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Migratory Birds/Commercial Buildings: Center for Biological Diversity Petitions U.S. Fish and Wildlife Service to Set Up Permitting System to Address Foreseeable Bird Strikes

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The Center for Biological Diversity (“CBD”) and 27 other bird and wildlife conservation organizations from 23 states submitted a Petition to the United States Fish and Wildlife Service (“Service”) styled:

Petition for Rulemaking to Allow Permits Authorizing the Foreseeable Killings of Migratory Birds in Building Collisions (“Petition”).

The Arkansas Audubon Society was one of the organizations that signed the Petition.

The Petition requests that the Service undertake a rulemaking that establishes the process, criteria, and conditions necessary for permitting the take of migratory birds caused by building collisions. It requests a permitting process for new construction of buildings with glass facades or other features that foreseeably lead to collisions.

Similarly, a permitting process is requested for existing commercial buildings that have documented collisions.

The Petition cites as authority the Migratory Bird Treaty Act (“MBTA”). See 16 U.S.C. §§ 703-712.

CBD contends that data exists indicating that United States buildings kill or otherwise “take” more than 1 billion birds per year. Take is used in the Petition to include capture, kill, and other MBTA prohibitions. See 16 U.S.C. §703.

The Petition argues that the Service has determined that the “incidental take” of migratory birds is a violation of the MBTA.

Further, it states that the Service indicated it would prioritize enforcement:

...when conduct foreseeably results in the take of migratory birds and, where available, beneficial practices to avoid or minimize impacts to migratory birds have not been taken.

The Petition cites an Order by the Service’s Director which it states has language indicating:

...“common actions” that may result in “incidental take” of migratory birds includes “infrastructure construction, operation, and maintenance.”

CBD contends that the Service has not conducted enforcement to address building collisions or taken any action to ensure widespread adoption of beneficial practices by commercial building owners.

A copy of the Petition can be downloaded [here](#).