

# LETTERS AND STATEMENTS OPPOSING H.R. 4345

- AAA
- ActionAid USA
- ACWA, the Association of California Water Agencies
- Alliance for Justice
- American Bakers
- American Meat Institute
- Americans for Limited Government
- Americans for Prosperity
- AMWA, the Association of Metropolitan Water Agencies
- AWWA, the American Water Works Association
- Boat U.S.: Boat Owners Association of the United States
- California Dairy Campaign
- CASA, the California Association of Sanitation Agencies
- Center for Auto Safety
- Center for Justice and Democracy
- Clean Air Task Force
- Clean Water Action
- Competitive Enterprise Institute
- EarthJustice
- Environment America
- Environmental Working Group
- Freedom Action
- Friends of the Earth
- Greenpeace
- Grocery Manufacturers Association
- Milk Producers Council
- National Audubon Society
- National Black Chamber of Commerce
- National Chicken Council
- National Consumers League
- National Council of Chain Restaurants
- National Meat Association
- National Taxpayers Union
- National Turkey Federation
- Natural Resources Defense Council
- NRWA, the National Rural Water Association
- Our Children's Earth Foundation
- Oxfam America
- Public Citizen
- Sierra Club
- Southeast Milk Inc.
- Southern Environmental Law Center
- Taxpayers for Common Sense
- U.S. PIRG



*Public Affairs*

---

Washington Office  
607 14<sup>th</sup> Street, NW, Suite 200  
Washington, D.C. 20005  
202/942-2050  
FAX: 202/783-4788

April 18, 2012

The Honorable John M. Shimkus  
Chairman

The Honorable Gene Green  
Ranking Member

United States House of Representatives  
Committee on Energy and Commerce  
Subcommittee on Environment and the Economy  
2322A Rayburn House Office Building  
Washington, D.C. 20515

Dear Chairman Shimkus and Ranking Member Green:

AAA is a not-for-profit federation of motor clubs providing services to more than 53 million members in the U.S. and Canada. AAA is committed to serving these members in all aspects of automobile ownership, including nationwide emergency roadside service, gas price monitoring, vehicle care information, and dedication to operator and passenger safety. I am writing to express AAA's concerns about the impact H.R. 4345, "The Domestic Fuels Protection Act of 2012" would have on AAA members and all motorists.

As legislation and regulation surrounding the sale of fuels — including increasing the permissible ethanol content from the current ten percent to fifteen percent — has been proposed, AAA has consistently expressed concerns with the potential consequences these changes might have on consumers. Vehicle manufacturers and the petroleum industry have expressed concern regarding accelerated wear and failure of engine systems that could result with an increased ethanol content. To this end, AAA has significant concerns with H.R. 4345, which would exempt from liability those who produce, distribute and dispense various fuels, while leaving consumers to bear the full consequences of any damages that result from the use of these fuels.

AAA opposes H.R. 4345 and urges you not to protect the interests of those in the fuel supply chain by unfairly shifting the burden to American motorists.

Sincerely,

Jill Ingrassia  
Managing Director, Government Relations and Traffic Safety Advocacy

Cc: Members of the United States House of Representatives, Committee on Energy and Commerce,  
Subcommittee on Environment and the Economy



## Government Affairs

880 South Pickett Street, Alexandria, VA 22304

147 Old Solomons Island Road, Suite 508  
Annapolis, MD 21401

Phone: (703) 461-2878 x8363 Fax: (410) 224-3807

Website: [www.BoatUS.com/gov](http://www.BoatUS.com/gov)

Email: [govtaffairs@BoatUS.com](mailto:govtaffairs@BoatUS.com)

April 17, 2012

The Honorable Fred Upton, Chairman  
Committee on Energy and Commerce  
United States House of Representatives  
Washington, DC 20515

Re: H.R. 4345, The Domestic Fuels Protection Act of 2012

Dear Chairman Upton:

BoatU.S. is the largest organization of recreational boaters in the United States, with more than 500,000 members, each owning an average of two boats. Recreational boating is a significant contributor to our nation's economy and society. In 2010, boats generated \$30.4 billion of economic activity and supported nearly 300,000 American jobs. That same year, an estimated 75 million people spent time on a recreational boat, making this one of our nation's favorite recreational activities.

