

CONSOLIDATED STATUTES OF CANADA

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Migratory Birds Convention Act, 1994

1994, c. 22

[M-7.01]

An Act to implement a Convention for the protection of migratory birds in Canada and the United States

[Assented to 23rd June, 1994]

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

SHORT TITLE

Short title

1. This Act may be cited as the *Migratory Birds Convention Act, 1994*.

INTERPRETATION

Definitions

2. (1) In this Act,

"Convention" « convention »

"Convention" means the Convention set out in the schedule, as amended from time to time;

"conveyance" « moyen de transport »

"conveyance" means a vehicle, aircraft or water-borne craft or any other contrivance that is used to move persons or goods;

"migratory bird" « oiseau migrateur »

"migratory bird" means a migratory bird referred to in the Convention, and includes the sperm, eggs, embryos, tissue cultures and parts of the bird;

"Minister" « ministre »

"Minister" means the Minister of the Environment or, in respect of any matter related to the Northern Pipeline referred to in the *Northern Pipeline Act*, the member of the Queen's Privy Council for Canada designated as the Minister for the purposes of that Act;

"nest" « nid »

"nest" means the nest of a migratory bird and includes parts of the nest.

Possession

(2) For the purposes of this Act,

(a) a person has anything in possession when the person has it in their personal possession or knowingly

(i) has it in the actual possession or custody of another person, or

(ii) has it in any place, whether or not that place belongs to or is occupied by the person, for their own use or benefit or for the use or benefit of another person; and

(b) where a person has anything in their possession or custody with the knowledge and consent of another person or other persons, it is in the possession and custody of each and all of them.

Aboriginal and treaty rights

(3) For greater certainty, nothing in this Act shall be construed so as to abrogate or derogate from any existing aboriginal or treaty rights of the aboriginal peoples of Canada under section 35 of the *Constitution Act, 1982*.

HER MAJESTY

Binding on Her Majesty

3. This Act is binding on Her Majesty in right of Canada or a province.

PURPOSE

Purpose

4. The purpose of this Act is to implement the Convention by protecting migratory birds and nests.

PROHIBITION

Prohibition

5. Except as authorized by the regulations, no person shall, without lawful excuse,

(a) be in possession of a migratory bird or nest; or

(b) buy, sell, exchange or give a migratory bird or nest or make it the subject of a commercial transaction.

ADMINISTRATION

Game officers

6. (1) The Minister may designate any person or class of persons to act as game officers for the purposes of this Act and the regulations, and all members of the Royal Canadian Mounted Police are game officers for the purposes of this Act and the regulations.

Designation of provincial government employees

(2) The Minister may not designate a person or class of persons employed by the government of a province unless that government agrees.

Certificate of designation

(3) Every game officer must be provided with a certificate of designation as a game officer in a form approved by the Minister and, on entering any place under this Act, the officer shall, if so requested, show the certificate to the occupant or person in charge of the place.

Powers of peace officers

(4) For the purposes of this Act and the regulations, game officers have all the powers of a peace officer, but the Minister may specify limits on those powers when designating any person or class of persons.

Exemptions for law enforcement activities

(5) For the purpose of investigations and other law enforcement activities under this Act, the Minister may, on any terms and conditions the Minister considers necessary, exempt game officers who are carrying out duties or functions under this Act, and persons acting under their direction and control, from the application of any provision of this Act or the regulations.

Obstruction

(6) When a game officer is carrying out duties or functions under this Act or the regulations, no person shall

(a) knowingly make any false or misleading statement either orally or in writing to the game officer; or

(b) otherwise wilfully obstruct the game officer.

Inspections

7. (1) For the purpose of ensuring compliance with this Act and the regulations, a game officer may, subject to subsection (3), at any reasonable time enter and inspect any place in which the officer believes, on reasonable grounds, there is any thing to which this Act or the regulations apply or any document relating to the administration of this Act or the regulations, and the game officer may

(a) open or cause to be opened any container that the game officer believes, on reasonable grounds, contains any such thing or document;

(b) inspect the thing and take samples free of charge;

(c) require any person to produce the document for inspection or copying, in whole or in part; and

(d) seize any thing by means of or in relation to which the game officer believes, on reasonable grounds, this Act or the regulations have been contravened or that the game officer believes, on reasonable grounds, will provide evidence of a contravention.

Conveyance

(2) For the purposes of carrying out the inspection, the game officer may stop a conveyance or direct that it be moved to a place where the inspection can be carried out.

Dwelling-place

(3) The game officer may not enter a dwelling-place except with the consent of the occupant or person in charge of the dwelling-place or under the authority of a warrant.

