

# **The Migratory Bird Protection Act of 2024**

## **Jared Huffman (D-CA) and Brian Fitzpatrick (R-PA)**

### **Background**

The Migratory Bird Treaty Act (MBTA) has been a critical bird conservation tool for over 100 years. However, aspects of its implementation have been open to interpretation between administrations, leaving bird species with patchwork protections. The *Migratory Bird Protection Act* addresses language within the MBTA that seeks to eliminate “incidental takes” by commercial activity. An incidental take is when birds are killed during an otherwise legal activity – for example, birds that are killed by flying into open oil pits. Previous administrations have used fines and financial incentives to reduce incidental takes by commercial and business entities.

In 2017, the Department of Interior (DOI) issued a legal opinion that, for the first time, exempted all incidental take from enforcement. This decision posed a significant potential impact on the health of bird populations, as the U.S. Fish and Wildlife Service (FWS) estimates that up to 1.3 billion migratory birds each year are poisoned, electrocuted on electric power poles, or killed in oil pits, wind turbines, power lines, and collisions with buildings.

The Biden administration has subsequently published a proposed rule to revoke the Trump-era exemption and issued an order that the MBTA would be interpreted as prohibiting all accidental and unpermitted migratory bird killings. This decision, while important for protecting migratory birds, has left industries open to legal uncertainty while the new rulemaking is being developed to permit and authorize the incidental take of migratory birds.

The *Migratory Bird Protection Act* would give the DOI tools to address the incidental take of migratory birds and regulate industrial sources of bird mortality. This legislation also calls on the FWS to develop a permit program to authorize incidental take in order to minimize regulatory burdens and give clarity to commercial entities in complying with the MBTA.

### **Bill Summary**

The bipartisan *Migratory Bird Protection Act* will amend the Migratory Bird Treaty Act to direct the Department of Interior to:

- Provide clarity to industry groups by creating regulations to authorize the incidental take of migratory birds.
- Assess civil penalties or commence a civil action (i.e. injunction) for the incidental take of migratory birds.
- Collect fees in authorizing and administering the incidental take of migratory birds to be used for administrative costs of the permit program and conserving bird populations.
- Establish a research program to monitor migratory bird populations, and understand, identify, and mitigate stressors to their populations.
- Submit a report to Congress on the effectiveness of the legislation in conserving migratory bird populations.

It authorizes 10 million annually to carry out these provisions.

The *Migratory Bird Protection Act* is endorsed by the American Bird Conservancy, Audubon Society, Defenders of Wildlife, National Wildlife Federation, and Wildlife Society.