

Biden Administration to Revoke the Trump Administration's Migratory Bird Rule

MAY 17, 2021

On May 7, 2021, the Biden Administration took the first step to revoke the Trump Administration's Migratory Bird Treaty Act ("MBTA") Rule. As discussed in our [prior MBTA blog posts](#), in January 2021, the U.S. Fish and Wildlife Service ("USFWS") published a final rule that limited the MBTA's prohibition on "takings" to only those purposeful "takes" that result in the injury or death of a migratory bird. The rule quickly fell under the scrutiny of the Biden Administration, with the USFWS in February [delaying](#) the effective date of the final rule to March 8, 2021. Now, the Biden Administration has proposed to revoke the Trump-era rule all together and return to interpreting the MBTA as prohibiting incidental take, not just purposeful take. This announcement follows the recent revocation of the 2017 opinion from the then-Department of the Interior Principal Deputy Solicitor Daniel H. Jorjani finding that the MBTA does not prohibit the incidental take of migratory birds. The USFWS is accepting public comment on the proposed revocation through June 7, 2021. The January 2021 MBTA rule remains in effect until its revocation is finalized.

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