



HOUSE COMMITTEE ON
NATURAL RESOURCES
CHAIRMAN BRUCE WESTERMAN

To: Subcommittee on Water, Wildlife and Fisheries Republican Members
From: Subcommittee on Water, Wildlife and Fisheries Staff: Richie O’Connell (richie@mail.house.gov), Doug Levine (doug.levine@mail.house.gov), Kirby Struhar (kirby.struhar@mail.house.gov), and Jackson Renfro (jackson.renfro@mail.house.gov); x5-8331
Date: Monday, March 2, 2026
Subject: Oversight Hearing titled “*Oversight of the Migratory Bird Treaty Act*”

The Subcommittee on Water, Wildlife and Fisheries will hold an oversight hearing titled “*Oversight of the Migratory Bird Treaty Act*” on **Wednesday, March 4, 2026, at 2:00 p.m., in room 1324 Longworth House Office Building.**

Member offices are requested to notify Hannah Garrett (hannah.garrett@mail.house.gov) by 4:30 p.m. on Tuesday, March 3, 2026, if their Member intends to participate in the hearing.

I. KEY MESSAGES

- House Republicans have prioritized reviewing and reauthorizing major permitting and environmental statutes.
- Although migratory birds are critical to sustaining functioning ecosystems and economies, their unchecked population growth is harming hardworking Americans. The laws intended to conserve these populations must be updated to alleviate that harm.
- Specifically, the mechanisms for take under the Migratory Bird Treaty Act (MBTA) must be improved to account for migratory birds’ impacts on other species, including threatened and endangered species.
- The MBTA regulatory framework for incidental take has whiplashed between successive administrations and conflicting federal court rulings, creating significant uncertainty for American businesses.

II. WITNESSES

Panel I (Outside Experts)

- **Mr. Mike McCormick**, President, Mississippi Farm Bureau Federation, Jackson, Mississippi
- **Mr. Davy Hite**, Co-Host, Bassmaster Television, Ninety Six, South Carolina
- **Ms. Lesly Swanson**, Senior Environmental Scientist, Salt River Project, Tempe, Arizona
- **Mr. Paul Schmidt**, Assistant Director for Migratory Birds (Retired), U.S. Fish and Wildlife Service, Palmyra, VA (*Minority Witness*)

III. BACKGROUND

MBTA Overview

Enacted in 1918 and amended subsequently, the Migratory Bird Treaty Act (MBTA)¹ implements four conservation treaties—those which the U.S. entered into with Canada in 1916, with Mexico in 1936, with Japan in 1972, and with Russia in 1976—whose shared purpose is to ensure the sustainability of protected migratory bird species.² The MBTA treaties protect over 900 bird species,³ using the term “migratory bird” to include all wild species of crows, ducks, falcons, geese, hawks, snipes, woodcocks, mourning doves, and white-winged doves.

The MBTA prohibits “take” of protected migratory bird species without prior authorization by the U.S. Fish and Wildlife Service (Service). “Take” is defined as killing, capturing, selling, trading, or transporting a protected migratory bird species.⁴ The Service has promulgated regulations under the MBTA that restrict the take of migratory birds, including which species can be hunted, the length of hunting seasons, bag limits, and the use of live decoys or other techniques to hunt migratory birds.

Take of Migratory Birds Under the MBTA

While each treaty contains different requirements and covers different species, they all aim to limit the take of migratory birds. When take is authorized, however, the rationale varies by treaty. The treaties with Japan⁵ and Russia⁶ permit take of migratory birds to protect people or property. The treaties with Canada,⁷ Japan, and Russia allow for take for “specific purposes.” The treaty with Mexico⁸ contains specific language allowing for take only for scientific purposes, such as for propagation, museums, and private game farms. In the case of insectivorous migratory birds, the treaty with Mexico contains more specific language, allowing for take “when they become injurious to agriculture and constitute plagues.”⁹

The MBTA authorizes the Service to allow hunting and taking when it is “compatible with the terms of the conventions” and to “adopt suitable regulation permitting and governing the same.”¹⁰ The Service has used this authority to establish regulated hunting seasons for migratory

¹ 16 U.S.C. 703-712.

