

**16 U.S.C.**

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Title 16 - CONSERVATION

CHAPTER 7 - PROTECTION OF MIGRATORY GAME AND INSECTIVOROUS BIRDS

SUBCHAPTER II - MIGRATORY BIRD TREATY

From the U.S. Government Publishing Office, [www.gpo.gov](http://www.gpo.gov)**SUBCHAPTER II—MIGRATORY BIRD TREATY****§703. Taking, killing, or possessing migratory birds unlawful****(a) In general**

Unless and except as permitted by regulations made as hereinafter provided in this subchapter, 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 (39 Stat. 1702), 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.

**(b) Limitation on application to introduced species****(1) In general**

This subchapter applies only to migratory bird species that are native to the United States or its territories.

**(2) Native to the United States defined****(A) In general**

Subject to subparagraph (B), in this subsection the term "native to the United States or its territories" means occurring in the United States or its territories as the result of natural biological or ecological processes.

**(B) Treatment of introduced species**

For purposes of paragraph (1), a migratory bird species that occurs in the United States or its territories solely as a result of intentional or unintentional human-assisted introduction shall not be considered native to the United States or its territories unless—

(i) it was native to the United States or its territories and extant in 1918;

(ii) it was extirpated after 1918 throughout its range in the United States and its territories;

and

(iii) after such extirpation, it was reintroduced in the United States or its territories as a part of a program carried out by a Federal agency.

(July 3, 1918, ch. 128, §2, 40 Stat. 755; June 20, 1936, ch. 634, §3, 49 Stat. 1556; Pub. L. 93–300, §1, June 1, 1974, 88 Stat. 190; Pub. L. 101–233, §15, Dec. 13, 1989, 103 Stat. 1977; Pub. L. 108–

447, div. E, title I, §143(b), Dec. 8, 2004, 118 Stat. 3071.)

#### AMENDMENTS

**2004**—Pub. L. 108–447 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

**1989**—Pub. L. 101–233 struck out "and" after "1936," and inserted before period at end "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".

**1974**—Pub. L. 93–300 substituted ", 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" for ", or any part, nest, or egg of any such birds", and ", and 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." for period at end.

**1936**—Act June 20, 1936, amended section generally. Prior to amendment, text read as follows: "Unless and except as permitted by regulations made as hereinafter provided, it shall be unlawful to hunt, take, capture, kill, attempt to take, capture or kill, possess, offer for sale, sell, offer to purchase, purchase, deliver for shipment, ship, cause to be shipped, deliver for transportation, transport, cause to be transported, carry or cause to be carried by any means whatever, receive for shipment, transportation or carriage, or export, at any time or in any manner, any migratory bird, included in the terms of the convention between the United States and Great Britain for the protection of migratory birds concluded August sixteenth, nineteen hundred and sixteen, or any part, nest, or egg of any such bird."

#### EFFECTIVE DATE OF 1974 AMENDMENT

Pub. L. 93–300, §3, June 1, 1974, 88 Stat. 190, provided that: "The amendments made by this Act [amending this section] shall take effect on the date on which the President proclaims the exchange of ratifications of the convention between 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, or on the date of the enactment of this Act [June 1, 1974], whichever date is later."

#### EFFECTIVE DATE OF 1936 AMENDMENT

Act June 20, 1936, ch. 634, §3, 49 Stat. 1556, provided in part that the amendment by section 3 is effective as of the day aforesaid, meaning the day on which the President shall proclaim the exchange of ratifications of the convention between the United States and the United Mexican States for the protection of migratory birds and game mammals concluded Feb. 7, 1936, or on June 20, 1936, whichever date is later. Such proclamation was made on June 30, 1937. See section 1 of act June 20, 1936, ch. 634, 49 Stat. 1555.

#### ELIMINATION OF BARRIERS TO IMPROVE AT-RISK BRIDGES

Pub. L. 114–94, div. A, title I, §1439, Dec. 4, 2015, 129 Stat. 1433, provided that:

"(a) TEMPORARY AUTHORIZATION.—

"(1) IN GENERAL.—Until the Secretary of the Interior takes the action described in subsection (b), the take of nesting swallows to facilitate a construction project on a bridge eligible for funding under title 23, United States Code, with any component condition rating of 3 or less (as defined by the National Bridge Inventory General Condition Guidance issued by the Federal Highway Administration) is authorized under the Migratory Bird Treaty Act (16 U.S.C. 703 et seq.) between April 1 and August 31.

