

March 1, 2021

To the U.S. Fish and Wildlife Service,

On behalf of the 252 undersigned organizations, we are grateful that the U.S. Fish and Wildlife Service is reviewing and delaying implementation of the Migratory Bird Treaty Act (MBTA) regulation (FWS-HQ-MB-2018-0090), which eliminates longstanding protections for birds. We encourage the Service to reconsider this rule, restore these critical bird protections, and initiate a process to consider a permitting program for incidental take under the MBTA.

The Department of the Interior and the U.S. Fish and Wildlife Service have a core responsibility to manage and conserve migratory birds on behalf of the American people and our treaty partners. With the signing of our bilateral treaties and the passage of the MBTA the United States made a commitment, through international and Congressional action, to bird conservation. This commitment helped turn the tide of rapidly declining bird populations and extinctions in the early 20th century. By enacting the MBTA, and taking meaningful and reasonable steps to limit our impacts on birds, many beloved species were rescued from the brink. Today, we have the opportunity to enjoy and benefit from hundreds of species of birds, providing significant benefits to our quality of life, boosting our economy through outdoor recreation, consumer spending, and ecosystem services, and providing substantial cultural, spiritual, and subsistence value.

The decisions made by the previous administration represented an unprecedented abdication of responsibility for migratory bird conservation. The 2017 Solicitor's Opinion, which reinterpreted the MBTA to allow avoidable and negligent bird deaths from industrial hazards, contradicted decades of Republican and Democratic administrations and set back significant progress in minimizing harm to birds. The MBTA has been a critical tool for advancing and implementing best management practices, such as covering oil waste pits and marking power lines. Additionally, the MBTA helps provide accountability and recovery after incidents such as oil spills. After the Deepwater Horizon oil spill, BP paid a \$100 million fine under the MBTA that was deposited in the North American Wetlands Conservation Fund to support habitat protection and restoration for birds impacted by the spill. Under the previous administration's approach, that recovery funding would not be available.

The Solicitor's Opinion and the FWS rulemaking to codify it have received overwhelming opposition by the public and key stakeholders. More than 25 states and 30 tribal governments, three flyway councils, and our treaty partner, Canada, objected. Former senior Interior Department officials from Republican and Democratic administrations expressed significant concerns, along with more than 200 former career officials. Over 500 organizations from all 50 states and more than 250,000 people representing birders, hunters, scientists, and more voiced their opposition. During the rulemaking, more than 99% of the public comments urged the previous administration not to finalize this rule.

Moreover, the legal basis for the rule -- the Solicitor's Opinion -- was held unlawful and vacated in August 2020 by a federal court that held that it was "contrary to the plain meaning of the MBTA" and "runs counter to the purpose of the MBTA to protect migratory bird populations". Instead of reversing course, the previous administration doubled down to codify the unlawful Solicitor's Opinion with a Final

Environmental Impact Statement and final rule that failed to fully consider environmental impacts and reasonable alternatives and respond to public concerns.

Despite the substantial progress that has been made to protect and conserve birds in recent decades, the science is clear that our bird populations remain at grave risk. A 2019 report in the journal *Science* found that North America's bird populations have declined by 3 billion birds since 1970, and a study by the National Audubon Society found that two-thirds of our bird species are threatened by climate change. Upholding longstanding protections under the MBTA is a critical and necessary step in turning around these declines and vulnerabilities.

Taking further action to secure and improve the MBTA can provide a lasting favorable impact in addressing our biodiversity crisis, while ensuring that there are reasonable and consistent standards for the industrial sector, including for our growing clean energy economy. The previous administration set back progress in developing a workable permitting approach for incidental take. A permit program can provide a conservation-based framework that expands the adoption of best management practices to minimize harm to birds and increase regulatory certainty for commercial entities. We urge the FWS to pursue an approach to the MBTA that fulfills its commitments to conservation and provides a durable path forward for the future of this bedrock law, the birds it protects, and the people that benefit from their continued presence.

