



# The Migratory Bird Treaty Act

*One of America's oldest and most important wildlife conservation laws*



The Migratory Bird Treaty Act (MBTA) passed in 1918 to implement the Migratory Bird Treaty between the U.S. and Canada. Early conservationists, including the National Audubon Society and its chapters, led the charge to secure the treaty and pass the MBTA in order to protect rapidly-declining bird species from threats such as the plume trade, market hunting, and habitat loss. Many species, including the once-ubiquitous Passenger Pigeon, the Carolina Parakeet, and Heath Hen went extinct, while others fell to the brink as a result of these activities. The MBTA turned the tide and is credited with saving millions, if not billions of birds, and numerous species from extinction, such as the Wood Duck and Snowy Egret.

Today, there are new threats to birds and the places they need. More than one-third of North American bird species are of high conservation concern and at risk of extinction without significant conservation action, according to the 2016 State of the Birds report. Birds now face 21st century threats, and MBTA protections are as critical as ever. Yet, the law itself is increasingly under threat, putting vital bird protections and gains made through 100 years of bird conservation at risk.



*Cerulean Warblers are threatened by collisions with communications towers.*

## Vital Protections for Birds

The MBTA protects birds by making it unlawful to kill, hunt, sell, or possess most native species of birds in the U.S., along with their nests, eggs, and feathers, without a permit. The covered species are based on the migratory bird treaties signed first with Canada, and later with Mexico, Japan, and Russia. That includes many species that are not protected under any other conservation law, like the Endangered Species Act, at either the state or federal level.

The law's protections helped end the widespread slaughter of birds in the early 20th century. In the modern era, millions of birds are also killed "incidentally" each year from otherwise lawful industrial activities such as oil waste pits, power lines, communications towers, and gas flares. Many of these deaths are avoidable with inexpensive solutions, such as covering oil pits or marking transmission lines. Under the Act's authority, the FWS and many industries have come to agreement on simple measures that protect birds.

The Fish and Wildlife Service utilizes discretion to only take action in egregious cases where deaths are a direct result of the activity and are foreseeable, and after working with companies on practices that could reduce bird deaths. In 2015, FWS began a rulemaking process to consider options for legal authorization so long as certain permit conditions outlining best management practices were met. Audubon supported this effort, but it was suspended in April 2017.

## Threats to the MBTA

There are growing threats to the MBTA that could severely undermine or even eliminate authority to require industries to take steps to protect birds. In December 2017, the Trump administration issued a legal opinion that the

incidental take of birds is not prohibited under the law and will not be enforced. In the House, as part of H.R. 4239, the SECURE American Energy Act, Rep. Liz Cheney added language during committee markup that would amend the law to no longer cover incidental take.

These changes would gut the MBTA by giving a free pass for bird deaths from industrial activities, such as oil waste pits and oil spills, and would end decades of practice by the Fish and Wildlife Service by removing the authority to address incidental take. Other legislation would chip away at the MBTA, including a bill that would end its protections for certain species (S. 935).

## Impacts to Birds

If MBTA protections are rolled back, it would be harmful to birds across the country and would turn back the clock on our environmental laws.

### 1. It will reduce common-sense practices that protect birds

Without any legal obligation under the MBTA, industries would be left without incentives or obligations to engage with agencies and stakeholders on actions that reduce harm to birds, at a sector-wide scale and at a project scale.

Examples of successful collaborative efforts under the MBTA include the Avian Power Line Interaction Committee (APLIC) in which stakeholders and electric companies agreed on effective, bird-friendly guidelines, as well as the voluntary wind energy guidelines that are being utilized by wind companies.

### 2. Ends the accountability from actions that kill birds

Actors whose industrial projects ignore best practices and needlessly kill significant numbers of birds would no longer face penalties, even if it was clear that the project would result in substantial bird deaths and could be easily remedied. It also removes a critical legal tool the federal government uses to recover natural resource damages from environmental disasters like the Deepwater Horizon oil spill. The fines recovered under the MBTA are then returned to bird conservation to help repair damages. As

part of the Gulf oil spill settlement, BP will pay \$100 million for violating the MBTA, which was directed toward restoring wetland habitat for birds impacted by the spill.

## Oppose Undermining the MBTA

Ultimately, this means that the 950 species of birds not covered under the ESA or Bald and Golden Eagle Protection Act would be left with fewer or no protections, from backyard birds like the Baltimore Oriole, to raptors like American Kestrels and Red-Tailed Hawks, waterbirds like the Great Blue Heron and Great Egret, waterfowl like Blue-winged Teal and Wood Ducks, along with the Great Horned Owl, Sandhill Crane, Wood Thrush, and hundreds more. Conserving these species proactively due to MBTA protections reduces the likelihood for ESA listings.

While important progress has been made in rescuing birds from the brink, now is not the time to roll back vital protections. **The MBTA is needed now as much as ever, and Audubon urges opposition to any effort that undermines America's cornerstone bird conservation law.**



Photos (clockwise): Brown Pelican after the BP oil spill, gas flare, American Coot in oil waste pit, electrocuted Red-Tailed Hawk

## Modern Day Threats to Birds

*Millions of birds die preventable deaths every year*

**Oil Waste Pits:** 500,000 to 1 million birds killed per year

**Power Lines:** Up to 64 million birds killed per year, from collisions and electrocution

**Gas Flares:** Unknown number, but thousands have been killed in single events

**Communications Towers:** Up to 7 million birds killed per year from collisions

**Oil Spills:** More than 1 million birds died from the Deepwater Horizon spill