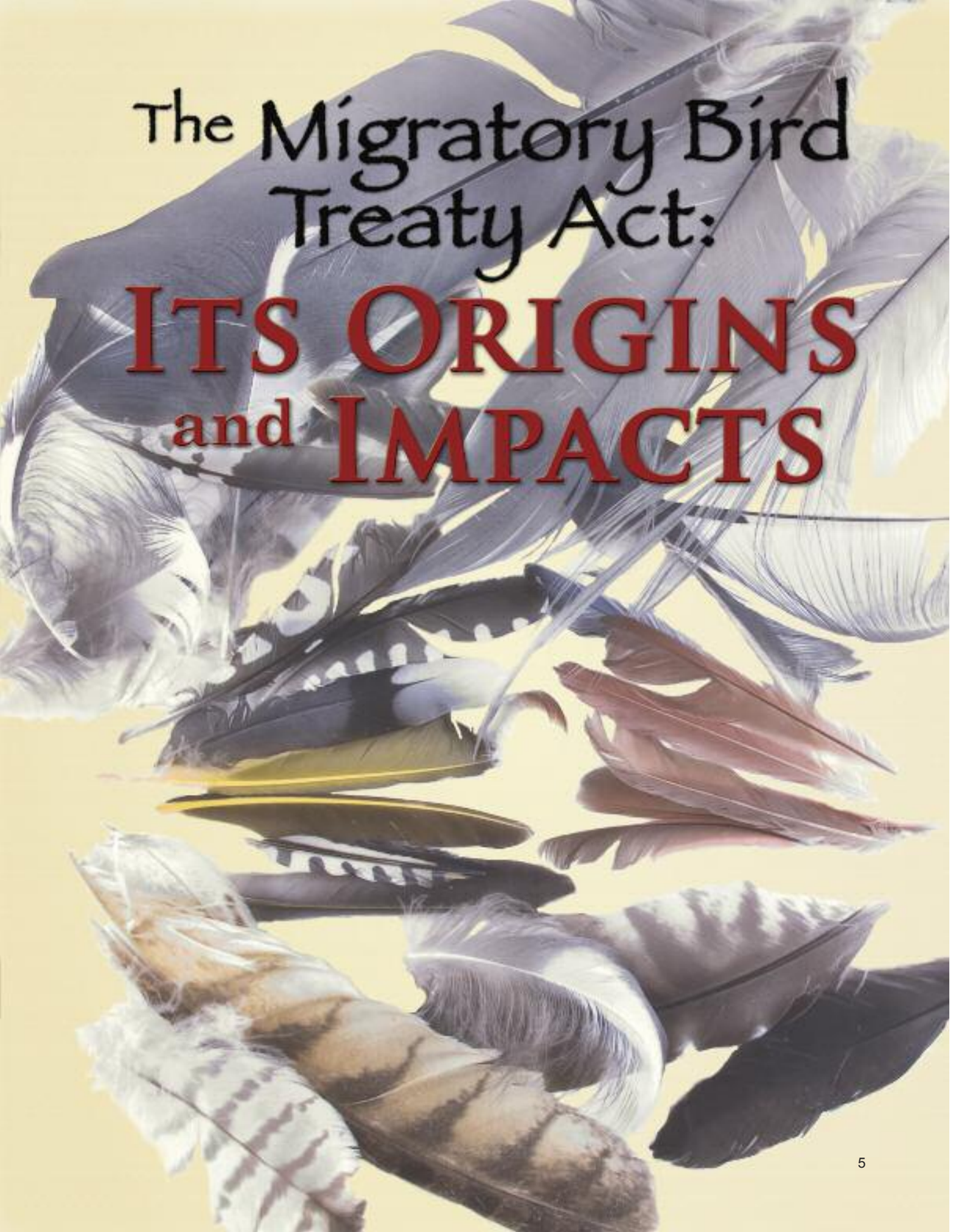
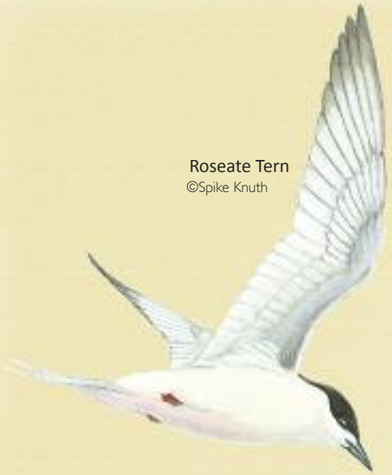
The Migratory Bird Treaty Act: Its Origins and Impacts





