



Audubon



Canada Geese
iStock

The MBTA Works and the Biggest Winners are Renewables

How a bird conservation law and industry can work together for everyone to win

Threats to birds covered under the Migratory Bird Treaty Act



American Coot
Pedro Ramirez Jr./USFWS



Great Egrets
Camilla Cerea/Audubon



iStock



Pavel Talashov/Alamy



Oiled Brown Pelican
Kim Hubbard/Audubon



Tom Shockey/Flickr (CC BY 2.0)

Oil waste pits

500,000 to 1 million birds killed per year

Power lines

Up to 64 million birds killed per year, from collisions and electrocution

Gas flares

Unknown number but thousands have been killed in single events

Communication towers

Up to 7 million birds killed per year from collisions

Oil spills

More than 1 million died from the Deepwater Horizon spill

Wind turbines

Up to 328,000 died due to wind turbine strikes

The century-old Migratory Bird Treaty Act prevents the accidental killing of birds, and over the years has been extremely successful at protecting bird life. Because of the MBTA, oil drillers and power line companies have taken common sense precautions to help prevent bird deaths.

How the MBTA works

Birds can die when they land on an uncovered oil waste pit that appears to be typical pond, or run into an unseen power line. **These kinds of deaths are called "incidental takes," or deaths that occur due to activities that are otherwise lawful.** The MBTA provides a framework so that industry knows what is expected of them to help prevent birds being killed during normal course of business.

Stopping the Bird-Killer Amendment

Legislation in Congress (HR 4239) introduced by Congressman Liz Cheney, and a new interpretation of the law by the administration, would end industry accountability for bird deaths. But the MBTA is not an onerous burden on the industry. In fact, a number of industries and individual companies, working with conservation groups and wildlife agencies, have already developed and often implemented best practices to protect birds, many of which are simple and cheap.

Which birds are protected by MBTA

More than 1,000 birds are currently protected by the MBTA, including iconic birds like the Bald Eagle, the Snowy Egret, and the Cinnamon Teal. Weakening protections the MBTA provides puts any bird not protected under another law, like the Endangered Species Act or the Bald and Golden Eagle Protection Act, at risk.

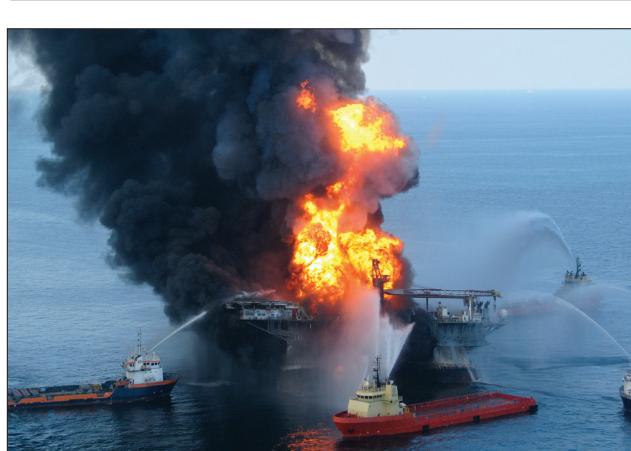
- Sandhill Crane
- Red-winged Blackbird
- Cerulean Warbler
- Roseate Spoonbill
- Dickcissel
- Common Loon
- Green-winged Teal
- Bobolink
- Horned Lark
- Baltimore Oriole
- Common Raven
- Tundra Swan
- Painted Bunting
- Black-billed Magpie
- Snowy Egret
- Great Blue Heron
- Blackburnian Warbler
- Red-breasted Nuthatch



Blackburnian Warbler
Jamie Harrelson/Audubon Photography Awards

One-third of all North American bird species need urgent conservation action

Watch List* threshold



Deepwater Horizon
U.S. Coast Guard

Deepwater Horizon and the MBTA

More than 1 million birds were killed by the Deepwater Horizon oil spill. Because of the destruction that the oil spill and cleanup wrought on birds, BP settled with the U.S. government to pay \$100 million in fines. That money will be used to restore important bird habitat.

If the administration's MBTA interpretation stands, or if legislators are successful in changing the law so that only the deliberate killing of birds is penalized, then companies responsible for oil spills like Deepwater Horizon that kill birds can do so with impunity. A future BP would not have to make restitution for the birds it killed.