² “Migratory Bird Treaty Act of 1918,” U.S. Fish and Wildlife Service, <https://www.fws.gov/law/migratory-bird-treaty-act-1918>.

³ *Id.*

⁴ *Id.*

⁵ Convention Between the Government of the United States of America and the Government of Japan for the Protection of Migratory Birds and Birds in Danger of Extinction, and Their Environment, March 4, 1972, <https://www.fws.gov/sites/default/files/documents/treaty-japan-migratory-birds.pdf>.

⁶ Convention Between the United States of America and the Union of Soviet Socialist Republics [Russia] Concerning the Conservation of Migratory Birds and Their Environment, November 26, 1976, <https://www.fws.gov/sites/default/files/documents/treaty-russia-migratory-birds.pdf>.

⁷ Protocol Between the Government of the United States of America and the Government of Canada Amending the 1916 Convention Between the United Kingdom and the United States of America for the Protection of Migratory Birds in Canada and the United States, December 14, 1995, <https://www.fws.gov/sites/default/files/documents/treaty-canada-migratory-birds-1995.pdf>.

⁸ Convention between the United States of America and Mexico for the Protection of Migratory Birds and Game Mammals, February 7, 1936, <https://www.fws.gov/sites/default/files/documents/treaty-mexico-migratory-birds-1936.pdf>.

⁹ *Id.*

¹⁰ 16 U.S.C. 704.

bird species, such as waterfowl. The Service also issues permits for the import or export of species, banding or marking, depredation, and other activities. Congress has explicitly authorized some of these permits, such as the current depredation permit system for black vultures and common ravens.

Debate has surrounded the extent to which MBTA's take prohibitions apply to the "incidental take" of migratory birds, such as take resulting from the operation of industrial facilities like wind farms. The Service defines "incidental take" under MBTA as "take that results from an activity, but is not the purpose of that activity."¹¹ However, no fewer than five federal courts have adopted different positions on whether take prohibitions apply to incidental take.¹² These rulings range from interpreting the MBTA as a strict-liability statute covering all forms of take to limiting its scope to only purposeful take. Given this legal ambiguity, the Service has relied on successive departmental legal opinions to govern its handling of incidental take. Under both the Obama and Biden administrations, the Service stated that the MBTA prohibits incidental take; under both Trump administrations, the Service has maintained that it does not.



Figure 1: Picture showing the interaction between birds and power lines | Source: Wildlife Mitigation

The latest opinion, titled M-37085, was published on April 11, 2025, by Acting Solicitor Gregory Zerzan¹³ and determined that the opinion published in 2017 during the first Trump administration (2017 Opinion) should govern how the Service treats incidental take under the MBTA. The 2017 Opinion concluded that strict liability under the MBTA is not triggered unless there is an intentional act to take a migratory bird.¹⁴

However, in subsequent actions, the Trump administration has signaled that it may hold a different view on the impacts of wind and solar energy facilities on migratory birds. On July 29, 2025, Secretary of the Interior (Secretary) Doug Burgum issued Secretarial Order No. 3437 (2025 Order), which instructed the U.S. Department of the Interior to examine "[MBTA]

¹¹ Memorandum from Solicitor of the U.S. Department of the Interior to Director of U.S. Fish and Wildlife Service on Incidental Take Prohibited Under the Migratory Bird Treaty Act. January 10, 2017, <https://www.doi.gov/sites/default/files/m-37041-incidental-take-prohibited-under-the-migratory-bird-treaty-act-011017.pdf>.

¹² Cassandra Barnum, "The Migratory Bird Treaty Act (MBTA): Selected Legal Issues," Congressional Research Service, August 12, 2025, <https://www.congress.gov/crs-product/R44694>.

¹³ Memorandum from Solicitor of the U.S. Department of the Interior to Assistant Secretary for Fish and Wildlife and Parks on the Withdrawal of Solicitor Opinion M-37065 "Permanent Withdrawal of Solicitor Opinion M-37050 'the Migratory Bird Treaty Act Does Not Prohibit Incidental Take,'" April 11, 2025, <https://www.doi.gov/sites/default/files/documents/2025-04/m-37085.pdf>.