Warrant

(4) Where on *ex parte* application a justice, as defined in section 2 of the *Criminal Code*, is satisfied by information on oath that

(a) the conditions for entry described in subsection (1) exist in relation to a dwelling-place,

(b) entry to the dwelling-place is necessary for the administration of this Act or the regulations, and

(c) entry to the dwelling-place has been refused or there are reasonable grounds for believing that entry will be refused,

the justice may issue a warrant authorizing the game officer to enter the dwelling-place subject to any conditions that may be specified in the warrant.

Search and seizure without warrant

8. For the purpose of ensuring compliance with this Act and the regulations, a game officer may exercise the powers of search and seizure provided in section 487 of the *Criminal Code* without a warrant if the conditions for obtaining a warrant exist but, by reason of exigent circumstances, it would not be feasible to obtain it.

Custody of things seized

9. (1) Subject to subsections (2) and (3), where a game officer seizes a thing under this Act or under a warrant issued under the *Criminal Code*,

(a) sections 489.1 and 490 of the *Criminal Code* apply; and

(b) the game officer, or any person that the officer may designate, shall retain custody of the thing subject to any order made under section 490 of the *Criminal Code*.

Forfeiture where ownership not ascertainable

(2) Where the lawful ownership of or entitlement to the seized thing cannot be ascertained within thirty days after its seizure, the thing, or any proceeds of its disposition, are forfeited to

(a) Her Majesty in right of Canada, if the thing was seized by a game officer employed in the public service of Canada; or

(b) Her Majesty in right of a province, if the thing was seized by a game officer employed by the government of that province.

Perishable things

(3) Where the seized thing is perishable, the game officer may dispose of it or destroy it, and any proceeds of its disposition must be

(a) paid to the lawful owner or person lawfully entitled to possession of the thing, unless proceedings under this Act are instituted within ninety days after its seizure; or

(b) retained by the game officer pending the outcome of the proceedings.

Abandonment

(4) The lawful owner of the seized thing may abandon it to Her Majesty in right of Canada or a province.

Disposition by Minister

10. Any thing that has been forfeited or abandoned under this Act must be dealt with and disposed of as the Minister may direct.

Liability for costs

11. The lawful owner and any person lawfully entitled to possession of any thing seized, abandoned or forfeited under this Act are jointly and severally liable for all the costs of inspection, seizure, abandonment, forfeiture or disposition incurred by Her Majesty that exceed any proceeds of the disposition of the thing that have been forfeited to Her Majesty under this Act.

REGULATIONS

Regulations

12. (1) The Governor in Council may make any regulations that the Governor in Council considers necessary to carry out the purposes and provisions of this Act and the Convention, including regulations

(a) providing for the periods during which, and the areas in which,

(i) migratory birds may be killed, captured or taken,

(ii) nests may be damaged, destroyed, removed or disturbed, or

(iii) migratory birds or nests may be bought, sold, exchanged, given or made the subject of a commercial transaction;

(b) for limiting the number of migratory birds that a person may kill, capture or take in any period when doing so is permitted by the regulations, and providing for the manner in which those birds may then be killed, captured or taken and the equipment that may be used;

(c) respecting the possession of migratory birds and nests that have been killed, captured, taken or removed in accordance with the regulations;

(d) for granting permits to kill, capture, take, buy, sell, exchange, give or possess migratory birds, or to make migratory birds the subject of a commercial transaction;

(e) for granting permits to remove or eliminate migratory birds or nests where it is necessary to do so to avoid injury to agricultural interests or in any other circumstances set out in the regulations;

(f) respecting the issuance, renewal, revocation and suspension of permits;

(g) for regulating the shipment or transportation of migratory birds from one province to another province or country and providing for the imposition of conditions governing international traffic in migratory birds;

(h) for prohibiting the killing, capturing, injuring, taking or disturbing of migratory birds or the damaging, destroying, removing or disturbing of nests;

(i) prescribing protection areas for migratory birds and nests, and for the control and management of those areas;

(j) for charging fees for permits, leases, stamps or other authorizing documents required to carry on any activity under this Act or the regulations, and for determining the amount of the fees and the terms and conditions under which they are to be paid; and

(k) authorizing the Minister to vary or suspend the application of any regulation where the Minister considers it necessary to do so for the conservation of migratory birds.

Amendments to Convention

(2) The Minister shall, by order, amend the schedule to incorporate any amendment to the Convention as soon as is practicable after the amendment takes effect, and table any amendment in both Houses of Parliament within fifteen sitting days after the order is made.

Debate in House of Commons

(3) Any amendment tabled in both Houses of Parliament pursuant to subsection (2) shall be debated in the House of Commons within twenty sitting days after being tabled in both Houses.

