



November 16, 2016

The Honorable Sally Jewell  
Secretary  
U.S. Department of the Interior  
1849 C Street, N.W.  
Washington, D.C. 20240

Christy Goldfuss  
Acting Manager  
White House Council on Environmental Quality  
Washington, D.C. 20501

Re: Migratory Bird Treaty Act – Support for incidental take permitting process

Dear Secretary Jewell and Acting Manager Goldfuss,

2016 marks the 100th anniversary of the Migratory Bird Treaty, a landmark and unparalleled international agreement that has protected, recovered, and maintained abundant bird populations for many groups of birds, especially shorebirds, waterfowl, and herons, and has helped maintain the spectacle of bird migration throughout the hemisphere. Given current pressures on resources, habitats, and the environment, a new process for incidental take permitting is urgently needed to keep the Treaty's implementing law, the Migratory Bird Treaty Act (MBTA) strong and relevant. The undersigned scientists respectfully urge you to advance migratory bird conservation by developing an incidental take permit process for migratory birds.

The MBTA prohibits take of migratory birds, but there is no permitting system in place to prevent avoidable and foreseeable incidental losses resulting from industrial development, or to provide for regulatory certainty for developers. Such a rule is urgently needed to help stem a broad-scale decline of migratory bird populations resulting in part from multiple sources of human-caused mortality. The U.S. Fish and Wildlife Service (FWS) has announced its intention to prepare a programmatic environmental impact statement (EIS) to evaluate the effects of creating a permitting system to reduce and mitigate for preventable sources of mortality. A draft EIS is expected this year.

The United States Endangered Species Act (ESA) includes an incidental take permit issued under Section 10 of the ESA to private, non-federal entities undertaking otherwise lawful projects that might result in the take of an endangered or threatened species. MBTA, unlike the ESA or the Bald and Golden Eagle Protection Act (BGEPA), currently has no provision for an incidental take permit for migratory birds. Creating the same provision to protect migratory birds would enable managers to apply best management practices to reduce mortality and mitigation measures.

The Notice of Intent includes potential options to establish incidental take authority permitting for sectors and projects that have known impacts to migratory birds such as wind power development, oil and gas drilling, communications towers, and power lines and tall towers. For each of these examples included in the notice, there are already available technologies and proven methods that can reduce bird mortality.

This policy is consistent with the Presidential Memorandum on Mitigation that would significantly improve the protection of birds covered by the MBTA by avoiding, minimizing, and compensating for avoidable threats. The FWS already has the authority to issue permits without a change to the legislation.

We urge you to stand up for the Migratory Bird Treaty Act by supporting an incidental take permit process for migratory birds. Science tells us that we've arrived at another crossroads for conservation. The State of North America's Birds 2016 report, released in May of this year, collected data from the United States, Canada, and Mexico to deliver an unprecedented trilateral analysis of how our birds are faring.

The report depends on data collected not just by professional ornithologists and researchers but also by tens of thousands of citizen scientists. Analyses of these data reveal that many of our bird species are at high risk of future extinction, hastened along by habitat destruction, climate change, energy industry operations, collisions with human-created structures, pesticides, and invasive species, among other factors.

The news isn't uniformly grim. Waterfowl have benefited from decades of concerted wetlands restoration. Hawks, eagles, and falcons have rebounded from historic lows as a result of changes in pesticide use. These successes remind us that our best hope for saving other threatened species lies in using science to drive sound conservation decisions and policymaking.

Unfortunately, today, many migratory birds protected under the Act (MBTA), 16 U.S.C. § 703 et seq., are facing serious threats and many are in rapid decline. About 30% of the birds protected by the MBTA are officially recognized by the U.S. Fish and Wildlife Service (FWS) as being in need of greater conservation efforts, including approximately 75 Endangered and Threatened species, and more than 240 species listed by FWS as Birds of Conservation Concern.

When we help birds, we help other species, including our own. Birds provide essential ecosystem services such as pest control, seed dispersal, and pollination. They contribute to the biodiversity a healthy planet requires. Sensitive to climate change and habitat loss, they're among our best indicators of how global ecosystems have been altered and how well we are doing at mitigating these changes.

