

MIGRATORY BIRD TREATY ACT

[Chapter 128, Approved July 3, 1918, 40 Stat. 755]

[As Amended Through P.L. 116–9, Enacted March 12, 2019]

【Currency: This publication is a compilation of the text of Chapter 128 of the 65th Congress. It was last amended by the public law listed in the As Amended Through note above and below at the bottom of each page of the pdf version and reflects current law through the date of the enactment of the public law listed at <https://www.govinfo.gov/app/collection/comps/>】

【Note: While this publication does not represent an official version of any Federal statute, substantial efforts have been made to ensure the accuracy of its contents. The official version of Federal law is found in the United States Statutes at Large and in the United States Code. The legal effect to be given to the Statutes at Large and the United States Code is established by statute (1 U.S.C. 112, 204).】

CHAP. 128.—An Act to give effect to the conventions between the United States and other nations for the protection of migratory birds, birds in danger of extinction, game mammals, and their environment.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act shall be known by the short title of the “Migratory Bird Treaty Act.”

SEC. 2. [16 U.S.C. 703] (a) IN GENERAL.—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 bird¹, 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, 1972² and the convention between the United States and the Union of Soviet Social-

¹For the definition of “migratory bird” for purposes of this Act, see section 11 of the Migratory Conservation Treaty Act (16 U.S.C. 715j).

²So in original. Probably should be followed by a comma.

ist 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 Act 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.

SEC. 3. [16 U.S.C. 704] (a) That subject to the provisions and in order to carry out the purposes of the conventions, the Secretary of Agriculture³ 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.

(c) FEDERAL FRAMEWORK CLOSING DATE FOR HUNTING OF DUCKS, MERGANSERS, AND COOTS.—

(1) REGULATIONS RELATING TO FRAMEWORK CLOSING DATE.—

(A) IN GENERAL.—In promulgating regulations under subsection (a) relating to the Federal framework for the

³Section 4(f) of Reorg. Plan No. II of 1939 (5 U.S.C. App.) transferred functions of the Secretary of Agriculture relating to conservation of wildlife, game, and migratory birds to the Secretary of the Interior.

closing date up to which the States may select seasons for migratory bird hunting, except as provided in paragraph (2), the Secretary shall, with respect to the hunting season for ducks, mergansers, and coots—

(i) subject to subparagraph (B), adopt the recommendation of each respective flyway council (as defined in section 20.152 of title 50, Code of Federal Regulations) for the Federal framework if the Secretary determines that the recommendation is consistent with science-based and sustainable harvest management; and

(ii) allow the States to establish the closing date for the hunting season in accordance with the Federal framework.

(B) REQUIREMENT.—The framework closing date promulgated by the Secretary under subparagraph (A) shall not be later than January 31 of each year.

(2) SPECIAL HUNTING DAYS FOR YOUTHS, VETERANS, AND ACTIVE MILITARY PERSONNEL.—

(A) IN GENERAL.—Notwithstanding the Federal framework closing date under paragraph (1) and subject to subparagraphs (B) and (C), the Secretary shall allow States to select 2 days for youths and 2 days for veterans (as defined in section 101 of title 38, United States Code) and members of the Armed Forces on active duty, including members of the National Guard and Reserves on active duty (other than for training), to hunt eligible ducks, geese, swans, mergansers, coots, moorhens, and gallinules, if the Secretary determines that the addition of those days is consistent with science-based and sustainable harvest management. Such days shall be treated as separate from, and in addition to, the annual Federal framework hunting season lengths.

(B) REQUIREMENTS.—In selecting days under subparagraph (A), a State shall ensure that—

(i) the days selected—

(I) may only include the hunting of duck, geese, swan, merganser, coot, moorhen, and gallinule species that are eligible for hunting under the applicable annual Federal framework;

(II) are not more than 14 days before or after the Federal framework hunting season for ducks, mergansers, and coots; and

(III) are otherwise consistent with the Federal framework; and

(ii) the total number of days in a hunting season for any migratory bird species, including any days selected under subparagraph (A), is not more than 107 days.

(C) LIMITATION.—A State may combine the 2 days allowed for youths with the 2 days allowed for veterans and members of the Armed Forces on active duty under subparagraph (A), but in no circumstance may a State have

more than a total of 4 additional days added to its regular hunting season for any purpose.

(3) REGULATIONS.—The Secretary shall promulgate regulations in accordance with this subsection for the Federal framework for migratory bird hunting for the 2019–2020 hunting season and each hunting season thereafter.

SEC. 4. [16 U.S.C. 705] That 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.

SEC. 5. [16 U.S.C. 706] That any employee of the Department of Agriculture authorized by the Secretary of Agriculture⁴ 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 commissioners 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 Act 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 Act 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.

SEC. 6. [16 U.S.C. 707] (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 Act, or who shall violate or fail to comply with any regulation made pursuant to this Act 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 Act, shall knowingly—

⁴ See footnote to section 3(a).

(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 bird⁵ 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 3(b)(2) shall be fined under title 18, United States Code, 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 Act with the intent to offer for sale, or sell, or offer for barter, or barter such bird in violation of this Act shall be forfeited to the United States and may be seized and held pending the prosecution of any person arrested for violating this Act and upon conviction for such violation, such forfeiture shall be adjudicated as a penalty in addition to any other provided for violation of this Act. Such forfeited property shall be disposed of and accounted for by, and under the authority of, the Secretary of the Interior.

SEC. 7. [16 U.S.C. 708] That nothing in this Act 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 Act, 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 three of this Act.

SEC. 8. [16 U.S.C. 709] That until the adoption and approval, pursuant to section three of this Act, of regulations dealing with migratory birds and their nests and eggs, such migratory birds and their nests and eggs as are intended and used exclusively for scientific or propagating purposes may be taken, captured, killed, possessed, sold, purchased, shipped, and transported for such scientific or propagating purposes if and to the extent not in conflict with the laws of the State, Territory, or District in which they are taken, captured, killed, possessed, sold, or purchased, or in or from which they are shipped or transported if the packages containing the dead bodies or the nests or eggs of such birds when shipped and transported shall be marked on the outside thereof so as accurately and clearly to show the name and address of the shipper and the contents of the package.

SEC. 9. [16 U.S.C. 709a] That 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 Agriculture⁶ is authorized out of such moneys to em-

⁵So in law. There probably should be a comma after "any migratory bird", and the subsequent text should probably begin on the next line and align with the left margin of subsection (b).

⁶See footnote to section 3(a).

ploy 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.

SEC. 10. [16 U.S.C. 710] That 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.

SEC. 11. That all Acts or parts of Acts inconsistent with the provisions of this Act are hereby repealed.

SEC. 12. [16 U.S.C. 711] 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 regulation for the purpose of increasing the food supply.

SEC. 13. That this Act shall become effective immediately upon its passage and approval.