

Congress of the United States
Washington, DC 20515

March 26, 2020

The Honorable David Bernhardt
Secretary of the Interior
U.S. Department of the Interior
1849 C Street NW
Washington, D.C. 20240

Dear Secretary Bernhardt:

We are greatly concerned about the Department of the Interior's (DOI) proposed rule under the Migratory Bird Treaty Act (MBTA), based upon Solicitor's Opinion M-37050. This proposed rule removes prohibitions on the incidental take of migratory birds, ends federal authority to address the incidental take of birds from industrial hazards, and puts the lives of millions of birds at risk. We strongly urge you to withdraw this proposal.

When the United States signed migratory bird treaties and passed the MBTA over a century ago, it established statutory protections for more than 1,000 species of native birds and rescued many from the brink of extinction. Because of the MBTA, the U.S. Fish and Wildlife Service has, in recent decades, assisted states, conservation groups, and industries in developing best practices for reducing incidental take and improving the conservation of migratory birds. When gross negligence occurred, as in the case of the Deepwater Horizon oil spill which killed more than one million birds, British Petroleum was fined \$100 million. That money was invested in the North American Wetlands Conservation Fund, which invests in wetland restoration for the benefit of waterfowl and other migratory birds.

We believe that DOI's Solicitors Opinion and the proposed rule contradict the Congressional intent of the MBTA and violate our international treaty obligations. Congress prohibited the killing of migratory birds "by any means or in any manner"¹ without a permit, and administrations for decades have reasonably applied the law's mandate to address not only hunting, but industrial hazards as well. In fact, seventeen former high-ranking officials in the Department of the Interior, under every Republican and Democratic administration from President Nixon to President Obama, and three flyway councils asked the Department to suspend the legal opinion².

¹ 16 U.S.C. 703-712

² Former officials' letter, 1/10/2018; Central Flyway Council letter 3/27/2018; Mississippi Flyway Council letter 4/5/2018; Atlantic Flyway Council letter, 9/27/2018.

If DOI finalizes a rule that eliminates agency authority to address incidental take under the MBTA, DOI risks reversing the significant progress the nation has made in recovering and maintaining bird populations, needlessly ties the hands of the Department's wildlife professionals, and undermines our international obligations. A responsible course of action is to suspend this rulemaking and instead address industrial threats to birds through general permits based on best management practices, similar to the framework set out in the bipartisan, H.R. 5552, Migratory Bird Protection Act.

On behalf of our constituents who care deeply about birds, we urge you to abandon this rulemaking and focus on efforts that protect and sustain migratory bird populations.

Sincerely,



Alan Lowenthal
Member of Congress



Francis Rooney
Member of Congress

Members of Congress Cosigning this Letter

Nanette Diaz Barragán	Rick Larsen
Donald S. Beyer Jr.	Barbara Lee
Earl Blumenauer	Andy Levin
Tony Cardenas	Ted W. Lieu
Ed Case	Stephen F. Lynch
Kathy Castor	Betty McCollum
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Henry C. "Hank" Johnson, Jr.	Nydia M. Velázquez
Ro Khanna	Peter Welch
Ann McLane Kuster	