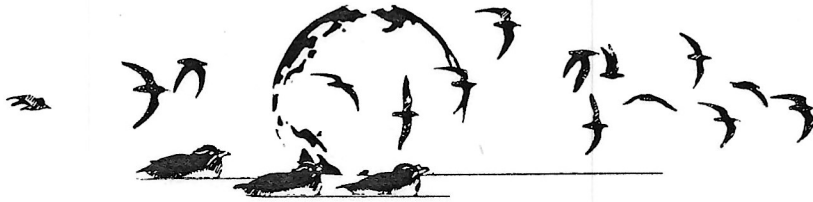

Pacific Seabird Group



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

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February 16, 1994

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

Dear Mr. Preston:

On behalf of the Pacific Seabird Group (PSG), thank you for an opportunity to review the January 18, 1994 draft of the Migratory Bird and Habitat Conservation bill. 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 populations and refuges, and individuals with interests in marine conservation. We repeat some of the points that we raised in our letter to Gina DeFerrari dated November 1, 1993.

I. Findings

PSG suggests that you amend the bill to add the following finding after the current § 2(4):

(5) the introduction of alien animals and plants is a major cause of the degradation and loss of habitats that are essential to migratory birds.

II. Fish and Wildlife Conservation Act

PSG supports amending the Fish and Wildlife Conservation Act to require the Secretary to develop plans for the management, monitoring, research and conservation of migratory birds. We

understand that the bill focuses on a national plan because Partners in Flight is already developing regional plans. However, Partners in Flight does not address seabirds and possibly other taxa in their regional plans. We believe that a national plan without regional plans will be hopelessly vague with respect to seabirds and will provide little except the usual platitudes. We strongly believe that a regional plan is needed for seabirds, and urge that Interior develop a Pacific-wide seabird plan that includes Alaska, British Columbia, Washington, Oregon, California, western Mexico and Hawaii.

III. Implementation of Japan and Russian Treaties

PSG strongly supports your efforts to insure that the U.S. Fish & Wildlife Service (FWS) implements the provisions of the migratory bird treaties with Japan and Russia. Section 7(a)(1) requires that Interior, EPA and Commerce "identify situations where pollution of the seas is damaging or may damage migratory birds and their environment." These agencies should be directed to include Japanese and Russia waters in their deliberations.

PSG hopes that this bill will break new ground regarding the loss of habitat because of biological factors. The previous draft of § 7(a)(2) required the development and implementation of a comprehensive plan to remove or control non-native animals that harm migratory birds such as seabirds. As drafted, this bill requires only a vague identification of threats. As drafted, the bill does not provide a mechanism for the public, including professional societies such as PSG, to assist the Secretary in identifying threats. Indeed, there is no way for PSG to know whether the Secretary has accomplished this task.

As we noted in our earlier letter, PSG has advised FWS that it has not adequately implemented these treaties. For a century professional biologists have recognized that foxes have been wreaking havoc in seabird colonies in Alaska. In Hawaii, black rats on Midway Islands have virtually eliminated enormous seabird colonies during the past fifty years. PSG has urged FWS and Interior to eliminate alien 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. It is vital to implementing the Russia and Japanese treaties that Interior clearly recognize and identify these problems. For this reason, we urge you to require Interior to directly and openly confront this problem by developing a plan (at least with respect to seabirds), and soliciting public comments on the plan.

PSG 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 oecania to conserve seabirds. Migratory birds migrate, and do not respect national boundaries.

IV. Guidelines for Federal Agencies Abroad

PSG agrees that the Secretary should issue guidelines regarding the conservation of migratory bird habitats that have been identified as Areas of Special Importance. Section 8(b), however, does not provide sufficient authority to implement these guidelines.

V. Enforcing the Migratory Bird Treaty Act

PSG generally agrees with § 9 of the draft bill that would increase penalties for violating the Migratory Bird Treaty Act. We believe that FWS should focus on and expand its efforts to obtain civil penalties. 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).

VI. 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"^{1/} 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.

VII. Seabird-Fishery Interactions

We strongly agree with § 10(a) regarding the need to evaluate, summarize and, in some instances, gather additional data on takings of marine birds. PSG believes that the federal government should focus on situations where the taking has a

^{1/} 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).

significant adverse impact on the species or population, or where the fishery needlessly wastes non-target species. We would have no objection to the issuance of incidental take permits under appropriate circumstances.

In this regard, the previous draft had a § 9(b) regarding prevention of takings. We believe that enforcement of the Migratory Bird Treaty Act with respect to fisheries is much too weak, and should be strengthened. One means would be a citizen suit provision as a protection against inaction by federal law enforcement officials.

VIII. Conclusion

We appreciate and commend your efforts in preparing the January 18, 1994 draft of the Migratory Bird and Habitat Conservation Act. We will gladly assist in reviewing additional drafts, and wish you every success in shepherding this bill into law. Please call me (202-778-2240) if I can provide further information on any of these important issues.

Sincerely,

A handwritten signature in cursive script that reads "Craig S. Harrison". The signature is written in dark ink and includes a long horizontal flourish at the end.

Craig S. Harrison