



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Washington, D.C. 20240



In Response Reply to:
FWS/AMB/069528

FEB 21 2019

The Honorable Chris Van Hollen
United States Senate
Washington, DC 20510

Dear Senator Van Hollen:

Thank you for your letter dated December 3, 2018 following-up on questions before the Interior, Environment, and Related Agencies Appropriations Subcommittee on May 10, 2018, and the subsequent Question for the Record that you submitted after the hearing related to the Migratory Bird Treaty Act (MBTA) and the Solicitor's M-Opinion, M-37050.

From its inception, the MBTA has been a valuable conservation tool. The initial migratory bird treaty established by the United States with Great Britain, on behalf of Canada, and the subsequent 1918 enactment of the MBTA were largely intended to reduce the threat to migratory birds from plume collection and market hunting. These threats were effectively eliminated through enforcement of the MBTA, regulation of migratory bird hunting, and sustainable authorization of purposeful take. In the 21st Century, the MBTA continues to be an important tool to protect migratory birds.

In practice, the new M-Opinion means that if an oil or hazardous chemical release occurs and is not done with the intent of taking migratory birds, the MBTA does not apply. Protections of publicly held natural resources, including migratory birds, under other authorities (such as the Comprehensive Environmental Response Compensation and Liability Act, Oil Pollution Act, and Clean Water Act) will still apply in these situations. Parties responsible for these incidents will also still be held accountable under the incidental take prohibitions in the Endangered Species Act and Bald and Golden Eagle Protection Act, as well as any applicable state laws. The M-Opinion applies to all industries equally, and the Department will continue to work with our industry partners to minimize impacts on migratory birds, whenever proponents or operators are willing to work with us toward this goal.

If you have additional questions, please contact me or Mr. Jerome Ford, Assistant Director – Migratory Bird program, U.S. Fish and Wildlife Service, at (202) 208-1050.

Sincerely,

Margaret E. Everson
Principal Deputy Director
Exercising the Authority of the Director,
U.S. Fish and Wildlife Service.