"(2) MEASURES TO MINIMIZE IMPACTS.—

"(A) NOTIFICATION BEFORE TAKING.—Prior to the taking of nesting swallows authorized under paragraph (1), any person taking that action shall submit to the Secretary of the Interior a document that contains—

"(i) the name of the person acting under the authority of paragraph (1) to take nesting swallows;

"(ii) a list of practicable measures that will be undertaken to minimize or mitigate significant adverse impacts on the population of that species;

"(iii) the time period during which activities will be carried out that will result in the taking of that species; and

"(iv) an estimate of the number of birds, by species, to be taken in the proposed action.

"(B) NOTIFICATION AFTER TAKING.—Not later than 60 days after the taking of nesting swallows authorized under paragraph (1), any person taking that action shall submit to the Secretary of the Interior a document that contains the number of birds, by species, taken in the action.

"(b) AUTHORIZATION OF TAKE.—

"(1) IN GENERAL.—The Secretary of the Interior, in consultation with the Secretary [of Transportation], shall promulgate a regulation under the authority of section 3 of the Migratory Bird Treaty Act (16 U.S.C. 704) authorizing the take of nesting swallows to facilitate bridge repair, maintenance, or construction—

"(A) without individual permit requirements; and

"(B) under terms and conditions determined to be consistent with treaties relating to migratory birds that protect swallow species occurring in the United States.

"(2) TERMINATION.—On the effective date of a final rule [promulgated] under this subsection by the Secretary of the Interior, subsection (a) shall have no force or effect.

"(c) SUSPENSION OR WITHDRAWAL OF TAKE AUTHORIZATION.—If the Secretary of the Interior, in consultation with the Secretary [of Transportation], determines that taking of nesting swallows carried out under the authority provided in subsection (a)(1) is having a significant adverse impact on swallow populations, the Secretary of the Interior may suspend that authority through publication in the Federal Register."

#### PUBLICATION OF LIST

Pub. L. 108–447, div. E, title I, §143(c), Dec. 8, 2004, 118 Stat. 3072, provided that:

"(1) IN GENERAL.—Not later than 90 days after the date of enactment of this section [Dec. 8, 2004], the Secretary of the Interior shall publish in the Federal Register a list of all nonnative, human-introduced bird species to which the Migratory Bird Treaty Act (16 U.S.C. 703 et seq.) does not apply. As necessary, the Secretary may update and publish the list of species exempted from protection of the Migratory Bird Treaty Act.

"(2) PUBLIC COMMENT.—Before publishing the list under paragraph (1), the Secretary shall provide adequate time for public comment.

"(3) EFFECT OF SECTION.—Nothing in this subsection shall delay implementation of other provisions of this section [amending this section and enacting provisions set out as notes under this section and section 710 of this title] or amendments made by this section that exclude nonnative, human-introduced bird species from the application of the Migratory Bird Treaty Act (16 U.S.C. 703 et seq.)."

#### RELATIONSHIP OF PUB. L. 108–447 TO TREATIES

Pub. L. 108–447, div. E, title I, §143(d), Dec. 8, 2004, 118 Stat. 3072, provided that: "It is the sense of Congress that the language of this section [amending this section and enacting provisions set out as notes under this section and section 710 of this title] is consistent with the intent and language of the 4 bilateral treaties implemented by this section."

#### INCIDENTAL TAKING OF MIGRATORY BIRDS DURING MILITARY READINESS ACTIVITIES

Pub. L. 107–314, div. A, title III, §315, Dec. 2, 2002, 116 Stat. 2509, provided that:

"(a) INTERIM AUTHORITY FOR INCIDENTAL TAKINGS.—During the period described in subsection (c), section 2 of the Migratory Bird Treaty Act (16 U.S.C. 703) shall not apply to the incidental taking of a migratory bird by a member of the Armed Forces during a military readiness activity authorized by the Secretary of Defense or the Secretary of the military department concerned.

"(b) IDENTIFICATION OF MEASURES TO MINIMIZE IMPACT OF ACTIVITIES.—During the periods described in subsections (c) and (d), the Secretary of Defense shall, in consultation with the Secretary of the Interior, identify measures—

"(1) to minimize and mitigate, to the extent practicable, any adverse impacts of authorized military readiness activities on affected species of migratory birds; and

"(2) to monitor the impacts of such military readiness activities on affected species of migratory birds.

