

CONCURRENCE IN SENATE AMENDMENTS

CSA1 Bill Id:AB 454 Author:(Kalra)

As Amended Ver:June 16, 2025

2/3 vote. Urgency

SUMMARY

Prohibits the take or possession of any migratory bird, or any part of any migratory bird, that was designated as of January 1, 2025 under the federal Migratory Bird Treaty Act (MBTA).

Senate Amendments

Make a technical change to refer to the bird species as "migratory birds" instead of "migratory nongame birds."

COMMENTS

Birds are considered great indicators of environmental health and ecosystem integrity. In North America, research indicates a 29% net loss of birds compared to their 1970 abundance. There is an estimated net loss of 2.5 billion individuals among the 419 native migratory species analyzed. Habitat loss, climate change, unregulated harvest, and other forms of human-caused mortality contribute to these losses.

The MBTA is a United States federal law, first enacted in 1916 to implement the convention for the protection of migratory birds between the United States and Great Britain (acting on behalf of Canada). The statute makes it illegal for anyone to take, possess, import, export, transport, sell, purchase, barter, or offer for sale, purchase, or barter, any migratory bird, or the parts, nests, or eggs of such a bird except under the terms of a valid permit issued pursuant to federal regulations. As of the most recent update of the list on July 31, 2023, the MBTA includes 1,106 species of birds. According to the National Audubon Society, the MBTA is credited with preventing the extinction of the Snowy Egret, Wood Duck, and Sandhill Crane.

Fish and Game Code (FGC) Section 3513 codifies the MBTA in state law. This section of code currently states: *It is unlawful to take or possess any migratory nongame bird as designated in the federal Migratory Bird Treaty Act (16 U.S.C. Sec. 703 et seq.), or any part of a migratory nongame bird described in this section, except as provided by rules and regulations adopted by the United States Secretary of the Interior under that federal act.* This section became inoperative on January 20, 2025. This bill proposes to restore this section of the FGC to the language that became inoperative on January 20, 2025.

This bill allows the take or possession of migratory birds in accordance with the MBTA as implemented before January 1, 2017, or after that date as long as those rules and regulations are in accordance with the FGC. Current law (FGC Section 355) allows the Fish and Game Commission to annually adopt regulations pertaining to migratory birds to conform with or to further restrict the rules and regulations prescribed pursuant to the MBTA.

Take is defined in the FGC as hunting, pursuing, catching, capturing, or killing, or attempting to hunt, pursue, catch, capture, or kill. This is different than the definition under the federal Endangered Species Act, where take is defined as harassing, harming, pursuing, hunting, shooting, wounding, killing, trapping, capturing, or collecting, or attempting to engage in any

such conduct. California does not have a state equivalent for harassing or harming. Incidental take describes the take of an animal that results from, but is not the purpose of, an activity.

The first 100 days of the current federal administration have included numerous efforts to undo actions of the previous administration. This includes a memorandum on February 28, 2025 requiring all M-opinions (opinions M-37065 through M-37084) from the previous administration to be placed under a "Suspension Review." This includes the opinion that addresses incidental take in the MBTA, as noted above. While these M-opinions are reviewed, units of the Department of the Interior are instructed to not rely on those opinions "as authoritative and binding without first consulting with the Office of the Solicitor for guidance."

Although the California Department of Fish and Wildlife (CDFW) does not cite under the federal MBTA, they do cite under regulation or from FGC Section 2000 and Section 3513. CDFW reports that the vast majority of these are for illegal take of waterfowl that may result in an estimate of \$100–\$1,000 per violation, depending on the case and court. Since 2021, the Law Enforcement Division of CDFW's Office of Spill Prevention and Response has filed four cases related to oil spills under FGC Section 2000 and Section 3513.

According to the Author

"California is home to a rich and critical diversity of migratory birds, many of which fulfill important ecological, cultural, and economic functions. In 2019, the California Migratory Bird Protection Act was enacted to continue enforcing effective migratory bird protections in the face of potential federal rollbacks. Unfortunately, the bill has since been sunset. Without it, the people of California could lose access to the hundreds of species of migratory birds that bring biodiversity to residential areas and urban centers and generate millions of dollars for the bird-watching industry. [This bill] will make the California Migratory Bird Protection Act permanent, ensuring that California will continue to preserve important migratory bird populations for generations to come."