We have reviewed H.R. 4345, the Domestic Fuels Protection Act of 2012, and have concerns with several of its provisions. With the increasing likelihood that gasoline with ethanol content of up to 15% (E15) will be introduced into the fuel supply, this legislation would remove crucial protections for boating consumers. We urge you to reject this bill.

When the Environmental Protection Agency granted a partial waiver for the use of E15 only in 2001 and new cars and light trucks, it specifically banned its use in all boat and other off-road engines. Nevertheless, with E15 heading to gas pumps, BoatU.S. has a number of concerns that mis-fueling of boat engines will occur. In response to a 2010 EPA request for suggestions on how to prevent mis-fueling, BoatU.S. noted the following:

*“Boats are fueled in a variety of places and ways. Some boats on trailers are towed to gas stations, and are filled up at the same time as the cars/trucks towing them. Larger boats are typically filled while floating in the water at a marine gas dock. Small dinghies and runabouts may use a small portable fuel tank, which is taken off the boat and carried to the gas station to fill, or is filled from the 5 gallon container in the garage that is used for lawn mowers, leaf blowers, and other small engines around the home. With such diversity in filling scenarios, there is no “one size fits all” answer to ensure proper fueling.”*

The Honorable Fred Upton

April 17, 2012

Page 2

Given the wide variety of methods used to fuel boats, it would be patently unfair to give a blanket exemption from liability for the responsible parties in the fuel supply chain, as proscribed in H.R. 4345.

For a number of years our members have experienced significant problems resulting from ethanol in gasoline, even at the currently 10% maximum permitted level. The chemical characteristics of ethanol make it a less than desirable fuel component in the marine environment and in engines that are not used daily. Ethanol readily absorbs water and is incompatible with many boat fuel system components. Thousands of boaters have faced significant — and expensive — problems, some leading to complete engine and/or fuel tank failure. Now, as E15 is poised to enter the marketplace, boaters are counting on the suppliers of fuel to dispense a product that will not damage their engines, void their warranties and potentially put them at safety risk from mechanical failures on the water. Should H.R. 4345 become law, exempting members of the fuel supply chain from liability, it will only serve to remove all incentive for suppliers to help prevent the inadvertent use of E15.

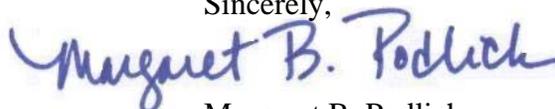
The only measure to prevent mis-fueling currently required is a label affixed on retail fuel pumps, a wholly inadequate scheme. There is no assurance such labels will always be in place or even remain legible, nor that they will be understood by consumers. Indeed, we have significant concerns that all fuel consumers, boaters among them, will be confused or led into inadvertently using E15 when fueling. Legislation that would absolve fuel retailers of any responsibility for taking even minor precautions is unacceptable. Should mis-fueling occur, resulting in engine and/or fuel system damage, boating consumers would have no recourse.

The proponents of E15 have suggested it is a safe fuel and will be compatible with much of the current fueling infrastructure. It is questionable, then, why this legislation is needed at all. Consumers should be provided the same protections from harm that they currently enjoy with fuels already in the marketplace.

We recognize that renewable fuels such as ethanol will be part of the energy mix for the foreseeable future. As E15 is introduced into commerce, however, boaters must be assured that safe, compatible fuels are available. We also expect fuel providers to stand behind their products. H.R. 4345 will not further these objectives and should be rejected.

Thank you for your attention to our concerns. Please let us know if we can be of assistance with this or any other issues that impact recreational boating.

Sincerely,



Margaret B. Podlich  
President

The Honorable Fred Upton

April 17, 2012

Page 3

Cc: The Honorable Henry Waxman

The Honorable John Shimkus

The Honorable Gene Green

**House of Representatives  
Committee on Energy and Commerce  
2125 Rayburn House Office Building**

April 19, 2012

Dear Congress Person,

The undersigned diverse group of business associations, consumer protection organizations, hunger and development organizations, agricultural groups, environmental groups, budget hawks, grassroots groups and free marketers urge you to oppose the Domestic Fuels Act of 2012. The Domestic Fuels Act would provide liability protection for retailers, engine manufacturers and fuel producers for any problems that occur as a result of using 15% ethanol in engine fuel (E15), a mix recently approved for use by the Environmental Protection Agency (EPA). This bill would leave consumers and taxpayers vulnerable to the potential damages and costs incurred on their engines, public safety, health, and the environment associated with using E15. The ultimate protection for businesses and consumers alike would be to slow the process of moving towards E15 until all of the potential harmful impacts have been addressed.

