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# WINGTIPS

Friends of the Migratory Bird/Duck Stamp

## Celebrating the Stamp and the Migratory Bird Treaty - a rule-change idea for stamp art

Next year marks the centennial of the Migratory Bird Treaty, or at least the initiation of the treaty. In 1916, President Woodrow Wilson signed the treaty with Great Britain (on behalf of Canada) for the protection of the "many species of birds which in their annual migration traverse certain parts of the United States and Canada." After the passage of the Lacey Act of 1900, this treaty became the most important federal action taken to save birds in North America. Officially called the "Convention for the Protection of Migratory Birds," it was signed on August 16, 1916.

But there are actually three Migratory Bird Treaty centennials before us. And the initial signing of 1916 is just the first of these centennials.

The convention still had to be ratified by Congress. That occurred with passage in 1918 and the President's signature on July 3, 1918. This is why the law itself is always called the Migratory Bird Treaty Act of 1918 (MBTA). It expressly addressed both the protection of migratory birds and their habitats. It prohibited the over-harvest of waterfowl and established the basis for modern hunting seasons and bag limits. And, among other things, it clearly provided that "the taking of nests or eggs of migratory game or insectivorous or nongame birds shall be prohibited, except for scientific or propagating purposes..."

Then, there was a third crucial event, when the Act was challenged constitutionally and upheld on April 19, 1920, by the Supreme Court in the seminal *Missouri v. Holland*, in which Justice Oliver Wendell Holmes, Jr. eloquently expressed the opinion of the majority (see excerpt on the next page and to the right).

Of course, [the coverage of the Treaty](#) was later expanded to

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## Did You Know?

- 1) Only once has an image of a dog appeared as part of the Federal Duck Stamp. But there are many occasions when dogs have appeared on state stamps, perhaps dozens of them, and from 22 states.
- 2) The last time that stamp sales topped two million was the 1980-1981 stamp, when 2,045,114 stamps were sold across the country.
- 3) Before the 1958 revisions of the law (effective 1 July 1960), land acquisition was only one of several programs financed at least in part with stamp dollars. Previously, about 20 percent of these funds were used to acquire refuge lands and approximately

include Mexico, Japan, and the Soviet Union.

This amounted to the essential precondition for what we know today as the Migratory Bird Hunting and Conservation [Duck] Stamp, with the Migratory Bird Conservation Act of 1929 serving as the functional bridge between the MBTA and the creation of the stamp in 1934.

The [Migratory Bird Conservation Act of 1929](#) authorized the acquisition of lands for the express purpose of conserving migratory birds, and it established a Migratory Bird Conservation Commission. The MBCC was virtually toothless, however, without a functioning funding mechanism for bird habitat acquisition, something finally provided in 1934 with the passage of the legislation creating the Federal Duck Stamp.

Today, the U. S. Fish and Wildlife Service is preparing for the 2016 centennial. Some plans can already be seen on their [webpage dedicated to the celebration](#).

Of course, there should be a role for the Migratory Bird Hunting and Conservation [Duck] Stamp in this action. And the Friends of the Migratory Bird/Duck Stamp has just the activity to draw attention to the link between the triple centennials and the stamp of today.

The [current art rules](#) for the stamp's artwork clearly stipulate that the eligible waterfowl species - with five species considered each year - be depicted as alive and as the "dominant feature in the design." And that's the way it should be! The three centennials, however, present the possibility of some added creativity, especially insofar as the MBTA covers *all* migratory birds.

Our suggestion is to include a "secondary" non-waterfowl migratory bird on the Duck Stamp, an effort to correspond with the Service's recognition of the centennial of the Migratory Bird Treaty. Presented correctly, this could be a new and creative challenge for the regular and reoccurring artists. There is also the serious potential of attracting new and aspiring artists to the art competition. And it should also be an important way to appeal to a broader audience. Remember: it's not just ducks! With the increase in the price of the stamp to \$25, it will be crucial to devise new ways to make the stamp more appealing, especially for those who are not required to buy one. In any case, it's amazing how a slight adjustment in the stamp art could stress the vital message - the stamp proceeds go to essential habitats and benefit multiple species!

