



Erik G. Milito
President

January 14, 2020

**NATIONAL
OCEAN
INDUSTRIES
ASSOCIATION**

The Honorable Alan Lowenthal
108 Cannon House Office Building
Washington, D.C. 20515

The Honorable Raul Grijalva
The Honorable Rob Bishop
Committee on Natural Resources
1324 Longworth House Office Building
Washington, D.C. 20515

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Dear Congressman Lowenthal, Chairman Grijalva and Ranking Member Bishop,

As the sole organization dedicated to representing all aspects of offshore energy in the United States—including the burgeoning offshore wind industry—the National Ocean Industries Association (NOIA) writes to express concern with H.R. 5552, the Migratory Bird Protection Act of 2020. This bill, set for consideration in your Committee on Wednesday, January 14, in some ways re-criminalizes the mere existence of entire categories of environmentally-beneficial projects and has the potential to resurrect an avenue for over-prosecution and pressure to bow to “NIBMY”-ism at the very moment that this important piece of the renewable energy sector is expanding.

First and foremost, we *do* applaud and support efforts to protect migratory birds. Neither NOIA nor its members wish to see the unlawful taking of the birds covered by the Migratory Birds Treaty Act; and our membership prides itself on strong environmental stewardship. We also believe there is a proper place for enforcement of the MBTA. In fact, our members in the renewable energy sector have developed best practices aimed at protecting migratory birds, including extensive planning, training facility inspections, engineering controls, installation of fencing, and anti-perching and anti-collision devices. Energy development and sustainable wildlife populations can—and do—co-exist.

However, we are all-to-aware of the fact that the interpretation of the MBTA has expanded significantly from its inception as an effort to stop over-poaching¹. Indeed, it was some half a century¹ after the MBTA’s passage before courts expanded the law’s focus to incidental takes and federal actions against companies inadvertently responsible for the death of birds. In the intervening years, the energy sector has faced *millions of dollars*¹ in fines and settlement costs for the accidental death of birds covered by the MBTA, arguably held to a higher standard than companies in other industries. We should not turn back the clock to an era of arbitrary and punitive applications of the MBTA.

While we appreciate the goal of Congressman Lowenthal’s bill—protection of migratory birds—we do have concerns with what some might consider the re-criminalization of the mere existence of entire industrial sectors. **A renewed layer of Administrative bureaucracy, fees, and the threat of criminal prosecution, not to mention the likelihood of rising compensatory mitigation costs, are not inconsequential for an offshore wind industry that already faces significant regulatory costs and hurdles in bringing new forms of energy to market.** That is why, as this bill moves through the Natural Resources Committee, it is our hope that you will consider narrowing the focus of incidental take, or first requiring a study of the largest drivers of incidental takes and whether an across-the-board regulatory regime is warranted.

We wish to be constructive during this process. The Migratory Bird Treaty Act is a testament to American conservation. NOIA is happy to discuss the content of the bill during the consideration

process at the committee level or before the full House. Should you have any questions, your staff may contact NOIA's Vice President of Government Affairs Richard England at REngland@noia.org.

Very respectfully,

A handwritten signature in black ink, appearing to read 'Erik Milito', with a stylized flourish at the end.

Erik Milito
President

¹ Souder, Williams. "How Two Women Ended the Deadly Feather Trade." *Smithsonian Magazine*. March 2013.

² Greenspan, Jesse. "The History and Evolution of the Migratory Bird Treaty Act." *Audubon*. 22 May 2015.

³ Office of Public Affairs, United States Department of Justice. 19 December 2014.

< <https://www.justice.gov/opa/pr/utility-company-sentenced-wyoming-killing-protected-birds-wind-projects-0>>