

INFORMATION FOR THE PRESS

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DUCK CLUBS DENIED INJUNCTION AGAINST FEDERAL GAME AGENTS

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Four southern California duck clubs failed recently in an attempt to enjoin Federal game agents from arresting members shooting over baited grounds in violation of the Migratory Bird Treaty Act Regulations. The U. S. Circuit Court of Appeals at San Francisco sustained a lower court in denying the injunction.

"This court action is of great importance to waterfowl conservation," says Ira N. Gabrielson, Chief of the U. S. Biological Survey, which enforces the Federal regulations. "It strengthens the hands of enforcement agents. Baiting is a practice that in the past seriously increased the kill of ducks. The restoration program has required the elimination of this practice."

Asking for equitable relief against enforcement of the Migratory Bird Treaty Act, the clubs claimed that denying stockholders and members the right to shoot over baited grounds would destroy investments in club properties. They contended that the power of Congress under the Migratory Bird Treaty was limited to fixing open seasons and did not include authority to prescribe means by which the birds could be taken. The baiting regulation, they argued, was too indefinite and uncertain to be understood and enforced.

Though affirming that the regulation might result in injury to investments, the Court held that under the commerce clause of the Constitution as well as under international treaties Congress has the authority to confer on the Secretary of Agriculture the power to prescribe the means by which migratory birds can be taken

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and that the regulation on feeding for the purpose of shooting "does not lack the definiteness necessary to describe a penal offense."

The regulation is violated, the Court held, "by pursuing the indirect method of baiting before the season opens to keep the birds there to be shot after the season opens," as well as by using bait during the season.

The Migratory Bird Treaty Act prohibits taking migratory birds except as permitted by regulations adopted by the Secretary of Agriculture and approved by the President. Regulations so adopted make it illegal to take waterfowl, mourning doves, or white-winged doves by means of grain or other food, a former practice well known to wildfowlers as baiting.

Gabrielson called attention to the court's ruling that the commerce clause of the Constitution gives Congress power to legislate for the protection of migratory birds. "This," he said, "strengthens the legal basis for waterfowl conservation, which in the past has been held by some to depend entirely on international treaties."

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