 nami, earthquake, volcanic eruption,
3 landslide, mudslide, drought, fire,
4 snowstorm, or other catastrophe that
5 is declared a major disaster by the
6 President in accordance with section
7 401 of the Robert T. Stafford Dis-
8 aster Relief and Emergency Assist-
9 ance Act (42 U.S.C. 5170)).

10 “(II) LIMITATIONS.—The term
11 ‘normal agricultural practice’ only in-
12 cludes a crop described in subclause
13 (I) that has been destroyed or manip-
14 ulated through activities that include
15 (but are not limited to) mowing,
16 discing, or rolling if the Federal Crop
17 Insurance Corporation certifies that
18 flooding was not an acceptable method
19 of destruction to obtain crop insur-
20 ance under the Federal Crop Insur-
21 ance Act (7 U.S.C. 1501 et seq.).

22 “(E) WATERFOWL.—The term ‘waterfowl’
23 means native species of the family Anatidae.

24 “(2) PROHIBITION.—It shall be unlawful for
25 any person—

1 (c) REPORT.—Not later than 1 year after the date
2 of enactment of this Act, the Administrator, in consulta-
3 tion with the Secretary of Agriculture, shall submit a re-
4 port to the Committee on Environment and Public Works
5 and the Committee on Agriculture of the Senate and the
6 Committee on Transportation and Infrastructure and the
7 Committee on Agriculture of the House of Representatives
8 that includes—

9 (1) the status of intra-agency coordination be-
10 tween the Office of Water and the Office of Pes-
11 ticide Programs of the Environmental Protection
12 Agency regarding streamlining information collec-
13 tion, standards of review, and data use relating to
14 water quality impacts from the registration and use
15 of pesticides;

16 (2) an analysis of the effectiveness of current
17 regulatory actions relating to pesticide registration
18 and use aimed at protecting water quality; and

19 (3) any recommendations on how the Federal
20 Insecticide, Fungicide, and Rodenticide Act (7
21 U.S.C. 136 et seq.) can be modified to better protect
22 water quality and human health.

23 **SEC. 7. FARMER IDENTITY PROTECTION.**

24 (a) DEFINITIONS.—In this section:

1 (1) AGENCY.—The term “Agency” means the
2 Environmental Protection Agency.

3 (2) LIVESTOCK OPERATION.—The term “live-
4 stock operation” includes any operation involved in
5 the raising or finishing of livestock and poultry.

6 (b) PROCUREMENT AND DISCLOSURE OF INFORMA-
7 TION.—

8 (1) PROHIBITION.—Except as provided in para-
9 graph (2), the Administrator, any officer or em-
10 ployee of the Agency, or any contractor or coop-
11 erator of the Agency, shall not disclose the informa-
12 tion of any owner, operator, or employee of a live-
13 stock operation provided to the Agency by a live-
14 stock producer or a State agency in accordance with
15 the Federal Water Pollution Control Act (33 U.S.C.
16 1251 et seq.) or any other law, including—

17 (A) names;

18 (B) telephone numbers;

19 (C) email addresses;

20 (D) physical addresses;

21 (E) Global Positioning System coordinates;

22 (F) financial information, including busi-
23 ness records and production data; or

1 (G) other identifying information regarding
2 the location of the owner, operator, livestock, or
3 employee.

4 (2) EFFECT.—Nothing in this section affects—

5 (A) the disclosure of information described
6 in paragraph (1) if—

7 (i) the information has been trans-
8 formed into a statistical or aggregate form
9 at the county level or higher without any
10 information that identifies the agricultural
11 operation or agricultural producer; or

12 (ii) the livestock producer consents to
13 the disclosure;

14 (B) the authority of any State agency to
15 collect information on livestock operations; or

16 (C) the authority of the Agency to disclose
17 the information on livestock operations to State
18 or other Federal governmental agencies.

19 (3) CONDITION OF PERMIT OR OTHER PRO-
20 GRAMS.—The approval of any permit, practice, or
21 program administered by the Administrator shall not
22 be conditioned on the consent of the livestock pro-
23 ducer under paragraph (2)(A)(ii).

24 **SEC. 8. PRIVACY OF AGRICULTURAL PRODUCERS.**

25 (a) DEFINITIONS.—In this section:

1 (1) ADMINISTRATOR.—The term “Adminis-
2 trator” means—

3 (A) the Administrator; and

4 (B) in the case of an action taken pursu-
5 ant to a permit program approved under section
6 402 of the Federal Water Pollution Control Act
7 (33 U.S.C. 1342), the head of the State agency
8 administering the program.