"(c) PERIOD OF APPLICATION FOR INTERIM AUTHORITY.—The period described in this subsection is the period beginning on the date of the enactment of this Act [Dec. 2, 2002] and ending on the date on which the Secretary of the Interior publishes in the Federal Register a notice that—

"(1) regulations authorizing the incidental taking of migratory birds by members of the Armed Forces have been prescribed in accordance with the requirements of subsection (d);

"(2) all legal challenges to the regulations and to the manner of their promulgation (if any) have been exhausted as provided in subsection (e); and

"(3) the regulations have taken effect.

"(d) INCIDENTAL TAKINGS AFTER INTERIM PERIOD.—(1) Not later than the expiration of the one-year period beginning on the date of the enactment of this Act, the Secretary of the Interior shall exercise the authority of that Secretary under section 3(a) of the Migratory Bird Treaty Act (16 U.S.C. 704(a)) to prescribe regulations

to exempt the Armed Forces for the incidental taking of migratory birds during military readiness activities authorized by the Secretary of Defense or the Secretary of the military department concerned.

"(2) The Secretary of the Interior shall exercise authority under paragraph (1) with the concurrence of the Secretary of Defense.

"(e) **LIMITATION ON JUDICIAL REVIEW.**—An action seeking judicial review of regulations prescribed pursuant to this section or of the manner of their promulgation must be filed in the appropriate Federal court by not later than the expiration of the 120-day period beginning on the date on which such regulations are published in the Federal Register. Upon the expiration of such period and the exhaustion of any legal challenges to the regulations pursuant to any action filed in such period, there shall be no further judicial review of such regulations or of the manner of their promulgation.

"(f) **MILITARY READINESS ACTIVITY.**—(1) In this section the term 'military readiness activity' includes—

"(A) all training and operations of the Armed Forces that relate to combat; and

"(B) the adequate and realistic testing of military equipment, vehicles, weapons, and sensors for proper operation and suitability for combat use.

"(2) The term does not include—

"(A) the routine operation of installation operating support functions, such as administrative offices, military exchanges, commissaries, water treatment facilities, storage facilities, schools, housing, motor pools, laundries, morale, welfare, and recreation activities, shops, and mess halls;

"(B) the operation of industrial activities; or

"(C) the construction or demolition of facilities used for a purpose described in subparagraph (A) or (B)."

#### **ARCTIC TUNDRA HABITAT EMERGENCY CONSERVATION**

Pub. L. 106–108, Nov. 24, 1999, 113 Stat. 1491, provided that:

"SECTION 1. SHORT TITLE.

"This Act may be cited as the 'Arctic Tundra Habitat Emergency Conservation Act'.

"SEC. 2. FINDINGS AND PURPOSES.

"(a) **FINDINGS.**—The Congress finds the following:

"(1) The winter index population of mid-continent light geese was 800,000 birds in 1969, while the total population of such geese is more than 5,200,000 birds today.

"(2) The population of mid-continent light geese is expanding by over 5 percent each year, and in the absence of new wildlife management actions it could grow to more than 6,800,000 breeding light geese in 3 years.

"(3) The primary reasons for this unprecedented population growth are—

"(A) the expansion of agricultural areas and the resulting abundance of cereal grain crops in the United States;

"(B) the establishment of sanctuaries along the United States flyways of migrating light geese; and

"(C) a decline in light geese harvest rates.

"(4) As a direct result of this population explosion, the Hudson Bay Lowlands Salt-Marsh ecosystem in Canada is being systematically destroyed. This ecosystem contains approximately 135,000 acres of essential habitat for migrating light geese and many other avian species. Biologists have testified that one-third of this habitat has been destroyed, one-third is on the brink of devastation, and the remaining one-third is overgrazed.

"(5) The destruction of the Arctic tundra is having a severe negative impact on many avian species that breed or migrate through this habitat, including the following:

"(A) Canada Goose.

"(B) American Wigeon.

"(C) Dowitcher.

"(D) Hudsonian Godwit.

"(E) Stilt Sandpiper.

"(F) Northern Shoveler.

"(G) Red-Breasted Merganser.

