

105TH CONGRESS  
1ST SESSION

# H. R. 741

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

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 12, 1997

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

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## 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 1997”.

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 better manage and conserve this 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

1 lack of clarity, inconsistent interpretations, and en-  
2 forcement. The baiting regulations have been the  
3 subject of multiple congressional hearings and a law  
4 enforcement advisory commission.

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

14 **SEC. 3. CLARIFYING HUNTING PROHIBITIONS.**

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

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

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

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

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

24 “(2) with a shotgun of any description capable  
25 of holding more than 3 shells, unless it is plugged

1 with a one-piece filler, incapable of removal without  
2 disassembling the gun, so that its total capacity does  
3 not exceed 3 shells;

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

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

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

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

1           “(6) by means or aid of any motor-driven land,  
2           water, or air conveyance, or any sailboat used for  
3           the purpose of or resulting in the concentrating,  
4           driving, rallying or stirring up of any migratory bird;

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

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

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

1 with the former in areas designated as nontoxic shot  
2 zones by the Secretary of the Interior.

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

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

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

15 “(B) the taking of all migratory game birds, ex-  
16 cept waterfowl, on or over any lands where shelled,  
17 shucked, or unshucked corn, wheat or other grain,  
18 salt, or other feed has been distributed or scattered  
19 as a result of normal agricultural operations or as  
20 a result of manipulation of a crop or other feed on  
21 the land where grown for wildlife management pur-  
22 poses.

23 “(3) As used in this subsection:

1           “(A) The term ‘baiting’ means the intentional  
2           placing, exposing, depositing, distributing, or scat-  
3           tering of shelled, shucked, or unshucked corn, wheat  
4           or other grain, salt, or other feed that constitutes  
5           for such birds an attraction, on or over any areas  
6           where hunters are attempting to take migratory  
7           game birds.

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

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

1           “(ii) Any other activity may be considered to be  
2 a normal agricultural operation only if the Secretary  
3 of the Interior, after meaningful consultation with  
4 the director of appropriate cooperative State re-  
5 search, education, and extension services, State fish  
6 and wildlife agencies, and State extension agricul-  
7 tural offices—

8           “(I) determines that the activity is normal  
9 within the specific regional area in which it oc-  
10 curs; and

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

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

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

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

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

3           (2) By inserting after subsection (b), the follow-  
4           ing:

5           “(c) All fines and penalties assessed and recovered  
6           under this provision shall be deposited into the migratory  
7           bird conservation fund established under section 4 of the  
8           Act of March 16, 1934 (16 U.S.C. 718d).”.

9           **SEC. 5. PENALTIES.**

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

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

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

15           “(2) In lieu of seizing any personal property, (except  
16           for machine guns and shotguns restricted under section  
17           3(b)2) the Secretary of the Interior shall permit the owner  
18           or operator of the personal property to post bond or other  
19           surety pending the disposition of any proceeding under  
20           this Act.”.

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