Climate change is real and important but building renewable energy infrastructure need not - and must not - be at the expense of birds and wildlife. Migratory birds face many threats and poorly sited renewable energy facilities and their associated infrastructure, notably power lines and towers, are killing hundreds of thousands, if not millions, of birds annually, including species of conservation concern.

The Migratory Bird Treaty Act is globally significant in helping to recover, protect and maintain abundant bird populations and the spectacle of bird migration throughout the hemisphere. It is urgent to keep MBTA strong by establishing an incidental take permitting process. The undersigned scientists, representing leaders in the fields of ornithology and ecological science, fully support the FWS in developing such a process.

Thank you for helping to protect the billions of migratory birds across our country.

Sincerely,

George Fenwick, Ph.D. President, American Bird Conservancy  
John W. Fitzpatrick, Ph.D., Director, Cornell Lab of Ornithology  
Kenneth V. Rosenberg, Conservation Scientist, Cornell Lab of Ornithology  
Andrew Farnsworth, Ph.D., Migration Biologist, Cornell Lab of Ornithology  
Peter Marra, Ph.D., Ornithologist  
Dr. Ann E. Brodie, Ph.D.  
Bob Gale, Ecologist & Public Lands Director, MountainTrue  
Brenda Beatty, MS, Senior Biologist, National Renewable Energy Laboratory  
Bryan Lenz, Ph.D., Director of Bird City Wisconsin, Chief Scientist at the Western Great Lakes Bird & Bat Observatory  
Carol R. Foss, Ph.D., Senior Advisor for Science and Policy, Audubon Society of New Hampshire  
Christine Sheppard, Ph.D., Bird Collisions Campaign Manager, American Bird Conservancy  
Dale Becker, Wildlife Program Manager, Confederated Salish and Kootenai Tribes  
Dan Rauch, Fisheries and Wildlife Biologist/Ornithologist  
Daniel Klem, Jr., Ph.D., D.Sc., Professor of Biology, and Sarkis Acopian Professor of Ornithology and Conservation Biology, Muhlenberg College  
David L. Davidson, Ph.D.  
Debra L. Donahue, M.S., Professor of Law, University of Wyoming College of Law  
Dr. Derek Lee, Principal Scientist, Wild Nature Institute  
Dominick A. DellaSala, Ph.D., President, Chief Scientist, Geos Institute  
Dr. Dominique G. Homberger, IOU Secretary, International Ornithologists' Union  
Eugene S. Morton, Ph.D.  
Grant Sizemore, M.S., AWB, Director of Invasive Species Programs, American Bird Conservancy  
Ileene Anderson, MS, Senior Scientist, Center for Biological Diversity  
Irene Liu, Ph.D., Postdoctoral Associate, Department of Biology, University of Maryland, College Park  
Jane E. Ramberg, MS  
Jason A. Mobley, Ph.D., Coordinator, Migratory Birds Conservation Program, AQUASIS  
Jay Withgott, Field Ornithologist, Environmental Science Textbook Author  
Jed Farmer, Chair, FGRV (Friends of the Grande Ronde Valley)  
Jessie Schillaci, Wildlife Biologist, RCW Monitoring Program Coordinator, Directorate of Public Works  
John Droz Jr., Physicist, Founder, Alliance for Wise Energy Decisions  
John Marzluff, James W. Ridgeway Professor of Forest Sciences, College of The Environment, University of Washington  
John P. Dumbacher, Ph.D., Curator of Birds and Mammals, California Academy of Sciences  
Jonathan L. Atwood, Ph.D., Bird Conservation Fellow, Mass Audubon  
Kara Whittaker, Ph.D., Senior Scientist & Policy Analyst, Washington Forest Law Center  
Katherine Brodhead, Wildlife Biologist  
Keith Stelling, MA, MNIMH, Dip Phyt, MCPP, Independent Researcher