Roseate Tern
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by Beth Hester

"Unless and except as permitted by regulations made as hereinafter provided in this subchapter, it shall be unlawful at any time, by any means or in any manner, to pursue, hunt, take, capture, kill, attempt to take, capture, or kill, possess, transport… any migratory bird, any part, nest, or egg of any such bird, or any product, whether or not manufactured, which consists, or is composed in whole or part, of any such bird or any part, nest, or egg thereof…"

–(16U.S.C. 703-712)

The MBTA: Confusion and Good Intentions

Earlier this year, a good-hearted 11-year-old Fredericksburg girl 'rescued' a baby woodpecker from a perceived threat: a cat lurking in the backyard. Not wanting to leave the bird alone and unwilling to leave the bird in a hot vehicle, the girl, with caged bird in tow, entered a local hardware outlet where the woodpecker was spotted by a U.S. Fish and Wildlife (FWS) officer who happened to be in the store. As illegal possession of a bird may potentially violate the federal Migratory Bird Treaty Act, the officer initiated an inquiry. Upon speaking with the family at a later date, the officer determined that no further action was needed, because the girl had since released the bird back into the wild and was operating as a Good Samaritan. Unfortunately, a glitch in the automated FWS computer system failed to cancel the previously issued, pre-investigation citation, and the girl's mother received the errant citation in the mail along with a fine of 535 dollars. The resulting news story went viral. The Virginia Department of Game and Inland Fisheries was not a part of this investigation.

The FWS apologized to the dazed family for the error, acknowledging the girl's good intentions. But by this time, the blogosphere was jumping with posts from anti-government conspiracy theorists claiming that the MBTA and attendant enforcement efforts constituted an unwarranted 'Big Government' intrusion into everyday life. Though experienced wildlife rehabilitators and other skilled outdoor professionals attempted to modulate the discussions in various media outlets by means of MBTA apologetics, it was becoming clear that lack of context, and an ignorance of the law and its origins, was fomenting a mixture of indignation and confusion. Given the breadth of recent media attention and widespread misunderstanding, it is useful to revisit the history of the Migratory Bird Treaty Act (MBTA) and explore its application in today's environment.

The Backstory: Fashion Trade, Market Hunting, and Specimen Collecting Devastate Bird Populations

Around the turn of the century, and before the MBTA was enacted in 1918, being 'fashion-forward' meant wearing hats accented by exotic bird feathers. Postcards from the era, along with covers of popular magazines like the *Saturday Evening Post*, show women sporting ostrich and egret-plumed hats, jaunty caps trimmed with heron feathers, and weird millinery concoctions topped with the bodies of entire birds. According to research by ornithologist Frank Chapman, 40 varieties of native birds or bird parts adorned approximately three-quarters of the 700 women's hats he'd observed in New York City alone. Millinery houses in Europe and America participated in an international bird and bird feather trade to meet the demand. Populations of white egret, heron, trumpeter swan and roseate tern were being devastated. Hunters would actively seek out remote, large rookeries where the take would be the greatest, cruelly removing the bird's breeding plumes. The indiscriminant slaughter of these birds often left considerable numbers of young offspring to starve, causing populations to further deteriorate. According to the Audubon Society, the feather trade killed some 200 million wild birds per year.

E. Pels

Another cause of avian decline was the practice of market gunning, widespread in waterfowl-rich regions across the Atlantic Flyway, including the Chesapeake Bay and Currituck Sound. At the turn of the century, wild game was becoming a popular item on the menus of upscale restaurants and resort hotels, and market gunners and their middlemen worked efficiently to satisfy the new tastes of emerging markets. So efficiently, it turns out, that market gunners using sink boxes, huge deck-mounted punt guns, live decoys, sneak boats, and baits could kill massive amounts of waterfowl in a very short period of time. Many conscientious sportsmen and guides whose livelihoods depended upon providing good hunts for their paying clients condemned the practices.

