

MIGRATORY BIRD TREATY ACT

§ 703. Taking, killing, or possessing migratory birds unlawful

Unless and except as permitted by regulations made as hereinafter provided, it shall be unlawful at any time, by any means or in any manner, to pursue, hunt, take, capture, kill, attempt to take, capture, or kill, possess, offer for sale, sell, offer to barter, barter, offer to purchase, purchase, deliver for shipment, ship, export, import, cause to be shipped, exported, or imported, deliver for transportation, transport or cause to be transported, carry or cause to be carried, or receive for shipment, transportation, carriage, or export, any migratory bird, any part, nest, or egg of any such bird, or any product, whether or not manufactured, which consists, or is composed in whole or part, of any such bird or any part, nest, or egg thereof, included in the terms of the conventions between the United States and Great Britain for the protection of migratory birds concluded August 16, 1916, the United States and the United Mexican States for the protection of migratory birds and game mammals concluded February 7, 1936, the United States and the Government of Japan for the protection of migratory birds and birds in danger of extinction, and their environment concluded March 4, 1972 and the convention between the United States and the Union of Soviet Socialist Republics for the conservation of migratory birds and their environments concluded November 19, 1976.

HISTORY: (July 3, 1918, c. 128, § 2, 40 Stat. 755; June 20, 1936, c. 634, § 3, 49 Stat. 1556; June 1, 1974, P.L. 93-300, § 1, 88 Stat. 190.) (As amended Dec. 13, 1989, P.L. 101-233, § 15, 103 Stat. 1977.)

§ 704. Determination as to when and how migratory birds may be taken, killed, or possessed

Subject to the provisions and in order to carry out the purposes of the conventions, the Secretary of Agriculture [Interior] is authorized and directed, from time to time, having due regard to the zones of temperature and to the distribution, abundance, economic value, breeding habits, and times and lines of migratory flight of such birds, to determine when, to what extent, if at all, and by what means, it is compatible with the terms of the conventions to allow hunting, taking, capture, killing, possession, sale, purchase, shipment, transportation, carriage, or export of any such bird, or any part, nest, or egg thereof, and to adopt suitable regulations permitting and governing the same, in accordance with such determinations, which regulations shall become effective when approved by the President.

HISTORY: (July 3, 1918, c. 128, § 3, 40 Stat. 755; June 20, 1936, c. 634, § 2, 49 Stat. 1556.)

§ 705. Transportation or importation of migratory birds or game mammals; when unlawful

It shall be unlawful to ship, transport, or carry, by any means whatever, from one State, Territory, or district to or through another State, Territory, or district, or to or through a foreign country, any bird, or any part, nest, or egg thereof, captured, killed, taken, shipped, transported, or carried at any time contrary to the laws of the State, Territory, or district in which it was captured, killed, or taken, or from which it was shipped, transported, or carried. It shall be unlawful to import any bird, or any part, nest, or egg thereof, captured, killed, taken, shipped, transported, or carried contrary to the laws of any Province of the Dominion of Canada in which the same was captured, killed, or taken, or from which it was shipped, transported, or carried.

HISTORY: (July 3, 1918, c. 128, § 4, 40 Stat. 755; June 20, 1936, c. 634, § 4, 49 Stat. 1556; Dec. 5, 1969, P.L. 91-135, § 10, 83 Stat. 282.)

§ 706. Arrests; search warrants

Any employee of the Department of Agriculture [Interior] authorized by the Secretary of Agriculture [Interior] to enforce the provisions of this Act shall have power, without warrant, to arrest any person committing a violation of this Act in his presence or view and to take such person immediately for examination or trial before an officer or court of competent jurisdiction; shall have power to execute any warrant or other process issued by an officer or court of competent jurisdiction for the enforcement of the provisions of this Act; and shall have authority, with a search warrant, to search any place. The several judges of the courts established under the laws of the United States, and United States

There is authorized to be appropriated, from time to time, out of any money in the Treasury not otherwise appropriated, such amounts as may be necessary to carry out the provisions and to accomplish the purposes of said conventions and this Act and regulations made pursuant thereto, and the Secretary of Agriculture [Interior] is authorized out of such moneys to employ in the city of Washington and elsewhere such persons and means as he may deem necessary for such purpose and may cooperate with local authorities in the protection of migratory birds and make the necessary investigations connected therewith.

HISTORY: (July 3, 1918, c. 128, § 9, 40 Stat. 756; June 20, 1936, c. 634, § 5, 49 Stat. 1556.)

§ 710. Partial invalidity

If any clause, sentence, paragraph, or part of this Act shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

HISTORY: (July 3, 1918, c. 128, § 10, 40 Stat. 757.)

§ 711. Breeding and sale for food supply

Nothing in this Act shall be construed to prevent the breeding of migratory game birds on farms and preserves and the sale of birds so bred under proper regulations for the purpose of increasing the food supply.

HISTORY: (July 3, 1918, c. 128, § 12, 40 Stat. 757.)

