

Chairman Huffman and Ranking Member McClintock, thank you for inviting me to testify today on this important wildlife conservation legislation. Your leadership on the Migratory Bird Protection Act is of critical importance to the billions of birds and the hundreds of millions of citizens of this continent.

One hundred and one years ago, Congress passed one of the first and most consequential and effective conservation laws ever: the Migratory Bird Treaty Act -- to implement and fulfill the obligations of the first of four bilateral treaties. We have enjoyed one hundred years of successful conservation and management of these ubiquitous and precious species with the leadership of the United States and the important cooperation of our treaty partners in Canada, Mexico, Japan and Russia. These treaty partners and the many millions of American citizens who enjoy migratory birds expect us to live up to those treaty obligations and this country's stewardship standards demand it. Unfortunately, a little over a year ago, the Department of Interior Solicitor's Opinion put this stellar leadership in conservation at immediate risk. We need the Congress of the United States to affirm the longstanding interpretation of the law and treaties by providing legislation that clearly charts a path forward.

In 1918, and through subsequent amendments, the language in the Migratory Bird Treaty Act was, and remains, clear and straightforward: Unless an individual has a valid permit, "it shall be unlawful at any time, by any means, or in any manner" to "hunt, take, capture, or kill" migratory birds. Apparently, it is not as clear to the current leadership within the Department of Interior, as they have developed a new interpretation of that language after one hundred years of successful and effective implementation. This new legal reinterpretation is currently being challenged in Federal court, but it is timely for the Congress to draft such legislation that will make this language

abundantly clear and return the United States to its place as the world leader in the management and conservation of wildlife, especially migratory birds. At a time when migratory birds are in serious decline around the world, other nations have looked to America for leadership and inspiration. It is very troubling that there is a serious effort to negate our most established and effective tools to conserve migratory birds. This law has been successfully used to balance our conservation goals with the economic prosperity and growth we have enjoyed over these 100 years.

This new and contrived legal standard creates a huge loophole in the Migratory Bird Treaty Act, allowing companies to engage in activities that routinely kill migratory birds so long as they were not intending that their operations would “render an animal subject to human control.” This is a standard that is inconsistent with EVERY OTHER previous Administration evidence of that is a Jan. 10, 2018 letter signed by 17 career and political leaders in the U.S. Fish and Wildlife Service and Department of Interior representing EVERY Administration dating back to the 1970s.

Birds are quite literally the proverbial “canary in the coal mine.” How birds fare in the world indicates how all wildlife and habitat, and by extension human populations, will fare. It is not just poetry that led Rachel Carson to title her seminal work, *Silent Spring*. All past Administrations have struck a balance and worked diligently and in good faith with industries that had significant impacts on birds, such as oil and gas, wind power, electric utilities, commercial fishing, and others to reasonably address unintended take. It can be done and in fact has been done.

Power lines, communications towers, wind turbines, oil spills and poison and pesticide applications kill tens of millions of birds a year.

The MBTA has served an important function to motivate these industries to reduce and minimize the harm. The MBTA can and has been successfully used to reduce gross negligence by companies that simply do not recognize the value of birds to society.

If Interior's current view of this incredible law holds, companies like Exxon or BP would no longer bear any responsibility for bird deaths from oil spills like the thousands that occurred in Exxon Valdez and Deepwater Horizon disasters.

The discussion draft of the Migratory Bird Protection Act does a thorough and elegant job of reaffirming the Congressional intent of the Migratory Bird Treaty Act and charting a path forward for the Administration to promulgate the necessary regulations to provide companies and citizens a simple, efficient and logical approach to comply with the law. This legislation would effectively modernize this 100 year old law and ensure that migratory bird conservation is balanced with our economic prosperity. This legislation and the subsequent regulations would provide reasonable certainty to companies and citizens. Additionally, the legislation would ensure that the U.S. treaty obligations to our partners in Canada and Mexico are met and reestablishes the U.S. as a leader in wildlife conservation across the globe. This draft legislation ensures that the longstanding strict liability standard is tempered with common-sense notions of reasonable foreseeability and readily available alternatives.

During my tenure as the Assistant Director, Migratory Birds for the U.S. Fish and Wildlife Service from 2003-2011, we explored promulgating reasonable regulations, but unfortunately were not able to get it done. This legislation provides a roadmap for getting such regulations done. This is needed now, more than ever.

I compliment the drafters of this legislation and this subcommittee for the clear and reasonable approach this represents. It provides what industry needs and citizens demand in a way that will be effective in conserving migratory birds without overburdening the permittees or the Administration. The legislation also supports some of the critical bird habitat conservation tools we have in the North American Wetlands Conservation Act and Neotropical Migratory Bird Act.

I stand ready to assist in this effort as a knowledgeable and passionate private citizen who is deeply concerned about wildlife conservation and our economy. And with that, Mr. Chairman, I am prepared to answer any questions you and the Subcommittee have.