
UNITED STATES DEPARTMENT OF THE INTERIOR
FISH AND WILDLIFE SERVICE

Wildlife Circular 13



Issued April 1941

**ACQUISITION OF NATIONAL WILDLIFE REFUGE LANDS
UNDER THE MIGRATORY BIRD CONSERVATION ACT**

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GENERAL INFORMATION

To lessen the dangers threatening migratory game birds from drainage and other causes, and thus meet more effectively the obligations of the United States under the Migratory Bird Treaty with Great Britain, there was passed by Congress the Migratory Bird Conservation Act, approved on February 18, 1929, authorizing the acquisition by purchase, gift, or lease of areas of land and of water to furnish in perpetuity reservations for the adequate protection of waterfowl and other birds. The full text of the act, as amended to allow acquisitions by exchange, is given on pages 4 to 7.

AREAS BEST ADAPTED FOR REFUGES

In carrying out the program under the act it was first necessary to ascertain by examination of the numerous potential refuges to be found throughout the United States those best adapted for the purpose, to make appraisals for determining their character and value,

NOTE.—This circular supersedes information issued in 1931 (as processed Form BI-1018) by the Bureau of Biological Survey, Department of Agriculture. (See footnote 2, p. 4.)

and to conduct other activities incident to their acquisition with the funds made available by Congress from time to time.

CHARACTER OF SUITABLE TRACTS

The units selected for migratory-bird refuges must be of such character as best to serve the needs of wildlife, particularly waterfowl. Usually they will be more or less extensive areas of lowland, comprising marsh and woodland contiguous to or embracing water areas; or they may be areas formerly well suited as feeding and nesting grounds for migratory birds, but now useless by reason of unwise drainage developments, though subject to restoration to their natural condition.

RESERVATIONS OF RESOURCES

Lands are not ordinarily considered for acquisition if the owners desire to reserve any of their natural resources, real or assumed. If, in special instances, conditions warrant departure from the general rule, such cases will be considered on their merits, and if it is evident that productive occupation of the land by wildlife will not be interfered with thereby, agreements may be reached allowing such reservations. In dealing for tracts on which the owners make reservations, however, recognition must be given to the values of these reservations, and relatively lower prices will be paid for land so encumbered.

GIFTS

Lands donated to the Government for use as bird refuges will contribute materially to the success of wildlife-restoration projects, and all areas that are of suitable type and available as gifts are solicited as such, if they are sufficiently large to form an economical administrative unit or if they form part of a unit in process of acquisition.

LEASES

Unless the conditions surrounding a proposed lease of refuge lands are very unusual, leases will not be entered into without an optional provision for purchase.

LANDS OFFERED FOR PURCHASE

Tracts offered at exorbitant prices will not be considered. Holding lands at excessive prices within any proposed refuge unit may prevent the acquisition of any part of it. Expectation values cannot be considered in making appraisals, and expenditures made in futile efforts to drain lands must be disregarded in determining their fair value.

SMALL AND LARGE TRACTS

Proposals will be received by the Fish and Wildlife Service of the Department of the Interior for small as well as large tracts within the units designated for purchase, but only those lands that are desirable for wildlife will be considered for acquisition.

Good policy dictates that, to be valuable and representative, refuges should normally comprise 20,000 to 50,000 acres. Such units make for adequate isolation, offer varieties of attractions to most if not all species of migratory birds, and lend themselves to more nearly ideal administrative arrangements than do smaller areas. In arid sections of the West and in densely populated and highly industrialized parts of the East, however, less extensive sites must be utilized for refuges in the absence of areas of the size desired.

DETERMINATION OF ACREAGE

Refuge lands will be purchased only (*a*) on the basis of an accurate survey by horizontal measurement; (*b*) by recourse to the General Land Office records; or (*c*) by both; and (*d*) at a specified rate per acre. A proposal on the basis of a lump-sum price for a tract will not be considered.

AGENTS NOT NECESSARY

Placing lands in the hands of an agent for disposal for refuge purposes is ordinarily not necessary. Usually agents can give no practical assistance, and optioned lands will not be considered. The Government desires to deal direct with the owners wherever practicable.

PROCEDURE IN PURCHASES

After the Fish and Wildlife Service has found a tract suitable for a migratory-bird refuge and has determined the ownership of lands within it and completed an appraisal to establish their fair market value, representatives of the Service will consult the owners of record, either in person or by mail, for the purpose of making a purchase offer. After a price agreement has been reached, the owner will be asked to give an option for the sale of the land.

