

United States Senate

WASHINGTON, DC 20510

April 4, 2018

The Honorable Ryan Zinke
Secretary
United States Department of the Interior
1849 C Street, NW
Washington, DC 20240

Dear Secretary Zinke:

We are writing to express our concerns regarding the Department of the Interior's interpretation of the Migratory Bird Treaty Act (MBTA) issued under the Solicitor's Opinion M-37050. We strongly urge you to reconsider this opinion and to cease any corresponding efforts to change agency rules or guidance under the MBTA. 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. With the signing of the Migratory Bird Treaty with Canada and subsequent treaties with Mexico, Japan, and Russia, and newly enshrined statutory protections for native birds, we rescued many species from the brink.

For the 1,000 species of birds protected by the MBTA, the menace of market hunting and the plume trade have since disappeared, but 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. In fact, U.S. Fish and Wildlife Service found that on an annual basis, electrocutions kill an estimated 5.4 million birds while oil pits kill an estimated 750,000 birds.

The Service, working closely with states, conservation groups, and industries, has led the way for decades in addressing and reducing these threats. Vital authorities under the MBTA enabled these advancements, and this new, unprecedented legal opinion puts the lives of countless birds, and the economies that rely on them, at risk. More than 45 million people watch birds around their homes and away from home. Birdwatchers spend nearly \$41 billion annually on trips and equipment, and local economies benefit from the \$14.9 billion that birdwatchers spend on food, lodging and transportation. Birds also consume approximately 98 percent of certain insect pests, including mosquitos.

We believe that the Department's interpretation of the MBTA stands in contradiction to 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 join with the seventeen former high-ranking officials in the Department of the Interior, under every

Republican and Democratic administration from President Nixon to President Obama, who recently wrote to you asking that you suspend the legal opinion and pursue a bipartisan, sensible path forward. As the officials describe, there have been significant strides in “defining the limits of this law through refined interpretations, court decisions, and common sense.”

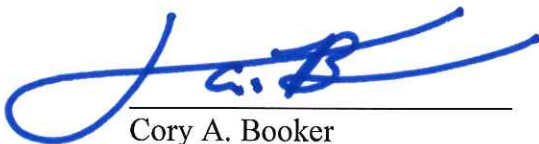
Through judicious enforcement of the law, the exemplary work of administrations over decades has led to covering innumerable oil pits, retrofitting power poles to prevent electrocutions, flagging transmission lines, adopting best management practices for wind energy, and more. This has been done by working diligently and in good faith with industries, striking a balance between development and conservation. 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, ties the hands of the Department’s wildlife professionals, and undermines our international obligations. There are reasonable alternatives available to address this issue that will positively impact birds and still provide 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.

We await your response.

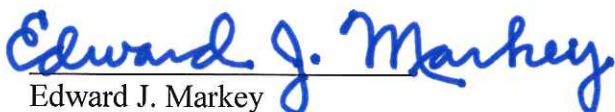
Sincerely,



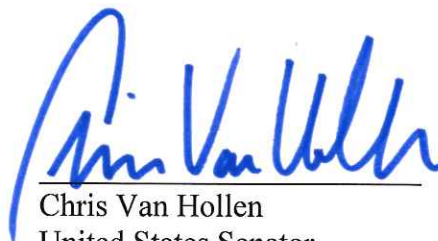
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United States Senator



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Chris Van Hollen
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