§ 712. Regulations

In accordance with the various migratory bird treaties and conventions with Canada, Japan, Mexico, and the Union of Soviet Socialist Republics, the Secretary of the Interior is authorized to issue such regulations as may be necessary to assure that the taking of migratory birds and the collection of their eggs, by the indigenous inhabitants of the State of Alaska, shall be permitted for their own nutritional and other essential needs, as determined by the Secretary of the Interior, during seasons established so as to provide for the preservation and maintenance of stocks of migratory birds.

The Secretary of the Interior is authorized to issue such regulations as may be necessary to implement the provisions of the convention between the United States and Great Britain for the protection of migratory birds concluded August 16, 1916, the convention between the United States and the United Mexican States for the protection of migratory birds and game mammals concluded February 7, 1936, the convention between the United States and the Government of Japan for the protection of migratory birds in danger of extinction, and their environment concluded March 4, 1972, and the convention between the United States and the Union of Soviet Socialist Republics for the conservation of migratory birds and their environment concluded November 19, 1976.

HISTORY: (As amended Nov. 8, 1978, P.L. 95-616, § 3(h)(2), (3), 92 Stat. 3112.)

Persons are required to use nontoxic

Persons operating under the provisions of this section may use decoys, calls, or other devices to lure, attract, or about to commit depredations within gun range.

Any person exercising the privilege of this section must keep and maintain a log recording the date and number of all birds killed each month under this authorization, that the log must be maintained for a period of three years (and that three previous years of takings must be maintained at all times thereafter), that the log and related records be made available to Federal or State wildlife enforcement officers upon request during normal business hours.

(f) Nothing in this section authorizes the killing of double-crested cormorants contrary to the laws or regulations of any State, and none of the privileges of this section may be exercised unless the person possesses the appropriate State permits, when required; nor the killing of any migratory bird species other than double-crested cormorants when committing or about to commit depredations to aquaculture stocks.

(g) The authority granted in this section will automatically expire on April 30, 2005, unless revoked or specifically extended prior to that date.

[63 FR 10560, Mar. 4, 1998]

Subpart E—Control of Overabundant Migratory Bird Populations

SOURCE: 64 FR 71237, Dec. 20, 1999, unless otherwise noted.

EFFECTIVE DATE NOTE: At 64 FR 71237, Dec. 20, 1999, Subpart E was added, effective Dec. 20, 1999 through May 15, 2001.

§21.60 Conservation order for mid-continent light geese.

(a) Which waterfowl species are covered by this order? This conservation order addresses management of lesser snow (*Anser c. caerulescens*) and Ross' (*Anser rossii*) geese that breed, migrate, and winter in the mid-continent portion of North America, primarily in the

Central and Mississippi Flyways (mid-continent light geese).

(b) In what areas can the conservation order be implemented? (1) The following States, or portions of States, that are contained within the boundaries of the Central and Mississippi Flyways: 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) Tribal lands within the geographic boundaries in paragraph (b)(1) of this section.

(3) The following areas within the boundaries in paragraph (b)(1) of this section are closed to the conservation order after 10 March of each year: Monte Vista National Wildlife Refuge (CO); Bosque del Apache National Wildlife Refuge (NM); the area within 5 miles of the Platte River from Lexington, Nebraska, to Grand Island, Nebraska; the following area in and around Aransas National Wildlife Refuge; those portions of Refugio, Calhoun, and Aransas Counties that lie inside a line extending from 5 nautical miles offshore to and including Pelican Island, thence to Port O'Conner, thence northwest along State Highway 165 and southwest along State Highway 35 to Aransas Pass, thence southeast along State Highway 361 to Port Aransas, thence east along the Corpus Christi Channel, thence southeast along the Aransas Channel, extending to 5 nautical miles offshore; except that it is lawful to take mid-continent light geese after 10 March of each year within the Guadalupe WMA. If at any time we receive evidence that a need to close the areas in this paragraph (b)(3) no longer exists, we will publish a proposal to remove the closures in the FEDERAL REGISTER.

(c) What is required in order for State/Tribal governments to participate in the conservation order? Any State or Tribal government responsible for the management of wildlife and migratory birds may, without permit, kill or cause to be killed under its general supervision, mid-continent light geese under the following conditions:

person to take mid-continent light geese on an area where tame or captive live geese are present unless such birds are and have been for a period of 10 consecutive days before the taking, confined within an enclosure that substantially reduces the audibility of their calls and totally conceals the birds from the sight of mid-continent light geese;

(vi) By means or aid of any motor-driven land, water, or air conveyance, or any sailboat used for the purpose of or resulting in the concentrating, driving, rallying, or stirring up of mid-continent light geese;

(vii) By the aid of baiting, or on or over any baited area. As used in this paragraph, "baiting" means the placing, exposing, depositing, distributing, or scattering of shelled, shucked, or unshucked corn, wheat or other grain, salt, or other feed so as to constitute for such birds a lure, attraction, or enticement to, on, or over any area where hunters are attempting to take them; and "baited area" means any area where shelled, shucked, or unshucked corn, wheat, or other grain, salt, or other feed capable of luring, attracting, or enticing such birds is directly or indirectly placed, exposed, deposited, distributed, or scattered; and such area shall remain a baited area for 10 days following complete removal of all such corn, wheat or other grain, salt, or other feed. However, nothing in this paragraph prohibits the taking of mid-continent light geese on or over standing crops, flooded standing crops (including aquatics), flooded harvested croplands, grain crops properly shucked on the field where grown, or grains found scattered solely as the result of normal agricultural planting or harvesting; or

(viii) Participants may not possess shot (either in shotshells or as loose shot for muzzleloading) other than steel shot, or bismuth-tin, or other shots that are authorized in 50 CFR 20.21(i). Season limitations in that section do not apply to participants acting under this order.