Upon recommendation of the Secretary of the Interior, the Migratory Bird Conservation Commission,¹ which was created by law for the purpose, will consider the appraisal and valuation data previously assembled and the desirability of purchasing the land at the price quoted in the option. Following favorable action by the Commis-

¹The Migratory Bird Conservation Commission consists of the Secretary of the Interior (chairman), the Secretary of Agriculture, the Secretary of Commerce, two members of the United States Senate, and two members of the House of Representatives; in addition the ranking member of a State game department is ex officio a member for the purpose of considering and voting on questions relating to acquisitions in his State.

sion an agreement looking to the acquisition of the land will be completed, and title examination and survey will be made by the Government preliminary to conveyance of the land to the United States.

ACQUISITIONS BY EXCHANGE

Lands for wildlife refuges may also be acquired by exchange on the basis of equal values of Government lands for those offered therefor. The text of the amendment of the Migratory Bird Conservation Act on this subject is given on page 7.

PROGRESS REPORTS

The Migratory Bird Conservation Commission submits to Congress annual reports on progress, naming the units established or enlarged during the current year by the Commission's approval of the acquisition of lands therefor, showing the total acreage of the units thus reported on, and discussing related matters of interest. Copies of the report may be obtained by writing to the Secretary, Migratory Bird Conservation Commission, Fish and Wildlife Service, Department of the Interior, Washington, D. C.²

TEXT OF ACT AND AMENDMENTS²

MIGRATORY BIRD CONSERVATION ACT OF 1929

[Act of February 18, 1929, 45 Stat. 1222; 16 U. S. Code 715, as amended June 15, 1935, 49 Stat. 381, 16 U. S. Code 715]

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 this act shall be known by the short title of "Migratory Bird Conservation Act."

SEC. 2. That a commission to be known as the Migratory Bird Conservation Commission, consisting of the Secretary of Agriculture, as chairman, the Secretary of Commerce, 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 Agriculture 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 relected to the succeeding Congress, may serve on the commission notwithstanding the expiration of a Congress. Any vacancy on the commission

² References herein to the Department or the Secretary of Agriculture automatically become Department or Secretary of the Interior, under the provisions of the Reorganization Act of 1939 (53 Stat. 561) and the President's Reorganization Plan No. II thereunder (53 Stat. 1431), whereby the Bureau of Biological Survey and its functions were transferred to the Department of the Interior, effective July 1, 1939 (53 Stat. 813). By Reorganization Plan No. III (54 Stat. 1231), the Bureau of Biological Survey and the Bureau of Fisheries were consolidated to form the Fish and Wildlife Service, effective June 30, 1940 (54 Stat. 230).

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.

SEC. 3. 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. That the Secretary of Agriculture shall recommend no area for purchase or rental under the terms of this act except such as he shall determine is necessary for the conservation of migratory game birds.

SEC. 5. That the Secretary of Agriculture is authorized to purchase or rent such areas as have been approved for purchase or rental by the commission, at the price or prices fixed by said commission, and to acquire by gift or devise, for use as inviolate sanctuaries for migratory birds, areas which he shall determine to be suitable for such purposes, and to pay the purchase or rental price and expenses incident to the location, examination, and survey of such areas and the acquisition of title thereto, including options when deemed necessary by the Secretary of Agriculture, from moneys to be appropriated hereunder by Congress from time to time: *Provided*, That no lands acquired, held, or used by the United States for military purposes shall be subject to any of the provisions of this act.

SEC. 6. That the Secretary of Agriculture 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, 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 Agriculture 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 Agriculture of areas for wildlife refuges shall be subject to rules and regulations prescribed by the Secretary of Agriculture 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 Agriculture, to such rules and regulations as may be prescribed by him from time to time.

[As amended by sec. 301 of the act of June 15, 1935, 49 Stat. 381.]

SEC. 7. That no deed or instrument of conveyance shall be accepted by the Secretary of Agriculture 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. 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. 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 insofar as they do not permit what is forbidden by Federal law.

SEC. 10. That no person shall knowingly disturb, injure, or destroy any notice, signboard, fence, building, ditch, dam, dike, embankment, flume, spillway, or other improvement or property of the United States on any area acquired under this act, or cut, burn, or destroy any timber, grass, or other natural growth, on said area or on any area of the United States which heretofore has been or which hereafter may be set apart or reserved for the use of the Department of Agriculture as a game refuge or as a preserve or reservation and breeding ground for native birds, under any law, proclamation, or Executive order, or occupy or use any part thereof or enter thereon for any purpose, except in accordance with regulations of the Secretary of Agriculture; nor shall any per-

son take any bird, or nest or egg thereof, on any area acquired under this act, except for scientific or propagating purposes under permit of the Secretary of Agriculture but nothing in this act or in any regulation thereunder shall be construed to prevent a person from entering upon any area acquired under this act for the purpose of fishing in accordance with the law of the State in which such area is located: *Provided*, That such person complies with the regulations of the Secretary of Agriculture covering such area.

