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MIGRATORY BIRD CONSERVATION ACT

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January 24, 2002

MIGRATORY BIRD CONSERVATION ACT

[Chapter 257, Approved Feb. 18, 1929, 45 Stat. 1222]

[As Amended Through Public Law 107–136, Jan. 24, 2002]

CHAP. 257.—AN ACT TO MORE EFFECTIVELY MEET THE OBLIGATIONS OF THE UNITED STATES UNDER THE MIGRATORY BIRD TREATY WITH GREAT BRITAIN BY LESSENING THE DANGERS THREATENING MIGRATORY GAME BIRDS FROM DRAINAGE AND OTHER CAUSES, BY THE ACQUISITION OF AREAS OF LAND AND OF WATER TO FURNISH IN PERPETUITY RESERVATIONS FOR THE ADEQUATE PROTECTION OF SUCH BIRDS; AND AUTHORIZING APPROPRIATIONS FOR THE ESTABLISHMENT OF SUCH AREAS, THEIR MAINTENANCE AND IMPROVEMENT, AND FOR OTHER PURPOSES.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That [16 U.S.C. 715] this Act shall be known by the short title of “Migratory Bird Conservation Act.”

SEC. 2. [16 U.S.C. 715a] That a commission to be known as the Migratory Bird Conservation Commission, consisting of the Secretary of Agriculture, as chairman¹, the Administrator of the Environmental Protection Agency, the Secretary of the Interior, and two Members of the Senate, to be selected by the President of the Senate, and two Members of the House of Representatives to be selected by the Speaker, is hereby created and authorized to consider and pass upon any area of land, water, or land and water that may be recommended by the Secretary of Agriculture¹ for purchase or rental under this Act, and to fix the price or prices at which such area may be purchased or rented; and no purchase or rental shall be made of any such area until it has been duly approved for purchase or rental by said commission. Any Member of the House of Representatives who is a member of the commission, if reelected to the succeeding Congress, may serve on the commission notwithstanding the expiration of a Congress. Any vacancy on the commission shall be filled in the same manner as the original appointment. The ranking officer of the branch or department of a State to which is committed the administration of its game laws, or his authorized representative, and in a State having no such branch or department, the governor thereof, or his authorized representative, shall be a member ex officio of said commission for the purpose of considering and voting on all questions relating to the acquisition, under this Act, of areas in his State. For purposes of this Act, the purchase or rental of any area of land, water, or land and water includes the purchase or rental of any interest in any such area of land, water, or land and water.

¹Section 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. Section 4(h) of such plan specifies that the Secretary of the Interior is chairman of the Migratory Bird Conservation Commission and the Secretary of Agriculture is a member thereof.

SEC. 3. [16 U.S.C. 715b] That the commission hereby created shall, through its chairman, annually report in detail to Congress, not later than the first Monday in December, the operations of the commission during the preceding fiscal year.

SEC. 4. [16 U.S.C. 715c] The Secretary of the Interior may not recommend any area for purchase or rental under the terms of this Act unless the Secretary of the Interior—

(1) has determined that such area is necessary for the conservation of migratory birds; and

(2) has consulted with the county or other unit of local government in which such area is located and with the Governor of the State concerned or the appropriate State agency.

SEC. 5. [16 U.S.C. 715d] The Secretary of the Interior may—

(1) purchase or rent such areas or interests therein as have been approved for purchase or rental by the Commission at the price or prices fixed by the Commission; and

(2) acquire, by gift or devise, any area or interests therein; which he determines to be suitable for use as an inviolate sanctuary, or for any other management purpose, for migratory birds. The Secretary may pay, when deemed necessary by him and from moneys authorized to be appropriated for the purposes of this Act (A) the purchase or rental price of any such area or interest therein, and (B) the expenses incident to the location, examination, survey, and acquisition of title (including options) of any such area or interest therein. No lands acquired, held, or used by the United States for military purposes shall be subject to any provisions of this Act.

SEC. 6. [16 U.S.C. 715e] That the Secretary of Agriculture¹ may do all things and make all expenditures necessary to secure the safe title in the United States to the areas which may be acquired under this Act, but no payment shall be made for any such areas until the title thereto shall be satisfactory to the Attorney General or his designee, but the acquisition of such areas by the United States shall in no case be defeated because of rights-of-way, easements, and reservations which from their nature will in the opinion of the Secretary of Agriculture¹ in no manner interfere with the use of the areas so encumbered for the purposes of this Act; but such rights-of-way, easements, and reservations retained by the grantor or lessor from whom the United States receives title under this or any other Act for the acquisition by the Secretary of Agriculture¹ of areas for wildlife refuges shall be subject to rules and regulations prescribed by the Secretary of Agriculture¹ for the occupation, use, operation, protection, and administration of such areas as inviolate sanctuaries for migratory birds or as refuges for wildlife; and it shall be expressed in the deed or lease that the use, occupation, and operation of such rights-of-way, easements, and reservations shall be subordinate to and subject to such rules and regulations as are set out in such deed or lease or, if deemed necessary by the Secretary of Agriculture¹, to such rules and regulations as may be prescribed by him from time to time.

SEC. 7. [16 U.S.C. 715f] That no deed or instrument of conveyance in fee shall be accepted by the Secretary of Agriculture¹

¹ See footnote to section 2.

under this Act unless the State in which the area lies shall have consented by law to the acquisition by the United States of lands in that State.

SEC. 8. [16 U.S.C. 715g] That the jurisdiction of the State, both civil and criminal, over persons upon areas acquired under this Act shall not be affected or changed by reason of their acquisition and administration by the United States as migratory bird reservations, except so far as the punishment of offenses against the United States is concerned.

