

# Migratory Bird Treaty Act (MBTA) Summary



The Migratory Bird Treaty Act (MBTA) was originally initiated in 1918, partially as an attempt to prevent the destruction of migratory birds for women's hats and excessive harvest. Millions of birds were killed in the late 19th century and the early part of the 20th century resulting in the complete extirpation of extremely common birds such as the passenger pigeon. Over the years, the MBTA has been important in reducing the killing of birds that cross international boundaries and ensuring that actions would be designed to reduce or avoid direct loss or incidental adverse impacts related to actions that indirectly kill birds. Many of the modifications to reduce incidental or direct take are relatively minor and have had positive ramifications to birds and other wildlife.

The MBTA makes it illegal to *"take, possess, import, export, transport, sell, purchase, barter, or offer for sale, purchase, or barter, any migratory bird, or the parts\*, nests, or eggs of such a bird except under the terms of a valid Federal permit"* (USFWS <https://www.fws.gov/birds/policies-and-regulations/laws-legislations/migratory-bird-treaty-act.php>). It has been amended to implement *Conventions between the United States and four countries (Canada, Mexico, Japan and Russia) for the protection of migratory birds.* (<https://www.fws.gov/birds/policies-and-regulations/laws-legislations/migratory-bird-treaty-act.php>). The Migratory Bird Treaty Reform Act of 2004 (MBTRA) (Pub. L. No. 108-447, 118 Stat. 2809, 3071-72), we included all species native to the United States or its territories, which are those that occur as a result of natural biological or ecological processes (See 70 FR 12710, March 15, 2005).

A 2017 Solicitor's opinion directs the USFWS to change the decades-long interpretation of the MBTA so that only "intentional" take of birds is regulated by the MBTA. Audubon provides this description: *Birds can die when they land on an uncovered oil waste pit that appears to be typical pond (consider the Berkeley pit in Butte), or run into an unseen power line. These kinds of deaths are called "incidental takes," that is, deaths that occur due to activities that are otherwise lawful...MBTA "will no longer hold industries accountable for "incidental" bird deaths under the law. This legal opinion prevents enforcement of all incidental take, removing incentives for companies to adopt practices that protect birds from threats such as oil waste pits. It also eliminates penalties for companies that kill substantial numbers of birds, including from large oil spills"*.

In 2018, Audubon joined other conservation organizations to challenge the USFWS's new interpretation of the MBTA (<https://www.audubon.org/sites/default/files/mbtacomplaintsfiled.pdf>). The National Wildlife Federation and the Natural Resources Defense Council also filed a separate suit regarding the MBTA interpretation.

Attorney Generals from eight states New York, California, Illinois, Maryland, Massachusetts, New Jersey, New Mexico and Oregon also sued, alleging that the solicitor's opinion is inconsistent with the **MBTA** and the long history of interpretation of the MBTA. The courts have confirmed that NY has status to continue the suit, and those suits will proceed through the legal system. The states' suits will be considered along with the Audubon suit.

Other actions include a House Natural Resources Committee historic hearing on the Migratory Bird Treaty Act, and consideration of draft legislation that would reaffirm longstanding protections for birds. Audubon provided testimony at the hearing in June 2019.

([https://www.audubon.org/sites/default/files/mbta\\_senner\\_testimony\\_2019\\_06\\_13.pdf](https://www.audubon.org/sites/default/files/mbta_senner_testimony_2019_06_13.pdf)).

The proposed rule was published in the *Federal Register* on February 3, 2020. This begins a 45-day public comment period and will include details on how to submit comments. Written comments and information must be received on or before March 19, 2020, by one of the following methods:

- **Federal Rulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments to Docket No. FWS-HQ-MB-2018-0090.
- **U.S. mail or hand-delivery:** Public Comments Processing, Attn: FWS-HQ-MB-2018-0090; U.S. Fish and Wildlife Service; MS: JAO/1N; 5275 Leesburg Pike; Falls Church, VA 22041-3803.

No emails or faxes will be accepted. All comments will be posted on <http://www.regulations.gov>, including any personal information you provide.

More information related to this proposed rule, scoping and other associated materials, can be found online at: <https://fws.gov/migratorybirds/2020Regulation.php>.

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