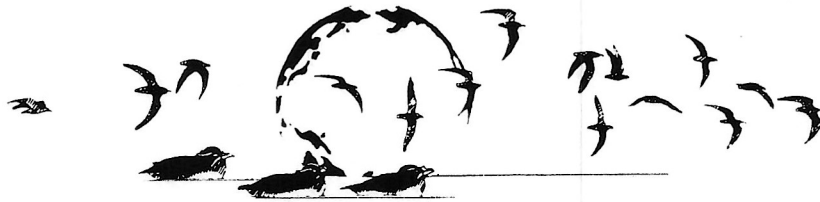

Pacific Seabird Group



DEDICATED TO THE STUDY AND CONSERVATION OF PACIFIC SEABIRDS AND THEIR ENVIRONMENT

Craig S. Harrison
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November 1, 1993

Gina De Ferrari
U.S. House of Representatives
Committee on Merchant Marine and Fisheries
1334 Longworth House Office Building
Washington DC 20515-6230

Dear Ms. De Ferrari:

On behalf of the Pacific Seabird Group (PSG), I want to thank you for this opportunity to review the discussion draft of the Migratory Bird and Habitat Conservation Act of 1993. As you may know, PSG is an international organization that was founded in 1972 to promote knowledge, study and conservation of Pacific seabirds. PSG draws its members from the entire Pacific Basin, including Japan, Australia, New Zealand, Russia, Mexico and Canada. Among PSG's members are biologists who have research interests in Pacific seabirds, state and federal officials who manage seabird refuges, and individuals with interests in marine conservation.

I. Fish and Wildlife Conservation Act

PSG supports amending the Fish and Wildlife Conservation Act to require the Secretary to develop regional migratory nongame bird habitat management plans. We suggest that you revise § 5(c)(1) to include "acquisition and designation" of new refuges and "cooperation with other federal agencies and States" PSG believes that federal lands provide important migratory bird habitat that should be managed accordingly.

II. Implementation of Japan and Russian Treaties

PSG strongly supports your efforts to insure that the U.S. Fish & Wildlife Service (FWS) implement the provisions of the migratory bird treaties with Japan and Russia. In particular, we support § 7(a)(2) regarding the development and implementation of

a comprehensive plan to remove or control non-native animals that harm migratory birds such as seabirds. We suggest that § 7(a)(2) also refer to Article VII of the Russian treaty, which requires the parties "to manage such areas [wildlife refuges] so as to preserve and restore the natural ecosystems."

Restoring the natural bio-diversity of migratory birds is especially important on Interior lands, such as national wildlife refuges, national parks and Bureau of Land Management lands. The treaties should apply to all federal land managers, including the U.S. Forest Service and the Department of Defense. In this regard, we believe that the legislation should require the secretaries of the Department of Agriculture and the Department of Defense to enter into cooperative agreements with the Secretary.

PSG has already advised FWS that the Service has not adequately implemented these treaties. For example, we doubt that FWS has amended its refuge manual and refuge master plans to implement the treaties in the field. PSG has urged FWS and Interior to eliminate non-native predators on seabird colonies in the Alaska Maritime National Wildlife Refuge by promoting an aggressive program to eliminate exotic rats, foxes and other creatures that have caused the local extinction of seabird colonies (Enclosure 1). Foxes that were abandoned by fox farmers depress the breeding population of seabirds on the Alaskan Maritime National Wildlife Refuge by several million each year. FWS should humanely end the suffering of the foxes that were deserted in this foreign and hostile environment and barely survive by depredating seabird colonies. We have been disappointed by the absence of leadership on this issue at senior levels of FWS and the Secretary's office (Enclosure 2). These issues are discussed in "A Deadly Plague of Stowaways" (Los Angeles Times, May 17, 1993) (Enclosure 3) and "Introduction of Foxes to Alaskan Islands — History, Effects on Avifauna, and Eradication" (FWS, 1993) (Enclosure 4).

PSG also supports the designation of areas of special importance under § 7(b) and the encouragement of Pacific-wide conservation efforts for migratory birds under § 7(c). We strongly believe that this nation should provide technical assistance to Russia, China, Japan and nations in Oceania to conserve seabirds. Migratory birds are by definition migratory, and do not respect national boundaries.

III. Enforcing the Migratory Bird Treaty Act

PSG generally agrees with § 8 of the legislation that would increase penalties for violating the Migratory Bird Treaty Act. As a practical matter, FWS law enforcement and the public may be more comfortable with increasing civil fines rather than prison

terms. We believe that FWS should focus on and expand its efforts to seek civil penalties with consent decrees or by rulings of administrative law judges.^{1/} For criminal violations, we believe that seizures of equipment are an appropriate remedy. See 16 U.S.C. § 1540(e)(4)(B) (Endangered Species Act).