Kelsey King, Ecologist, Crane Trust  
Kenneth D. Meyer, Ph.D., Executive Director, Avian Research and Conservation Institute  
Mark Klym, Biologist  
Mary A. Keith, Ph.D.  
Mary Costello, M.S., Avian Ecology  
Mary O'Brien, Ph.D., Grand Canyon Trust  
Maya Khosla, MS. Biology and Toxicology  
Melinda Welton, Conservation Policy Chair, Tennessee Ornithological Society  
Michael Hutchins, Ph.D., Director, Bird Smart Wind Energy Campaign, American Bird Conservancy  
Michael J. Painter, B.S.C., Genetics, Coordinator, Californians for Western Wilderness  
Nicole Arcilla, Ph.D., Crane Trust  
Paul G. Rodewald, President, Association of Field Ornithologists  
Peter G. Saenger, Acopian Ornithological Specialist, Acopian Center for Ornithology  
R. Scot Duncan, Ph.D., Conservation Biologist, Professor of Biology, Birmingham-Southern College  
Richard Beilfuss, Ph.D., Lic. Prof. Hydrologist, President & CEO, International Crane Foundation  
Dr. Scott Petrie, Ph.D., Chief Executive Officer, Delta Waterfowl Foundation  
Sidney A. Gauthreaux, Jr., Ph.D., Ornithologist, Fellow of the American Association for the Advancement of Science  
Stanley A. Temple, Beers-Bascom Professor Emeritus in Conservation, University of Wisconsin-Madison  
and Senior Fellow, Aldo Leopold Foundation  
Steve Beissinger, Professor of Ecology and Conservation Biology, University of California, Berkeley  
Steve Roels, M.A., Ph.D. Candidate, Department of Integrative Biology, Michigan State University  
Sophie Osborn, MS, Wildlife biologist and writer  
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Travis Longcore, Ph.D., Science Director, The Urban Wildlands Group  
William M. Janousek, M.A., Ph.D. Candidate, Wildlife Biology Program, Avian Science Center, University of Montana

### **Conservation Organizations**

Alberta Wilderness Association  
Arkansas Audubon Society  
Audubon Society of Corvallis  
Audubon Society of New Hampshire  
Biodiversity First!  
Bird Conservation Network  
Canton Audubon Society  
Chesapeake Wildlife Heritage  
Coastal Bird Conservation  
Conservation Northwest  
Delaware-Otsego Audubon Society  
Delaware Valley Ornithological Club  
Delmarva Ornithological Society  
Delta Waterfowl Foundation  
Detroit Audubon Society  
Eastern Long Island Audubon Society

Endangered Habitats League  
Foothills Audubon Club  
Fort Collins Audubon Society  
Francis M. Weston Audubon Society  
Friends of the San Pedro River  
Gaylord Nelson Audubon  
Golden Gate Audubon Society  
Great Old Broads for Wilderness  
Halifax River Audubon  
Hoy Audubon Society of Racine, Kenosha  
Illinois Ornithological Society  
Indianapolis Prize  
Kettle Range Conservation Group  
Lane County Audubon Society  
Los Padres ForestWatch  
Maryland Conservation Council  
Maryland Ornithological Society  
Menunkatuck Audubon Society  
Minnesota River Valley Audubon Chapter  
Ohlone Audubon Society  
Pacific Biodiversity Institute  
Palos Verdes/South Bay Audubon  
Prince George's Audubon Society  
Raptor Education Group, Inc.  
Roaring Fork Audubon  
St. Louis Audubon Society  
Salem Audubon Society  
Santa Clara Valley Audubon Society  
Save Our Cabinets  
Save Our Allegheny Ridges  
Saving Birds Thru Habitat  
South Bend-Elkhart Audubon Society  
Southern Adirondack Audubon Society  
The Tennessee Ornithological Society  
The Wildlife Center of Virginia  
Tucson Audubon Society  
Turtle Restoration Network  
Virginia Zoo  
Washington Crossing Audubon Society  
Washington Wildlife Federation  
Washtenaw Safe Passage  
West Virginia Highlands Conservancy  
Western Nebraska Resources Council  
WildLands Defense  
Wisconsin Audubon Council  
Wisconsin Bird Conservation Initiative  
Wisconsin Metro Audubon Society  
Zumbro Valley Audubon