"(H) Oldsquaw.

"(I) Parasitic Jaeger.

"(J) Whimbrel.

"(K) Yellow Rail.

"(6) It is essential that the current population of mid-continent light geese be reduced by 50 percent by the year 2005 to ensure that the fragile Arctic tundra is not irreversibly damaged.

"(b) PURPOSES.—The purposes of this Act are the following:

"(1) To reduce the population of mid-continent light geese.

"(2) To assure the long-term conservation of mid-continent light geese and the biological diversity of the ecosystem upon which many North American migratory birds depend.

#### "SEC. 3. FORCE AND EFFECT OF RULES TO CONTROL OVERABUNDANT MID-CONTINENT LIGHT GEESE POPULATIONS.

"(a) FORCE AND EFFECT.—

"(1) IN GENERAL.—The rules published by the Service on February 16, 1999, relating to use of additional hunting methods to increase the harvest of mid-continent light geese (64 Fed. Reg. 7507–7517) and the establishment of a conservation order for the reduction of mid-continent light goose populations (64 Fed. Reg. 7517–7528), shall have the force and effect of law.

"(2) PUBLIC NOTICE.—The Secretary, acting through the Director of the Service, shall take such action as is necessary to appropriately notify the public of the force and effect of the rules referred to in paragraph (1).

"(b) APPLICATION.—Subsection (a) shall apply only during the period that—

"(1) begins on the date of the enactment of this Act [Nov. 24, 1999]; and

"(2) ends on the latest of—

"(A) the effective date of rules issued by the Service after such date of the enactment to control overabundant mid-continent light geese populations;

"(B) the date of the publication of a final environmental impact statement for such rules under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)); and

"(C) May 15, 2001.

"(c) RULE OF CONSTRUCTION.—This section shall not be construed to limit the authority of the Secretary or the Service to issue rules, under another law, to regulate the taking of mid-continent light geese.

#### "SEC. 4. COMPREHENSIVE MANAGEMENT PLAN.

"(a) IN GENERAL.—Not later than the end of the period described in section 103(b) [probably means section 3(b)], the Secretary shall prepare, and as appropriate implement, a comprehensive, long-term plan for the management of mid-continent light geese and the conservation of their habitat.

"(b) REQUIRED ELEMENTS.—The plan shall apply principles of adaptive resource management and shall include—

"(1) a description of methods for monitoring the levels of populations and the levels of harvest of mid-continent light geese, and recommendations concerning long-term harvest levels;

"(2) recommendations concerning other means for the management of mid-continent light goose populations, taking into account the reasons for the population growth specified in section 102(a)(3) [probably means section 2(a)(3)];

"(3) an assessment of, and recommendations relating to, conservation of the breeding habitat of mid-continent light geese;

"(4) an assessment of, and recommendations relating to, conservation of native species of wildlife adversely affected by the overabundance of mid-continent light geese, including the species specified in section 102(a)(5) [probably means section 2(a)(5)]; and

"(5) an identification of methods for promoting collaboration with the Government of Canada, States, and other interested persons.

"(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section \$1,000,000 for each of fiscal years 2000 through 2002.

#### "SEC. 5. DEFINITIONS.

"In this Act:

"(1) MID-CONTINENT LIGHT GEESE.—The term 'mid-continent light geese' means Lesser snow geese (*Anser caerulescens caerulescens*) and Ross' geese (*Anser rossii*) that primarily migrate between Canada and the States of 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) SECRETARY.—The term 'Secretary' means the Secretary of the Interior.

"(3) SERVICE.—The term 'Service' means the United States Fish and Wildlife Service."

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

(a) Subject to the provisions and in order to carry out the purposes of the conventions, referred to in section 703 of this title, the Secretary of the 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.

(b) It shall be unlawful for any person to—

(1) take any migratory game bird by the aid of baiting, or on or over any baited area, if the person knows or reasonably should know that the area is a baited area; or

(2) place or direct the placement of bait on or adjacent to an area for the purpose of causing, inducing, or allowing any person to take or attempt to take any migratory game bird by the aid of baiting on or over the baited area.

(July 3, 1918, ch. 128, §3, 40 Stat. 755; June 20, 1936, ch. 634, §2, 49 Stat. 1556; 1939 Reorg. Plan No. II, §4(f), eff. July 1, 1939, 4 F.R. 2731, 53 Stat. 1433; Pub. L. 105–312, title I, §102, Oct. 30, 1998, 112 Stat. 2956.)

