

Rogue Valley Audubon Society “Chat” Newsletter, February 2018

The Conservation Column

By Pepper Trail

The Migratory Bird Treaty Act (MBTA) is the world’s most comprehensive law protecting birds. Enacted in 1918 and revised several times since, it covers all North American native bird species with the exception of upland game birds (turkeys, grouse, and quail), making it illegal for anyone to “take, possess, import, export, transport, sell, purchase, barter, or offer for sale, purchase, or barter, any migratory bird, or the parts, nests, or eggs of such a bird except under the terms of a valid permit issued pursuant to Federal regulations.” For decades, the law has been considered to be a “strict liability statute” – that is, it applies to incidental “take” of birds as well as to deliberate killing. This is what has made it possible to impose fines and compel remediation on oil companies whose spills kill seabirds, electric companies whose power lines electrocute hawks, and wind companies whose turbines kill eagles.

On the Friday before Christmas, when it was sure to attract little press coverage, the Trump administration released a new legal memorandum that tosses aside this long-established and essential protection, stating that the killing of migratory birds violates the MBTA only when “the actor [is] engaged in an activity the object of which was to render an animal subject to human control.” By this “standard,” the next big oil spill – say, in the Arctic National Wildlife Refuge, which is now open for oil drilling as part of the Republican tax bill – would not violate the MBTA, no matter how many birds die. Wind turbine projects would no longer need to consult with the US Fish and Wildlife Service about ways to minimize their impacts on birds. A lot more hawks and eagles will be electrocuted by unprotected power lines.

Here is the National Audubon Society statement on this catastrophic decision:

“Christmas came early for bird killers. By acting to end industries’ responsibility to avoid millions of gruesome bird deaths per year, the White House is parting ways with more than 100 years of conservation legacy,” said David O’Neill, Audubon’s chief conservation officer, in response to the Trump Administration’s decision to no longer enforce the Migratory Bird Treaty Act (MBTA) in cases of incidental bird deaths.

“Gutting the MBTA runs counter to decades of legal precedent as well as basic conservative principles— for generations Republicans and Democrats have embraced both conservation and economic growth and now this Administration is pitting them against each other. The Migratory Bird Treaty Act is one of the most important conservation laws we have.

“We will engage our 1.2 million members to defend the MBTA from this and any other attack on the laws that protect birds.”

Congress passed the MBTA in 1918 (2018 will be its centennial year) in response to public outcry over the mass slaughter of birds, which threatened egrets and other species with extirpation. The law prohibits killing or harming America’s birds except under certain conditions, including managed hunting seasons for game species. The law protects more than 1,000 bird species in part because it requires industries implement commonsense best management practices like covering tar pits and marking transmission lines.

Facts and figures on industrial causes of bird mortality in the United States:

- Power lines: Up to 175 million birds per year
(Source: http://www.fs.fed.us/psw/publications/documents/psw_gtr191/Asilomar/pdfs/1051-1064.pdf)
- Communication towers: Up to 50 million birds per year
(Source: http://www.fs.fed.us/psw/publications/documents/psw_gtr191/Asilomar/pdfs/1051-1064.pdf)

- Oil waste pits: 500,000 to 1 million birds per year
(Source: <http://www.ncbi.nlm.nih.gov/pubmed/16988870>)
- Gas flares: No reliable mortality estimates, but an infamous 2013 incident in Canada incinerated an estimated 7,500 birds (Source: <http://www.cbc.ca/news/canada/new-brunswick/7-500-songbirds-killed-at-canaport-gas-plant-in-saint-john-1.1857615>)

Unfortunately, this is not the only terrible news related to the Migratory Bird Treaty Act. In Congress, H.R. 4239 – the “SECURE American Energy Act” – would change the MBTA to cement the Trump administration’s radical new interpretation and permanently end the government’s ability to address major sources of bird mortality from industrial activities. This change would represent the most significant roll back of the MBTA in its 100-year history. It would dramatically reduce the incentive for industries to implement best practices that save birds, and would limit the accountability and recovery from events and activities that kill substantial numbers of birds. For example, after the Gulf of Mexico oil spill, which killed more than one million birds, BP pled guilty to violations of the MBTA, paying \$100 million to recover damages to birds impacted by the spill. These funds are being distributed through the North American Wetlands Conservation Act to restore habitat for waterfowl and other birds.

What you can do:

Rogue Valley Audubon Society (joined by Audubon Society of Lincoln City and others from Oregon Audubon Council) has signed on to a letter from the American Bird Conservancy opposed to this new policy. I urge all ASLC members to read more about the Administration’s attack on the Migratory Bird Treaty Act at:

<http://www.cbbirds.org/2018/01/03/using-the-sword-of-damocles-to-decapitate-the-migratory-bird-treaty-act/>

Then, call Representative Walden and Senators Wyden and Merkeley and urge them to oppose any changes to the Migratory Bird Act, and specifically the “SECURE American Energy Act.” And while you’re at it, you might also urge them to oppose any changes to the Endangered Species Act!

Representative Greg Walden: Medford office: 541-776-4646; D.C. office: 202-225-5774

Senator Ron Wyden: Medford office: 541-858-5122; D.C. office: 202-224-5244

Senator Jeff Merkeley: Medford office: 541-608-9102; D.C office: 202-224-3753