

104TH CONGRESS
2D SESSION

H. R. 4077

To clarify hunting prohibitions and provide for wildlife habitat under the
Migratory Bird Treaty Act.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 12, 1996

Mr. YOUNG of Alaska (for himself and Mr. BREWSTER) introduced the
following bill; which was referred to the Committee on Resources

A BILL

To clarify hunting prohibitions and provide for wildlife
habitat under the Migratory Bird Treaty Act.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Migratory Bird Treaty
5 Reform Act of 1996”.

6 **SEC. 2. FINDINGS.**

7 The Congress makes the following findings:

8 (1) The Migratory Bird Treaty Act was enacted
9 in 1918 to implement the 1916 Convention for the
10 Protection of Migratory Birds between the United

1 States and Great Britain (for Canada). The Act was
2 later amended to reflect similar agreements with
3 Mexico, Japan, and the former Soviet Union.

4 (2) Pursuant to the Migratory Bird Treaty Act,
5 as amended, the Secretary of the Interior is author-
6 ized to promulgate regulations specifying when, how,
7 and whether migratory birds may be hunted.

8 (3) Contained within these regulations are pro-
9 hibitions on certain methods of hunting migratory
10 birds to prevent an excessive harvest of the resource.
11 These prohibitions, many of which were rec-
12 ommended by sportsmen, have been in place for over
13 60 years and have received broad acceptance among
14 the hunting community with one principal exception
15 relating to the application and interpretation of the
16 prohibitions on the hunting of migratory birds by
17 the aid of baiting, or on or over any baited area.

18 (4) The prohibitions regarding the hunting of
19 migratory birds by the aid of bait, or on or over
20 bait, have been fraught with interpretive difficulties
21 on the part of law enforcement, the hunting commu-
22 nity, and courts of law. Hunters who desire to com-
23 ply with applicable regulations have been subject to
24 citation for violations of the regulations due to the
25 lack of clarity, inconsistent interpretations, and en-

1 forcement. The baiting regulations have been the
2 subject of multiple congressional hearings and a law
3 enforcement advisory commission.

4 (5) Restrictions on the hunting of migratory
5 birds by the aid of baiting, or on or over any baited
6 area, must be clarified in a manner that recognizes
7 the national and international importance of protect-
8 ing the migratory bird resource while ensuring con-
9 sistency and appropriate enforcement including the
10 principles of “fair chase”. No baiting restrictions
11 should act as a detriment to the benefits of habitat
12 management including wildlife food crops.

13 **SEC. 3. CLARIFYING HUNTING PROHIBITIONS.**

14 Section 3 of the Migratory Bird Treaty Act (16
15 U.S.C. 704) is amended as follows:

16 (1) By inserting “(a)” after “SEC. 3.”.

17 (2) By adding at the end the following:

18 “(b) No person shall take migratory game birds—

19 “(1) with a trap, snare, net, rifle, pistol, swivel
20 gun, shotgun larger than 10 gauge, punt gun, bat-
21 tery gun, machine gun, fish hook, poison, drug, ex-
22 plosive, or stupefying substance;

23 “(2) with a shotgun of any description capable
24 of holding more than 3 shells, unless it is plugged
25 with a one-piece filler, incapable of removal without

1 disassembling the gun, so that its total capacity does
2 not exceed 3 shells;

3 “(3) from or by means, aid, or use of a sinkbox
4 or any other type of low floating device, having a de-
5 pression affording a hunter a means of concealment
6 beneath the surface of the water;

7 “(4) from or by means, aid or use of any motor
8 vehicle, motor-driven land conveyance, or aircraft of
9 any kind, except that paraplegics and persons miss-
10 ing 1 or both legs may take from any stationary
11 motor vehicle or stationary motor-driven land con-
12 veyance;

13 “(5)(A) except as provided in subparagraph
14 (B), from or by means of any motorboat or other
15 craft having a motor attached, or any sailboat, un-
16 less the motor has been completely shut off and/or
17 the sails furled, and its progress therefrom has
18 ceased;

19 “(B) a craft under power may be used to re-
20 trieve dead or crippled birds (except that crippled
21 birds may not be shot from such craft under power
22 except in the seaduck area, as provided by regula-
23 tions issued by the Secretary of the Interior);

24 “(6) by means or aid of any motor-driven land,
25 water, or air conveyance, or any sailboat used for

1 the purpose of or resulting in the concentrating,
2 driving, rallying or stirring up of any migratory bird;

3 “(7) by the use or aid of live birds as decoys,
4 including on any area where tame or captive live
5 ducks or geese are present, unless such birds are
6 and have been for a period of 10 consecutive days
7 prior to such taking, confined within an enclosure
8 which substantially reduces the audibility of their
9 calls and totally conceals such birds from the sight
10 of wild migratory waterfowl;

11 “(8) by the use or aid of recorded or electrically
12 amplified bird calls or sounds, or recorded or elec-
13 trically amplified imitations of bird calls or sounds;
14 and

15 “(9) while possessing shot (either in shotshells
16 or loose shot for muzzle-loading) other than steel
17 shot, bismuth-tin shot, or such other shot as may be
18 approved as nontoxic by the Secretary of the Inte-
19 rior; this paragraph applies only to the taking of
20 Anatidae (ducks, geese, including brant, and swans),
21 coots (*Fulica americana*) and any species that make
22 up aggregate bag limits during concurrent seasons
23 with the former in areas designated as nontoxic shot
24 zones by the Secretary of the Interior.

1 “(c)(1) No person shall take any migratory bird by
2 the aid of baiting, or on or over any baited area, where
3 that person knows or should have known through the exer-
4 cise of reasonable diligence that bait was present.