### **AMENDMENTS**

**1998**—Pub. L. 105–312 designated existing provisions as subsec. (a) and added subsec. (b).

**1936**—Act June 20, 1936, substituted "conventions" for "convention" in two places.

### **EFFECTIVE DATE OF 1936 AMENDMENT**

Act June 20, 1936, ch. 634, §2, 49 Stat. 1556, provided in part that the amendment by section 2 is effective as of the day aforesaid (June 30, 1937). See note under section 703 of this title.

### **TRANSFER OF FUNCTIONS**

Transfer of functions of Secretary of Agriculture to Secretary of the Interior by Reorg. Plan, No. II of 1939, see Transfer of Functions note set out under section 701 of this title.

### **DELEGATION OF FUNCTIONS**

For delegation to Secretary of the Interior of authority vested in President, see Ex. Ord. No. 10752, Feb. 12, 1958, 23 F.R. 973, set out as a note under section 715j of Title 15, Commerce and Trade.

Secretary of the Interior empowered to promulgate regulations under this section without approval, ratification, or other action of President, see section 2(b) of Ex. Ord. No. 10250, June 5, 1951, 16 F.R. 5385, set out as a note under section 301 of Title 3, The President.

### **BAITING OF MIGRATORY GAME BIRDS**

Pub. L. 115–334, title XII, §12601, Dec. 20, 2018, 132 Stat. 5003, provided that:

"(a) DEFINITIONS.—In this section:

"(1) NORMAL AGRICULTURAL OPERATION.—The term 'normal agricultural operation' has the meaning given the term in section 20.11 of title 50, Code of Federal Regulations (as in effect on the date of enactment of this Act [Dec. 20, 2018]).

"(2) POST-DISASTER FLOODING.—The term 'post-disaster flooding' means the destruction of a crop through flooding in accordance with practices required by the Federal Crop Insurance Corporation for agricultural producers to obtain crop insurance under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.) on land on which a crop was not harvestable due to a natural disaster (including any hurricane, storm, tornado, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, drought, fire, snowstorm, or other catastrophe that is declared a major disaster by the President in

accordance with section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170)) in the crop year—

"(A) in which the natural disaster occurred; or

"(B) immediately preceding the crop year in which the natural disaster occurred.

"(3) RICE RATOONING.—The term 'rice ratooning' means the agricultural practice of harvesting rice by cutting the majority of the aboveground portion of the rice plant but leaving the roots and growing shoot apices intact to allow the plant to recover and produce a second crop yield.

"(b) REGULATIONS TO EXCLUDE RICE RATOONING AND POST-DISASTER FLOODING.—Not later than 30 days after the date of enactment of this Act, the Secretary of the Interior, in consultation with the Secretary of Agriculture, shall revise part 20 of title 50, Code of Federal Regulations, to clarify that rice ratooning and post-disaster flooding, when carried out as part of a normal agricultural operation, do not constitute baiting.

"(c) REPORTS.—Not less frequently than once each year—

"(1) the Secretary of Agriculture shall submit to the Secretary of the Interior a report that describes any changes to normal agricultural operations across the range of crops grown by agricultural producers in each region of the United States in which the official recommendations described in section 20.11(h) of title 50, Code of Federal Regulations (as in effect on the date of enactment of this Act), are provided to agricultural producers; and

"(2) the Secretary of the Interior, in consultation with the Secretary of Agriculture and after seeking input from the heads of State departments of fish and wildlife or the Regional Migratory Bird Flyway Councils of the United States Fish and Wildlife Service, shall publicly post a report on the impact that rice ratooning and post-disaster flooding have on the behavior of migratory game birds that are hunted in the area in which rice ratooning and post-disaster flooding, respectively, have occurred."

#### REPORT ON EFFECTS OF 1998 AMENDMENTS

Pub. L. 105–312, title I, §104, Oct. 30, 1998, 112 Stat. 2956, provided that: "Not later than 5 years after the date of enactment of this Act [Oct. 30, 1998], the Secretary of the Interior shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Resources [now Committee on Natural Resources] of the House of Representatives a report analyzing the effect of the amendments made by section 2 [probably should be section 102, which amended this section], and the general practice of baiting, on migratory bird conservation and law enforcement efforts under the Migratory Bird Treaty Act (16 U.S.C. 701 et seq.) [16 U.S.C. 703 et seq.]."