SEC. 11. That for the purposes of this act, migratory birds are those defined as such by treaty between the United States and Great Britain for the protection of migratory birds concluded August 16, 1916.

SEC. 12. 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 game birds and under the administration of the Secretary of Agriculture, including the construction of dams, dikes, ditches, flumes, spillways, buildings, and other necessary improvements, and for the elimination of the loss of migratory birds from alkali poisoning, oil pollution of waters, or other causes, for cooperation with local authorities in wildlife conservation, for investigations and publications relating to North American birds, for personal service, 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 game 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 Agriculture 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.

SEC. 13. That for the efficient execution of this act, the judges of the several courts established under the laws of the United States, United States commissioners, and persons appointed by the Secretary of Agriculture to enforce this act shall have, with respect thereto, like powers and duties as are conferred by section 5 of the Migratory Bird Treaty Act (title 16, section 706 of the United States Code) upon said judges, commissioners, and employees of the Department of Agriculture appointed to enforce the act last aforesaid. Any bird, or part, nest or egg thereof, taken or possessed contrary to this act when seized shall be disposed of as provided by section 5 of said Migratory Bird Treaty Act.

SEC. 14. That any person, association, partnership, or corporation who shall violate or fail to comply with any of the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than \$10 nor more than \$500, or be imprisoned not more than six months, or both.

SEC. 15. 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. Nothing in this act shall be construed as authorizing or empowering the Migratory Bird Conservation Commission herein created, the Secretary of Agriculture, 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. 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 Agriculture may so certify, and then and thereafter said State may cooperate with the Secretary of Agriculture in the enforcement of this act and the regulations thereunder.

SEC. 18. That a sum sufficient to pay the necessary expenses of the commission and its members, not to exceed an annual expenditure of \$5,000, 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. 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.

AMENDMENT OF 1935

[Secs. 302-304, act of June 15, 1935, 49 Stat. 381; for sec. 301, see sec. 6, p. 5]

SEC. 302. That when the public interests will be benefited thereby the Secretary of Agriculture is authorized, in his discretion, to accept on behalf of the United States title to any land which he deems chiefly valuable for wildlife refuges, and in exchange therefor to convey by deed on behalf of the United States an equal value of lands acquired by him for like purposes, or he may authorize the grantor to cut and remove from such lands an equal value of timber, hay, or other products, or to otherwise use said lands, when compatible with the protection of the wildlife thereon, the values in each case to be determined by said Secretary. Timber or other products so granted shall be cut and removed, and other uses exercised, under the laws and regulations applicable to such refuges and under the direction of the Secretary of Agriculture and under such supervision and restrictions as he may prescribe. Any lands acquired by the Secretary of Agriculture under the terms of this section shall immediately become a part of the refuge or reservation of which the lands, timber, and other products or uses given in exchange were or are a part and shall be administered under the laws and regulations applicable to such refuge or reservation.

SEC. 303. That when the public interests will be benefited thereby the Secretary of the Interior is authorized, in his discretion, to accept on behalf of the United States title to any lands which, in the opinion of the Secretary of Agriculture, are chiefly valuable for migratory bird or other wildlife refuges, and in exchange therefor may patent not to exceed an equal value of surveyed or unsurveyed, unappropriated, and unreserved nonmineral public lands of the United States in the same State, the value in each case to be determined by the Secretary of Agriculture. Before any such exchange is effected notice thereof, reciting the lands involved, shall be published once each week for four successive weeks in some newspaper of general circulation in the county or counties in which may be situated the lands proposed to be granted by the United States in such exchange. Lands conveyed to the United States under this section shall be held and administered by the Secretary of Agriculture under the terms of section 10 of the aforesaid Migratory Bird Conservation Act of February 18, 1929, and all the provisions of said section of said Act are hereby extended to and shall be applicable to the lands so acquired.

SEC. 304. That all the provisions of section 6 of the aforesaid Migratory Bird Conservation Act, as hereby amended, relating to rights-of-way, easements, and reservations shall apply equally to exchanges effected under the provisions of this Act, and in any such exchanges the value of such rights-of-way, easements, and reservations shall be considered in determining the relation of value of the lands received by the United States to that of the land conveyed by the United States.

U. S. GOVERNMENT PRINTING OFFICE: 1941

