



## Migratory Bird Treaty Act

In the early 20<sup>th</sup> century, many North American bird populations experienced rapid declines as a result of unregulated market hunting driven by high-demand for wild bird products in food and fashion. In an effort to reverse these trends, the United States and Great Britain (representing Canada) signed the Convention for the Protection of Migratory Birds in 1916. Congress then passed the Migratory Bird Treaty Act (MBTA) in 1918 to implement the provisions of the convention, thus protecting native migratory birds in the U.S.

### Methods

MBTA allows the United States to give effect to promises made in international treaties for the protection of migratory birds by serving as an authorizing device for implementing and amending regulations in the U.S. deemed necessary to protect migratory birds covered by the treaties.



The U.S. Fish & Wildlife Service (USFWS) is responsible for administering MBTA. USFWS can add or remove species from the list of protected migratory birds based on new taxonomy and/or new evidence of occurrence in the U.S.<sup>2</sup>

MBTA makes it "unlawful at any time, by any means or in any manner, to pursue, hunt, take, capture, kill, [or] sell...any migratory bird [or] any part, nest, or egg of any such bird," except as otherwise permitted by a valid permit. Permit exceptions exist for activities such as scientific collection, Native American ceremonies, and falconry.

MBTA also identifies certain migratory game birds for which the Secretary of Interior may establish hunting seasons. While MBTA lists approximately 170 game bird species, typically less than 60 of those species are hunted each year. For hunted species, USFWS promulgates annual regulations that establish a framework within which states can set hunting seasons. Since 1995, USFWS has adopted a concept known as Adaptive Harvest Management (AHM) for setting annual hunting regulations. AHM uses an iterative process to identify optimal harvest strategies based on environmental conditions and monitoring data that compares predicted and subsequently observed population sizes to enhance management performance.

### Results

Since the original 1916 Convention with Great Britain/Canada, the U.S. has entered into similar agreements with Mexico in 1936, Japan in 1972, and the Soviet Union in 1976 (now Russia) for the protection of migratory birds. These treaties have led to protections for over 1,000 bird species through MBTA.<sup>2</sup>

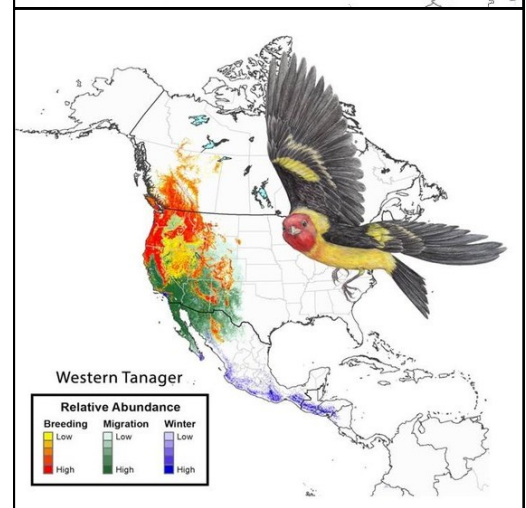
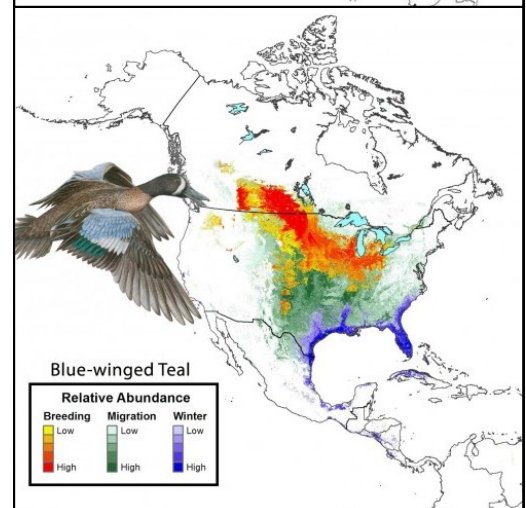
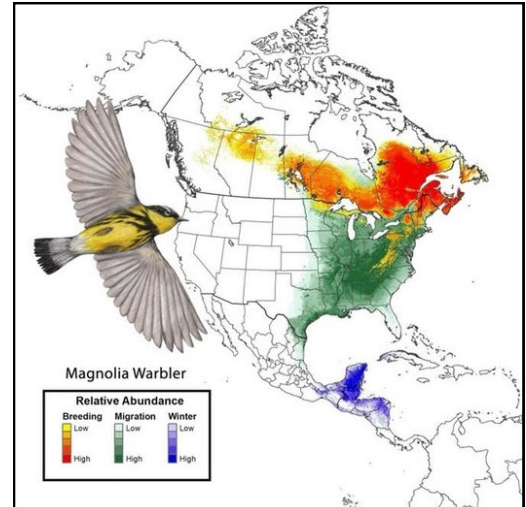
### Discussion

Now nearly a century-old, MBTA is one of the nation's oldest and most significant environmental laws. Despite its age, however, MBTA still suffers from statutory ambiguity and unpredictable enforcement. Courts vary widely in how they interpret liability under the Act, and with no opportunity for individuals to bring a lawsuit under MBTA, USFWS has broad discretion in how they choose to enforce MBTA penalties.

Moreover, birds continue to face significant threats from the emergence of relatively new hazards—including feral cats, habitat loss/degradation, collisions with human structures, and agrochemicals—further raising questions as to the scope of MBTA and how it should be used to achieve migratory bird conservation in the 21<sup>st</sup> century.