¹⁴ Memorandum from Solicitor of the U.S. Department of the Interior to Director of U.S. Fish and Wildlife Service on Incidental Take Prohibited Under the Migratory Bird Treaty Act. January 10, 2017, <https://www.doi.gov/sites/default/files/m-37041-incidental-take-prohibited-under-the-migratory-bird-treaty-act-011017.pdf>.

compliance consultation” of renewable energy projects, among other things.¹⁵ Additionally, the 2025 Order required the Assistant Secretary for Land and Minerals Management to produce for the Secretary a report that provides recommendations regarding “[t]rends in environmental impacts from onshore and offshore wind projects on wildlife, especially birds, marine mammals, and fisheries.”¹⁶

The change of policy from one administration to another has created great legal uncertainty for many regulated industries, including electric utilities. Many activities conducted by electric utilities, such as ongoing operations and maintenance, infrastructure upgrades, and wildfire prevention, could affect migratory bird species. In its public comments to the Biden administration’s proposed rules regarding incidental take under MBTA, the National Rural Electric Cooperatives Association stated, “it is impossible for individuals and companies to know exactly what is legally required when otherwise lawful activities result in accidental bird deaths.”¹⁷

Species-Specific Issues

Waterfowl Hunting

While various waterfowl species are protected under the MBTA, waterfowl hunting is a treasured heritage throughout much of the U.S., drawing over a million participants each year. Hunting for waterfowl is permitted pursuant to a set of federal regulations, which in turn inform flyway and then state-specific regulations. Federal regulations establish season frameworks, including the dates when hunting seasons may open and must close; daily individual take limits; and shooting hours. Annual population surveys and recommendations by the four flyway councils (Atlantic, Mississippi, Central, and Pacific) inform these regulations.

Under the MBTA, waterfowl hunting seasons cannot exceed 107 days, and their exact lengths vary by flyway based on the abundance of birds, number of hunters, and migration patterns.¹⁸ Typically, the Pacific Flyway has the longest season and the Atlantic and Mississippi Flyways have the shortest. Once the federal regulations are established



Figure 2: Map of the four flyway councils | Source: U.S. Fish and Wildlife Service

¹⁵ Order No. 3437: Ending Preferential Treatment for Unreliable, Foreign-Controlled Energy Sources in Department Decision Making, Secretary Doug Burgum, July 29, 2025, <https://www.doi.gov/document-library/secretary-order/so-3437-ending-preferential-treatment-unreliable-foreign>.

¹⁶ *Id.*

¹⁷ Comments on the US Fish and Wildlife Service Draft Environmental Impact Statement No. 20200117 on Regulations Governing Take of Migratory Birds, 85 FR 34625, National Rural Electric Cooperatives Association. On file with Subcommittee on Water, Wildlife, and Fisheries Staff.

¹⁸ “How the Hunting Seasons and Limits are set for Waterfowl,” U.S. Fish and Wildlife Service, <https://www.fws.gov/story/how-hunting-seasons-and-limits-are-set-waterfowl>.

for the year, states can then set their own regulations, so long as they comply with the federal regulations. This approach has proven popular with both hunters and states and could provide a potential framework for the management of other migratory bird species.

Double-crested Cormorants

Double-crested cormorants (cormorants) are one of six cormorant species native to North America, with the largest concentration located in the Great Lakes region. Cormorants were listed under the MBTA in 1972 when their population had contracted alongside the widespread use of chemicals like dichloro-diphenyl-trichloroethane (DDT).¹⁹ Today, however, the Service estimates the population of cormorants in the continental U.S. and Canada to be between 871,001 and 1,031,757 birds,²⁰ indicating a much-improved situation.

