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Environmental Moments

# THE ENVIRONMENT AND UTILITIES

## The Migratory Bird Treaty Act

### What is the Migratory Bird Treaty Act?

Simply put, the Migratory Bird Treaty (MBTA) Act seeks to limit human-caused mortality and injury to migratory birds. It was enacted in 1918 and implemented treaties with Canada, Mexico, Japan, and the Russian Federation. (FWS) The aim of instituting the MBTA was to limit the heavy decline of migratory bird populations, which have seen a loss of approximately 3 billion birds in the last 50 years. (FWS)

The MBTA has been of particular interest to utilities, as migratory birds pass through rights-of-way and offer both opportunity and impediment. While conserving the environment is always important, “Migratory birds [also] play an important role in their ecosystems, not limited to pollination, disease and pest control, carrion disposal and seed dispersal, according to U.S. Fish and Wildlife.” (TCIA) While preserving the environment and its diverse populations should be a priority for everyone, accidental take and the ability to prosecute it has been a raging debate.

### M-37050: The Migratory Bird Treaty Act Does Not Prohibit Incidental Take

The M-37050 legal opinion released by the Department of the Interior (DOI) has been the subject of much controversy since its inception and has since been overturned. It clarified that, “the penalties for pursuing, hunting, taking, capturing, killing, or attempting to do the same apply only to intentional actions, and do NOT apply to incidental or accidental take of migratory birds.” (Davey Tree) This helped to narrow what previously seemed like an endless scope of liability, however, controversy stemmed from the perception that intentionality can be difficult to prove, therefore leaving bad actors more leeway to abuse the law.

### The August 11th Ruling

In August of 2020, a U.S. district judge in New York ruled against the DOI, stating that it ran counter to the MBTA’s purpose. (TCI) The DOI has been heavily critical of this ruling, and it is in contention to this day. Regardless, the protected migratory birds listed at [fws.org](https://www.fws.gov), should be monitored for and precautions should be taken to prevent any harm or take of these birds. Keeping abreast of these ever-changing policies can be difficult, but with such drastic shifts occurring over the last few years, it is important to try and be aware of the current legal landscape.

### Works Consulted

“Avoiding and Minimizing Incidental Take of Migratory Birds: U.S. Fish & Wildlife Service.” FWS.gov, <https://www.fws.gov/library/collections/avoiding-and-minimizing-incident-take-migratory-birds>.

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