### §705. Transportation or importation of migratory birds; 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.

(July 3, 1918, ch. 128, §4, 40 Stat. 755; June 20, 1936, ch. 634, §4, 49 Stat. 1556; 1939 Reorg. Plan No. II, §4(f), eff. July 1, 1939, 4 F.R. 2731, 53 Stat. 1433; Pub. L. 91–135, §10, Dec. 5, 1969, 83 Stat. 282.)

#### AMENDMENTS

**1969**—Pub. L. 91–135 repealed second par., which prohibited shipment of wild game mammals or parts thereof by any person of the United States to and from Mexico, except by permit from the Secretary of the Interior.

**1936**—Act June 20, 1936, inserted last sentence.

#### EFFECTIVE DATE OF 1969 AMENDMENT

Pub. L. 91–135, §11, Dec. 5, 1969, 83 Stat. 282, provided that: "The provisions of sections 1 through 10 of this Act [enacting sections 668cc–1 to 668cc–6 of this title and amending this section, sections 851, 852, 852a,

and 852d of this title, and sections 43, 44, 3054, and 3112 of Title 18, Crimes and Criminal Procedure] shall be effective one hundred and eighty days after the date of enactment of this Act [Dec. 5, 1969]."

#### EFFECTIVE DATE OF 1936 AMENDMENT

Act June 20, 1936, ch. 634, §4, 49 Stat. 1556, provided in part that the amendment by section 4 is effective as of the day aforesaid (June 30, 1937). See note under section 703 of this title.

#### TRANSFER OF FUNCTIONS

Transfer of functions of Secretary of Agriculture to Secretary of the Interior by Reorg. Plan No. II of 1939, see Transfer of Functions note set out under section 701 of this title.

### §706. Arrests; search warrants

Any employee of the Department of the Interior authorized by the Secretary of the Interior to enforce the provisions of this subchapter shall have power, without warrant, to arrest any person committing a violation of this subchapter 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 subchapter; 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 magistrate judges may, within their respective jurisdictions, upon proper oath or affirmation showing probable cause, issue warrants in all such cases. All birds, or parts, nests, or eggs thereof, captured, killed, taken, sold or offered for sale, bartered or offered for barter, purchased, shipped, transported, carried, imported, exported, or possessed contrary to the provisions of this subchapter or of any regulation prescribed thereunder shall, when found, be seized and, upon conviction of the offender or upon judgment of a court of the United States that the same were captured, killed, taken, sold or offered for sale, bartered or offered for barter, purchased, shipped, transported, carried, imported, exported, or possessed contrary to the provisions of this subchapter or of any regulation prescribed thereunder, shall be forfeited to the United States and disposed of by the Secretary of the Interior in such manner as he deems appropriate.

(July 3, 1918, ch. 128, §5, 40 Stat. 756; 1939 Reorg. Plan No. II, §4(f), eff. July 1, 1939, 4 F.R. 2731, 53 Stat. 1433; Pub. L. 90–578, title IV, §402(b)(2), Oct. 17, 1968, 82 Stat. 1118; Pub. L. 95–616, §3(h)(1), Nov. 8, 1978, 92 Stat. 3111; Pub. L. 101–650, title III, §321, Dec. 1, 1990, 104 Stat. 5117.)

#### AMENDMENTS

**1978**—Pub. L. 95–616 made provisions respecting seizures and judgment of court applicable to birds, or parts, nests, or eggs sold or offered for sale, bartered or offered for barter, purchased, imported and exported and substituted "any regulation prescribed thereunder" in two places for "any regulations made pursuant thereto" and "any regulation made pursuant thereto" and provision for disposition of the birds, etc., by Secretary of the Interior in such manner as he deems appropriate for prior provision for such disposition as directed by court having jurisdiction.

#### CHANGE OF NAME

"United States magistrate judges" substituted for "United States magistrates" in text pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure. Previously, "United States magistrates" substituted in text for "United States commissioners" pursuant to Pub. L. 90–578. See chapter 43 (§631 et seq.) of Title 28.

