

§ 4902. WILD BIRDS GENERALLY; NO OPEN SEASON; EXCEPTION

- (A) It is unlawful to take or possess any migratory nongame bird as designated in the federal Migratory Bird Treaty Act (16 U.S.C. Sec. 703 et seq.), or any part of a migratory nongame bird described in this section, except as provided by this part, rules of the Board, or orders of the Commissioner. ~~Birds coming from outside the State belonging to the same family as those protected by this subchapter shall not be bought or sold.~~
- (B) Bird harm or death that results from human activity where the intent was not to harm or kill the bird, but where bird harm or death was a direct and foreseeable result of the activity, is prohibited. Nothing in this bill shall require the Department to implement a new permitting program. For purposes of this title, the Commissioner has authority to exercise enforcement discretion, including refraining from taking any enforcement action for the incidental take of migratory birds. Enforcement shall focus on activities that have at least local population level impacts on migratory birds. ~~Enforcement of this provision shall be in accordance with 10 V.S.A. Section 4520.~~

Notes:

- A) Listing those species covered by the MBTA is the simplest, cleanest and best way to ensure we are covering those species we wish to provide protection for, and make sure we are not covering invasive or potentially invasive species such as European Starlings, House Sparrows, Pigeons and Mute Swans. Striking the last line of this paragraph is necessary given how broad the number of species covered by the MBTA would be under this language.
- B) Striking the last line referencing 10 V.S.A. Section 4520 would result in this provision being enforced under general penalties, in other words they would be enforced criminally. The penalty would be up to \$1,000 per bird and a restitution amount of between \$50 and \$500 per bird.

Leaving “title” instead of “section” in this paragraph ensures that enforcement discretion is preserved as it relates to migratory birds in other portions of Title 10, for instance as it relates to migratory game birds.