OFFENCES AND PUNISHMENT

Contravention of Act or regulations

13. (1) Every person who contravenes section 5, subsection 6(6) or any regulation

(a) is guilty of an offence punishable on summary conviction and is liable

(i) in the case of a corporation, to a fine not exceeding \$100,000, and

(ii) in the case of an individual, to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding six months, or to both; or

(b) is guilty of an indictable offence and is liable

(i) in the case of a corporation, to a fine not exceeding \$250,000, and

(ii) in the case of an individual, to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding five years, or to both.

Subsequent offences

(2) Where a person is convicted of an offence under this Act a second or subsequent time, the amount of the fine for the subsequent offence may, notwithstanding subsection (1), be double the amount set out in that subsection.

Continuing offence

(3) A person who commits or continues an offence on more than one day is liable to be convicted for a separate offence for each day on which the offence is committed or continued.

Fines cumulative

(4) Any fine imposed for an offence involving more than one migratory bird or nest may be calculated in respect of each one as though it had been the subject of a separate information and the fine then imposed is the total of that calculation.

Additional fine

(5) Where a person has been convicted of an offence and the court is satisfied that monetary benefits accrued to the person as a result of the commission of the offence,

(a) the court may order the person to pay an additional fine in an amount equal to the court's estimation of the amount of the monetary benefits; and

(b) the additional fine may exceed the maximum amount of any fine that may otherwise be imposed under this Act.

Forfeiture

14. (1) Where a person is convicted of an offence, the convicting court may, in addition to any punishment imposed, order that any seized thing by means of or in relation to which the offence was committed, or any proceeds of its disposition, be forfeited to Her Majesty.

Return where no forfeiture ordered

(2) Where the convicting court does not order forfeiture, the seized thing, or the proceeds of its disposition, must be returned to its lawful owner or the person lawfully entitled to possession of it.

Retention or sale

15. Where a fine is imposed on a person convicted of an offence, any seized thing, or any proceeds of its disposition, may be retained until the fine is paid or the thing may be sold in satisfaction of the fine and the proceeds applied, in whole or in part, in payment of the fine.

Court order

16. Where a person is convicted of an offence, the court may, in addition to any punishment imposed and having regard to the nature of the offence and the circumstances surrounding its commission, make an order containing one or more of the following prohibitions, directions or requirements:

(a) prohibiting the person from doing any act or engaging in any activity that could, in the opinion of the court, result in the continuation or repetition of the offence;

(b) directing the person to take any action the court considers appropriate to remedy or avoid any harm to any migratory bird or nest that resulted or may result from the commission of the offence;

(c) directing the person to publish, in any manner the court considers appropriate, the facts relating to the commission of the offence;

(d) directing the person to pay the Minister or the government of a province compensation, in whole or in part, for the cost of any remedial or preventive action taken by or on behalf of the Minister or that government as a result of the commission of the offence;

(e) directing the person to perform community service in accordance with any reasonable conditions that may be specified in the order;

(f) directing the person to submit to the Minister, on application to the court by the Minister within three years after the conviction, any information about the activities of the person that the court considers appropriate in the circumstances;

(g) requiring the person to comply with any other conditions that the court considers appropriate for securing the person's good conduct and for preventing the person from repeating the offence or committing other offences; and

(h) directing the person to post a bond or pay into court an amount of money the court considers appropriate for the purpose of ensuring compliance with any prohibition, direction or requirement under this section.

Suspended sentence

17. (1) Where a person is convicted of an offence and the court suspends the passing of sentence pursuant to paragraph 731(1)(a) of the *Criminal Code*, the court may, in addition to any probation order made under that paragraph, make an order containing one or more of the prohibitions, directions or requirements mentioned in section 16.

Imposition of sentence

(2) Where the person does not comply with the order or is convicted of another offence, within three years after the order was made, the court may, on the application of the prosecution, impose any sentence that could have been imposed if the passing of sentence had not been suspended.

1994, c. 22, s. 17; 1995, c. 22, s. 18.

Limitation period

18. (1) Proceedings by way of summary conviction in respect of an offence may be commenced at any time within, but not later than, two years after the day on which the subject-matter of the proceedings became known to the Minister.

Minister's certificate

(2) A document appearing to have been issued by the Minister, certifying the day on which the subject-matter of any proceedings became known to the Minister, is admissible in evidence without proof of the signature or official character of the person appearing to have signed the document and is proof of the matter asserted in it.

References to the Minister

(3) For the purposes of this section, a reference to the Minister includes the provincial minister responsible for the protection of wildlife in the province where the offence is alleged to have been committed.