There has yet to be a thorough analysis of the environmental and economic impacts of increasing the amount of allowable ethanol content in gasoline to 15% (E15). In fact, Congress and the Government Accountability Office (GAO) already agree that more testing and research is needed before E15 is ready for the marketplace. On February 19, 2011, 285 members of Congress supported this exact measure as amendment to H.R. 1.<sup>1</sup> In 2011 the GAO issued a report identifying several health, safety, cost, and environmental issues that warrant additional study in relation to mid-level ethanol blends.<sup>2</sup> In addition, a report from the National Renewable Energy Laboratory (NREL) raised fundamental concerns regarding the use of E15 in marine engines.<sup>3</sup>

A move to higher blends of ethanol with gas could also produce another demand shock to our corn market. This demand shock could cause food prices to spike at home and abroad. Biofuels expansion in general, and U.S. corn ethanol expansion in particular, are widely seen as one of the main contributors to the recent surge in global food prices.<sup>4</sup> With food and gas prices climbing, we need to proceed with caution to ensure that we don't continue to subsidize or expand the market for corn ethanol, which could raise food prices, threaten the health and safety of our citizens and the environment, and do so with huge costs to the taxpayer and consumer.

The undersigned groups have varied views on the overall issue of providing liability protection for a given industry or set of products affected by federal mandates. However, it is clear that the main effect of this legislation is to expand the existing web of government subsidies and regulations that support ethanol while forcing consumers and taxpayers to absorb the real and exorbitant costs. We are united in our concerns about the impacts of ethanol for the environment, economy, and consumers, and urge you to oppose the Domestic Fuels Act.

Sincerely,

---

<sup>1</sup> Roll Call Vote #134 agreeing to Sullivan of Oklahoma amendment #94: 285-136.

<sup>2</sup> Government Accountability Office. Biofuels Challenges to the Transportation, Scale, and Use of Intermediate Ethanol Blends. GAO-11-513. July 2011.

<sup>3</sup> David Hilbert, A Study of the Effects of Running Gasoline with 15% Ethanol Concentration in Current Production Outboard Four-Stroke Engines and Conventional Two-Stroke, National Renewable Energy Lab (June 16, 2010 – June 30, 2011).

<sup>4</sup> Wise, Timothy A. and Sophia Murphy, Resolving the Food Crisis: Assessing Global Policy Reforms Since 2007, Tufts University and IATP. 2012

ActionAid USA  
American Bakers  
American Meat Institute  
Americans for Limited Government  
Americans for Prosperity  
California Dairy Campaign  
Clean Air Task Force  
Competitive Enterprise Institute  
Freedom Action  
Friends of the Earth  
Grocery Manufacturers Association  
Milk Producers Council  
National Black Chamber of Commerce  
National Chicken Council  
National Council of Chain Restaurants  
National Meat Association  
National Taxpayers Union  
National Turkey Federation  
Oxfam America  
Southeast Milk Inc  
Taxpayers for Common Sense

April 18, 2012

The Honorable John Shimkus  
Chairman  
House Subcommittee on  
Environment and the Economy  
2125 Rayburn House Office Building  
Washington, DC 20515

The Honorable Gene Green  
Ranking Member  
House Subcommittee on  
Environment and the Economy  
H2-564 Ford House Office Building  
Washington, DC 20515

Dear Chairman Shimkus and Ranking Member Green:

The undersigned organizations oppose H.R. 4345, the Domestic Fuels Protection Act of 2012, which provides broad liability exemptions to fuel producers, engine manufacturers and retailers of virtually all transportation fuels and fuel additives such as methyl tertiary-butyl ether (MTBE) and 15 percent ethanol (E15) blend. The bill grossly undermines state consumer protection laws, gives immunity to makers of defective fuel products, and shields owners and operators of leaking underground storage tanks from legal action. Furthermore, it passes associated risks onto consumers, who are left exposed to billions of dollars in potential damages with no means of recourse.

