

114TH CONGRESS  
1ST SESSION

# H. R. 493

To update avian protection laws in order to support an all-of-the-above domestic energy strategy, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 22, 2015

Mr. DUNCAN of South Carolina (for himself, Mr. JONES, Mrs. BLACK, Mr. JOHNSON of Ohio, Mr. BUCSHON, and Mr. MULVANEY) introduced the following bill; which was referred to the Committee on Natural Resources

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## A BILL

To update avian protection laws in order to support an all-of-the-above domestic energy strategy, 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 “Clarification of Legal  
5 Enforcement Against Non-criminal Energy Producers Act  
6 of 2015” or the “CLEAN Energy Producers Act of  
7 2015”.

8 **SEC. 2. FINDINGS.**

9 The Congress finds the following:

1           (1) The Migratory Bird Treaty Act (MBTA)  
2 was enacted in 1918 to protect the migratory bird  
3 population from overhunting and poaching and has  
4 not been updated to reflect the societal changes that  
5 have occurred in our Nation over the last 95 years.

6           (2) Anyone involved in an otherwise legal activ-  
7 ity may be subject to criminal liability for the unin-  
8 tentional death of any one of over 1,000 species of  
9 birds protected under the MBTA.

10           (3) The Act of June 8, 1940 (chapter 278; 16  
11 U.S.C. 668), popularly known as the Bald and Gold-  
12 en Eagle Protection Act (BGEPA), was first enacted  
13 in 1940 to protect the dwindling population of bald  
14 eagles and amended in 1962 to cover golden eagles  
15 in order to provide additional protective measures  
16 for bald eagles and for other purposes.

17           (4) The BGEPA includes a program for the  
18 Federal Government to issue permits in order to  
19 protect companies from legal liability if eagles are  
20 unintentionally injured or killed, but the Federal  
21 Government has failed to issue permits issued under  
22 the program.

23           (5) Among other goals, the BGEPA's permit  
24 program was established to assure the protection of  
25 interests fundamental to the basic operation of our

1 society like agriculture and energy infrastructure de-  
2 velopment and maintenance.

3 (6) The BGEPA was successful in helping the  
4 overall eagle population recover, leading to bald ea-  
5 gles being removed from the list of threatened and  
6 endangered species in 2007.

7 (7) There are differing legal and judicial inter-  
8 pretations regarding the scope of criminality in those  
9 statutes.

10 (8) It appears criminal prosecution under those  
11 statutes has been subjective, selective, and not ap-  
12 plied uniformly and fairly across all sectors of soci-  
13 ety.

14 (9) Those statutes need to be updated to reflect  
15 significant changes in our Nation over the last half  
16 century, including the urbanization of rural areas  
17 and how domestic energy is produced, transmitted,  
18 and distributed.

19 (10) Protecting the avian population and its  
20 habitat is important.

21 (11) Federal enforcement actions should be ap-  
22 propriate, uniform, nondiscriminatory, and just.

23 **SEC. 3. PERMITS FOR INCIDENTAL TAKE.**

24 Section 1 of the Act of June 8, 1940 (chapter 278;  
25 16 U.S.C. 668), popularly known as the Bald and Golden

1 Eagle Protection Act, is amended by adding at the end  
2 the following:

3 “(d) PERMITS FOR INCIDENTAL TAKE.—Upon sub-  
4 mission of a substantially completed application, the Sec-  
5 retary shall issue or deny an eagle take permit for no less  
6 than 30 years under section 22.26 of title 50, Code of  
7 Federal Regulations, that authorizes taking of any bald  
8 eagle or golden eagle that is incidental to, but not the pur-  
9 pose of, an otherwise lawful activity. Failure to issue or  
10 deny such a permit within a reasonable time (which shall  
11 not exceed one year) is deemed issuance of such permit,  
12 and the applicant shall not be subject to liability for any  
13 incidental take of a bald eagle or golden eagle that is in  
14 conformity with the information submitted to the Sec-  
15 retary as part of the application for the permit.”.

16 **SEC. 4. MIGRATORY BIRD TREATY ACT.**

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

19 (1) by striking “shall” the first and second  
20 place it appears and inserting “shall with intent  
21 knowingly”; and

22 (2) by adding at the end the following: “For the  
23 purposes of this subsection, ‘with intent knowingly’  
24 does not include any taking, killing, or other harm  
25 to any migratory bird that is accidental or incidental

1 to the presence or operation of an otherwise lawful  
2 activity.”.

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