



FOR IMMEDIATE RELEASE

July 27, 2015

Media Contact: Mark Chenoweth | mchenoweth@wlf.org | 202-588-0302

WLF Calls on Fish & Wildlife Service to Cease Efforts to Regulate Activity that Incidentally Harms Birds

(In re: Restrictions on “Incidental Take” of Migratory Birds)

“If Fish & Wildlife Service’s view of the Migratory Bird Treaty Act prevails, someone driving down the highway may commit a federal crime when a bird flies into their windshield. FWS says it will exercise discretion in bringing enforcement actions, but it provides little comfort if all that stands between you and a prison cell is the whim of a federal bureaucrat.”

—Richard Samp, WLF Chief Counsel

WASHINGTON, DC—Washington Legal Foundation today called on the U.S. Fish & Wildlife Service (FWS) to cease its efforts to assert regulatory authority over activities that have, at most, an incidental effect on migratory birds. The Migratory Bird Treaty Act (MBTA), adopted in 1918, declares it unlawful to take certain actions designed to harm a migratory bird. In formal comments filed in response to an FWS proposal to expand its regulatory footprint, WLF argues that the MBTA does not authorize the agency to restrict “incidental take”—FWS’s term for actions that, while not directed at migratory birds, may cause them incidental and indirect harm.

FWS announced in May that it is considering adopting new regulations requiring individuals to obtain an FWS permit before engaging in activity that, although not directed at migratory birds, is reasonably likely to result in harm to at least some birds. WLF’s comments explain why the MBTA cannot be interpreted as applying to incidental, indirect harms. WLF urges FWS, if it believes that threats to migratory birds require a stronger government response, to bring its case to Congress and ask for new legislative authority.

WLF argues that FWS’s proposal would give the agency an unprecedented tool to bludgeon disfavored business groups, such as the oil and gas industry. WLF points out that the ability to threaten criminal prosecution of business executives for even innocuous conduct could easily result in industry’s abandoning a wide variety of beneficial economic activities.

Upon filing its comments, WLF issued the following statement by Chief Counsel Richard Samp: “If Fish & Wildlife Service’s view of the Migratory Bird Treaty Act prevails, someone driving down the highway may commit a federal crime when a bird flies into their windshield. FWS says it will exercise discretion in bringing enforcement actions, but it provides little comfort if all that stands between you and a prison cell is the whim of a federal bureaucrat. Congress meant to prevent wholesale slaughter of migratory birds—not to penalize activities that incidentally result in some deaths, even reasonably foreseeable deaths.”

WLF is a free-market, public-interest law firm and policy center that supports adopting policies that promote environmental health without sacrificing economic liberty or individual rights.