



Director Aurelia Skipwith
Attention: FWS-HQ-MB-2018-0090
U.S. Fish and Wildlife Service
5257 Leesburg Pike
Falls Church, Virginia 22041-3803

12 March 2020

Dear Director Skipwith,

We appreciate the opportunity to provide comments regarding Regulations Governing Take of Migratory Birds [Docket No. FWS-HQ-MB-2018-0090]. We are nine independent Audubon societies, not affiliated with National Audubon, and represent more than 200,000 members. We protect birds, other wildlife and their habitats in our respective states through conservation, education and advocacy for the benefit of people and all living things.

We strongly urge you to withdraw the proposed rule, which dramatically weakens one of our nation's oldest conservation laws and directly contravenes the intent and wording of the original Act. The Migratory Bird Treaty Act of 1918 (MBTA) states that

“Unless and except as permitted by regulations made as hereinafter provided in this subchapter, it shall be unlawful at any time, by any means or in any manner, to pursue, hunt, take, capture, kill, attempt to take, capture, or kill, possess, offer for sale, sell,

offer to barter, barter, offer to purchase, purchase, deliver for shipment, ship, export, import, cause to be shipped, exported, or imported, deliver for transportation, transport or cause to be transported, carry or cause to be carried, or receive for shipment, transportation, carriage, or export, any migratory bird, any part, nest, or eggs of any such bird, or any product, whether or not manufactured, which consists, or is composed in whole or part, of any such bird or any part, nest, or egg thereof, included in the terms of the conventions between the United States and Great Britain for the protection of migratory birds concluded August 16, 1916 (39 Stat. 1702), the United States and the United Mexican States for the protection of migratory birds and game mammals concluded February 7, 1936, the United States and the Government of Japan for the protection of migratory birds and birds in danger of extinction, and their environment concluded March 4, 1972 [1] and the convention between the United States and the Union of Soviet Socialist Republics for the conservation of migratory birds and their environments concluded November 19, 1976.”

The proposed rule reduces “at any time, by any means or in any manner” to only include actions that are specifically and deliberately directed at migratory birds, their nests, or their eggs. By eliminating the regulation of “incidental take,” the injury or mortality of migratory birds resulting from an otherwise lawful activity, the proposed rule not only contravenes this law, but adversely affects international treaty obligations the United States holds with Canada, Mexico, Japan, and Russia. Additionally, intent is very difficult to prove in a court of law and proof of intentional harm would effectively make it nearly impossible to enforce the provisions of the Act.

Over the century since enactment of the MBTA, professionals in the U.S. Fish and Wildlife Service, the Department of Interior, and the Department of Justice have worked to define the scope of the MBTA in a way that balances economic goals with the conservation of bird populations. The proposed rule completely overturns this balance.

Enactment of the proposed rule will have negative economic, as well as negative environmental impacts. Crows and jays play an important role in dispersing acorns, maintaining and expanding the distribution of economically important oak species used for hardwood furniture and flooring. A myriad of songbird species consume insect pests of field crops and forest trees. Hawks and owls prey on rodents that damage property, consume human and livestock food, and carry human diseases. Eagles, vultures, and ravens scavenge carcasses that would otherwise be sources of disease and lead to increases in nuisance fly species.

The MBTA has provided critical incentives for industry to avoid or minimize bird mortality through the application of best management practices and simple, common sense precautions. Use of black, rather than red or orange insulators on electric fences prevents widespread electrocutions of hummingbirds. Covering oil waste pits prevents large scale mortality of waterfowl. Innovations developed by the Avian Power Line Interaction Committee have

prevented thousands of bird mortalities on power lines. Wildlife biologists and commercial fishermen have collaborated to reduce the drowning risks for seabirds in fishing lines and nets.

While some responsible companies may continue to work with wildlife professionals to prevent bird injuries and deaths from their activities and structures, eliminating the legal incentive for doing so will lead many players to favor the economic bottom line over protecting natural resources. Bird populations are an important component of our nation's public trust resources and the public deserves compensation for massive mortalities such as the 1989 Exxon Valdez and 2010 Deepwater Horizon oil spills.

North America's bird populations face diverse threats, many of which are new since the MBTA was enacted in 1918. For example, energy generation and delivery have led to bird mortalities from wind turbines, oil spills, large solar plants, and powerline collisions, and climate change is altering the timing of bird migration and the availability of foods necessary for successful breeding and overwintering. The North American Bird Conservation Initiative's 2019 State of the Birds report (NABCI 2019) documents steep declines in many of the continent's bird populations, and a recent report in the journal *Science* estimates that North America has experienced a net loss of nearly three billion birds since 1970 (Rosenberg et al. 2019). Protecting the integrity of the Migratory Bird Treaty Act is vital to halting and reversing these declines.

At a time when our nation's bird population are more threatened than any time in recent history, the USFWS, our country's lead federal agency charged with their protection, proposes to weaken the primary law designed to safeguard them. We urge you to withdraw the proposed rule.

Sincerely,

Ron Klataske
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Lisa Alexander
Executive Director
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References Cited

NABCI. 2019. The State of the Birds 2019. <https://www.stateofthebirds.org/2019/>

Rosenberg, K.V., A. M. Dokter, P. J. Blancher, J.R. Sauer, A. C. Smith, P. A. Smith, J.C. Stanton, A. Panjabi, L. Helft, M. Parr, and P.P. Marra. 2019. Decline of the North American avifauna. *Science* 04 Oct 2019: Vol. 366, Issue 6461, pp. 120-124. DOI: 10.1126/science.aaw1313

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