Arguments in Support

A coalition of environmental organizations write in support of this bill, which they claim is important due to the decline of avian populations and rollbacks of protections at the federal level. "[This bill] would ensure that existing California law will continue to protect native and migratory birds regardless of actions taken by the federal government to weaken oversight and protection for birds. Additionally, this bill would allow California to set a higher bar than protections offered by federal law."

Arguments in Opposition

None on file.

FISCAL COMMENTS

According to the Assembly Appropriations Committee, the version that passed the Assembly would result in the following fiscal impact:

To the extent that CDFW's law enforcement division issues more citations under FGC § 3513 as a result of the restored protections under this bill, this bill may result in increased enforcement costs and a possible increase in penalty revenue for the department. However, these costs are speculative and difficult to quantify. CDFW contends any costs associated with this bill are minor and absorbable.

CDFW reports that the vast majority of citations to date have been for illegal take of waterfowl that may result in a fine of \$100 to \$1,000 per violation, depending on the case and court. Since 2021, the law enforcement division of CDFW's Office of Spill Prevention and Response (OSPR) has filed four cases related to oil spills under FGC Section 2000 and Section 3513. In a criminal case related to the 2021 Pipeline P00547 oil spill in Southern California, the Attorney General's Office recovered a \$10,000 penalty under FGC Section 3513. The money was split between OSPR's Fish and Wildlife Pollution Account and Orange County's fish and wildlife propagation fund.

The Senate Appropriations Committee did not hear this bill and, instead, reported it to the Senate Floor pursuant to Senate Rule 28.8; indicating this bill does not appropriate money, does not result in significant state costs or require the appropriation of funds, and will cause no significant reduction in revenues.

VOTES:

ASM WATER, PARKS, AND WILDLIFE: 10-3-0

YES: Papan, Alvarez, Ávila Farías, Bains, Bennett, Boerner, Caloza, Hart, Celeste Rodriguez, Rogers

NO: Jeff Gonzalez, Macedo, Tangipa

ASM APPROPRIATIONS: 10-4-1

YES: Wicks, Arambula, Calderon, Caloza, Elhawary, Fong, Mark González, Hart, Pacheco, Solache

NO: Sanchez, Dixon, Hadwick, Ta

ABS, ABST OR NV: Pellerin

ASSEMBLY FLOOR: 59-12-8

YES: Addis, Aguiar-Curry, Ahrens, Alanis, Alvarez, Arambula, Ávila Farías, Bains, Bauer-Kahan, Bennett, Berman, Boerner, Bonta, Bryan, Calderon, Caloza, Carrillo, Connolly, Elhawary, Fong, Gabriel, Garcia, Gipson, Mark González, Haney, Harabedian, Hart, Irwin, Jackson, Kalra, Krell, Lee, Lowenthal, McKinnor, Muratsuchi, Nguyen, Ortega, Pacheco, Patel, Pellerin, Petrie-Norris, Quirk-Silva, Ramos, Ransom, Celeste Rodriguez, Michelle Rodriguez, Rogers, Schiavo, Schultz, Sharp-Collins, Solache, Stefani, Valencia, Wallis, Ward, Wicks, Wilson, Zbur, Rivas

NO: Castillo, Chen, Davies, DeMaio, Ellis, Gallagher, Hadwick, Lackey, Macedo, Sanchez, Ta, Tangipa

ABS, ABST OR NV: Dixon, Flora, Jeff Gonzalez, Hoover, Papan, Patterson, Blanca Rubio, Soria

SENATE FLOOR: 30-10-0

YES: Allen, Archuleta, Arreguín, Ashby, Becker, Blakespear, Cabaldon, Caballero, Cervantes, Cortese, Durazo, Gonzalez, Grayson, Hurtado, Laird, Limón, McGuire, McNerney, Menjivar, Padilla, Pérez, Reyes, Richardson, Rubio, Smallwood-Cuevas, Stern, Umberg, Wahab, Weber Pierson, Wiener

NO: Alvarado-Gil, Choi, Dahle, Grove, Jones, Niello, Ochoa Bogh, Seyarto, Strickland, Valladares

UPDATED

VERSION: June 16, 2025

CONSULTANT: Stephanie Mitchell / W., P., & W. / (916) 319-2096

FN: 0001564