



THE WILDLIFE SOCIETY

Leaders in Wildlife Science, Management and Conservation

18 March 2020

Public Comments Processing
Attn: FWS-HQ-MB-2018-0090
U.S. Fish and Wildlife Service
MS: JAO/1N
5275 Leesburg Pike
Falls Church, VA 22041-3803

RE: Proposed Regulations Governing Take of Migratory Birds

Dear U.S. Fish and Wildlife Service,

The Wildlife Society is writing to express concern about the effects proposed changes to regulations implementing the Migratory Bird Treaty Act (MBTA) will have on the ability of wildlife professionals to sustain and conserve migratory bird populations and their habitats.

This proposal – which codifies the 2017 Interior Solicitor M-Opinion indicating that non-intentional, incidental take and killing of migratory birds is permitted under the MBTA – could limit our nation’s ability to uphold obligations under the 1916 Migratory Bird Treaty and restrict the ability of public and private sector wildlife professionals to conserve migratory birds. **We request the Department rescind this proposed rule and renew the Department’s longstanding interpretation of the Act.**

Founded in 1937, The Wildlife Society (TWS; wildlife.org) and our network of affiliated chapters and sections represents over 15,000 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 their habitat through science-based management and conservation.

Migratory birds are culturally and economically important wildlife species. There are 46 million bird watchers in the United States which contribute more than \$85 billion annually in economic activity ([Pullis La Rouche 2006](#)). More than 2.4 million migratory bird hunters spent more than 16 million days and \$2.3 billion pursuing migratory birds in 2016 ([USFWS 2016](#)). Migratory birds can also assist with agricultural production by responding to pest outbreaks, and provide key ecological services such as seed dispersal ([Hougner et al. 2005](#), [Wenny et al. 2011](#)).

The Migratory Bird Treaty Act has long been the nation’s key tool in conserving these migratory species an international, public trust resource that must be managed through scientific understanding. As a public trust resource, migratory birds are managed by government agencies for the benefit of current and future generations.

With these proposed regulations, however, the federal government is aiming to eliminate its role in preventing or mitigating incidental take or killing of these species. This will result in

continued declines to species already threatened by industry advances. The estimated 64 million birds killed by power lines ([Loss et al. 2014](#)), five million birds killed by communications towers ([Manville 2005](#)), and nearly 600,000 birds killed by wind energy operations ([Smallwood 2013](#)) each year in the United States is a result of what are otherwise considered legal business operations.

While this take and killing of migratory birds is incidental and unintentional, **its impacts on the nation's public trust resources must be minimized and mitigated through adherence to best management practices.** 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.

The Wildlife Society agrees with the stated intent of the regulation – to ensure added certainty and clarity in the implementation of otherwise legal industry processes. Rather than remove the ability to regulate incidental take, **we encourage the Service to once again explore the creation of an industry permitting program that allows for incidental take of MBTA-listed species when adhering to best management practices.** Such a process would alleviate concerns regarding any undue burden placed on the American public under current regulations, while still enabling wildlife professionals to work alongside commercial and industrial activities to minimize and mitigate impacts on migratory birds.

We ask that you rescind this proposed rule and revert to the former interpretation of the Migratory Bird Treaty Act to uphold the spirit of the original treaty, recognize migratory birds as an international and public trust resource, and ensure science-based conservation and management of migratory birds. Please contact Caroline Murphy, AWB®, government relations manager at The Wildlife Society (cmurphy@wildlife.org; 301-897-9770 x 308), with any questions regarding these comments.

Sincerely,



Gary C. White, PhD, CWB®
President