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BASIC STATEMENT ON MIGRATORY BIRD TREATY

E. M. Bosak
Game Management Agent
U.S. Fish and Wildlife Service
Columbus, Ohio

The members of the panel include Paul Ochs. Paul is formerly one of our constituents here in Ohio, having been associated with the old Predator Control Branch. He is now staff specialist for rodenticide evaluation, USDA, Washington.

Dr. James Elder is staff specialist, pesticide appraisal, Minneapolis, Minnesota. He's with the Fish and Wildlife Service.

Others include: Mr. Clifford Shane, chief inspector for the FDA, Detroit; Mr. Leroy Korschgen, Missouri Conservation Department, Columbia, Missouri; Mr. Jim Shepard, Director of the Department of Natural Resources, Massachusetts Fish and Game; and Mr. Robert Russell, director of service, Orkin Exterminating Company in Atlanta, Georgia.

This is my fourth time here at Bowling Green, second time on the program. I think I graduate this year; I'm not sure if Bill lets me. On bird control, I feel somewhat like the student who, after carousing all night, came to class to hear the professor lecture on atomic fission. The prof noticed that Johnny kept nodding his head and finally let it drop on the desk. So the prof directed a specific question about atomic fission right to John. John shook his head and said, "You know professor, I stayed up all night just studying this same question. I came to class just to ask you what you think about it." The professor said, "Young man, I don't think, I know." To that the student retorted, "That's the trouble with me professor; I don't think I know either."

But as far as the Migratory Bird Treaty Act is concerned, I think I know what it contains. And therefore my portion of the program is the basic statement on the Migratory Bird Treaty Act regulations.

Basically, laws are designed to control the actions of human beings. J. Edgar Hoover recently stated, "Man cannot live in our complex society today without a system of laws. The social system is doomed unless the laws are enforced, and the enforcement officer is ineffective unless his efforts to maintain the peace and protect life and property are supported by the government and the people." Therefore, it behooves each one of us to be aware of those laws that affect us in our everyday strivings.

The Division of Management and Enforcement, Bureau of Sport Fisheries and Wildlife, is charged with the enforcement of the Migratory Bird Treaty Act proclaimed December 8, 1916 for the protection of migratory birds. My remarks will be limited to those provisions contained in said act which directly affect those of us involved in bird control problems.

Article I, Migratory Bird Treaty Act contains a listing of those birds included in the terms of the convention between Great Britain and the United States. For this purpose wildlife leaflet No. 475 is available to those desiring that listing of the birds protected by federal law.

Article VII of the Migratory Bird Treaty Act provides that: Permits to kill any of the said-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 therefore by them respectively, but such permits shall lapse, or may be canceled, 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.

Having established the authority we now turn to the Code of Federal Regulations Title 50. Fifty CFR Section 10.61 provides that: upon receipt of information from the owner, tenant, sharecropper, or other person that migratory birds are injuring his crops or other property on the land on which he resides, or over which he exercises control, together with a statement of the location of the area, the nature of the crops or other interests being injured, the extent of such injury, and the particular species of birds committing the injury, an investigation will be made, and if it is determined from such investigation that the injury complained of is substantial and can be so abated, permits to kill, frighten, or otherwise herd the birds may be issued by the Secretary. Such permits shall specify the time during which, the person or persons by whom the birds may be killed, frightened, or herded, the disposition to be made of the birds killed, and such other restrictions, including a requirement for the submission of reports of operations, as may be deemed necessary and appropriate in the circumstances of the particular case.

Fifty CFR Section 10.62 provides that: any person without a permit, may kill yellow headed, red-winged, bi-colored red-winged, tri-colored red-winged, and Brewers Blackbirds, cowbirds, and all grackles under the conditions and restrictions prescribed in this section when found committing or about to commit serious depredations upon any agricultural crop or ornamental or shade trees.

