



THE WILDLIFE SOCIETY

Leaders in Wildlife Science, Management and Conservation

09 February 2018

Secretary Ryan Zinke
Department of the Interior
1849 C Street, N.W.
Washington DC 20240

RE: New Interpretation Regarding Incidental Take under the Migratory Bird Treaty Act

Dear Secretary Zinke,

In December 2017, the Department of the Interior released a new interpretation of the definitions of “take” and “kill” under the Migratory Bird Treaty Act (MBTA). This new interpretation will have negative consequences for conservation and limit the ability of wildlife professionals to work alongside businesses to manage and conserve migratory birds. We are asking that you reaffirm the longstanding prior interpretation of the Act, restoring those protective measures that have been so successful, and request the U.S. Fish and Wildlife Service to continue development of an incidental take permitting program for companies that use best conservation practices.

The Wildlife Society was founded in 1937 and is a non-profit professional society representing over 10,000 wildlife biologists and managers, dedicated to excellence in wildlife stewardship through science and education. Our mission is to inspire, empower, and enable wildlife professionals to sustain wildlife populations and habitats through science-based management and conservation.

In 1916, the U.S. and Great Britain signed a treaty to stave off a conservation crisis. Migratory birds were being killed by market hunters for their plumes for feathered hats, for meat, and for other goods, in staggering numbers that decimated these populations. The response to this crisis included the creation of the National Wildlife Refuge System by President Roosevelt and the 1918 Migratory Bird Treaty Act, one of our nation’s first federal wildlife laws, which is still being effectively implemented a century later. Indeed, the MBTA is a durable example of the recognition of wildlife as an international resource, one of the tenets of what has become known as the North American Model of Wildlife Conservation.

Largely gone today are the pressures of market hunting and fashion trends on bird populations. However, they have been replaced by new and different threats, such as oil waste pits, wind turbines, and electrical lines. Such developments are certainly necessary to support modern society when carried out with proper regulatory controls, but can cause problems for wildlife when regulatory safeguards are not in place.

We are concerned about the effects that the December 2017 DOI Solicitor General memorandum (M-37050) will have on the migratory bird populations that our members work to manage and conserve. This new interpretation could result in a reduced ability to uphold obligations under the 1916 Migratory Bird Treaty and limit the options of public and private sector wildlife professionals doing conservation work in the field.

The estimated 64 million birds killed by power lines, five million birds killed by communications towers, and nearly 600,000 birds killed by wind energy operations occurs each year as a result of what are otherwise considered legal business operations. If it were not for the decades of administrative and diplomatic interpretation of the MBTA enabling regulation of incidental take within the scope of the law,

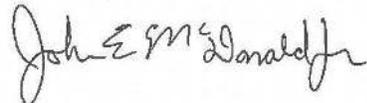
businesses would not have the incentive to work with the U.S. Fish and Wildlife Service to implement and improve upon conservation and mitigation practices.

Until this recent change in interpretation, the preferred method of MBTA enforcement was to work alongside businesses to find effective solutions. The USFWS' Office of Law Enforcement codified a policy of cooperation in a November 2015 [Chief's Directive](#), which states that "investigations will focus on individuals or companies that fail to utilize conservation measures or otherwise minimize negative impacts on birds."

Now, businesses will have less motivation, and the USFWS will have less opportunity, to work together to reduce migratory bird deaths resulting from business practices. On behalf of the members of The Wildlife Society I ask you to reconsider this new interpretation of the MBTA and uphold the spirit of the original treaty to ensure science-based conservation and management of migratory birds.

Thank you for considering the input of wildlife professionals. We look forward to working with the Administration towards a solution on this issue.

Sincerely,

A handwritten signature in black ink that reads "John E. McDonald, Jr." The signature is written in a cursive, slightly slanted style.

Dr. John E. McDonald, Jr.
President, The Wildlife Society

Cc: David Bernhardt, Aurelia Skipwith, Greg Sheehan, Jim Kurth, Edward Grace, Members of the House Natural Resources Committee, Members of the Senate Environment and Public Works Committee, Members of the Senate Energy and Natural Resources Committee