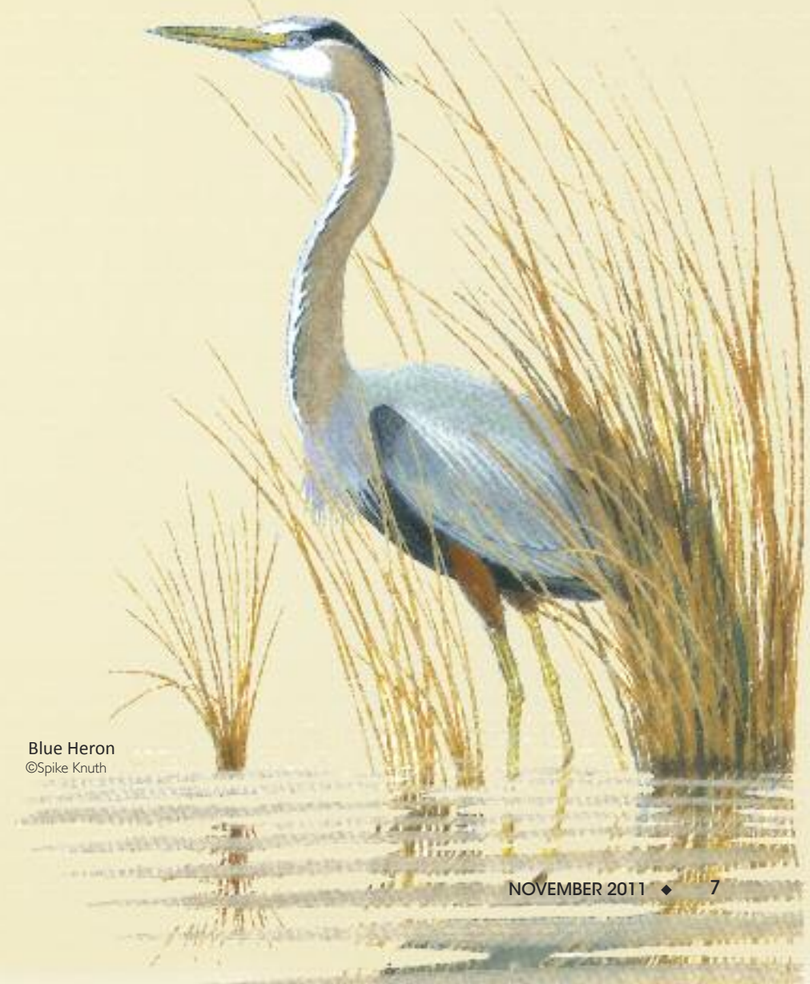
Interestingly, during the same period that the hunting of game birds was largely unregulated and bobolinks were being served in restaurants, there was a corresponding up-tick of interest in natural history and bird watching. Eager nature hobbyists collected specimens for study and, peripherally, for home décor. For many fashionable late-Victorians, Edwardians, and Gilded Agers, this literally meant bringing the outdoors inside. Literature of the period frequently describes interiors where varieties of stuffed birds and collections of nests, feathers, and eggs are exhibited in bell jars or in diorama-like display cases right alongside the potted plants. This widespread collecting added to the bird body count, but the growing interest in new scientific discoveries and natural history had the collateral effect of encouraging emerging pockets of concerned bird watchers and ornithologists to begin to form the basis for what would become a modern, fully-fledged conservation movement.

Cooperative Efforts and Concerned Citizens Organize

Early efforts at bird conservation were truly grassroots. For example, in 1896, years after George Grinnell's unsuccessful attempt at organizing the first Audubon Society chapter, a determined Harriet Hemenway persuaded her influential, high-society friends to, well, stop wearing birds on their heads. Eventually, Harriet and her cadre of Boston bird advocates founded the Massachusetts Audubon Society. As other chapters organized, they banded together, pushing states to regulate market hunting and to stop practices that were pushing more and more birds to the edge of extinction. Society women held fundraising, bird-consciousness-raising informational teas and they tirelessly circulated petitions. These tea parties were early conservationist versions of social media, and with the aid of auxiliary publications, word about bird conservation began to spread. Eventually, editorial content in fashion magazines like *Harper's Bazaar*, *Vogue*, and *Ladies Home Journal* reflected this new discussion.