TICKETABLE OFFENCES

Procedure

19. (1) In addition to the procedures set out in the *Criminal Code* for commencing a proceeding, proceedings in respect of any offence prescribed by the regulations may be commenced by a game officer

(a) completing a ticket that consists of a summons portion and an information portion;

(b) delivering the summons portion to the accused or mailing it to the accused at the accused's latest known address; and

(c) filing the information portion with a court of competent jurisdiction before the summons portion has been delivered or mailed or as soon as is practicable afterward.

Content of ticket

(2) The summons and information portions of the ticket must

(a) set out a description of the offence and the time and place of its alleged commission;

(b) include a statement, signed by the game officer who completes the ticket, that the officer has reasonable grounds to believe that the accused committed the offence;

(c) set out the amount of the fine prescribed for the offence by the regulations and the manner in which and period within which it may be paid;

(d) include a statement that if the accused pays the fine within the period set out in the ticket, a conviction will be entered and recorded against the accused; and

(e) include a statement that if the accused wishes to plead not guilty or for any other reason fails to pay the fine within the period set out in the ticket, the accused must appear in the court on the day and at the time set out in the ticket.

Notice of forfeiture

(3) Where a thing is seized under this Act and proceedings relating to it are commenced by way of the ticketing procedure, the game officer who completes the ticket shall give written notice to the accused that, if the accused pays the prescribed fine within the period set out in the ticket, the thing, or any proceeds of its disposition, will be immediately forfeited to Her Majesty.

Consequences of payment

(4) Where an accused to whom the summons portion of a ticket is delivered or mailed pays the prescribed fine within the period set out in the ticket,

(a) the payment constitutes a plea of guilty to the offence and a conviction must be entered against the accused and no further action may be taken against the accused in respect of that offence; and

(b) notwithstanding section 9, any thing seized from the accused under this Act in relation to the offence, or any proceeds of its disposition, are forfeited to

(i) Her Majesty in right of Canada, if the thing was seized by a game officer employed in the public service of Canada; or

(ii) Her Majesty in right of a province, if the thing was seized by a game officer employed by the government of that province.

Regulations

(5) The Governor in Council may make regulations prescribing

(a) offences in respect of which this section applies and the manner in which the offences are to be described in tickets; and

(b) the amount of the fine for a prescribed offence, but the amount may not exceed \$1,000.

CONSEQUENTIAL AMENDMENT

20. [Amendment]

REPEAL

21. [Repeal]

SCHEDULE

(Section 2)

CONVENTION

Whereas many species of birds in the course of their annual migrations traverse certain parts of the Dominion of Canada and the United States; and

Whereas many of these species are of great value as a source of food or in destroying insects which are injurious to forests and forage plants on the public domain, as well as to agricultural crops, in both Canada and the United States, but are nevertheless in danger of extermination through lack of adequate protection during the nesting season or while on their way to and from their breeding grounds;

His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British dominions beyond the seas, Emperor of India, and the United States of America, being desirous of saving from indiscriminate slaughter and of insuring the preservation of such migratory birds as are either useful to man or are harmless, have resolved to adopt some uniform system of protection which shall effectively accomplish such objects, and to the end of concluding a convention for this purpose have appointed as their respective plenipotentiaries:

His Britannic Majesty, the Right Honourable Sir Cecil Arthur Spring-Rice, G.C.V.O., K.C.M.G., etc., His Majesty's ambassador extraordinary and plenipotentiary at Washington; and

The President of the United States of America, Robert Lansing, Secretary of State of the United States;

Who, after having communicated to each other their respective full powers which were found to be in due and proper form, have agreed to and adopted the following articles:—

Article I

The High Contracting Powers declare that the migratory birds included in the terms of this Convention shall be as follows:—

1. Migratory Game Birds:—

- (a) Anatidae or waterfowl, including brant, wild ducks, geese, and swans;
- (b) Gruidae or cranes, including little brown, sandhill, and whooping cranes;
- (c) Rallidae or rails, including coots, gallinules and sora and other rails;
- (d) Limicolae or shorebirds, including avocets, curlew, dowitchers, godwits, knots, oyster catchers, phalaropes, plovers, sandpipers, snipe, stilts, surf birds, turnstones, willet, woodcock, and yellowlegs;
- (e) Columbidae or pigeons, including doves and wild pigeons.

2. Migratory Insectivorous Birds: Bobolinks, catbirds, chickadees, cuckoos, flickers, flycatchers, grosbeaks, humming birds, kinglets, martins, meadowlarks, nighthawks or bull bats, nuthatches, orioles, robins, shrikes, swallows, swifts, tanagers, titmice, thrushes, vireos, warblers, waxwings, whippoorwills, woodpeckers, and wrens, and all other perching birds which feed entirely or chiefly on insects.