9 (2) AERIAL SURVEILLANCE.—The term “aerial
10 surveillance” means any surveillance from the air,
11 including—

12 (A) surveillance conducted from manned or
13 unmanned aircraft; or

14 (B) the use of aerial or satellite images, re-
15 gardless of whether the images are publicly
16 available.

17 (3) AGRICULTURAL LAND.—

18 (A) IN GENERAL.—The term “agricultural
19 land” means land used primarily for agricul-
20 tural production.

21 (B) INCLUSIONS.—The term “agricultural
22 land” includes—

23 (i) cropland;

24 (ii) grassland;

25 (iii) prairie land;

- 1 (iv) improved pastureland;
2 (v) rangeland;
3 (vi) cropped woodland;
4 (vii) marshes;
5 (viii) reclaimed land;
6 (ix) fish or other aquatic species habi-
7 tat;
8 (x) land used for—
9 (I) agroforestry; or
10 (II) the production of livestock;
11 and
12 (xi) land that contains existing infra-
13 structure used for—
14 (I) the production of livestock; or
15 (II) another agricultural oper-
16 ation.

17 (b) LIMITATION ON USE OF AERIAL SURVEIL-
18 LANCE.—

19 (1) IN GENERAL.—Subject to paragraph (2), in
20 exercising any authority under the Federal Water
21 Pollution Control Act (33 U.S.C. 1251 et seq.), the
22 Administrator may not conduct aerial surveillance of
23 agricultural land.

24 (2) EXCEPTIONS.—The Administrator may con-
25 duct aerial surveillance of agricultural land under

1 the Federal Water Pollution Control Act (33 U.S.C.
2 1251 et seq.) if the Administrator—

3 (A) has obtained the voluntary written
4 consent of the owner or operator of the land to
5 be surveilled in accordance with subsection (c);
6 or

7 (B) has obtained a certification of reason-
8 able suspicion in accordance with subsection
9 (d).

10 (c) VOLUNTARY WRITTEN CONSENT.—

11 (1) CONSENT REQUIRED.—In order to conduct
12 aerial surveillance under subsection (b)(2)(A), the
13 Administrator shall obtain from the owner or oper-
14 ator of the land to be surveilled written consent to
15 such surveillance.

16 (2) CONTENTS.—The Administrator shall en-
17 sure that any written consent required under para-
18 graph (1)—

19 (A) specifies the period during which the
20 consent is effective, which may not exceed 1
21 year;

22 (B) contains a specific description of the
23 geographical area to be surveilled; and

24 (C) on the request of the owner or oper-
25 ator of the land to be surveilled, contains limi-

1 tations on the days and times during which the
2 surveillance may be conducted.

3 (3) ASSURANCE OF VOLUNTARY CONSENT.—

4 The Administrator—

5 (A) shall ensure that any written consent
6 required under paragraph (1) is granted volun-
7 tarily by the owner or operator of the land to
8 be surveilled; and

9 (B) may not threaten additional, more de-
10 tailed, or more thorough inspections, or other-
11 wise coerce or entice the owner or operator, in
12 order to obtain written consent.

13 (d) CERTIFICATION OF REASONABLE SUSPICION.—

14 (1) IN GENERAL.—In order to conduct aerial
15 surveillance under subsection (b)(2)(B), the Admin-
16 istrator shall obtain from a United States district
17 court of competent jurisdiction (referred to in this
18 subsection as a “Court”) a certification of reason-
19 able suspicion in accordance with this subsection.

20 (2) CERTIFICATION REQUIREMENTS.—A Court
21 may issue to the Administrator a certification of rea-
22 sonable suspicion if—

23 (A) the Administrator submits to the
24 Court an affidavit setting forth specific and
25 articulable facts that would indicate to a rea-

1 sonable person that a violation of the Federal
2 Water Pollution Control Act (33 U.S.C. 1251 et
3 seq.) exists in the area to be surveilled; and

4 (B) the Court finds that the Administrator
5 has shown reasonable suspicion that an owner
6 or operator of agricultural land in the area to
7 be surveilled has violated the Federal Water
8 Pollution Control Act (33 U.S.C. 1251 et seq.).

9 (e) DISCLOSURE OF INFORMATION.—

10 (1) IN GENERAL.—Except as provided in para-
11 graph (3), or for the purposes of an investigation or
12 prosecution by the Administrator as described in
13 subsection (f), the Administrator may not disclose
14 information collected through aerial surveillance con-
15 ducted under subsection (b)(2).

16 (2) APPLICABILITY OF FOIA.—Section 552 of
17 title 5, United States Code, shall not apply to any
18 information collected through aerial surveillance con-
19 ducted under subsection (b)(2).

