



**The Wildlife Society**  
**Western Section**  
**P.O. Box 6756**  
**Albany, CA 94706**  
**[www.tws-west.org](http://www.tws-west.org)**

June 7, 2021

Public Comments Processing  
Attn: FWS–HQ–MB–2018–0090  
U.S. Fish and Wildlife Service  
MS: JAO/3W  
5275 Leesburg Pike  
Falls Church, VA 22041-3803

**Subject: Regulations Governing Take of Migratory Birds; Final Rule Defining Scope of MBTA.**

The Western Section of The Wildlife Society (TWS) supports the United States Fish and Wildlife Service (Service) and its proposal to revoke the Final Rule published January 7, 2021, regarding the Migratory Bird Treaty Act (MBTA) and publish an amended Record of Decision selecting Alternative B, the environmentally preferable alternative. We refer you to our March 1, 2021, comments on this subject regarding the reasons why we support Alternative B. We also request following this action that the Service propose a way forward to formalize permitting under the MBTA.

**The Basis for Comments by the Western Section of the Wildlife Society**

TWS, founded in 1937, is a non-profit professional society representing wildlife biologists, managers, and educators 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. The Western Section of TWS represents professional wildlife biologists residing in Nevada, California, Hawaii, and Guam. Our members have extensive experience in addressing MBTA compliance for take of migratory birds under both the previous and current contested interpretations of the definition of take under the act. Our professional training and experience provides a strong basis for evaluating the need for promulgation of incidental take protections under the MBTA. We are also familiar with the benefits and challenges that inconsistent implementation of the MBTA has caused for a variety of stakeholders

*Excellence in Wildlife Stewardship through Science and Education*

including agencies, businesses, and individuals. For this reason, we request that a consistent permitting process under the MBTA be explored going forward.

## Summary

On behalf of the members of the Western Section of TWS, I ask you to rescind the Final Rule and uphold the spirit of the original treaty to ensure science-based conservation and management of migratory birds. As part of the review of this Final Rule, we also urge the Department of Interior to create and adopt a rule that allows the Service to issue permits for incidental take of migratory birds under the MBTA. 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. This should alleviate previous concerns of inflexibility on the incidental take prohibition that has created difficulties for commercial Excellence in Wildlife Stewardship through Science and Education interests which in some cases resulted in substantial disruptions to otherwise lawful activities even when impacts to migratory birds were of limited or *de minimus* importance. A migratory bird incidental take permitting process would provide both protections for migratory birds consistent with the MBTA and a streamlined process to allow permitted project actions to go forward. This was not properly considered as an alternative in the EIS for the Final Rule. Please see our comments regarding this and other inadequacies of the EIS analysis in our March 1, 2021, letter submitted on the Draft EIS.

The Western Section of TWS thanks you for the opportunity to submit comment on the delay and reevaluation of this Final Rule. Please contact Kelly Holland, CWB®, the Past-President and the Conservation Affairs Committee Chair for the Western Section of The Wildlife Society ([conservation@twswest.org](mailto:conservation@twswest.org)), with any follow up questions regarding these comments.

## Conclusion

I appreciate the opportunity to offer comments on behalf of the membership of the Western Section of TWS. We are very supportive of the proposal to revoke the January 7, 2021 Final Rule regarding the MBTA and promulgate incidental protections. We encourage you to seriously consider a process that will formalize permitting under the MBTA. We look forward to continuing our involvement in the process of protecting the birds of North America.

Sincerely,



Kelly Holland  
Past-President, Conservation Affairs Committee Chair  
Western Section, The Wildlife Society