



**Walter Wright, Jr.**  
wwright@mwlaw.com  
(501) 688.8839

# Migratory Bird Treaty Act: Environmental Organizations File Lawsuit Challenging Department of Interior Solicitor's Interpretive Memorandum

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A number of environmental organizations filed a May 24th Complaint for Declaratory and Injunctive Relief (“Complaint”) challenging as unlawful and arbitrary and capricious the:

. . . December 22, 2017 Solicitor’s Memorandum M-37050, which was issued by the office of the Solicitor of the Department of the Interior (“DOI”) and reverses Defendants DOI’s and the U.S. Fish and Wildlife Service’s (“FWS” or “Service”) longstanding interpretation and implementation of the Migratory Bird Treaty Act of 1918 . . . (“MBTA”).

The United States Defendants include the United States Department of the Interior and the United States Fish and Wildlife Service.

The environmental organizations filing the lawsuit include:

- National Audubon Society
- American Bird Conservancy
- Center for Biological Diversity
- Defenders of Wildlife

(Collectively, “Audubon Society”)

Audubon Society argue in the Complaint that the Defendant agencies have previously construed the MBTA as protecting migratory bird populations from foreseeable “incidental” killing or “take” caused by major industrial activities that are not specifically directed at migratory birds but nevertheless kill them in large numbers. They further argued that the December 22, 2017 Solicitor’s Memorandum “declares that only activities deliberately intended to kill or take migratory birds (such as hunting) may be the subject of regulation or enforcement under the MBTA.”

Audubon Society asks for a judicial declaration that the agencies’ adoption and implementation of the Memorandum exceeds their statutory authority, and is arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law or procedure required by law. They are requesting that the Court vacate the Memorandum and declare that the agencies must revert to their prior, correct longstanding interpretation and policy.

The Complaint was filed in the United States District Court for the Southern District of New York.

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