In [our last Wingtips](#) we included a number of ideas to increase stamp appreciation. Among these concepts were drawing attention to the art by further engaging the art community, collectors, and portions of the general public interested in

50 percent had been used to develop and maintain migratory bird refuges after acquisition.

4) The highest number of stamps sold in California was in the 1952-1952 year when there were 214,456 stamps sold in the Golden State.

5) The first national Jr. Duck Stamp contest began with 8 states participating in 1993: Arkansas, California, Florida, Illinois, Kansas, Maryland, South Dakota, and Vermont.

6) Bob Hines (1912-1994) created the original rules for a Federal Duck Stamp Art Contest and managed the competition for over three decades.

7)

Stamp funds not only go to refuges. Since 1958, the funds also go to acquire smaller wetland and grassland habitats (the Small Wetlands Acquisition Program - SWAP) within the Prairie Pothole Region of the upper Midwest and northern Great Plains. In this way, over 3.6 million acres of wetland and grassland habitat have been added to Refuge System. These units are commonly referred to as Waterfowl Production Areas or WPAs.

## From the Supreme Court - 1920

On April 19, 1920 the Supreme Court ruled, in an opinion by Justice Oliver Wendell Holmes, Jr., that the Migratory Bird Treaty of 1916 and the Migratory Bird Treaty Act of 1918 were, indeed, constitutional. As constitutional doctrine, the importance of this case has rested on its broad reading of the treaty power as against the claim of a state. But this case of

wildlife and art, and also linking stamp promotion with a recognition of historical and conservation events. (These two general concepts were explained in arguments #3 and #4 [in that last issue of Wingtips.](#))

The two suggestions can actually be combined through the inclusion of the secondary bird species to the artwork.

This could start with the contest to be held in the fall of 2016, the first centennial year. There is plenty of time to prepare - announcements, rules, artist preparation, and essential promotion.

Of course, the eligible waterfowl would be the prime and dominant feature in the artwork, but with this approach another non-waterfowl migratory bird in the image would be required. Any non-waterfowl species covered under the Migratory Bird Treaty and the related Act could be portrayed. It is assumed that that species should be appropriate, showing the right habitat (e.g., wetland, riparian, bottomland, or grassland), seasonal presence, and corresponding plumage.

For the 2016 art contest, we already know the eligible waterfowl species: Brant, Northern Shoveler, Canada Goose, Red-breasted Merganser, and Steller's Eider.

Just consider some of the artistic possibilities showing a secondary species (e.g., shorebird, songbird, long-legged wader, or raptor) along with the dominant waterfowl:

- Brant - Wintering Brant along the shore with non-breeding-plumaged Ruddy Turnstone (shorebird) in the background.
- Northern Shoveler - An incubating female Northern Shoveler on a nest with a Yellow-headed Blackbird (songbird) on nearby reeds/cattails.
- Canada Goose - A pair of these geese in a large pond with Great Egret (long-legged wader) on the far shoreline.
- Red-breasted Merganser - Pair of Red-breasted Mergansers in a boreal pond, with Merlin (raptor) in the far-off bare trees.
- Steller's Eider - A pair of these eiders in tundra habitat, along with a male Pectoral Sandpiper (shorebird) displaying off to the side.

Moreover, almost any of the dominant species could be joined by a favorite raptor (e.g., Northern Harrier, Bald Eagle, or Peregrine Falcon) or a familiar long-legged wader (e.g., Great Blue Heron or Green Heron) in the background. And how about another hunted migratory non-waterfowl (Sandhill Crane or Wilson's Snipe)? Now, wouldn't that be grand!

Any new art requirement would have to be *clearly stipulated in the rules.*

*Missouri v. Holland*, 252 U.S. 416 (1920), is also significant in conservation law, as can be seen in the following passage from the opinion by Holmes:

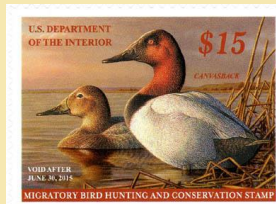
***To put the claim of the State upon title is to lean against a slender reed. Wild birds are not in the possession of anyone; and possession is the beginning of ownership. The whole foundation of the states' rights is the presence within their jurisdiction of birds that yesterday had not arrived, tomorrow may be in another state and in a week a thousand miles away.***

Elsewhere in the decision, Justice Holmes added:

***We see nothing in the Constitution that compels the Government to sit by while a food supply is cut off and the protectors of our forests and our crops are destroyed. It is not sufficient to rely upon the States. The reliance is vain, and were it otherwise, the question is whether the United States is forbidden to act. We are of the opinion that the treaty and the statute must be upheld.***

## T-shirts Available!

The Friends of the Migratory Bird/Duck Stamp has created a t-shirt with the 2014-2015 image of the Stamp. The stamp image, shown below, shows a pair of Canvasbacks painted by Adam Grimm.