### Implications for Wildlife Professionals

While questions remain as to the applicability of MBTA in addressing modern threats to migratory birds, it remains an effective tool for regulating migratory bird hunting and controlling the illegal take of native bird species. Protections for birds provided under MBTA empower and enable wildlife professionals to sustainably manage both migratory and non-migratory native bird populations and their habitats.



Bird migration is the seasonal movement of a species from their breeding ranges to their wintering grounds—a trip that can span thousands of miles each year. MBTA plays a key role in protecting birds throughout their annual migration. (Credit: NABCI)

# Migratory Bird Treaty Act: Spotlight



## Eastern Willet Recovery<sup>3</sup>

In the late 19<sup>th</sup> and early 20<sup>th</sup> century, the eastern willet (*Tringa semipalmata*) was virtually eliminated along the northeast coast of the U.S. as a result of high-demand for both their eggs and meat. Following the passage of MBTA in 1918, the willet became a protected species, which outlawed the hunting, take, and sale of willets and their eggs or parts. This protection enabled the population to gradually recover. Eventually, the eastern willet reappeared in states along the east coast, arriving first to New Jersey in the 1950s and finally to New Hampshire in the 1980s. Today, in a testament to the effectiveness of MBTA in protecting migratory birds, the eastern willet now fully occupies its historic coastal range.

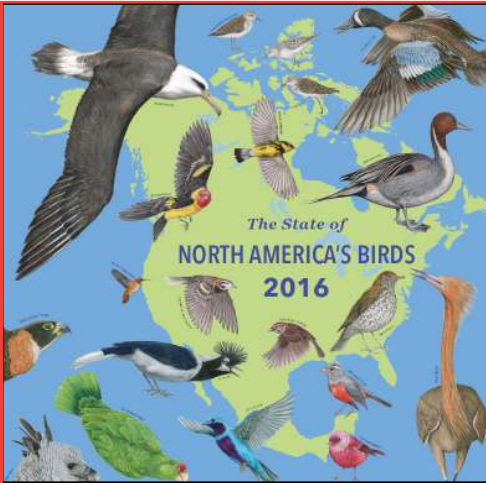
An eastern willet at the Nantucket National Wildlife Refuge, MA (Credit: Amanda Boyd, USFWS)

## Wind Energy and MBTA<sup>4,5</sup>

In 2013, Duke Energy Renewables became the first corporation criminally convicted of unpermitted avian takings under MBTA. The corporation was involved in the death of 14 golden eagles and 149 other protected birds at two wind projects in Wyoming from 2009 to 2013. According to court rulings, the corporation failed to make all reasonable efforts to build the projects in a way that would avoid the risk of avian deaths by collision with turbine blades, despite prior warnings from USFWS. Currently, permitting under MBTA is only available for activities directed at migratory birds, thus there's no way for a developer to proactively avoid liability for an incidental take of a protected bird species. In May 2015, USFWS published a Notice of Intent to evaluate the potential environmental impacts of a proposal to authorize incidental take of migratory birds under MBTA—particularly in regards to some industry sectors including wind energy.



Golden eagle (Credit: Tony Hisgett, Flickr)



## State of the Birds Report<sup>6</sup>

The State of North America's Birds Report was created by the North American Bird Conservation Initiative (NABCI), of which The Wildlife Society is a member. NABCI, created in 1999, is a tri-national effort of the United States, Canada, and Mexico to protect, restore, and enhance populations and habitats of North America's birds. The 2016 State of the Birds Report indicates that over one-third of all North America's bird species (432 of the 1,154 species) are in urgent need of conservation action. The report also depicts several conservation success stories for bird species, emphasizing the need to build on these successes and base policy decisions in sound science. MBTA plays a key role in integrating science into conservation action through an internationally coordinated management framework.

2016 State of North America's Birds Report (Credit: NABCI)

1. The Audubon Society. 2015. The Evolution of the Migratory Bird Treaty Act. <<https://www.audubon.org/news/the-evolution-migratory-bird-treaty-act>>. Accessed 26 August 2015.
2. Fish and Wildlife Service. 2013. 50 CFR Parts 10 and 21 General Provisions; Revised List of Migratory Birds; Final Rule. Federal Register, Washington, D.C., USA.
3. Smith, J. 2009. Conservation Success Story. Smithsonian Migratory Bird Center. <[http://nationalzoo.si.edu/scbi/migratorybirds/featured\\_birds/?id=308](http://nationalzoo.si.edu/scbi/migratorybirds/featured_birds/?id=308)>. Accessed 14 Oct 2014.
4. Department of Justice, Office of Public Affairs. 2013. Utility Company Sentenced in Wyoming for Killing Protected Birds at Wind Projects. <<http://www.justice.gov/opa/pr/utility-company-sentenced-wyoming-killing-protected-birds-wind-projects>>. Accessed 14 Oct 2014.
5. Fish and Wildlife Service. 2015. Migratory Bird Permits; Programmatic Environmental Impact Statement. Federal Register, Washington, D.C., USA
6. North American Bird Conservation Initiative. 2016. The State of North America's Birds 2016. <<http://www.stateofthebirds.org/2016/wp-content/uploads/2016/05/SoNAB-ENGLISH-web.pdf>>. Accessed 18 April 2017.

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