New Laws Help Safeguard Bird Populations

One of the earliest pieces of legislation resulting from the coalescing interests of educated ladies-who-lunch, amateur naturalists, birders,



Blue Heron
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scientists, and ethical sportsmen was *The Lacey Act of 1900*. The act helped to protect game and wild birds by making it a federal crime to poach game in one state with the intent to sell it in another. The law also was concerned with the potential for exotic and non-native species of animals to be introduced into native populations, overtake them, and introduce disease.

Following on the heels of *The Lacey Act* was the *Weeks-McLean Law*, which in 1913 placed migratory birds under federal jurisdiction, prohibiting their killing without federal authorization. There followed various state and federal court rulings to strike down *Weeks-McLean*, but in 1916 the Wilson Administration negotiated a treaty on behalf of Canada via Great Britain—an agreement which would lay the groundwork for what would, in 1918, become *The Migratory Bird Treaty Act*.

The Migratory Bird Treaty Act Gains Traction

The MBTA implemented the 1916 agreement between the United States and Great Britain to protect birds migrating between the U.S. and Canada. Migratory birds don't observe border crossings or turn back at checkpoints, so as conservation efforts evolved and political climates became amenable to discussion, other conventions between the U.S. and Mexico (1936), Japan (1972), and the U.S.S.R. (Russia, 1976) were incorporated. Currently, the MBTA establishes federal protection over approximately 836 bird species, some 58 of which are legally hunted as game birds during designated seasons, with bag limits regulating harvest.

Some species not covered by the MBTA are covered by The Endangered Species Act, or other federal and state laws which are at least as restrictive. While broader aspects of the MBTA are easily understood, such as not killing songbirds, disturbing eggs, or relocating or removing osprey nests without a special purpose permit, other facets of the act are surprising, and harder to interpret, such as whether or not it's legal to remove a baby bird to save it from a marauding cat in your backyard. While researching this piece, I came across countless examples of people seeking clarity on a variety of murky, bird-related moral dilemmas. Here is a sampling of questions, and the correct answers:

- *"My mom's afraid her new chihuahua will be snatched from our yard by circling hawks. What do we do?"* Keep the dog in the house, or get a bigger dog.
- *"Can I pick up found game bird feathers to use in my fly tying / dream catcher crafting / quill pen making?"* You can, but you probably shouldn't. If the authorities find the feathers in your possession out of season, how would they know how you obtained them? Of course, using feathers from legally hunted and thus legally possessed game birds is fine.
- *Is it illegal for me to bring in blue jay feathers for show-and-tell?"* Yes. Although it seems unreasonable to some, unless specifically allowed under the terms of a salvage or other permit, it is illegal to collect bird feathers or nests.
- *"A woodpecker is punching holes in my siding. Can I get rid of it?"* There are harmless, simple ways to discourage this unwanted activity. Check with your local Cooperative Extension Service agent.

Bobolink
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- *"Canada geese are harming my crops!"* Check with the Department of Game and Inland Fisheries or the U.S. Dept. of Agriculture's wildlife program for information on current laws and available 'coping' mechanisms.
- *"I found a baby bird hopping on the ground. I think it's abandoned or injured. Can I bring it in the house to keep it safe and nurture it back to health?"* It is best to curb the impulse to 'rescue' birds. Though well intended, you may end up doing more harm than good. In most cases the baby birds are finding their way in their new surroundings and are being watched by a parent. If a bird is actually crippled or needs assistance, contact www.wildliferehabinfo.org or your veterinarian for guidance on what to do until a legally certified wildlife rehabilitator can take possession of the bird.