Special art requirements or restrictions have been established before. You may remember the Black Scoter in the 2001 contest (for the 2002-2003 stamp).



That year's contest was actually restricted to artwork showing Black Scoter, a waterfowl that had yet to be chosen for a stamp. (See that stamp on the left, with Joseph Hautman's rendition of Black Scoter.)

But why isn't this proposed non-waterfowl bird in the art simply *an option* for the artist in the coming year or years? *Actually, it already is!* (The rules allow for stamp designs that include "habitat scenes" and "conservation... uses of the stamp.") However, the artists want to know, *exactly*, what the judges will be told, what their *precise instructions* for judging will be. An "option" does not do that!

If the artists know that *all* of them have to consider and display a secondary species covered under the Migratory Bird Treaty, only then is the art competition run *on a level playing field*.

Ideally, these rules would extend to the 2019-2020 stamp, that is, through three contests - 2016, 2017, and 2018. (Remember, the MBTA was upheld by the Supreme Court in 1920.) If stakeholders are displeased, the rule change could be dropped after the 2018 contest. If the concept is embraced during those years, it could even be continued.

The good news is that this suggested change for inclusion of a secondary species does not require any change whatsoever in the Federal Law, just minor changes in [the Contest Rules](#). And this has been done before.

Readers of *Wingtips* can review our detailed proposal, with very simple rule changes we have placed [on our website](#). We have already presented these ideas to the USFWS for their consideration. And [we welcome your comments](#) which we could post or circulate as the discussion grows.

Through the t-shirt, we wish to spread the word about the unique role that the Migratory Bird Hunting and Conservation [Duck] Stamp provides. Basically, we have a simple goal in producing the t-shirt: to increase the appreciation and sales of the stamp.

The t-shirt comes in five standard sizes (S, M, L, XL, and XXL), and it comes in two colors (Cardinal Red and Dark Chocolate). And the cost is \$23.49 (any size and including shipping anywhere in the U.S.). You can find more details and order your own t-shirts by [using this form](#).

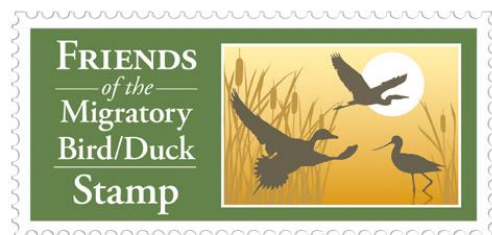
Finally, by using the 2014-2015 stamp image on the t-shirt, our Friends acts as a Nonexclusive Licensee of the United States Fish and Wildlife Service, with the Stamp design the property of the United States Government. Also, as part of our use of the stamp image, five percent (5%) of the price of this t-shirt is deposited into the Migratory Bird Conservation Fund, the fund where Duck Stamp dollars are sent for acquisition of wetland, bottomland, and grassland habitats in the National Wildlife Refuge System.

Yes, by buying a t-shirt you will also help secure actual habitat!

## About the Friends of the Migratory Bird/Duck Stamp

Our Friends Group is an independent, nonprofit organization dedicated to two basic goals:

- 1 To increase promotional and educational efforts among various target audiences concerning the stamp and the National Wildlife Refuge System.
- 2 To increase the regular, voluntary purchase of the stamp among hunters and non-hunters alike.



Our "Regular Friend" fee is kept modest, equal to the cost of one current Stamp (\$15), but all Friends are *also* asked to pledge to buy two stamps per year, joining with other individuals and organizations across the country with that promotional effort. Our "Friend's Year" also corresponds with the "year" of a valid Stamp - from July to July.

[Buy a Stamp. Join the Friends Group!](#)

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