Sincerely,

National and International Organizations

Alaska Wilderness League
American Bird Conservancy
Animal Welfare Institute
Appalachian Trail Conservancy
Association of Avian Veterinarians
Bold Alliance
Clean Water Action
Defenders of Wildlife
EarthAction
Earthjustice
Endangered Species Coalition
Environmental Defense Fund
FLAP Canada
Friends of the Earth
Great Old Broads for Wilderness
Humane Society Legislative Fund
International Crane Foundation
International Marine Mammal Project of Earth Island Institute
League of Conservation Voters
National Audubon Society

National Parks Conservation Association
National Wildlife Federation
Natural Resources Defense Council
Ocean Conservancy
Predator Defense
Sierra Club
The Humane Society of the United States
The Institute for Bird Populations
The Nature Conservancy
The Trumpeter Swan Society
The Wildlife Society
The Wildlife Trust
Turtle Island Restoration Network
Waterkeeper Alliance
Western Watersheds Project
WildEarth Guardians
Wild Farm Alliance
World Wildlife Fund

Regional, State, and Local Organizations

Alabama Ornithological Society
Alachua Audubon Society
Alaska Shorebird Group
Alberta Wilderness Association
Alliance for International Reforestation, Inc.
Alma College Bird Observatory
Altacal Audubon Society
Apalachee Audubon Society
Audubon California
Audubon Everglades
Audubon Mid-Atlantic
Audubon Naturalist Society
Audubon Society of Greater Cleveland
Audubon Society of Northern Virginia
Audubon Society of Portland
Audubon Western Everglades
Bauman Foundation
Bay County (FL) Audubon Society
Bergen County Audubon Society
Bird City Wisconsin
Bird Conservation Network
Birding Under Nevada Skies

Black River Audubon Society
Blue Mountain Audubon Society
Boreal Partners in Flight
Boulder County Audubon Society
Bozeman Birders
Bucks County Audubon Society
Butte Environmental Council
Californians for Western Wilderness
Canton Audubon Society
Cape Henry Audubon Society
Central Basin Audubon
Central Lakes College Natural Resources Program
Central New Mexico Audubon Society
Champaign County Audubon Society
Charleston Audubon and Natural History Society
Chesapeake Wildlife Heritage
Chicago Audubon Society
Christian Council of Delmarva
Chuljian Properties LLC
City Wildlife, Inc.
Clearwater Audubon Society
Colorado Crane Conservation Coalition, Inc.
Columbia Audubon Society of South Carolina
Columbus Zoo and Aquarium
Conservation Congress
Conservation Council For Hawaii
Conservation Northwest
Conservian
Cumberland-Harpeth Audubon Society
Delaware Audubon Society
Delaware Valley Ornithological Club
Delta Wind Birds
Downeast Audubon
Duval Audubon Society
Ecology Center of Southern California
Eden Wildlife Rehabilitation
Environmental Action Committee of West Marin
Environmental Protection in the Caribbean
Environmental Protection Information Center
Evergreen Audubon
Federated Conservationists of Westchester County
Federation of Monroe County Environmentalists
Fort Wayne Children's Zoo
Four Harbors Audubon Society

Four Rivers Audubon
Francis M. Weston Audubon Society
Friends of Indian River
Friends of the Clearwater
Friends of the San Pedro River
Ft. Berthold Protectors of Water and Earth Rights
G2 Marketing Group
Georgia Audubon
Grand Valley Audubon Society
Great Old Broads for Wilderness Middle Park Colorado Broadband
Great Salt Lake Audubon
Greater Akron Audubon Society
Greater Ozarks Audubon Society
Halifax River Audubon
Hawk Mountain Sanctuary Association
Heartwood
Help Wild Birds
Hendry-Glades Audubon Society
Hernando Audubon Society
High Peaks Birders
Highlands Plateau Audubon Society
Howard County Bird Club
Howling For Wolves
Hudson River Audubon Society of Westchester
Huntington-Oyster Bay Audubon Society
Illinois Chapter of The Wildlife Society
International Bird Rescue
Jackson Audubon Society
Jackson Mississippi Audubon Society
John Burroughs Natural History Society
Juniata Valley Audubon Society
Kerncrest Audubon Society
Kettle Range Conservation Group
Kirkland Bird Club
Kissimmee Valley Audubon Society
Kittitas Audubon
Klamath Forest Alliance
Klamath Siskiyou Wildlands Center
Lake County Audubon
Lake Region Audubon Society
Lehigh Valley Audubon Society
Litchfield Hills Audubon Society
Los Angeles Audubon Society
Los Padres ForestWatch