These exemptions will likely endanger public health and consumer safety. Twenty-five states have banned MTBE, a gasoline additive notorious for leaking from underground storage tanks, yet its handlers would qualify for liability protection. Ethanol producers and distributors would also be exempt from liability for E15, a fuel which has been found to cause engine failure in boats, non-road vehicles and equipment, void auto warranties and contribute to lower gas mileage.

As the Subcommittee prepares for its legislative hearing on April 19<sup>th</sup> we ask that you consider these concerns.

Sincerely,

Alliance for Justice  
Center for Auto Safety  
Center for Justice & Democracy  
National Consumers League  
Public Citizen  
U.S. PIRG



Association of  
California Water Agencies  
*Since 1910*  
Leadership Advocacy Information



April 19, 2012

The Honorable Henry Waxman  
Subcommittee on Environment and the Economy  
U.S. House of Representatives  
Washington, D.C. 20515

The Honorable Mary Bono Mack  
Subcommittee on Environment and the Economy  
U.S. House of Representatives  
Washington, D.C. 20515

The Honorable Doris Matsui  
Subcommittee on Environment and the Economy  
U.S. House of Representatives  
Washington, D.C. 20515

The Honorable Lois Capps  
Subcommittee on Environment and the Economy  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Members of the California Delegation:

The Association of California Water Agencies (ACWA) and California Association of Sanitation Agencies (CASA) are writing to express our concerns with HR 4345, the Domestic Fuels Act. ACWA's 450 public water agency members supply over 90 percent of the water delivered in California for residential, agricultural, and industrial uses. CASA is a statewide organization representing over 90% of California's sewer population. Together our members provide water and wastewater service throughout California.

We understand that the goal of HR 4345 is to streamline the rules and regulations governing the operation of underground storage tanks. However, several provisions in the legislation place the quality of California's drinking water in jeopardy. Specifically, we object to:

- Section 2(b) Compatibility with Fuels. Language within this section effectively preempts states ability to regulate underground storage tanks and equipment. It also deems all existing storage tanks and equipment compatible with all fuel additives as long as "a national recognized laboratory" lists it as compatible. The nationally recognized laboratory listing overrides state authority and applies even if future tests show the tanks and equipment are incompatible.
- Section 4(a) dismissing with prejudice all on-going civil lawsuits in state and federal court over fuels and all types of fuel additives including MTBE. Our member agencies are fighting to obtain help from responsible parties to cleanup groundwater contamination. The language in this section would negate approximately 10 on going court cases in California with over \$100 million

in damages. If these court cases are dismissed, ratepayers would have to pay for these cleanup projects.

- Section 4(b) providing immunity from liability (safe harbor) to producers of all current and future gasoline additives. ACWA and CASA have long objected to this provision because it transfers the cost of cleaning up contaminated groundwater from the responsible parties to the ratepayers.

ACWA and CASA strongly encourage you to revise the bill so as not to place the safety of our nation's drinking water at risk. If you have any questions, please contact Abby Schneider in ACWA's Washington DC office at (202) 434-4760 or CASA's Washington Representative Eric Sapirstein at (202) 466-3766.

Sincerely,



Catherine Smith, CAE  
Executive Director  
California Association of Sanitation Agencies



Timothy Quinn  
Executive Director  
Association of California Water Agencies

cc: Chairman John Shimkus  
Ranking Member Gene Green  
California Congressional Delegation



April 18, 2012

The Honorable John Shimkus  
Chairman, Subcommittee on Environment and the Economy  
U.S. House of Representatives  
Washington, D.C. 20515

The Honorable Gene Green  
Ranking Member, Subcommittee on Environment and the Economy  
U.S. House of Representatives  
Washington, D.C. 20515

RE: MTBE Liability Waiver in the "Domestic Fuels Protection Act"

Dear Chairman Shimkus and Ranking Member Green,

As the Environment and the Economy Subcommittee convenes a hearing on H.R. 4345, the "Domestic Fuels Protection Act," the drinking water community would like to register our concern about Section 4 of the bill, which would allow polluters to pass on to communities and their customers the cost of cleaning up drinking water sources contaminated by MTBE (methyl tertiary-butyl ether). This issue of "safe harbor" for contamination by MTBE came up during the 109<sup>th</sup> Congress, and the House and Senate ultimately did not include such provisions in the comprehensive energy bill enacted in 2005. We hope that Congress will reach the same conclusion on a potential MTBE liability waiver this year as well.