5 “(2) Nothing in this subsection shall prohibit—

6 “(A) the taking of all migratory game birds, in-
7 cluding waterfowl, on or over standing crops, flooded
8 standing crops (including aquatics), flooded har-
9 vested croplands, grain crops properly shocked on
10 the field where grown, or grains found scattered
11 solely as the result of normal agricultural planting
12 or harvesting;

13 “(B) the taking of all migratory game birds, ex-
14 cept waterfowl, on or over any lands where shelled,
15 shucked, or unshucked corn, wheat or other grain,
16 salt, or other feed has been distributed or scattered
17 as a result of normal agricultural operations or pro-
18 cedures or as a result of manipulation of a crop or
19 other feed on the land where grown for wildlife man-
20 agement purposes; or

21 “(C) the taking of any migratory game birds,
22 including waterfowl, on or over moist soil on emer-
23 gent marsh plants—

24 “(i) that are on the land where the plants
25 were grown;

1 “(ii) that have been mowed, chopped,
2 disced, or otherwise manipulated; and

3 “(iii) the presence of which is the result of
4 normal wetland habitat practices performed by
5 the owner of record or any agent of the owner.

6 “(3) For purposes of paragraph (2)(C), the term
7 ‘moist soil on emergent marsh plants’—

8 “(A) means those species of wetland plants
9 which occur naturally in unmanaged wetlands; and

10 “(B) includes, but is not limited to, watergrass/
11 wild millet (*Eschinochloa* spp.), smartweed
12 (*Polygonum* spp.), bulrush (*Scirpus* spp.), swamp
13 timothy (*Heleochoa schoenoides*), spike rush
14 (*Eleocharis* spp.), wild rice (*Zizania* spp.), sedge
15 (*Cyperus* spp.), cocklebur (*Xanthum* spp.), sprangle
16 top (*Leptochloa* spp.), curly dock (*Rumex* spp.),
17 Pigweed (*Amaranthus* spp.), cattail (*Typha* spp.),
18 beggarticks (*Bidens* spp.), giant reed grass
19 (*Phragmites* spp.), joint grass (*Paspalum* spp.),
20 johnson grass (*Sorghum* spp.), and goosefoot (*Che-*
21 *nopodium* spp.).

22 “(4) As used in this subsection:

23 “(A) The term ‘baiting’ means the intentional
24 placing, exposing, depositing, distributing, or scat-
25 tering of shelled, shucked, or unshucked corn, wheat

1 or other grain, salt, or other feed that constitutes
2 for such birds an attraction, on or over any areas
3 where hunters are attempting to take migratory
4 game birds.

5 “(B) The term ‘baited area’ means any area
6 where shelled, shucked, or unshucked corn, wheat or
7 other grain, salt, or other feed whatsoever capable of
8 attracting migratory game birds is intentionally
9 placed, exposed, deposited, distributed, or scattered;
10 such an area shall remain a baited area for 10 days
11 following complete removal of all such corn, wheat or
12 other grain, salt, or other feed.

13 “(C)(i) The term ‘normal agricultural oper-
14 ations’ includes the growing of crops where harvest-
15 ing does not take place, planting for erosion control,
16 top sowing of crops, and distribution or scattering of
17 grains if such operations are normal in a region, ex-
18 cept that the term shall not include the distributing
19 or scattering of grain or other feed once it has been
20 removed from or stored on a field where grown un-
21 less it is for a normal agricultural operation for feed
22 for farm animals in the region.

23 “(ii) Any other activity may be considered to be
24 a normal agricultural operation only if the Secretary
25 of the Interior, after meaningful consultation with

1 the director of appropriate cooperative State re-
2 search, education, and extension services, State fish
3 and wildlife agencies, and State extension agricul-
4 tural offices—

5 “(I) determines that the activity is normal
6 within the specific regional area in which it oc-
7 curs; and

8 “(II) publishes the determination annually
9 in the Federal Register in conjunction with
10 other migratory bird hunting regulations, after
11 public review and comment.

12 “(D) The terms ‘attraction’ and ‘attracting’
13 mean that the bait was a major contributing factor
14 in luring the migratory birds to within a reasonable
15 shotgun range given other such factors as the geo-
16 graphic location of the hunting venue, the physical
17 characteristics of the hunting area, and the hunting
18 methods used by the hunters.”.

19 **SEC. 4. ACQUISITION OF MIGRATORY BIRD REFUGES.**

20 Section 6 of the Migratory Bird Treaty Act (16
21 U.S.C. 707) is amended as follows:

22 (1) By redesignating subsection “(c)” as sub-
23 section “(d)”.

24 (2) By inserting after subsection (b), the follow-
25 ing:

1 “(c) All fines and penalties assessed and recovered
2 under this provision shall be deposited into the migratory
3 bird conservation fund established under section 4 of the
4 Act of March 16, 1934 (16 U.S.C. 718d) to be used only
5 for the location, ascertainment, and acquisition of suitable
6 areas for migratory bird refuges under this Act.”.

7 **SEC. 5. PENALTIES.**

8 Section 6(c) of the Migratory Bird Treaty Act (16
9 U.S.C. 707(c)) is amended as follows:

10 (1) By striking “All guns,” and inserting “(1)
11 Except as provided in paragraph (2), all guns”.

12 (2) By adding the following at the end:

13 “(2) In lieu of seizing any personal property, the Sec-
14 retary of the Interior shall permit the owner or operator
15 of the personal property to post bond or other surety pend-
16 ing the disposition of any proceeding under this Act.”.

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