#### TRANSFER OF FUNCTIONS

Enforcement functions of Secretary or other official in Department of the Interior related to compliance with protection of certain birds under this subchapter with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas transferred to Federal Inspector, Office of Federal Inspector for Alaska Natural Gas Transportation System, until first anniversary of date of initial operation of Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, §§102(e), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, effective July 1, 1979, set out in the Appendix to Title 5, Government Organization and Employees. Office of Federal Inspector for the Alaska Natural Gas



Transportation System abolished and functions and authority vested in Inspector transferred to Secretary of Energy by section 3012(b) of Pub. L. 102–486, set out as an Abolition of Office of Federal Inspector note under section 719e of Title 15, Commerce and Trade. Functions and authority vested in Secretary of Energy subsequently transferred to Federal Coordinator for Alaska Natural Gas Transportation Projects by section 720d(f) of Title 15.

Transfer of functions of Secretary of Agriculture to Secretary of the Interior by Reorg. Plan No. II of 1939, see Transfer of Functions note set out under section 701 of this title.

## **§707. Violations and penalties; forfeitures**

(a) Except as otherwise provided in this section, any person, association, partnership, or corporation who shall violate any provisions of said conventions or of this subchapter, or who shall violate or fail to comply with any regulation made pursuant to this subchapter shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not more than \$15,000 or be imprisoned not more than six months, or both.

(b) Whoever, in violation of this subchapter, shall knowingly—

(1) take by any manner whatsoever any migratory bird with intent to sell, offer to sell, barter or offer to barter such bird, or

(2) sell, offer for sale, barter or offer to barter, any migratory bird shall be guilty of a felony and shall be fined not more than \$2,000 or imprisoned not more than two years, or both.

(c) Whoever violates section 704(b)(2) of this title shall be fined under title 18, imprisoned not more than 1 year, or both.

(d) All guns, traps, nets and other equipment, vessels, vehicles, and other means of transportation used by any person when engaged in pursuing, hunting, taking, trapping, ensnaring, capturing, killing, or attempting to take, capture, or kill any migratory bird in violation of this subchapter with the intent to offer for sale, or sell, or offer for barter, or barter such bird in violation of this subchapter shall be forfeited to the United States and may be seized and held pending the prosecution of any person arrested for violating this subchapter and upon conviction for such violation, such forfeiture shall be adjudicated as a penalty in addition to any other provided for violation of this subchapter. Such forfeited property shall be disposed of and accounted for by, and under the authority of, the Secretary of the Interior.

(July 3, 1918, ch. 128, §6, 40 Stat. 756; June 20, 1936, ch. 634, §2, 49 Stat. 1556; Pub. L. 86–732, Sept. 8, 1960, 74 Stat. 866; Pub. L. 99–645, title V, §501, Nov. 10, 1986, 100 Stat. 3590; Pub. L. 105–312, title I, §103, Oct. 30, 1998, 112 Stat. 2956.)

### **AMENDMENTS**

**1998**—Subsec. (a). Pub. L. 105–312, §103(1), substituted "\$15,000" for "\$500".

Subsecs. (c), (d). Pub. L. 105–312, §103(2), (3), added subsec. (c) and redesignated former subsec. (c) as (d).

**1986**—Subsec. (b). Pub. L. 99–645 substituted "shall knowingly" for "shall" in introductory provisions.

**1960**—Pub. L. 86–732 designated existing provisions as subsec. (a), inserted "Except as otherwise provided in this section", and added subsecs. (b) and (c).

**1936**—Act June 20, 1936, substituted "conventions" for "convention".

### **EFFECTIVE DATE OF 1936 AMENDMENT**

Act June 20, 1936, ch. 634, §2, 49 Stat. 1556, provided in part that the amendment by section 2 is effective as of the day aforesaid (June 30, 1937). See note under section 703 of this title.

### **TRANSFER OF FUNCTIONS**

For transfer of certain enforcement functions of Secretary or other official in Department of the Interior under this subchapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see Transfer of Functions note set out under section 706 of this title.

## **§708. State or Territorial laws or regulations**

Nothing in this subchapter shall be construed to prevent the several States and Territories from making or enforcing laws or regulations not inconsistent with the provisions of said conventions or of this subchapter, or from making or enforcing laws or regulations which shall give further protection to migratory birds, their nests, and eggs, if such laws or regulations do not extend the open seasons for such birds beyond the dates approved by the President in accordance with section 704 of this title.

