

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.)

Editorial Notes

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."

Statutory Notes and Related Subsidiaries

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 from 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