

118TH CONGRESS
2D SESSION

H. R. 9971

To amend the Migratory Bird Treaty Act to affirm that the prohibition on the unauthorized take or killing of migratory birds of that Act includes incidental take, and to direct the United States Fish and Wildlife Service to authorize such incidental take, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 11, 2024

Mr. HUFFMAN (for himself and Mr. FITZPATRICK) introduced the following bill; which was referred to the Committee on Natural Resources

A BILL

To amend the Migratory Bird Treaty Act to affirm that the prohibition on the unauthorized take or killing of migratory birds of that Act includes incidental take, and to direct the United States Fish and Wildlife Service to authorize such incidental take, and for other purposes.

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 Protec-
5 tion Act of 2024”.

1 **SEC. 2. AMENDMENTS TO THE MIGRATORY BIRD TREATY**
2 **ACT.**

3 (a) IN GENERAL.—The Migratory Bird Treaty Act
4 (16 U.S.C. 703 et seq.) is amended—

5 (1) by striking “of Agriculture” each place it
6 appears;

7 (2) by striking “of the Interior” each place it
8 appears;

9 (3) in section 5 (16 U.S.C. 706), as amended
10 by paragraph (1) of this section, by inserting “of the
11 Interior” after “employee of the Department”;

12 (4) in section 6 (16 U.S.C. 707), as amended
13 by paragraph (1) of this section, by adding at the
14 end the following:

15 “(e) AUTHORIZING CIVIL PENALTIES FOR INCI-
16 DENTAL TAKE.—

17 “(1) IN GENERAL.—A person who incidentally
18 takes a migratory bird without an authorization
19 issued pursuant to section 14 or in violation of the
20 terms and conditions of an applicable permit or reg-
21 ulation issued by the Secretary to administer section
22 14 may be assessed a civil penalty by the Secretary
23 of not more than \$10,000 per violation, except that
24 unpermitted incidental take which is caused by con-
25 duct that is reckless or grossly negligent shall be
26 subject to the penalties of subsection (a).

1 “(2) CIVIL ACTION.—The Secretary may com-
2 mence a civil action for appropriate relief, including
3 a permanent or temporary injunction, for any inci-
4 dental take of a migratory bird without a permit or
5 any violation of the terms and conditions of a permit
6 issued or regulation promulgated pursuant to section
7 14.”; and

8 (5) by adding at the end the following:

9 **“SEC. 14. INCIDENTAL TAKE OF MIGRATORY BIRDS.**

10 “(a) IN GENERAL.—It shall be a violation of this Act
11 to incidentally take any migratory bird, and any part,
12 nest, or egg of any such bird, except as authorized by the
13 Secretary. The Secretary shall promulgate regulations to
14 authorize the incidental take of migratory birds pursuant
15 to this section, including issuing general permits. Before
16 the Secretary promulgates regulations for an industry, the
17 Secretary shall continue to enforce the document titled
18 ‘Director’s Order No.: 225’ (published October 5, 2021).
19 No penalty shall be assessed unless such entity is given
20 notice and opportunity for a hearing on the record in ac-
21 cordance with sections 554 and 556 of title 5, United
22 States Code. In determining the amount of the penalty,
23 the Secretary shall consider the gravity of the violation
24 and the demonstrated good faith of the entity. For good

1 cause shown, the Secretary, in an extraordinary case, may
2 remit or mitigate any such penalty.

3 “(b) AUTHORIZATION OF FEES.—The Secretary may
4 collect fees pursuant to authorizing and administering the
5 incidental take of migratory birds. The fees may be used
6 to cover the administrative costs for the permit program
7 and conserving populations of bird species—

8 “(1) affected by the authorized activities; or

9 “(2) identified as birds of conservation concern
10 under authority of section 13 of the Fish and Wild-
11 life Conservation Act of 1980 (16 U.S.C. 2912).

12 “(c) DEPOSIT OF FEES.—There is established in the
13 Treasury a separate account, which shall be known as the
14 ‘Migratory Bird Recovery Fund’. The fund shall be man-
15 aged by the Secretary and may consist of—

16 “(1) amounts received from fees pursuant to
17 regulations under subsection (b);

18 “(2) amounts received pursuant to section 6(e);

19 “(3) amounts made available from appropria-
20 tions; and

21 “(4) amounts received by the Secretary in the
22 form of donations.

23 “(d) AUTHORIZATION OF APPROPRIATIONS.—There
24 is authorized to be appropriated \$10,000,000 for each fis-

1 cal year beginning after the date of the enactment of this
2 section to carry out this section.

3 “(e) REPORT TO CONGRESS.—Not later than 5 years
4 after the date of enactment of this section, and at the end
5 of each 5 year period thereafter, the Secretary shall sub-
6 mit a report to the Chair and Ranking Member of the
7 House Natural Resources Committee and to the Chair and
8 Ranking Member of the Senate Environment and Public
9 Works Committee on—

10 “(1) the conservation status of migratory birds;

11 “(2) the impacts upon migratory birds of activi-
12 ties for which authorizing regulations have been
13 issued under this section; and

14 “(3) the Secretary’s progress in carrying out
15 the functions and responsibilities given to the Sec-
16 retary under this section.

17 “(f) RESEARCH PROGRAM.—The Secretary shall es-
18 tablish and maintain, through direct programming, con-
19 tracts, or other form of agreement, and in consultation
20 with research institutions, institutions of higher education,
21 wildlife conservation groups, and representatives of au-
22 thorized activities regulated under this section, a research
23 program to—

24 “(1) better monitor the status of bird popu-
25 lations;

1 “(2) understand the stressors to bird popu-
2 lations;

3 “(3) identify opportunities to reduce the impact
4 of such stressors; and

5 “(4) deploy and validate mitigation measures to
6 conserve bird populations.

7 **“SEC. 15. DEFINITIONS.**

8 “For the purposes of this Act:

9 “(1) INSTITUTION OF HIGHER EDUCATION.—

10 The term ‘institution of higher education’ has the
11 meaning given the term in section 101(a) of the
12 Higher Education Act of 1965 (20 U.S.C. 1001(a)).

13 “(2) SECRETARY.—The term ‘Secretary’ means
14 the Secretary of the Interior, acting through the Di-
15 rector of the United States Fish and Wildlife Serv-
16 ice.”.

17 (b) CONFORMING AMENDMENT.—Section 7(b) of the
18 North American Wetlands Conservation Act (16 U.S.C.
19 4406(b)) is amended by inserting “subsections (a) through
20 (d) of” before “section 6 of the Migratory Bird Treaty
21 Act”.

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