



Bringing back the birds

U.S. House Committee on Natural Resources
Subcommittee on Water, Oceans, and Wildlife
Legislative Hearing on
Discussion Draft of the *Migratory Bird Protection Act*

Statement by American Bird Conservancy

The Migratory Bird Treaty Act Needs to be Strengthened

Rep. Lowenthal's Migratory Bird Protection Act Offers Good Path Forward

Chairman Huffman, Ranking Member McClintock, and Members of the Subcommittee, on behalf of American Bird Conservancy, which works to conserve birds and their habitats throughout the Americas, please consider these comments on the need to strengthen protection for migratory birds and to highlight key elements of Rep. Alan Lowenthal's commendable *Migratory Bird Protection Act discussion draft*.



The Cerulean Warbler population has declined 70 percent over the past forty years.

In 1918, the United States enacted the Migratory Bird Treaty Act (MBTA) to [implement a 1916 treaty](#) between the U.S. and Canada to protect migratory birds. The Act helped restore populations of many birds, ranging from herons and egrets to shorebirds and waterfowl.

[In a legal opinion issued December 2017](#), the Administration abruptly reversed decades of government policy and practice — by both Democratic and Republican administrations — on the implementation and enforcement of the MBTA. The Act's prohibition on the killing or "taking" of

migratory birds has long been understood to extend to "incidental take" — meaning unintentional, but predictable and avoidable killing, from threats such as oil pits that trap birds, and tall towers and power lines responsible for many bird collisions.

Under the Administration's revised interpretation, the MBTA's protections will apply only to activities that purposefully kill birds. Any incidental take — no matter how inevitable, avoidable, or devastating its impact on birds — is now immune from enforcement under the law.

Conservation Groups, States, and Key Members of Senate Oppose MBTA Changes

In May, a coalition of national environmental groups, including American Bird Conservancy, Center for Biological Diversity, Defenders of Wildlife, National Audubon Society, National Wildlife Federation, and the Natural Resources Defense Council, [filed litigation](#) challenging the Administration's move to eliminate these longstanding protections. In September, eight states joined the effort and filed suit against the administration to reinstate these vital bird protections.



The recovery of waterfowl is a remarkable success of the Migratory Bird Treaty Act. Mallard chicks.

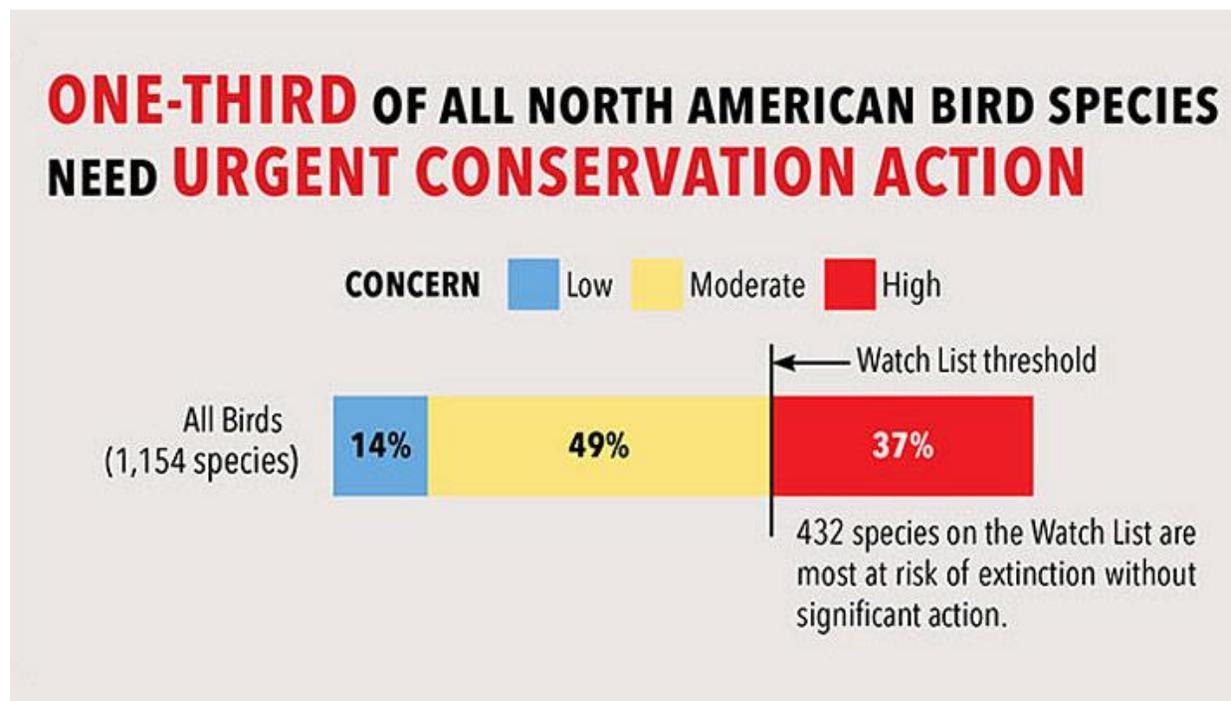
Opposition to the weakening of the Act is also mounting in Congress. All 10 Democratic members of the Senate's Committee on Environment and Public Works sent a [letter](#) to Interior Secretary Ryan Zinke, calling on him to [keep enforcing the MBTA](#), cited as the country's most important bird conservation law. In their letter, the Senators call attention to the 100-year history of the MBTA and why it remains essential.