To recap some of the issues discussed in 2005:

- MTBE travels faster through the ground than other constituents of gasoline and does not biodegrade easily;
- Humans can taste the presence of MTBE in water containing as little as 2 parts per billion;
- There is no requirement that MTBE be used as an oxygenate for gasoline; and
- Studies have concluded that MTBE is an animal carcinogen with the potential to cause cancer in humans.

Many communities are already straining under the cost of billions of dollars in water infrastructure repair and replacement needs, and past studies have estimated that it could cost more than \$30 billion to remove MTBE from contaminated water sources across the country. Local water utility ratepayers simply cannot afford to foot the entire bill to remove MTBE pollution from their drinking water sources, nor should they.

As introduced in the House of Representatives, Section 4 of H.R. 4345 would provide product defect liability immunity ("safe harbor") to producers of a wide range of gas additives, including MTBE. If enacted, ongoing lawsuits by drinking water systems

April 18, 2012

Page 2

against MTBE producers would be dismissed, and those producers would have little incentive to prevent, much less clean up, MTBE contamination resulting from their activities. Affected water systems would not only have to finance billions in cleanup costs, but also find and pay for new sources of drinkable water – all without assistance from the party responsible for the pollution in the first place. In many cases, the result would be increased water rates to offset these costs, or deferred rehabilitation and replacement of aging water infrastructure.

With these concerns in mind, we encourage you to amend H.R. 4345 to ensure that no local community or drinking water system will be left without the ability to recover costs associated with remediating MTBE or other similar contamination of drinking water sources.

Our association members, in partnership with the U.S. Environmental Protection Agency and Congress, have a unique responsibility in ensuring that Americans receive the safest drinking water possible. Granting safe harbor to MTBE or other, similar contamination would be incompatible with that duty. Thank you for considering our perspectives, and we look forward to working with you on this critically important issue.

Sincerely,

American Water Works Association  
Association of California Water Agencies  
Association of Metropolitan Water Agencies  
National Rural Water Association

cc: Environment and the Economy Subcommittee members

**Environmental Working Group • Friends of the Earth • Greenpeace  
Natural Resources Defense Council • Our Children's Earth Foundation**

April 18, 2012

The Honorable John Shimkus  
Chairman  
House Subcommittee on  
Environment and the Economy  
2125 Rayburn House Office Building  
Washington, DC 20515

The Honorable Gene Green  
Ranking Member  
House Subcommittee on  
Environment and the Economy  
H2-564 Ford House Office Building  
Washington, DC 20515

Dear Chairman Shimkus and Ranking Member Green:

We, the undersigned organizations, strongly oppose H.R. 4345, the Domestic Fuels Protection Act of 2012, which would grant liability exemptions for makers and retailers of transportation fuels and fuel additives such as methyl tertiary-butyl ether (MTBE) and 15 percent ethanol (E15) blend that have been found to endanger public health and the environment. Twenty-five states have banned the gasoline additive MTBE, a groundwater contaminant leaked from storage tanks, yet the bill would exempt owners and operators of leaking underground storage tanks from civil suits. Meanwhile, communities would be left paying billions in cleanup costs and other damages.

Additionally, ethanol producers and distributors would also be exempt from liability for E15, a fuel whose production is linked to water and air pollution, agricultural runoff, and soil erosion, and whose use will likely harm engines, void warranties and cause safety problems. Using E15 in older cars or other vehicles not compatible with the new fuel also risks increasing dangerous tailpipe emissions. The Environmental Protection Agency's labeling requirements for fuel pumps dispensing E15 are insufficient to prevent driver misfueling and shifts liability squarely onto consumers.

Providing broad immunity from E15-related lawsuits puts all the environmental risks and hazards of this product on the American people, not the industry. We urge the Subcommittee to oppose this bill.

Thank you for your consideration.

