

March 1st, 2021

To the U.S. Fish and Wildlife Service:

The undersigned organizations represent the National Wildlife Federation and 29 of its state and territorial affiliates. Collectively, our memberships include more than six million wildlife conservationists who appreciate our nation's great outdoors and the fish and wildlife that make them special. We are writing today to express our appreciation for the U.S. Fish and Wildlife Service's (USFWS) decision to delay implementation of the Migratory Bird Treaty Act (MBTA) regulation (FWS-HQ-MB-2018-0090), that removed well-established, bipartisan protections for birds. We urge the USFWS to begin a public process to reinstate these critical protections, while adding a permitting program that will provide regulatory certainty for incidental take under the MBTA.

Our nation's wildlife is in crisis, and birds are truly the canary in the coal mine. According to a study issued by the journal *Science*, there has been an alarming net loss of approaching 29% of bird abundance over the last half-century. This devastating loss of birds indicates an urgent need to address threats to prevent future harm to bird species and ensure ecosystem integrity and services. As excellent indicators of environmental health, many species of birds play a fundamental role in our ecosystems and provide value to our nation and the world. The attack on the MBTA has only placed birds at greater risk for harm.

The MBTA is a highly successful law that is more than a century old. It has provided longstanding protections for birds from avoidable hazards, including for game birds and birds hunted to the brink extinction for feathers. Reducing protections offered through the MBTA goes against decades of reasonable policies to improve bird conservation. The recently finalized regulation removes the law's enforcement of all incidental take, and will no longer hold industries or any other actors accountable for incidental harms to birds. It eliminates penalties, and the legal responsibilities and liability for actions that kill a significant and alarming number of bird species each year. This new—and, as already decided by a federal court, illegal—interpretation of the law, essentially clips the wings of the MBTA and weakens its protection for birds. As top Interior officials from the Nixon, Ford, Carter, Bush I, Clinton, Bush II and Obama have said, the legal theory that this regulation is based on is “contrary to the long-standing interpretation [of the MBTA] by every administration (Republican and Democrat) since at least the 1970s,” and represents a “a new, contrived legal standard that creates a huge loophole.”

We urge the USFWS to fully restore safeguards for birds against incidental take, and to create a new pathway for permitting under the MBTA to encourage industry and other individuals to engage in best management practices that protect birds from the variety of dangers they encounter. It is undeniable that industrial and other activities today, such as oil and gas, mining, chemical, and electricity generation and transmission, present great challenges for birds and result in millions of bird deaths each year. A permitting program for consequential levels of incidental take will both protect birds and provide industry with regulatory certainty. Such a permitting system is specifically authorized in Section 703(a) of the MBTA which prohibits killing and taking of migratory birds “[u]nless and except as permitted by regulations made as hereinafter provided...,” and Section 704 which directs the Secretary of the Interior to “determine when, to what extent, if

at all, and by what means” to allow taking, killing, and other harms. A permitting program, which can be accomplished with a general permit that reduces compliance costs, would require industry groups to implement best management practices and demonstrate compliance with the MBTA.

Our members and millions of Americans enjoy and benefit from the health of the many species of birds protected by the MBTA. These bird species provide substantial cultural, spiritual, recreational, and subsistence value. Bird hunting and birding ecotourism are enormous economic engines in the United States. Even in the midst of a global pandemic, birds continue to play a significant role in our daily lives and provide benefits to our quality of life, such as solace and the opportunity to enjoy spaces outside. As people become more connected with nature during these socially distant times, bird hunting and bird watching is likely to become an even bigger driver of tourism. As pollinators, birds provide essential ecosystem services and contribute significantly to our food production. Because of this, many farmers and consumers strongly rely on birds for their own survival.

Since its passage, the MBTA has expanded its protection on an international level and has helped our nation uphold international commitments. Without necessary protections against intentional *and* incidental harms, the MBTA will no longer serve its ultimate purpose to safeguard birds and our nation’s conservation legacy will be in jeopardy. As such, we urge you to repeal this illegal regulation, restore full MBTA protections for birds, and institute a permitting program for the incidental take of protected migratory bird species.

Sincerely,

Arkansas Wildlife Federation

Colorado Wildlife Federation

Conservation Coalition of Oklahoma

Conservation Council for Hawaii

Conservation Federation of Missouri

Conservation Northwest, WA

Delaware Nature Society

Idaho Wildlife Federation

Iowa Wildlife Federation

Kansas Wildlife Federation

Kentucky Waterways Alliance

Mississippi Wildlife Federation

Montana Wildlife Federation

National Aquarium, MD

National Wildlife Federation

Nebraska Wildlife Federation

Nevada Wildlife Federation

New Mexico Wildlife Federation

North Carolina Wildlife Federation

North Dakota Wildlife Federation

Ohio Conservation Federation

PennFuture

Planning and Conservation League, CA

Prairie Rivers Network, IL

South Dakota Wildlife Federation

Tennessee Wildlife Federation

Texas Conservation Alliance

Utah Wildlife Federation

Virginia Conservation Network

Wyoming Wildlife Federation