Evolving Laws and Regulations

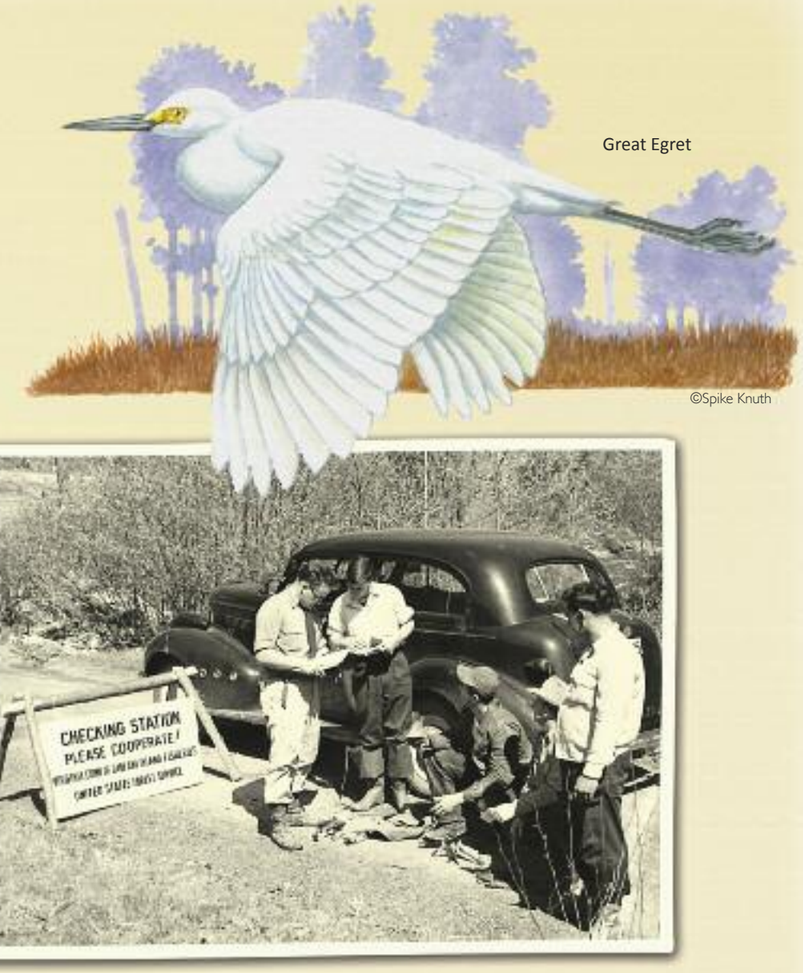
Changing circumstances can create the need to re-evaluate our conservation laws. For example, *The Lacey Act of 1900* has been amended many times, and now it includes provisions for plants and mammals and is concerned with the effects of commercial logging on wildlife. Limited flexibility has been created to handle osprey nests and Canada geese in certain narrow circumstances, and in August of this year the Audubon Society met to re-examine the MBTA's effectiveness, as migratory birds face increasing environmental stress.

The provisions of MBTA impact individuals, corporations, and industry. Enforcement is strict, and penalties for violating the law can be severe. It may seem petty or intrusive to make it illegal to gather bird feathers during an autumn hike in the woods; it may seem heartless to restrict well-meaning, but un-trained citizens from 'rescuing' baby birds; it may be a temporary pain in the keester to have to consult with wildlife officials or biologists about the mourning dove that is nesting in your construction equipment; and… it may seem like 'Big Brother' is restricting your right to do whatever you want to any animal that comes onto your property. But the fact is, strict enforcement of the MBTA and other bird conservation laws protecting both game and non-game species has substantially curbed declining population numbers and many birds, such as the great blue heron, have rebounded since the early 20th century.

The MBTA hasn't prevented women from wearing ugly hats; children will always want to pick up pretty feathers; and some people will simply do whatever they want when they think no one is looking. But these persnickety laws, as some have called them, serve a greater purpose. The smaller details of the MBTA help to support its overall mission, to further a diverse, healthy ecosystem.

So as they say: When in doubt, observe but don't touch… look, but don't collect.

Beth Hester is a writer and freelance photographer from Portsmouth. Her passions include reading, shooting, kayaking, fishing, tying saltwater flies, and tending her herb garden.



Great Egret
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