3. Other Migratory Nongame Birds: Auks, auklets, bitterns, fulmars, gannets, grebes, guillemots, gulls, herons, jaegers, loons, murre, petrels, puffins, shearwaters, and terns.

Article II

The High Contracting Parties agree that, as an effective means of preserving migratory birds, there shall be established the following close seasons during which no hunting shall be done except for scientific or propagating purposes under permits issued by proper authorities.

1. The close season on migratory game birds shall be between 10th March and 1st September, except that the close of the season on the limicolae or shorebirds in the Maritime Provinces of Canada and in those states of the United States bordering on the Atlantic ocean which are situated wholly or in part north of Chesapeake Bay shall be between 1st February and 15th August, and that Indians may take at any time scoters for food but not for sale. The season for hunting shall be further restricted to such period not exceeding three and one-half months as the High Contracting Powers may severally deem appropriate and define by law or regulation.

2. The close season on migratory insectivorous birds shall continue throughout the year.

3. The close season on other migratory nongame birds shall continue throughout the year, except that Eskimos and Indians may take at any season auks, auklets, guillemots, murre, and puffins, and their eggs for food and their skins for clothing, but the birds and eggs so taken shall not be sold or offered for sale.

Article III

The High Contracting Powers agree that during the period of ten years next following the going into effect of this Convention, there shall be a continuous close season on the following migratory game birds, to wit:

Band-tailed pigeons, little brown, sandhill and whooping cranes, swans, curlew and all shorebirds (except the black-breasted and golden plover, Wilson or jack snipe, woodcock, and the greater and lesser yellowlegs); provided that during such ten years the close seasons on cranes, swans and curlew in the province of British Columbia shall be made by the proper authorities of that province within the general dates and limitations elsewhere prescribed in this Convention for the respective groups to which these birds belong.

Article IV

The High Contracting Powers agree that special protection shall be given the wood duck and the eider duck either (1) by a close season extending over a period of at least five years, or (2) by the establishment of refuges, or (3) by such other regulations as may be deemed appropriate.

Article V

The taking of nests or eggs of migratory game or insectivorous or nongame birds shall be prohibited, except for scientific or propagating purposes under such laws or regulations as the High Contracting Powers may severally deem appropriate.

Article VI

The High Contracting Powers agree that the shipment or export of migratory birds or their eggs from any state or province, during the continuance of the close season in such state or province, shall be prohibited except for scientific or propagating purposes, and the international traffic in any birds or eggs at such time captured, killed, taken, or shipped at any time contrary to the laws of the state or province in which the same were captured, killed, taken, or shipped shall be likewise prohibited. Every package containing migratory birds or any parts thereof or any eggs of migratory birds transported, or offered for transportation from the Dominion of Canada into the United States or from the United States into the Dominion of Canada, shall have the name and address of the shipper and an accurate statement of the contents clearly marked on the outside of such package.

Article VII

Permits to kill any of the above-named birds which, under extraordinary conditions, may become seriously injurious to the agricultural or other interests in any particular community, may be issued by the proper authorities of the High Contracting Powers under suitable regulations prescribed therefor by them respectively, but such permits shall lapse or may be cancelled, at any time when, in the opinion of said authorities, the particular exigency has passed, and no birds killed under this article shall be shipped, sold, or offered for sale.

Article VIII

The High Contracting Powers agree themselves to take, or propose to their respective appropriate law-making bodies, the necessary measures for insuring the execution of the present Convention.

Article IX

The present Convention shall be ratified by His Britannic Majesty and by the President of the United States of America, by and with the advice and consent of the Senate thereof. The ratifications shall be exchanged at Washington as soon as possible and the Convention shall take effect on the date of the exchange of the ratifications. It shall remain in force for fifteen years, and in the event of neither of the High Contracting Powers having given notification twelve months before the expiration of said period of fifteen years, of its intention of terminating its operation, the Convention shall continue to remain in force for one year and so on from year to year.

In faith whereof, the respective Plenipotentiaries have signed the present Convention in duplicate and have hereunto affixed their seals.

Done at Washington this sixteenth day of August, 1916.

[Here follow the signatures of Cecil Spring-Rice and Robert Lansing.]

AMENDMENT NOT IN FORCE

1992, c. 47, s. 84 (Sch.), as amended by 1994, c. 22, s. 20:

20. The schedule to the *Contraventions Act* is amended by adding the following after section 7:

Migratory Birds Convention Act, 1994

7.1 Section 19 and the heading before it are repealed.