



The Wildlife Society
Western Section
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19 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: Update to the Regulations Governing Take of Migratory Birds [FWS-HQ-MB-2018-0090]

Thank you for the opportunity to submit comments on the Proposed Rule to adopt a regulation that governs take of migratory birds under the Migratory Bird Treaty Act (MBTA).

I am writing on behalf of the 1000+ professional biologists from California, Nevada, Hawaii, and Guam who comprise the Western Section of The Wildlife Society (<http://tws-west.org>). The Wildlife Society (<https://wildlife.org>) is an international non-profit scientific and educational association, founded in 1937, that represents over 15,000 wildlife biologists and managers, dedicated to excellence in wildlife stewardship through science and education. Our mission is to ensure that wildlife and habitats are conserved through management actions that take into careful consideration relevant scientific information. TWS and our membership work to ensure that science plays an active role in policy and regulatory decision-making processes, and this letter's comments provide our expert opinion about the proposed rule for the MBTA.

The Western Section of The Wildlife Society opposes the Department of the Interior's proposed rule to codify the recently reconsidered definitions of "take" and "kill" under the MBTA. The proposed rule would reverse decades of previous interpretation regarding incidental take. The rule will have negative consequences for conservation and limit the ability of wildlife professionals to work with commercial entities to manage and conserve migratory birds. We expect that adoption of the rule would lead to substantial legal challenges and resulting delay in resolving issues related to incidental take of migratory birds. We offer an alternative rule amendment approach that we believe properly balances the migratory bird protections intended in the act and reasonably accommodates the need for allowing incidental take of migratory birds under certain conditions.

The 1918 MBTA originated from a conservation crisis in which migratory birds were being killed for feathered hats, meat, and other market goods. As one of our nation's first federal wildlife laws, 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.

Although many of the specific pressures that migratory birds face today are different from those that fostered the MBTA, many of the effects of today's activities are similar or more severe. A recent comprehensive study led by Cornell University and published in the preeminent journal *Science* concluded that bird populations in the U. S. and Canada have declined by nearly one-third since 1970. Today's threats to migratory bird populations result primarily from habitat loss and degradation and from activities that result in incidental take, including residential and commercial development, agricultural activities (including pesticide application), energy development (including wind turbines, power lines), mining, and a multitude of other activities. For example, an estimated 64 million birds are killed by power lines, while five million are killed by communications towers and nearly 600,000 by wind energy operations, each of which are otherwise considered legal business operations.

If not for the decades of administrative and diplomatic interpretation of the MBTA enabling regulation of incidental take within the scope of the law, businesses have had little incentive to work with the U.S. Fish and Wildlife Service (USFWS) to implement and improve upon conservation and mitigation practices. Efforts of conservation agencies to work with business to find effective solutions to take of migratory birds have been severely compromised since the 2017 Solicitor's Opinion excluding incidental take.

Members of the Western Section recognize that a wide range of projects are necessary to support modern society. In fact, many of our members work directly or for utility companies, water resources entities, natural resource management companies, and government agencies. We are concerned about the effects that the removal of protections from incidental take as described in the proposed rule would 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 MBTA and limit the options for public and private sector wildlife professionals to accomplish conservation work in the field.

Under the proposed rule, businesses will have less motivation and the USFWS will have fewer opportunities to work together to reduce migratory bird deaths resulting from business practices. **On behalf of the members of the Western Section of The Wildlife Society, I ask you to rescind the proposed rule with the new interpretation of the MBTA and uphold the spirit of the original treaty to ensure science-based conservation and management of migratory birds.**

We recognize that the inflexibility of the previous interpretation of incidental take prohibition under the MBTA has created difficulties for commercial interests. We also acknowledge that in some cases, these prohibitions have result in substantial disruptions to otherwise lawful activities even when impacts to migratory birds were of limited or *de minimus* importance. For these reasons, we urge the Department of Interior to adopt a rule that allows the USFWS to issue permits for incidental take of migratory birds under the MTBA. Such a process would allow the weighing of the population impacts of proposed actions that result in incidental take; identification of reasonable measures to avoid, minimize, and mitigate for such take; and the issuance of permits that allow legal taking of migratory birds consistent with permit conditions. A migratory bird incidental

take permitting process would provide both protections for migratory birds consistent with the act and a streamlined process to allow permitted project actions to go forward.

In conclusion, we urge the Department of Interior to maintain strong protections for migratory birds via the MBTA and work to develop meaningful and effective ways to reduce conflicts between conservation and project development.

The Western Section of The Wildlife Society thanks you for the opportunity to submit comment on this proposed rule. Please contact Kelly Holland, CWB®, the President and the Conservation Affairs Committee Chair for the Western Section of The Wildlife Society (conservation@twc-west.org), with any follow up questions regarding these comments.

Sincerely,

A handwritten signature in cursive script that reads "Kelly A. Holland". The signature is written in black ink and is positioned above the typed name and title.

Kelly Holland, CWB
President and Conservation Affairs Committee Chair
Western Section, The Wildlife Society