

United States Senate  
WASHINGTON, DC 20510

July 14, 2020

The Honorable David Bernhardt  
Secretary  
U.S. Department of the Interior  
1849 C Street NW  
Washington, D.C. 20240

Dear Secretary Bernhardt,

We are greatly concerned about the Department of the Interior's draft Environmental Impact Statement (EIS) for its proposed rule under the Migratory Bird Treaty Act (MBTA), based upon Solicitor's Opinion M-37050. We have strong concerns with the current process, as well as the substance of the new environmental analysis, and the policy outcome that the Department is pursuing.

The Department and the draft EIS have failed to seriously consider bipartisan Congressional calls for a different path forward on this issue. Further, the Department has still not responded to serious concerns raised in response to the proposed rule by more than a dozen state wildlife agencies, three flyway councils, hundreds of former Interior officials, numerous conservation and animal welfare organizations, tribes, scientists, birders, sportsmen, and more. Instead of responding to the concerns from these key stakeholders, the Department appears to be doubling down and fast-tracking its attempt to lock in the elimination of longstanding and bipartisan protections for migratory birds.

The Department closed the comment period on the proposed rule in mid-March during the height of a pandemic, ignoring requests from Congress to extend the comment deadline, and without even responding to Congress until after the deadline ended. Since then, the nation's governors, state legislatures, and mayors jointly requested a suspension of public comment periods during this national emergency. Now, with the pandemic still raging and the number of people testing positive increasing in many states, the Department should not be putting additional burdens on the public to respond at this time. The Department appears to be rushing through this entire process to meet an arbitrary timeline. At the very least, the Department should not be providing the minimum comment period. Rather, it should extend that comment period by 45 days or more.

The draft EIS fails to provide a rigorous analysis of the impacts to migratory birds and the economic and ecological benefits that birds provide to our country, in part by omitting an analysis of the impacts of ending the enforcement of bird protections as a result of the M-Opinion. In addition, the draft EIS also fails to provide a reasonable range of alternatives. Despite informing the public during its scoping webinars that it would consider an incidental take permit alternative, the draft EIS does not consider this alternative.

Even with these flaws, the conclusions of the draft EIS only reinforce the significant and harmful outcomes of this policy rollback. As FWS states in the draft EIS, the preferred alternative will directly lead to increased bird mortality, additional listings under the Endangered Species Act and prolonged delisting, as well as greater costs and burdens on state wildlife agencies, harm to species that are important to native peoples, and reduced ecosystem services and habitat restoration that benefits all of our communities.

The Department continues to ignore its obligations under statutes, treaties, Executive Orders, and its own mission by enforcing and codifying this MBTA policy. We again urge you to halt this process, correct these errors, and pursue a path forward that fulfills your responsibility to protect and conserve migratory birds for the benefit of the American people.

Signed,

/s/ Chris Van Hollen  
United States Senator

/s/ Thomas R. Carper  
United States Senator

/s/ Tammy Duckworth  
United States Senator

/s/ Patrick Leahy  
United States Senator

/s/ Martin Heinrich  
United States Senator

/s/ Tom Udall  
United States Senator

/s/ Edward J. Markey  
United States Senator

/s/ Kirsten E. Gillibrand  
United States Senator

/s/ Cory A. Booker  
United States Senator

/s/ Dianne Feinstein  
United States Senator

/s/ Christopher A. Coons  
United States Senator

/s/ Mazie Hirono  
United States Senator

/s/ Benjamin L. Cardin  
United States Senator

/s/ Kamala D. Harris  
United States Senator

/s/ Jeffrey A. Merkley  
United States Senator

/s/ Tina Smith  
United States Senator

/s/ Sheldon Whitehouse  
United States Senator

/s/ Ron Wyden  
United States Senator

/s/ Amy Klobuchar  
United States Senator

/s/ Bernard Sanders  
United States Senator

/s/ Michael Bennet  
United States Senator

/s/ Richard Blumenthal  
United States Senator