ABC and a coalition of more than 500 conservation groups [have called on Congress](#) to defend the Act. And, in a remarkable show of support for keeping the MBTA strong, 17 high-ranking officials from previous Republican and Democratic administrations sent [a letter to Sec. Zinke](#) opposing the change. "This legal opinion is contrary to the long-standing interpretation by every administration (Republican and Democrat) since at least the 1970s, who held that the Migratory Bird Treaty Act strictly prohibits the unregulated killing of birds," they wrote.

The bipartisan group of signers includes several former Deputy Secretaries of Interior and several former directors of the U.S. Fish and Wildlife Service. They agreed on the effectiveness of the MBTA, stating, "The Migratory Bird Treaty Act can and has been successfully used to reduce gross negligence by companies that simply do not recognize the value of birds to society or the practical means to minimize harm."

Migratory Bird Population Declines and Economic Impacts

Sensitive to climate change and habitat loss, birds are among our best indicators of how ecosystems have been altered and how well we are doing at mitigating these changes. The news is not good: In the [State of North America's Birds 2016](#) report — an unprecedented trilateral analysis of how our birds are faring across the United States, Canada, and Mexico — data revealed that many of our bird species are disappearing, hastened along by habitat destruction, climate change, pesticides, and invasive species, among other factors. Today, fully one-third of all North American bird species, including seabirds, shorebirds, and grassland songbirds, urgently need conservation action.



Migratory birds are [more valuable than many realize](#). While birds have inherent value, they also are an economic driver, with U.S. bird enthusiasts spending billions of dollars each year on wildlife-watching equipment, backyard birding supplies, and birding tourism. Even more important, birds contribute to the biodiversity a healthy planet requires. They provide essential services necessary to people, from natural control of insect pests to seed dispersal and pollination.

Beyond their ecological significance, birds also connect us to our environment and nature in a positive feedback loop essential for human well-being, especially at a time when many people have too few chances to connect with wildlife and the outdoors. Birds exist all around us, easily found right in our own backyards and parks. They lift our spirits with their beauty and song.

Good Reasons for Affected Industrial Sectors to Support MBTA Permitting

The risk of liability under the MBTA has long provided the oil and gas industry, wind energy development companies, and power transmission line operators with an incentive to work with the U.S. Fish and Wildlife Service to minimize bird deaths. For example, in an effort to protect migratory birds and bats and avoid potential MBTA liability, the communications tower and power line industries have developed effective best management practices. The Administration's new policy eliminates this incentive for industries and individuals to minimize and mitigate foreseeable impacts of their activities on migratory birds, putting already-declining populations of our nation's songbirds and other migratory birds at risk.

Some companies put strong conservation practices in place without needing legal incentives. But having the law in place encourages all companies to do the right thing and creates a level playing field. The administration's policy change to MBTA takes the teeth out of the only law that protects the vast majority of our native birds. Millions of birds are killed by preventable industrial causes each year. [Hundreds of thousands](#) are killed by wind turbines — a number that continues to grow. [Millions more](#) perish at power lines and tall communications towers.

Because of the MBTA, we have seen steady progress toward reducing sources of bird mortality. Best management practices, like covering oil pits with screens, put little burden on industry but prevent many needless deaths of birds. In practice, enforcement of the MBTA has only occurred in a few instances when companies failed to adopt accepted industry best practices — and ignored government cautions and requests for mitigation. Only a handful of companies from across the energy sector have been prosecuted and fined, in spite of their known impacts on birds.

Solutions for Migratory Bird Conservation and Mitigating Industrial Impacts

American Bird Conservancy has proposed to resolve this problem by [petitioning the government](#) to create a migratory bird permitting system, similar to those now in place for eagles and endangered species. Agreed upon best management practices would be the basis for a permit, and it would provide industry with greater certainty and a level playing field where all players would be required to meet the same conservation standards.

Rep. Lowenthal's discussion draft reaffirms protection of migratory birds from incidental take, and provides an excellent framework to address the need to reduce preventable bird mortality through the application of best management practices and the mitigation hierarchy. The bill establishes a process to develop general incidental take permits for industrial sectors that cause significant mortality, and where best management practices have already been developed and proven effective.

A separate rulemaking would identify the agreed-upon the practices that would be included in a self-certifying permit for each sector. The bill emphasizes the role of each industrial sector in the development of these general permits. Other sectors could be added as best management practices are developed and proven effective. Thank you for considering these comments.

For more information, please contact Steve Holmer, Vice President of Policy, American Bird Conservancy, 202-888-7490, sholmer@abcbirds.org.