Your letter raised several questions concerning the reasons why the Migratory Bird Treaty Act is not enforced. We believe that often federal law enforcement officials simply lack the will to enforce the Migratory Bird Treaty Act and other statutes such as the Endangered Species Act except in traditional FWS activities such as enforcing bag limits. As "More Endangered than the Spotted Owl" (May 27, 1992) (Enclosure 5) notes, FWS has declined to enforce the Endangered Species Act against the largest land owner in Hawaii. We understand that the Portland Regional Office interfered with the local law enforcement agent's attempts to investigate these violations.

IV. Enforcement of Migratory Bird Treaty Act at Sea

The Migratory Bird Treaty Act should expressly state that it is to be enforced throughout the Exclusive Economic Zone. This would over-rule a solicitor's opinion written by Don Barry during the Carter administration that opined that the act applies only to the territorial sea. The negotiation report following the USA-Russia treaty states "[t]he American negotiators preferred the word "areas" in the English version to insure that the Convention could apply to the high seas out to the 200 mile limit"^{2/} The Senate was aware of this language when it ratified the treaty. Especially because there are no citizen suit provisions in the Migratory Bird Treaty Act, it is essential that Interior be directed to enforce the act throughout the Exclusive Economic Zone.

^{1/} We are sufficiently concerned about FWS' poor or arbitrary enforcement of the Migratory Bird Treaty Act and the Endangered Species Act, as well as its general inability to function as a regulatory agency, that we may publicly suggest that these duties be transferred to EPA once EPA becomes a cabinet-level department.

^{2/} E.U. Curtis Bohlen, Negotiation Report from the American Delegation for the Convention Between the United States of America and the Union of Soviet Socialist Republics concerning the Conservation of Migratory Birds and their Environment (March 16, 1977).

V. Seabird-Fishery Interactions

We strongly agree with § 9 regarding the need to gather additional data on takings of marine birds in the Pacific. PSG believes that the federal government should focus on situations where the taking has a significant adverse impact on the species or population, or where the fishery needlessly wastes non-target species. We would have no objection to allowing incidental take permits under appropriate circumstances.

In this regard, § 9(b) should include a citizen suit provision as a protection against enforcement inaction by Interior or Commerce. Most modern federal environmental statutes (Endangered Species Act, Marine Mammal Protection Act, Clean Water Act, Clean Air Act) have citizen suit provisions. If the federal government does not enforce the Migratory Bird Treaty Act, no one does. This can be said of few other environmental statutes. For example, the 1990 amendments to the Clean Air Act require industrial emission sources to pay large permit fees to states, which has enabled states to hire additional staff to increase enforcement efforts. On a comparable basis, having citizen suit provisions in the Clean Air Act is less important than having them in the Migratory Bird Treaty Act.

We are aware of the following problems regarding seabird-fishery interactions. Usually, the source of this information is an FWS biologist. Please call me if you wish to contact directly the experts on these issues.

Alaska. Gill nets in Prince William Sound take marbled murrelets, murres, loons, kittiwakes and sooty shearwaters. Salmon set nets in the Gulf of Alaska close to Cordova take marbled murrelets. While the marbled murrelet population in Alaska is not listed as threatened, the species is listed in British Columbia, Washington, Oregon and California. FWS believes that the Prince William Sound population has dropped from around 300,000 (1972) to 100,000 (1992). We have asked the Exxon Valdez trustees to enforce the Migratory Bird Treaty Act to protect marbled murrelets in the Prince William Sound and Cordova area. We think it would be anomalous to spend hundreds of millions dollars to purchase the breeding habitat of marbled murrelets near Prince William Sound while they drown just offshore in fishing nets.

In the Bering Sea, long lining gear in the fishery for sablefish takes some seabirds. We also understand that populations of red-legged kittiwake, black-legged kittiwake and murres in the Pribiloffs may be declining because of insufficient food caused by over-fishing near their colonies.

Washington. In Puget Sound, net fisheries seem to be drowning many marbled murrelets, and we need better information to assess this situation. The article entitled "A bird in the gillnet is worth . . ." (Fishermen's News, April 1993) discusses this issue (Enclosure 6).

California. In the Farallones Islands, a rock fish fishery is affecting murrelets because the fishery is diminishing their food supply. In Monterey Bay, the California state observer program found that a gillnet fishery for starry flounder, white croaker and halibut is drowning murrelets. Murrelets declined 52% through 1986, and declined an additional 8% from 1986 to 1989. Because of budget problems, this monitoring program did not collect data from 1990 to 1992.

Hawaii. Long line tuna fishermen may be killing 100 Laysan and black-footed albatrosses per day, some intentionally. Because the fishery is remote, enforcement is difficult.

VI. Conclusion

We appreciate and commend your efforts in preparing the discussion draft of the Migratory Bird and Habitat Conservation Act of 1993. We will gladly assist in reviewing additional drafts, and wish you every success in shepherding this bill into law. As general background, I enclose "The Laws and Treaties of North Pacific Rim Nations That Protect Seabirds on Land and at Sea" (Enclosure 7), which discusses many of these issues. Please call me (202-778-2240) if I can provide further information on any of these important issues. Please note that I will be abroad on vacation from 10-30 November 1993.

Sincerely,

Enclosures