(July 3, 1918, ch. 128, §7, 40 Stat. 756; June 20, 1936, ch. 634, §2, 49 Stat. 1556.)

### **AMENDMENTS**

**1936**—Act June 20, 1936, substituted "conventions" for "convention".

### **EFFECTIVE DATE OF 1936 AMENDMENT**

Act June 20, 1936, ch. 634, §2, 49 Stat. 1556, provided in part that the amendment by section 2 is effective as of the day aforesaid (June 30, 1937). See note under section 703 of this title.

## **§709. Omitted**

### **CODIFICATION**

Section, act July 3, 1918, ch. 128, §8, 40 Stat. 756, authorized taking and use of migratory birds, nests, or eggs for scientific or propagating purposes until adoption and approval, pursuant to section 704 of this title, of regulations dealing therewith. Regulations were promulgated by Proc. July 31, 1918, 40 Stat. 1812.

## **§709a. Authorization of appropriations**

There is hereby 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 of this subchapter and regulations made pursuant thereto, and the Secretary of the 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.

(July 3, 1918, ch. 128, §9, as added June 20, 1936, ch. 634, §5, 49 Stat. 1556; amended 1939 Reorg. Plan No. II, §4(f), eff. July 1, 1939, 4 F.R. 2731, 53 Stat. 1433.)

### **EFFECTIVE DATE**

Act June 20, 1936, ch. 634, §5, 49 Stat. 1556, provided in part that this section is effective as of the day aforesaid (June 30, 1937). See Effective Date of 1936 Amendment note set out under section 703 of this title.

### **TRANSFER OF FUNCTIONS**

For transfer of certain enforcement functions of Secretary or other official in Department of the Interior under this subchapter to Federal Inspector, Office of Federal Inspector for Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see Transfer of Functions note set out under section 706 of this title.

Transfer of functions of Secretary of Agriculture to Secretary of the Interior by Reorg. Plan No. II of 1939, see Transfer of Functions note set out under section 701 of this title.

### **AVAILABILITY OF FUNDS**

Act June 20, 1936, ch. 634, §6, 49 Stat. 1557, provided: "That all moneys now or hereafter available for administration and enforcement of said Act approved July 3, 1918 [this subchapter], shall be equally available for the administration and enforcement of said Act as hereby amended."

## **§710. Partial invalidity; short title**

If any clause, sentence, paragraph, or part of this subchapter, which shall be known by the short title of the "Migratory Bird Treaty 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.

(July 3, 1918, ch. 128, §§1, 10, 40 Stat. 755, 757.)

### **CODIFICATION**

The provisions of this section relating to short title are from section 1 of act July 3, 1918, and the provisions relating to severability are from section 10 of that act.

### **SHORT TITLE OF 2004 AMENDMENT**

Pub. L. 108–447, div. E, title I, §143(a), Dec. 8, 2004, 118 Stat. 3071, provided that: "This section [amending section 703 of this title and enacting provisions set out as notes under section 703 of this title] may be cited as the 'Migratory Bird Treaty Reform Act of 2004'."

### **SHORT TITLE OF 1998 AMENDMENT**

Pub. L. 105–312, title I, §101, Oct. 30, 1998, 112 Stat. 2956, provided that: "This title [amending sections 704 and 707 of this title and enacting provisions set out as a note under section 704 of this title] may be cited as the 'Migratory Bird Treaty Reform Act of 1998'."

## **§711. Breeding and sale for food supply**

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

(July 3, 1918, ch. 128, §12, 40 Stat. 757.)

## **§712. Treaty and convention implementing regulations; seasonal taking of migratory birds for essential needs of indigenous Alaskans to preserve and maintain stocks of the birds; protection and conservation of the birds**

(1) 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.

(2) 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.

(Pub. L. 95–616, §3(h)(2), (3), Nov. 8, 1978, 92 Stat. 3112.)

### **CODIFICATION**

Par. (1) of section 3(h) of Pub. L. 95–616 amended section 706 of this title. Pars. (2) and (3) of such section 3(h) were redesignated (1) and (2) for codification purposes.

Section was enacted as part of the Fish and Wildlife Improvement Act of 1978, and not as part of the Migratory Bird Treaty Act which comprises this subchapter.