(a) No birds killed pursuant to this section nor the plumage of such birds shall be sold or offered for sale. Quite often this comes out when a person asks if he can eat these birds. The answer is yes; he can eat these birds. The only restriction is that the plumage or the bird itself cannot be offered for sale.

(b) Every person availing himself of the privileges of this section shall permit at all reasonable times, and particularly during any operations thereunder, any Federal or State game or deputy game agent, warden, protector, or other game law enforcement officer free and unrestricted access to the premises on which such operations have been or are being conducted and shall furnish promptly to such officer whatever information regarding said operations the officer may require.

(c) Nothing in this section shall be deemed to permit the killing of any of the aforesaid birds in violation of any State law or regulation, and if a State

permit to kill the birds is required, such permit must be procured before the privileges conferred by this section are exercised.

Fifty CFR Section 10.65 provides authority to issue depredation orders to permit the killing of migratory game birds. This section provides for alleviation of damage to agricultural, horticultural, and fish cultural interests by migratory game birds as opposed to damage caused by non-game birds provided for under Sections 10.61 and 10.62, and is mentioned but passed over. Actually the system is much the same as provided for non-game birds. The only difference is we have under policy two different divisions: the division of Wildlife Services is taking care of the non-game, as opposed to the game birds where the division of Management Enforcement is so charged.

Further 50 CFR Section 11.3 provides that: the Secretary may issue permits to kill bald eagles when he determines that bald eagles have become seriously injurious to wildlife or to agricultural or other interests in any particular community in the United States or in any place subject to its jurisdiction, and that the injury complained of is substantial and can be abated only by killing some or all the birds. This has been amended in 1962 to include the golden eagle.

Such authority for issuance of permits to kill bald eagles is contained in 16 USC 668a and is lightly touched upon here in order that you may review and be aware of its existence.

Fifty CFR Section 10.31 specifically provides that: nothing in this part or in any permit issued thereunder shall be construed to permit the taking, possession, sale, purchase, or transportation of migratory birds, or parts, nests, or eggs thereof, contrary to the laws and regulations of any State made for the purpose of giving further protection to migratory birds, their nests or eggs when such laws and regulations are not inconsistent with the conventions between the United States and any other country for the protection of migratory birds or with the Migratory Bird Treaty Act and do not extend the open seasons for such birds beyond the dates prescribed by this part.

In conclusion, gentlemen, I strongly emphasize that although the killing of birds may sometimes be justified and effective locally, their widespread destruction is unfeasible. To realize a marked effect on damage, a large percentage of offending birds would have to be destroyed; and no safe, effective method of drastically reducing bird numbers is known. Even if a method were known, control operations against destructive species throughout their extensive ranges would cost millions of dollars. Such costs might well exceed the benefits obtained. In addition to the biological issues involved, we must also be aware of the moral issues that exist.

DISCUSSION:

QUESTION: I am wondering if feral pigeons and sparrows are on Wildlife Leaflet 475, and if they aren't, is anything in the works to put them on the list of unprotected birds?

BOSAK: This leaflet also contains a list of birds that specifically are *not protected* by federal law: anhingas, cormorants, crows, hawks, ibises, jays, kingfishers, magpies, ospreys, owls, pelicans, ravens, sparrows (English or house only), and starlings. No, we don't have feral pigeons on here; however, many municipal laws do protect feral pigeons. So in your vicinity contact the municipality to see whether or not feral pigeons are protected. Some states do protect the feral pigeon.

COMMENT: I'd like to emphasize that unprotected birds are on the federal register, but now there are some birds which are protected under state laws.

BOSAK: That's correct; hawks and owls are not specifically protected by federal law, but are, in a number of instances, protected by state law. There again it would be necessary to refer back to your own state law.

If there are no more questions we will now turn to Mr. Paul Ochs, Staff Specialist, Rodenticides Evaluation Staff, Washington, D.C. I'm sure Paul will give you a very enlightening talk.