(e) Under what conditions would the conservation order be revoked? The Service will annually assess the overall impact and effectiveness of the conservation order to ensure compatibility

granted under this section may be exercised unless persons acting under the authority of the conservation order possess whatever permit or other authorization(s) required for such activities by the State or Tribal government concerned.

(3) Participants who take mid-continent light geese under this section may not sell or offer for sale those birds nor their plumage, but may possess, transport, and otherwise properly use them.

(4) Participants acting under the authority of this section must permit at all reasonable times, including during actual operations, any Federal or State game or deputy game agent, warden, protector, or other game law enforcement officer free and unrestricted access over the premises on which such operations have been or are being conducted, and must promptly furnish whatever information an officer requires concerning the operation.

(5) Participants acting under the authority of this section may take mid-continent light geese by any method except those prohibited as follows:

(i) With a trap, snare, net, rifle, pistol, swivel gun, shotgun larger than 10 gauge, punt gun, battery gun, machine gun, fish hook, poison, drug, explosive, or stupefying substance;

(ii) From or by means, aid, or use of a sinkbox or any other type of low-flooding device having a depression affording the person a means of concealment beneath the surface of the water;

(iii) From or by means, aid, or use of any motor vehicle, motor-driven land conveyance, or aircraft of any kind, except that paraplegics and persons missing one or both legs may take from any stationary motor vehicle or stationary motor-driven land conveyance;

(iv) From or by means of any motor boat or other craft having a motor attached, or any sailboat, unless the motor has been completely shut off and the sails furled, and its progress therefrom has ceased. A craft under power may be used only to retrieve dead or crippled birds; however, the craft may not be used under power to shoot any crippled birds;

(v) By the use or aid of live birds as decoys; although not limited to, it will be a violation of this paragraph for any

(1) Activities conducted under this section may not affect endangered or threatened species as designated under the Endangered Species Act.

(2) Control activities must be conducted clearly as such and are intended to relieve pressures on migratory birds and habitat essential to migratory bird populations only and are not to be construed as opening, reopening, or extending any open hunting season contrary to any regulations promulgated under section 3 of the Migratory Bird Treaty Act.

(3) Control activities may be conducted only when all waterfowl and crane hunting seasons, excluding fall conry, are closed.

(4) Control measures employed through this section may be implemented only between the hours of one-half hour before sunrise to one-half hour after sunset.

(5) Nothing in this section may limit or initiate management actions on Federal land without concurrence of the Federal agency with jurisdiction.

(6) States and Tribes must designate participants who must operate under the conditions of this section.

(7) States and Tribes must inform participants of the requirements/conditions of this section that apply.

(8) States and Tribes must keep records of activities carried out under the authority of this section, including the number of mid-continent light geese taken under this section, the methods by which they were taken, and the dates they were taken. The States and Tribes must submit an annual report summarizing activities conducted under this section on or before August 30 of each year to the Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240.

(d) What is required for individuals to participate in the conservation order? Individual participants in State or tribal programs covered by this section are required to comply with the following requirements:

(1) Nothing in this section authorizes the take of mid-continent light geese contrary to any State or Tribal laws or regulations, and none of the privileges

With long-term conservation of this resource. If at any time we receive evidence that clearly demonstrates a serious threat of injury to the area or areas involved no longer exists, we will initiate action to revoke the conservation order.

(f) Will information concerning the conservation order be collected? The information collection requirements of the conservation order have been approved by OMB and assigned clearance number 1019-0103. Agencies may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The recordskeeping and reporting requirements imposed under regulations established in this subpart E will be used to administer this program, particularly in the assessment of impacts alternative regulatory strategies may have on mid-continent light geese and other migratory bird populations. The information collected will be required to authorize State and Tribal governments responsible for migratory bird management to take Mid-continent light geese within the guidelines provided by the Service.

PART 22—EAGLE PERMITS

Subpart A—Introduction

Sec.

- 22.1 What is the purpose of this part?
- 22.2 What activities does this part apply to?
- 22.3 What definitions do you need to know?
- 22.4 Information collection requirements.

Subpart B—General Requirements

- 22.11 What is the relationship to other permit requirements?
- 22.12 What activities are illegal?

Subpart C—Eagle Permits

- 22.21 What are the requirements concerning scientific and exhibition purpose permits?
- 22.22 What are the requirements concerning permits for Indian religious purposes?
- 22.23 What are the requirements for permits to take depredating eagles?
- 22.24 Permits for falconry purposes.
- 22.25 What are the requirements concerning permits to take golden eagle nests?