Sincerely,

Jason Rano  
Director of Government Affairs  
Environmental Working Group

Kyle Ash  
Senior Legislative Representative  
Greenpeace USA

Michelle Chan  
Economic Policy Project Director  
Friends of the Earth

Nathanael Greene  
Director of Renewable Energy Policy  
Natural Resources Defense Council

Tiffany Schauer  
Executive Director  
Our Children's Earth Foundation

**Clean Water Action \* Earthjustice \* Environment America \* Environmental Working Group \* Friends of the Earth \* Greenpeace \* National Audubon Society \* Natural Resources Defense Council \* Sierra Club \* Southern Environmental Law Center**

April 18, 2012

**RE: OPPOSE H.R. 4345, THE POLLUTERS' "DOMESTIC FUELS PROTECTION ACT OF 2012"**

Dear Member of the House Energy and Commerce Committee:

On behalf of our millions of members and supporters, we write to urge you oppose H.R. 4345, the "Domestic Fuels Protection Act of 2012." This bill – and especially its unprecedented waiver of liability for groundwater pollution – threatens public health by increasing the risk of further contaminating our nation's drinking water supplies with toxic chemicals. It would foist the costs of cleaning up contaminated drinking water and groundwater pollution onto the households and communities that suffer from this pollution – all to benefit the industries responsible for such spills.

The threat of financial liability for polluting our drinking water resources serves as a powerful motivation for companies to behave responsibly. If oil companies cannot be held accountable for the pollution they cause, they will have less incentive to take measures to reduce their environmental releases and more water supplies will be contaminated as a result. By granting oil companies and gas stations immunity for pollution caused by leaking underground storage tanks and spills, this legislation would allow them to escape responsibility for polluting water supplies and unfairly put the burden of cleanup on taxpayers and household water bills.

One specific example illustrates why this legislation might be appropriately re-titled the "ExxonMobil Protection Act." In 2009, ExxonMobil was ordered to pay nearly \$105 million in clean-up costs after a jury found the company liable for poisoning New York City water wells with the gasoline additive MTBE. This case will simply be dismissed, and the judgment will evaporate, if this bill becomes law, because the case is still on appeal. ExxonMobil will be off the hook and the clean-up costs will fall on New York City's households and taxpayers.

In 1996, the city of Santa Monica learned that two of its drinking water wells were heavily contaminated with MTBE. In response, 50 percent of the city's drinking water supply was shut down and the city was forced to buy replacement water. If H.R. 4345 had been law at that time, oil companies such as Shell, ChevronTexaco and Exxon that were found responsible for that contamination would have been shielded from liability.

A growing list of studies has detected MTBE in drinking water supplies throughout the nation. Because MTBE dissolves easily in water, it migrates faster and farther in the ground than other gasoline components, thus making it more likely to contaminate public water systems and private drinking water wells. MTBE does not breakdown easily and therefore is difficult and

costly to remove from ground water. In fact, every state in the country has experienced fuel leaks and water contamination, including groundwater and drinking water pollution from MTBE. This has led more than twenty States to ban the use of MTBE.

MTBE is only one of the contaminants in fuels that pose health threats to people exposed to fuel-contaminated water. The liability waiver in this bill goes far beyond provisions in legislation that Congress rejected several years ago; it would cover all types of fuel and fuel additives, containing literally thousands of toxic chemicals, like benzene, a known carcinogen. This bill is so reckless that it applies to new additives and contaminants that may be added to fuel in the future, without any regard for the health risks they may pose. It is so radically unfair and irresponsible that it would even dismiss existing liability suits for contamination that has already been caused, even if the perpetrators are known. The immunity in this bill would shield oil companies and others from liability for all design defect claims, including design defects even when the defect is known or where the risks posed by a fuel product outweigh its benefits.

In the interest of public health and fairness to consumers and taxpayers, and in the interest of corporate responsibility and accountability, we ask that you strongly oppose H.R. 4345.

Thank you for standing up for public health and fairness to communities.

Sincerely,

Joan Mulhern  
Senior Legislative Counsel  
Earthjustice

Debbie Sease  
National Campaigns Director  
Sierra Club

Brian Siu  
Policy Analyst  
Natural Resources Defense Council

Rick Hind  
Legislative Director  
Greenpeace

Jason Rano  
Director of Government Affairs  
Environmental Working Group

Lynn Thorp  
National Campaigns Director  
Clean Water Action

Michelle Chan  
Economic Policy Team Director  
Friends of the Earth

Shelley Vinyard  
Clean Water Advocate  
Environment America

Navis Bermudez  
Deputy Legislative Director  
Southern Environmental Law Center

Brian Moore  
Legislative Director  
National Audubon Society