A cormorant's diet consists mostly of fish, averaging a pound of fish per day. According to the Service, cormorants "are opportunistic and generalist feeders, preying on many species of fish by concentrating on those that are easiest to catch."²¹ This approach can make commercial aquaculture facilities and free-swimming fish populations optimal feeding grounds for cormorants. A 2021 study, for example, estimated that cormorants imposed economic losses of roughly \$64.7 million per year on fish farms, including the costs of non-lethal management techniques and revenue lost from cormorant depredation.²² Additionally, in 2018, the Michigan Department of Natural Resources testified at a House Committee on Natural Resources field hearing that cormorant predation was a "major explanatory factor" in the decline of perch populations in the Great Lakes.²³

In 1998, the Service utilized MBTA authorities to create two depredation orders for cormorants, one for aquaculture facilities and one for public resources.²⁴ Each order allowed the U.S. Department of Agriculture's Animal and Plant Inspection Service (APHIS) to work with fish farmers and state game and fish agencies to implement non-lethal and lethal techniques to prevent cormorants from damaging the viability of commercial aquaculture ponds and public resources.



Figure 3: Cormorant eating a juvenile fish | Source: Seafood Source

Unfortunately, a 2014 renewal of the public resources order triggered a lawsuit from the Public Employees for Environmental Responsibility (PEER), which argued that the renewal violated the

¹⁹ "Expanding Management of Conflicts Associated with Double-crested Cormorants: Frequently Asked Questions," U.S. Fish and Wildlife Service, <https://www.fws.gov/node/417891>.

²⁰ *Id.*

²¹ *Id.*

²² Carole R. Engle, et al., "Principal economic effects of cormorant predation on catfish farms," *Journal of the World Aquaculture Society*, 2021, 52:41–56, <https://doi.org/10.1111/jwas.12728>.

²³ Testimony of Randall Claramunt, House Committee on Natural Resources, Subcommittee on Oversight and Investigations, Oversight Hearing on "Fisheries Impact from Double-Crested Cormorant Populations in the Great Lakes," June 11, 2018, <https://www.congress.gov/115/meeting/house/108380/witnesses/HHRG-115-II00-TTF-ClaramuntR-20180611.pdf>.

²⁴ 50 CFR 21.47.

National Environmental Policy Act (NEPA).²⁵ On May 25, 2016, Judge John D. Bates of the U.S. District Court for the District of Columbia ruled in PEER’s favor, concluding that the Service violated NEPA by reissuing the public resources order without an adequate environmental assessment (EA). Judge Bates also vacated the order for aquaculture facilities for failing to have an adequate EA.²⁶

With the removal of the aquaculture and public resources orders, the Service created an individual permit system based on a Population Take Limit (PTL) model. The PTL model is based on nest counts and requires individuals to apply annually for permits. When the Service issues a permit to take cormorants, it specifies the number of cormorants allowed to be taken under that permit. Currently, the Service allows an annual take of up to 121,504 cormorants.²⁷ At a legislative hearing on April 8, 2025, the Subcommittee on Water, Wildlife and Fisheries heard testimony about how the PTL model “creates a patchwork of guessing by [the Service] on where the main problems will occur each year.”²⁸ On December 9, 2025, the House of Representatives passed H.R. 2293, the “Cormorant Relief Act of 2025,” which would reinstate the depredation order for aquaculture facilities.

Black Vultures

Black vultures are protected under the MBTA²⁹ and inhabit much of the eastern and central United States, with a range extending all the way into South America.³⁰ Since the MBTA’s enactment, the black vulture population has grown to over 190 million birds worldwide and increases by approximately 3.4 percent each year.³¹



Figure 4: Black vultures predating on a calf | Source: Purdue University

Black vultures are notorious threats to livestock, often plucking out eyes, eating tongues of newborn animals, and killing and feeding on smaller farm animals like chickens. Black vultures regularly attack and feed on calves, often killing the animals during or immediately after birth.

²⁵ *Pub. Emp. for Env’l Responsibility v. U.S. Fish and Wildlife Serv.*, No. 1:2014cv01807 (D.D.C. 2016), [5 26 16 Cormorant Court Ruling and Order.pdf](#).

