

Congress of the United States

Washington, DC 20515

April 19, 2018

Secretary Ryan Zinke
Department of Interior
1849 C Street, N.W.
Washington DC 20240

Dear Secretary Zinke,

We are greatly concerned about the Department of the Interior's new interpretation of the Migratory Bird Treaty Act (MBTA) issued under the Solicitor's Opinion M-37050 and recent U.S. Fish and Wildlife guidance on the opinion. We strongly urge you to withdraw this opinion and to cease any effort to change agency rules or further guidance under the MBTA that would end the authority to address the incidental take of birds from industrial hazards. Instead, we ask that you continue to enforce this foundational bird conservation law as every administration from across the political spectrum has done for more than forty years.

One hundred years ago, the United States took a major step forward in the protection of the nation's wildlife and natural resources with the passage of the MBTA. No longer would the country stand by as populations of beloved birds like the Snowy Egret plummeted toward extinction. With the signing of the Migratory Bird Treaty with Canada and subsequent treaties with Mexico, Japan, and Russia, we established newly enshrined statutory protections for more than 1,000 species of native birds and rescued many from the brink of extinction.

Though the menace of market hunting and the plume trade have since diminished, the threats to birds have not. The rapid industrialization of the country in the 20th century created new threats, as millions of waterfowl, raptors, and songbirds began to die tragic deaths after being trapped in oil pits, electrocuted on power lines, and more. The U.S. Fish and Wildlife Service, working closely with states, conservation groups, and industries, has led the way for decades in addressing and reducing these threats. These advancements could not have been made without the vital authorities under the MBTA, and your administration's unprecedented legal opinion puts this progress, and the lives of countless birds, at serious risk.

We believe that Department's interpretation of the MBTA violates the Congressional intent of the law. Congress determined that protected birds shall not be killed "by any means or in any manner" without a permit, and administrations for decades have reasonably applied the law's mandate to address not only hunting, but industrial hazards as well. We take very seriously the recent letter from seventeen former high-ranking officials in the Department of the Interior, under every Republican and Democratic administration from President Nixon to President Obama, asking that you suspend the legal opinion. As the officials describe, there have been significant strides in "defining the limits of this law through refined interpretations, court decisions, and common sense."

Through judicious enforcement of the law, the exemplary work of administrations over decades has led to covering innumerable oil pits, retrofitting power poles to prevent electrocutions, flagging transmission lines, adopting best management practices for wind energy, and more. When these deaths have not been avoided, the MBTA has been a critical tool to invest the penalties toward the recovery of impacted species. The MBTA fines from the Deepwater Horizon oil spill, which killed more than one million birds, resulted in \$100 million for wetland restoration to benefit waterfowl and other birds through the North American Wetlands Conservation Act.

Eliminating agency authority to address incidental take under the MBTA 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. Continuing down this road, on the 100th anniversary of the MBTA, is an unconscionable rollback of one of our most important conservation laws. There are reasonable alternatives available to address this issue that will positively impact birds and provide greater regulatory certainty under the MBTA. On behalf of all of our constituents who benefit from the presence of migratory birds in their daily lives, we would greatly appreciate the opportunity to discuss a path forward that meets our nation's responsibilities to protect this invaluable wildlife resource.

Sincerely,



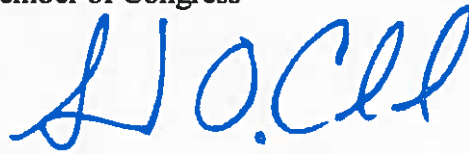
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