

# Committee on Resources

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**Testimony by  
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Before the  
US House of Representatives  
Fisheries Conservation, Wildlife and Oceans Resources Subcommittee  
Annapolis, Maryland**

**December 16, 2003**

Mr. Chairman:

I am pleased to offer testimony on administration of the Migratory Bird Treaty Act (MBTA), based on my previous experience with the US Fish and Wildlife Service for more than twenty years, and my direct involvement as a professional conservationist working outside government, working closely with migratory bird management.

From 1984 to 1989 I was Chief of Migratory Bird Management with the Service, and from 1989 to 1991 was Deputy Assistant Director with oversight for migratory bird programs, including refuge management, law enforcement, and the Duck Stamp program. I was responsible for development of annual hunting season recommendations and held public meetings and listening sessions with the state wildlife agencies and the public. From 1984 through the late 1990s I was extensively involved with the US and Canada in a dialogue seeking to amend the Migratory Bird Treaty to legally recognize the need for far northern residents to be allowed to take migratory birds for food and other necessities outside the guidelines of the original treaty. I served on a task force that helped two Service directors pave the way for responsible amendment first with Canada, then Mexico.

During that same period I had a lead role in drafting the North American Waterfowl Management Plan, and in its implementation both with the agency and later in my role at the Wildlife Management Institute. The Migratory Bird Treaty and the Migratory Bird Treaty Act were primary considerations in many international and US based discussions of migratory bird management, habitat needs and management, and enforcement.

The list of birds considered covered under the MBTA was revised several times while I was with the Service, mainly to respond to taxonomic clarifications or new range information. I do not recall any changes made to accommodate management of exotic species. My personal understanding of MBTA is that it was not enacted to deal with exotic birds, but rather to provide a sound framework for protection of native migratory species moving between the countries involved in the treaties. It was well into the existence of the treaty and MBTA that such common nuisance species such as English sparrows, rock doves, and starlings became a recurrent problem. They are among species controlled daily across America because of damage that they do, and are not considered covered by MBTA.

In my experience with migratory bird management through the Fish and Wildlife Service, the focus has been understood to be on maintaining populations of native species and avoiding unnecessary losses to human activities. It has not generally been viewed as a law directly designed to protect individual birds, unless they might be threatened or endangered, or unless the enforcement would make a point to the public that might preclude a larger number of deaths. In my professional interactions with Canada, and with people in the management and political arena across America, there has been a general feeling that literal enforcement bird by bird was in most cases not feasible, and not reasonable. We have struggled for decades with what to do about transmission lines and towers, buildings with bright windows that birds collide with, and a whole array of human activities that show no signs of diminishing in our lifetime. Reasonable efforts to solve problems associated with structures and human activities are entirely called for, and supported by everyone. More work undoubtedly needs to be done with that, but it would appear infeasible to any reasonable person to literally interpret the Migratory Bird Treaty Act as protecting the welfare of every bird across the continent.

In large issues concerning the welfare of birds the consideration of how literal to be in the enforcement of MBTA inevitably comes up. I testified before administrative legal hearings held by the Environmental Protection Agency in seeking ways to reduce the damage caused by the use of chemicals on golf courses. There was considerable debate over whether the best course of action was enforcement concerning any bird death, or making a case of a widespread problem and seeking solutions through different management, use of different compounds, or outright ban of certain chemicals. This dilemma is common in migratory bird management in balancing the needs of birds against the needs of humans.

In the 1990s, concern over the impact of arctic nesting white geese on their habitat during migration, led to broad consideration of what to do about a habitat problem when its cause was an apparent overabundance of birds. I assembled an international stakeholders group to assess the need to reduce numbers of arctic nesting white geese to avoid further damage to their habitats, with a long-term objective of affecting habitat recovery. While there was not agreement by all parties, stakeholders in general concluded that long-term habitat concerns and evidence of a rapid growth rate of goose flocks warranted direct reduction of populations to protect that habitat. In the end the Fish and Wildlife Service has allowed hunting seasons outside the normal recreational seasons, designed to directly reduce populations. We as stakeholders did not need definitive cause and effect data to recommend action.

The issue of what constitutes a truly "exotic" species is itself difficult. The Service has resisted listing species under MBTA because of incidental occurrences and infrequent movements between continents. While mute swans, for example, may well be capable of joining other swans in migration and moving between continents, it is quite clear that the mute swan in America has come from release or escape of exotics. This does not seem to be a situation envisioned by the drafters of MBTA, nor of the managers for many decades thereafter who have exercised the responsibility of bird protection. Exotics are in general a negative influence and should not be encouraged in the wild.

Control of wildlife that become more abundant than people inhabiting the same areas desire, or that come into direct conflict with people or pets, or threaten either crops or peoples' well being have grown to be one of the biggest issues in wildlife management in North America. Symposia through professional societies, focus on alternative solutions, and a considerable amount of public disagreement will likely continue. Expecting an almost one hundred year old statute, although a very valuable law, to cover the problems of today may not be a reasonable solution to many of these problems.

An important question is what would it take to modify the Migratory Bird Treaty Act if that were sought as a solution? Hazards seem to include action by those who wish to either expand the reach of MBTA, or reduce it. In either case rational conservation may suffer. Yet amendment of MBTA may well be the most direct way to solve modern problems such as the exotic mute swan. If so, it must be attempted surgically to solve the problem at hand, and not opened to wider agendas for change.

In conclusion, the mute swan is a problem for native habitats and species. Including it under MBTA protection seems a departure from many decades of useful discretion in application of MBTA. There seems to be abundant experience with MBTA that argues for direct action now based on what we know, to directly reduce mute swan populations and influence as much as possible. Thank you for this opportunity to testify.