

not apply to parts of migratory birds, such as down. The only requirement under the treaty with Canada applicable to parts is the marking requirement of Article VI. *See also* Article II, para. 4(a)(i) (indicating down may be sold without restriction, in contrast to birds and eggs taken by Aboriginal peoples of Canada, which may be sold only within and between Aboriginal communities). Moreover, the only prohibition in the treaty with Canada that relates to import is the prohibition on unlawfully taken birds and eggs, not applicable here. *See* Article VI.

Second, the treaty with Mexico (as amended by the 1997 Protocol) prohibits the sale of products or parts of migratory birds during the close[d] season, and mandates a particular close[d] season for wild ducks (which include common eiders). Article II, paras. A and D. However, exceptions to this prohibition include “when proceeding, with appropriate authorization, from private game farms.” The Icelandic eider farms are “private game farms” within the meaning of this provision. There are no applicable restrictions on import of the eider down, as long as it does not enter the United States via Mexico. *See* Article III.

Third, the treaty with Russia prohibits the sale or importation of the parts or products of protected birds, but allows exceptions to these prohibitions by law or regulation for any “specific purposes not inconsistent with the principles of this Convention.” Article II, para. 1(a). As discussed above, this rule is consistent with the principles of all the treaties, and therefore falls within this broad exception.

Finally, the treaty with Japan, unlike the other three treaties, does not apply to the common eider. *See* Annex to the treaty.

Federal regulations prohibit the commercial use of feathers from migratory birds to prevent the large-scale take of protected birds for profit and to insure the future viability of those species. Under the Act’s implementing regulations found in Title 50, Code of Federal Regulations, migratory birds or their parts, nests, or eggs may not be imported or sold except as permitted under the terms of a valid permit issued pursuant to the provisions of Parts 13, 17, 20, and 21. Current regulations, specifically Sections 20.61 (importation limits), 20.91 (commercial use of feathers), 21.21 (import and export permits), and 21.25 (waterfowl sale and disposal permits) of 50 CFR do not allow the importation of eiderdown. The only migratory bird feathers that can be sold are those taken from

waterfowl that have been legally hunted (Section 20.91) or are captive bred (Section 21.25). The feathers from legally hunted birds can only be fashioned into fishing flies, bed pillows, and mattresses or used for similar commercial items. Feathers may not be used for millinery or ornamental purposes. Captive-bred waterfowl that are properly marked may be sold, but because the feathers of wild-reared common eiders in Iceland cannot meet this marking requirement, individual feathers cannot be sold under current regulations.

The wild, breeding common eider in Iceland is unique among the hundreds of MBTA-protected migratory birds. The hen of the common eider produces a breast down that has exceptional insulating qualities and is naturally shed during nesting to insulate the eggs and hatchlings. While other down from geese (*Anser* and other genera) and ducks (*Anas* genus) may be sold as “eiderdown,” only the down from the common eider is true eiderdown. Common eiders in Iceland have been afforded special protection since 1847 when hunting of this species in Iceland was banned. Icelanders have used eiderdown for over 11 centuries and have exported it since the 14th century. From May to July, Icelanders most frequently collect down twice, initially during the midpoint of incubation when birds are still on the nest, and following hatching after nestlings have left. Some farmers will only make one late-season acquisition, while others make multiple collections. Collectors take great care to avoid disturbing brooding hens, replacing down removed from the nest (15–20 g/nest) with dry grass or hay. Recent studies conducted by the Icelandic Museum of Natural History show no evidence that down collection has a negative impact on the eiders or on their ability to reproduce successfully. Iceland eider farmers actively control resident MBTA-protected birds, including native predatory birds (e.g., black-backed gulls and ravens), native non-predatory birds (e.g., common puffins), and nonresident mammalian predators (e.g., Arctic foxes and mink) by lethal and nonlethal means during the nesting season.

Before raw down is exported from Iceland, it is cleaned to remove extraneous materials such as moss, grass, and soil. The raw down is then heated (processed) for at least 8 hours at minimum sustained temperatures of 100 °C to kill any ectoparasites and diseases that may be carried by the feathers.

Two other species of eider in the genus *Somateria* are the king eider (*S.*

spectabilis) and the spectacled eider (*S. fischeri*). The status of the king eider is essentially unknown, although periodic and limited spring migration counts suggest declines in bird numbers since 1976. Spectacled eiders are in severe decline and are listed as threatened under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), as are the more distantly related Steller’s eiders (*Polysticta stelleri*). The common eider is the only eider species known to occur in Iceland. Of the four eider species in the Northern Hemisphere, only the common eider in Iceland has experienced a long-term population increase likely due in part to a ban on hunting, improvements in eider nesting habitat, and predator control. Populations of common eider are variable throughout their range, which includes Northern Europe, Northern Russia, Alaska, Northern Canada, Greenland, and Iceland, but have declined in areas where hunting is allowed (e.g., Spitsbergen and Siberia). The Circumpolar Eider Conservation Strategy and Action Plan, adopted by the Arctic Council in 1997, recognizes that an international approach is needed to manage eiders and endorses development of down harvesting as a sustainable use of eiders.

Icelanders have practiced “eider farming” for centuries. Although birds are not captive, they have developed a mutualistic association with humans. All nesting colonies are located on private lands. Some 650 colonies are currently registered with the Icelandic Ministry of the Environment. Landowners maintain legal rights to collect down from eider nests. Icelandic law allows landowners to have their eider nesting grounds declared “legally protected” during the breeding season from April 15 to July 14, which gives farmers the right to deny public access to nest sites and prohibit any shooting within 1.6 miles of nesting colony boundaries or prohibit any net fishing within 0.16 miles of the colony.

True eiderdown from the common eider is a scarce luxury item, with annual worldwide production averaging less than 3 metric tons, at a total annual average price of less than \$2.2 million (U.S.). Iceland currently exports eiderdown primarily to Denmark, Germany, and Japan where it may be re-exported elsewhere. The high cost and limited quantity of true eiderdown may be an incentive for false labeling of eiderdown which may actually have been acquired from another waterfowl species. The eiderdown may also have been obtained using unsustainable methods outside of Iceland. Large populations of common eider are found