²⁶ *Id.*

²⁷ “Expanding Management of Conflicts Associated with Double-crested Cormorants: Frequently Asked Questions,” U.S. Fish and Wildlife Service, <https://www.fws.gov/node/417891>.

²⁸ Testimony of Chris McGlawn, House Committee on Natural Resources, Subcommittee on Water, Wildlife and Fisheries, Legislative Hearing on H.R. 839, H.R. 1809, H.R. 2293, and H.R. 2316, April 8, 2025, <https://docs.house.gov/meetings/II/II13/20250408/118118/HHRG-119-II13-Wstate-McGlawnC-20250408.pdf>.

²⁹ 16 U.S.C. 703-712.

³⁰ “Black Vulture,” Hawk Mountain Sanctuary, <https://www.hawkmountain.org/raptors/black-vulture#>.

³¹ “North American Breeding Survey, Results and Analysis 1966-2019,” U.S. Geological Survey, Patuxent Wildlife Research Center, <https://www.mbr-pwrc.usgs.gov/>.

Moreover, since the 1990s, black vultures have increased in abundance and expanded their historical range, resulting in a corresponding increase in livestock depredations attributable to them.³² Results from a 2022 study conducted by APHIS and Purdue University in Indiana, for example, showed that 38 percent of cattle producers in that state reported livestock losses due to black vultures.³³ Relatedly, a survey of Florida ranchers showed that each black vulture depredation costs a cattle producer an average of \$2,000.³⁴

Take of black vultures is allowed through a system where permits are usually issued to a state farm bureau or a state agency, which then issues sub-permits to livestock producers. These sub-permits can allow for up to ten takes per year. However, testimony from previous subcommittee hearings reveals that instances of 40 to 50 black vultures descending onto calving pastures are not uncommon, highlighting the inadequacy of current permitting limits.³⁵

The Service works in partnership with APHIS to help producers experiencing black vulture-related problems. According to its Fiscal Year 2024 Budget Justification, APHIS “conducted direct control in 22 States in 2022, removing 13,154 black vultures and dispersing 83,454 black vultures to protect agriculture, human health and safety, and property.”³⁶

Over the last two Congresses, the House Committee on Natural Resources has favorably reported the bipartisan “Black Vulture Relief Act.” The legislation would eliminate the current permitting structure and allow livestock producers to take a black vulture without a permit if they have a reasonable belief that their animals could be harmed by that vulture. Livestock producers would still be required to annually report their black vulture take to the Service. This improved framework would allow livestock producers to take sensible measures to protect their livelihoods without enduring needless bureaucratic delays and restrictions.

³² Brandon M. Quinby, et al., “Spatial risk modeling of cattle depredation by black vultures in the midwestern United States,” *The Journal of Wildlife Management*, April 12, 2022, <https://wildlife.onlinelibrary.wiley.com/doi/full/10.1002/jwmg.22231>.

³³ “2024 USDA Explanatory Notes – Animal and Plant Health Inspection Service,” Animal and Plant Health Inspection Service, 2023, <https://www.usda.gov/sites/default/files/documents/23-2024-APHIS.pdf>.

³⁴ Michael P. Milleson, et al., “Vulture-Cattle Interaction – A Survey of Florida Ranchers,” Animal and Plant Health Inspection Service, Wildlife Services National Research Center, https://escholarship.org/content/qt7c56v4nq/qt7c56v4nq_noSplash_b0731b71c06c76a1bcc875b7120a2c36.pdf?t=plu173.

³⁵ Testimony of Charlie Beshler, House Committee on Natural Resources, Subcommittee on Water, Wildlife and Fisheries Legislative Hearing on H.R. 1437, H.R. 1792, H.R. 2950, H.R. 2982, H.R. 4051, H.R. 4094, H.R. 4587, and H.R. 4596, https://naturalresources.house.gov/uploadedfiles/testimony_beshler.pdf.

³⁶ “2024 USDA Explanatory Notes – Animal and Plant Health Inspection Service,” Animal and Plant Health Inspection Service, 2023, <https://www.usda.gov/sites/default/files/documents/23-2024-APHIS.pdf>.