To: U.S. Fish and Wildlife Service
Public Comments Processing
U.S. Fish and Wildlife Service
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Attn: FWS-HQ-MB-2018-0090

Submitted electronically via comment portal at:
https://www.regulations.gov/comment?D=FWS-HQ-MB-2018-0090-8411

Subject: Comments on the Draft Environmental Impact Statement "Regulations Governing the Take of Migratory Birds."

Dear Sir or Madam,

Thank you for the opportunity to comment on the U.S. Fish and Wildlife Service's proposed rule regarding a new interpretation of "incidental take" under the Migratory Bird Treaty Act of 1918 (MBTA). The Department of the Interior and the U.S. Fish and Wildlife Service are charged with conserving our nation's fish, wildlife and plants and their habitats for the continuing benefit of the American people, and I would remind the Department of the Interior of how deeply the vast majority of Americans care about these resources. More than 46 million bird enthusiasts have told the Fish and Wildlife Service that birds matter to them. More than one million waterfowl hunters and 15 million hunters and harvesters of other migratory bird species, as part of practicing a recreational sport or subsistence way of life that creates 700,000 jobs nationwide and spends $22 billion dollars per year, are emphatic about their support of healthy bird and other wildlife populations.

The 69-page Draft Environmental Impact Statement (DEIS) does not adequately address significant potential impacts from this unprecedented restriction of the MBTA's authority, and in failing to do so, has not properly considered the agency's statutory responsibilities. There are both procedural and substantive problems with this proposed rule that must be addressed, among them:

Procedural:
1. There are no instructions in the DEIS on how or where to submit comments, and no addresses or links to web sites for the public to use to submit them.

2. Only one tiny footnote in a single reference on page 44 links to a supplemental, 16-page Regulatory Impact Analysis that cannot easily be found via Google Search and would have better informed the public of impacts had it been appropriately incorporated into the DEIS. Requiring the extra step of finding a footnote so far into the DEIS and typing in a long, complex link to access this important information is

contrary to law, which says an agency not make procedural requirements somehow 'discretionary.'

3. With only one out of 573 federally recognized Native American Tribes responding with a request for government-to-government consultation, the DEIS infers the appearance of consensus and agreement; therefore, the accuracy and intent of the language in those notices sent to Tribes should be questioned and re-examined, and a significant extension of time added to the comment period, which is currently at the minimum allowable.

4. The no-action alternative is not "no action." Removing liability exceeds the legal authority of the Department of the Interior, because only Congress can amend, restrict, repeal or expand a federal law.

5. With 28 endorsements on the announcement of this *proposed* rule, many of them from industry lobby groups, and without a single statement of opposition, the Department has failed to remain impartial and has given the appearance of breaking the law by providing nonpublic information to outside interests, both of which are expressly prohibited by law.

Substantive:
6. The argument for overturning a century of legislative and judicial precedent for the sake of removing criminal and financial liability from individuals and entities who were previously found criminally and financially liable is irrational and unfounded.

7. State and federal agencies such as the Departments of State, Defense, Commerce, and the Federal Aviation Commission have indicated that they do not agree that the proposed rule is reasonable or sound.

8. The Department acknowledges the huge toll this will cause to already declining bird populations yet rejects the measures that would conserve them.

The procedural duties imposed by the National Environmental Policy Act (NEPA) are meant to be carried out by federal agencies "to the fullest extent possible." When they are not, substantive issues are also triggered, as they have been here. This process and this DEIS itself fail both procedural and substantive standards. Courts have ruled that the phrase "to the fullest extent possible" does not provide "…an escape hatch for foot-dragging agencies. Congress did not intend the Act to be a paper tiger." NEPA's procedural requirements "must be complied with to the fullest extent, unless there is a clear conflict of statutory authority." In this case, there is no such conflict and the agency is obligated to adhere to the law.

A federal agency that makes it difficult for the public to comment by not supplying them with contact information within the document they are commenting on, or

that infers the lack of response from Tribes as a lack of interest, or manipulates language to infer the appearance of consensus and agreement, is out of NEPA compliance and therefore invalidates the public process. This DEIS must be withdrawn.

Closer in size and quality to a minimal Environmental Assessment than a proper Environmental Impact Statement, the DEIS contains major gaps, inaccuracies, and contradictions. It fails to analyze significant direct, indirect, and cumulative impacts despite acknowledging that they will occur. Therefore, it is invalid as the basis for a public process.

My comment is part of the administrative record on this matter and must not be disregarded.

Thank you.