Madison Audubon Society
Madrean Archipelago Wildlife Center
Maine Audubon
Marion Audubon Society
Maryland Ornithological Society
Mass Audubon
Mattawoman Watershed Society
Maui Nui Seabird Recovery Project
Miami Valley Audubon
Michigan Audubon
Michigan Chapter of The Wildlife Society
Minnesota River Valley Audubon Chapter
Mississippi Coast Audubon Society
Mississippi Headwaters Audubon Society
Missouri River Bird Observatory
Mitchell Lake Audubon Center
Montana Audubon
Montgomery Bird Club
Mt. Diablo Audubon Society
New Hampshire Audubon
New Jersey Audubon
New Mexico Audubon Council
New York City Audubon
North Cascades Audubon Society
North Central Section of The Wildlife Society
Northern Arizona Audubon Society
Northern Catskills Audubon Society
Northwest Arkansas Audubon Society
Northwest Section of the Wildlife Society
NY4WHALES
Oakland Audubon Society
On A Wing And A Prayer
Onondaga Audubon
Orange Audubon Society
OVEC-Ohio Valley Environmental Coalition
Peace River Audubon Society
Pelican Island Audubon Society
Pennsylvania Society for Ornithology
Piedmont Audubon Society
Potomac Valley Audubon Society
Prescott Audubon Society
Prince George's Audubon Society
Protect the Peninsula's Future
Quiet Use Coalition

Rachel Carson Council
Raptors Are The Solution
Richmond Audubon Society
Roanoke Valley Bird Club
Robeson Township Environmental Advisory Council
Rockbridge Bird Club
Rocky Mountain Recreation Initiative
Safe Skies Maryland
San Diego Audubon Society
San Juan Citizens Alliance
San Luis Valley Ecosystem Council
Sangre de Cristo Audubon Society
Santa Fe Audubon Society
Save Our Allegheny Ridges
Save The Prairie Society
Seaducks Unlimited Inc.
Seminole Audubon Society
Sheep Mountain Alliance
Sierra Foothills Audubon Society
Skagit Audubon Society
Soda Mountain Wilderness Council
Sonoran Audubon Society
South Florida Audubon
South San Juan Broadband, Great Old Broads for Wilderness
South Shore Audubon Society
Southeast Volusia Audubon Society
Southern Maryland Audubon Society
Space Coast Chapter National Audubon Society
Sperry-Galligar Audubon Society
St Lucie Audubon Society
St. Johns County Audubon Society
St. Louis Audubon Society
Stockbridge Audubon Chapter
Sugarloaf: The North Shore Stewardship Association
Sun City Hilton Head Bird Club
Sycamore Audubon Society
Tampa Audubon Society
Tennessee Ornithological Society
The Linnaean Society of New York
The Urban Wildlands Group
Topeka Audubon Society
Tree Fredericksburg
Tropical Audubon Society
Tucson Audubon Society

Unitarian Universalist Church of Lake County
Utah Physicians for a Healthy Environment
Ventura Audubon Society
Virginia Society of Ornithology
Waccamaw Audubon Society
West Pasco Audubon society
West Volusia Audubon Society
Western Great Lakes Bird and Bat Observatory
Western Section of The Wildlife Society
Wild Bird Fund, Inc
Wild Ones West Cook
Wildcare Eastern Sierra
WildCare of Western New York
Wisconsin Society for Ornithology
Woodland Park Zoo
Yuma Audubon Society