Defending the MBTA from current threats

115th Congress

HR 4239 amendment (the "Cheney amendment") exempts incidental take

Current administration

Issued legal opinion that exempts incidental take from enforcement

Withdrew permitting process that manages incidental take

MBTA by the numbers: Most violations addressed the oil industry



Number of cases

Total: 452*

Oil pit/tank: 407

Mining: 10 Pesticide: 9 Oil spill: 8 Power lines: 7

Chemicals: 3 Wind: 3 Unspecified energy: 2 Water treatment: 2 Oil rig: 1



Fines

Total: \$255,603,579

Oil spills: \$249,000,000

Everything else: Oil pit/tank, chemicals, wind, mining, power lines, and other causes.

* Data compiled from publicly available reports, law databases, and case law

90%

incidental take violations issued were for oil waste pits and tanks

\$6,500

average fine for each oil pit violation

97%

fines involving incidental take are from two major oil spills: Exxon Valdez and Deepwater Horizon

Debunking myths about the Migratory Bird Treaty Act

Myth:

The MBTA is hindering energy development and other industrial activity.



Myth:

If the law isn't changed, anyone that accidentally kills a bird is at risk from prosecution, including homeowners and car drivers.



Myth:

Exempting incidental take is the only path forward to provide more regulatory certainty under MBTA.



Fact:

There is no evidence that energy projects are being stifled by the MBTA, or that any projects have not been permitted because of the law. The Fish and Wildlife Service has used significant discretion when enforcing the law, after working directly with industries to share best management practices that can effectively and feasibly reduce bird deaths. Egregious and preventable cases have led to enforcement under the MBTA, including from oil pits, toxic waste, and major oil spills such as Deepwater Horizon, which killed one million birds.



Fact:

In 100 years, there has never been a prosecution for those activities, and there is no expectation that there ever will be. Only industrial actors that caused bird deaths from their activities and failed to take reasonable action to prevent them have been issued violations.



Fact:

The Fish and Wildlife Service proposed an incidental take permit process in 2015, which could have provided regulatory certainty while ensuring the conservation of birds. This could be an effective path forward for industry and birds, but the Trump administration has withdrawn the rulemaking and issued a legal opinion that incidental take is not covered under the law. Audubon supports an efficient permit system and is willing to work on other approaches that protect birds and responsibly advance industrial activity.



Audubon supports reaching 50% renewable-power generation by 2030



By advocating for well-sited renewable energy projects and policies.



By making conservation legislation—including MBTA—part of renewable solution.



By working with all stakeholders—energy developers, conservation organizations, government agencies—to promote renewable energy policies at the state and federal levels.



By recognizing that climate change is the greatest environmental threat facing all life on the planet—and working together on the full portfolio of solutions.



At Duke's Top of the World wind farm outside Casper, Wyoming, an IdentiFlight unit scans the horizon for raptors. Its AI software can pick out eagles at risk of collision and trigger a turbine curtailment.

Spencer Lowell



Audubon

100 years with the MBTA

Through 19th Century

With essentially zero regulations in place, market hunters decimated U.S. bird populations.

Fight to save birds takes off

Aug. 16, 1916

Migratory Bird Treaty signed between the U.S. and Canada (through Great Britain).

July 3, 1918

MBTA signed by President Woodrow Wilson.

- ▶ The MBTA prevents the killing of birds without a permit.
- ▶ Audubon was instrumental in lobbying to pass the bill.

Addressing new threats while collaborating on a path forward

1970s

U.S. agencies address incidental take of birds from oil and gas, electricity, and chemical companies by issuing fines for bird deaths.

1989

Avian Power Line Interaction Committee (APLIC) formed.

- ▶ Audubon, electric utilities, and the U.S. Fish and Wildlife Service join forces to address bird mortality from transmission lines.
- ▶ Exxon Valdez runs aground in Prince William Sound, killing up to 250,000 birds.
- ▶ Settlement leads to almost \$125 million in fines under MBTA.

2010

Deepwater oil spill in Gulf of Mexico kills one million birds.

- ▶ Settlement leads to \$100M in fines under the MBTA. Money being put toward wetland restoration.

2012

Wind energy guidelines finalized with Audubon input on best practices.

2013

First wind project to lose MBTA prosecution after failing to adopt best practices.

2015

Avian-Solar Working Group formed to facilitate research on solar and migratory birds.

2015

FWS announces the intent to pursue an incidental take permit program, supported by Audubon and other organizations.

Congressional attacks ramp up

2015

Amendment added to appropriations bill would block all enforcement of the MBTA. It did not pass.

2017

House bill (H.R. 4239) includes Cheney amendment that guts the MBTA by exempting incidental take.

- ▶ Administration issues legal opinion that exempts incidental take from enforcement.

What's next?

2018

Celebration of the 100th anniversary of the MBTA...

...but will MBTA still be intact?