SEC. 9. [16 U.S.C. 715h] That nothing in this Act is intended to interfere with the operation of the game laws of the several States applying to migratory game birds in so far as they do not permit what is forbidden by Federal law.

SEC. 10. [16 U.S.C. 715i] (a) Areas of lands, waters, or interests therein acquired or reserved pursuant to this Act shall, unless otherwise provided by law, be administered by the Secretary of the Interior under rules and regulations prescribed by him to conserve and protect migratory birds in accordance with treaty obligations with Mexico, Canada, Japan, and the Union of Soviet Socialist Republics, and other species of wildlife found thereon, including species that are listed pursuant to section 4 of the Endangered Species Act of 1973 as endangered species or threatened species, and to restore or develop adequate wildlife habitat.

(b) In administering such areas, the Secretary is authorized to manage timber, range, and agricultural crops; to manage other species of animals, including but not limited to fenced range animals, with the objectives of perpetuating, distributing, and utilizing the resources; and to enter into agreements with public and private agencies.

SEC. 11. [16 U.S.C. 715j] That for the purposes of this Act and the Migratory Bird Treaty Act (16 U.S.C. 703 et seq.), migratory birds are those defined as such by the treaty between the United States and Great Britain for the protection of migratory birds concluded August 16, 1916 (39 Stat. 1702), the treaty between the United States and the United Mexican States for the protection of migratory birds and game mammals concluded February 7, 1936 (50 Stat. 1311), the Convention between the Government of the United States of America 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 Environment concluded November 19, 1976.

SEC. 12. [16 U.S.C. 715k] For the acquisition, including the location, examination, and survey, of suitable areas of land, water, or land and water, for use as migratory bird reservations, and necessary expenses incident thereto, and for the administration, maintenance, and development of such areas and other preserves, reservations, or breeding grounds frequented by migratory birds and under the administration of the Secretary of Agriculture¹, including the construction of dams, dikes, ditches, flumes, spillways, buildings, and other necessary improvements, and for the elimi-

¹ See footnote to section 2.

nation of the loss of migratory birds from alkali poisoning, oil pollution of waters, or other causes, for cooperation with local authorities in wild life conservation, for investigations and publications relating to North American birds, for personal services, printing, engraving, and issuance of circulars, posters, and other necessary matter and for the enforcement of the provisions of this Act, there are authorized to be appropriated, in addition to all other amounts authorized by law to be appropriated, the following amounts for the fiscal years specified—

\$75,000 for the fiscal year ending June 30, 1930;

\$200,000 for the fiscal year ending June 30, 1931;

\$600,000 for the fiscal year ending June 30, 1932;

\$1,000,000 for the fiscal year ending June 30, 1933;

\$1,000,000 for each fiscal year thereafter for a period of six years; and

\$200,000 for the fiscal year ending June 30, 1940, and for each fiscal year thereafter. Not more than 20 per centum of the amounts appropriated pursuant to this authorization for the fiscal year beginning July 1, 1930, and for each fiscal year to and including the fiscal year ending June 30, 1939, shall be expended for personal services in the District of Columbia and elsewhere incident to the administration and maintenance of acquired areas, printing, engraving, and issuance of circulars and posters. No part of any appropriation authorized by this section shall be used for payment of the salary, compensation, or expenses of any United States protector, except reservation protectors for the administration, maintenance, and protection of such reservations and the birds thereon: *Provided*, That reservation protectors appointed under the provisions of this Act shall be selected, when practicable, from qualified citizens of the State in which they are to be employed. The Secretary of Agriculture¹ is authorized and directed to make such expenditures and to employ such means, including personal services in the District of Columbia and elsewhere, as may be necessary to carry out the foregoing objects.

【Sections 13 and 14 were repealed by section 7(d) of Public Law 89-669, 80 Stat. 930.】

SEC. 15. 【16 U.S.C. 715n】 That for the purposes of this Act the word “take” shall be construed to mean pursue, hunt, shoot, capture, collect, kill, or attempt to pursue, hunt, shoot, capture, collect, or kill, unless the context otherwise requires.

SEC. 16. 【16 U.S.C. 715o】 Nothing in this Act shall be construed as authorizing or empowering the Migratory Bird Conservation Commission herein created, the Secretary of Agriculture¹, or any other board, commission, or officer, to declare, withdraw, or determine, except heretofore designated, any part of any national forest or power site, a migratory bird reservation under any of the provisions of this Act, except by and with the consent of the legislature of the State wherein such forest or power site is located.

SEC. 17. 【16 U.S.C. 715p】 That when any State shall, by suitable legislation, make provision adequately to enforce the provisions of this Act and all regulations promulgated thereunder, the Secretary of Agriculture¹ may so certify, and then and thereafter

¹ See footnote to section 2.

said State may cooperate with the Secretary of Agriculture¹ in the enforcement of this Act and the regulations thereunder.

SEC. 18. [16 U.S.C. 715q] That a sum sufficient to pay the necessary expenses of the commission and its members, not to exceed an annual expenditure of \$7,500, is hereby authorized to be appropriated out of any money in the Treasury not otherwise appropriated. Said appropriation shall be paid out on the audit and order of the chairman of said commission, which audit and order shall be conclusive and binding upon the General Accounting Office as to the correctness of the accounts of said commission.

SEC. 19. [16 U.S.C. 715r] That if any provision of this Act or the application thereof to any person or circumstance is held invalid the validity of the remainder of the Act and of the application of such provision to other persons and circumstances shall not be affected thereby.

SEC. 20. That this Act shall take effect upon its passage and approval.