20 (3) RIGHT TO PETITION.—The owner or oper-
21 ator of land surveilled under this section has the
22 right to petition for copies of the information col-
23 lected through such surveillance.

24 (f) DESTRUCTION OF INFORMATION.—The Adminis-
25 trator shall destroy information collected through aerial

1 surveillance conducted under subsection (b)(2) not later
2 than 30 days after collection, unless the information is
3 pertinent to an active investigation or prosecution by the
4 Administrator.

5 (g) RULE OF CONSTRUCTION.—Nothing in this Act
6 expands the power of the Administrator to inspect, mon-
7 itor, or conduct surveillance of agricultural land pursuant
8 to the Federal Water Pollution Control Act (33 U.S.C.
9 1251 et seq.) or any other Federal law.

10 **SEC. 9. REGULATIONS RELATING TO THE TAKING OF DOU-**
11 **BLE-CRESTED CORMORANTS.**

12 (a) FORCE AND EFFECT.—

13 (1) IN GENERAL.—Subject to subsection (b),
14 sections 21.47 and 21.48 of title 50, Code of Fed-
15 eral Regulations (as in effect on the date of enact-
16 ment of this Act), shall have the force and effect of
17 law.

18 (2) PUBLIC NOTICE.—The Secretary of the In-
19 terior (referred to in this section as the “Sec-
20 retary”), acting through the Director of the United
21 States Fish and Wildlife Service (referred to in this
22 section as the “Director”), shall notify the public of
23 the authority provided by paragraph (1) in a manner
24 determined appropriate by the Secretary.

1 (b) SUNSET.—The authority provided by subsection
2 (a)(1) shall terminate on the effective date of a regulation
3 promulgated by the Director after the date of enactment
4 of this Act to control depredation of double-crested cor-
5 morant populations.

6 (c) RULE OF CONSTRUCTION.—Nothing in this sec-
7 tion limits the authority of the Director to promulgate reg-
8 ulations relating to the taking of double-crested cor-
9 morants under any other law.

10 **SEC. 10. APPLICABILITY OF SPILL PREVENTION, CONTROL,**
11 **AND COUNTERMEASURE RULE.**

12 Section 1049 of the Water Resources Reform and De-
13 velopment Act of 2014 (33 U.S.C. 1361 note; 128 Stat.
14 1257; 130 Stat. 1902) is amended—

15 (1) in subsection (b)—

16 (A) in paragraph (1)(B), by striking
17 “20,000” and inserting “42,000”;

18 (B) in paragraph (2), by striking subpara-
19 graph (A) and inserting the following:

20 “(A) an aggregate aboveground storage ca-
21 pacity greater than 10,000 gallons but less than
22 42,000 gallons; and”;

23 (C) in paragraph (3)—

24 (i) by striking subparagraph (A) and
25 inserting the following:

1 “(A) with an aggregate aboveground stor-
2 age capacity of less than or equal to 10,000
3 gallons; and”; and

4 (ii) in subparagraph (B), by striking
5 “; and” and inserting a period; and

6 (D) by striking paragraph (4);

7 (2) in subsection (c)(2)(A)—

8 (A) in clause (i), by striking “1,000” and
9 inserting “1,320”; and

10 (B) in clause (ii), by striking “2,500” and
11 inserting “3,000”; and

12 (3) by striking subsection (d).

13 **SEC. 11. PREDATORY AND OTHER WILD ANIMALS.**

14 Section 1 of the Act of March 2, 1931 (7 U.S.C.
15 8351), is amended—

16 (1) in the second sentence, by striking “The
17 Secretary” and inserting the following:

18 “(b) ADMINISTRATION.—The Secretary”;

19 (2) in the first sentence, by striking “The Sec-
20 retary” and inserting the following:

21 “(a) IN GENERAL.—The Secretary”; and

22 (3) by adding at the end the following:

23 “(c) ACTION BY FWS.—The Director of the United
24 States Fish and Wildlife Service shall use the most expedi-

1 tious procedure practicable to process and administer har-
2 assment and taking permits for—

3 “(1) a nuisance species;

4 “(2) a depredating eagle under the Act of June
5 8, 1940 (commonly known as the ‘Bald Eagle Pro-
6 tection Act’) (54 Stat. 250, chapter 278; 16 U.S.C.
7 668 et seq.), or sections 22.11 through 22.32 of title
8 50, Code of Federal Regulations (including with re-
9 spect to livestock, wildlife, and species protected
10 under the Endangered Species Act of 1973 (16
11 U.S.C. 1531 et seq.) or any other Federal manage-
12 ment program); or

13 “(3) a migratory bird included on the list under
14 section 10.13 of title 50, Code of Federal Regula-
15 tions (or successor regulations).”.