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## Federal Laws that Protect Bird Species

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Some people mistakenly think killing cats will save declining bird populations. The federal laws protecting bird species indicate otherwise; Congress determined those laws were necessary because destructive human activities are the real threat to American wildlife. Killing cats in an attempt to save bird species

distracts from this threat and trivializes the issues facing birds today. While the effectiveness of the Endangered Species Act and the Migratory Bird Treaty Act may be debated, no citizen is entitled to act outside the scope of these laws to individually attempt to protect bird species by killing cats.

Endangered and migratory bird species are protected primarily by two federal laws: the Migratory Bird Treaty Act (MBTA) and the Endangered Species Act (ESA). Congress passed both laws in response to the widespread human destruction of birds, other species, and their habitats—not because of cats. Their general objective is to preserve species for their future value, whether economic, scientific, recreational, or ecological. Below is a more detailed explanation of each law.

### Migratory Bird Treaty Act (MBTA)

The Migratory Bird Treaty Act (MBTA) was enacted in 1918 to enforce the Migratory Bird Treaty between the U.S. and Canada. The treaty determined that many migratory bird species “are of great value as a source of food or in destroying insects, but are nevertheless in danger of extermination through lack of adequate protection” during nesting and migration. Protection of Migratory Birds, U.S.-U.K., Aug. 16, 1916, 12 Bevans 375.

Unregulated bird hunting in the late 19th and early 20th centuries caused a huge decline in migratory bird populations; hunting to meet fashion demands alone led to the deaths of millions of migratory birds. The purpose of the MBTA is to save migratory birds from the “indiscriminate slaughter” of commercial hunting and to insure the “preservation of such migratory birds as are either useful to man or are harmless.” *Id.* The act, which had its roots in an international treaty between the United States and Canada, was later expanded to protect migratory birds whose seasonal homes include Mexico, Japan, and the former Soviet Union.

Because birds are listed under the MBTA based on whether they migrate rather than their population size, hundreds of species of birds are covered by the Act, including common species like the Canada goose. Under the MBTA, migratory birds are protected from direct human acts such as hunting, trapping, and killing—unless a person has a permit from the U.S. Fish and Wildlife Service.

Since indirect harms are not prohibited, however, it is permissible under the MBTA to modify or degrade land that is part of migratory bird habitat. For example, it is possible under the MBTA to develop land that is migratory bird habitat, so long as migratory birds themselves are not killed, although that same activity could be unlawful under the ESA.

The Fish and Wildlife Service issues permits to allow the hunting of game waterfowl and the culling of migratory birds causing damage to crops or other economic interests. Permits for hunting of many species of migratory waterfowl are granted by the purchase of a hunting license, called “duck stamp.” In 2006, over 36 million game birds were shot under the duck stamp program; over 45 million were shot in 2000.

### Endangered Species Act (ESA)

The Endangered Species Act was enacted in 1973 when the Congress found that “various species...in the United States have been rendered extinct as a consequence **of economic growth and development untempered by adequate concern and conservation**; other species...have been so depleted in numbers that they are in danger of or threatened with extinction.” 16 U.S.C. §1531(a) (2006).

The purpose of the ESA is to recover species and ecosystems, and to prevent further decline in order to preserve

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the species' "esthetic, ecological, educational, historical, recreational, and scientific value to the Nation and its people." Id. The law does not attempt to halt economic growth or land development but to balance those pursuits with conservation of the nation's species.

The ESA applies to all "listed" species. The U.S. Fish and Wildlife Service is charged with considering the best scientific or commercial data available in determining whether a species' continued existence is in danger, and thus whether it should be listed. Species that are listed as endangered or threatened may be delisted. The bald eagle, for example, was delisted in the summer of 2007 after its population grew from a low of under 450 nesting pairs to almost 10,000 nesting pairs.

Once a species is listed, a recovery plan is devised and implemented. Recovery plans generally contain background information on the species, including threats that led to the species' status as threatened or endangered. Plans contain recovery goals in terms of population size or distribution and list actions that can be taken to make recovery possible.

Since 1988, the public must be given notice of recovery plans or revisions of plans, and granted the opportunity to comment on them before they are implemented. The plans are also sometimes peer reviewed by a variety of experts, including government agencies, scientific groups, individuals, and any party with information applicable to the proposed plan. These recovery plans are intended to guide recovery efforts and have limited legal power.

Endangered species are granted broad protections under the ESA, including protection from direct human acts such as hunting and trapping, and certain indirect harms such as habitat modification and destruction. However, important exceptions exist to these prohibitions. The most significant of these is called an "incidental take permit," which allows a person to harm an endangered species, as long as the harm is only a result of the person's activity and not the purpose of it. An incidental take permit requires the applicant to specifically demonstrate how impacts to an endangered species would be minimized.

[Learn more](#) about the Galveston birder who faced a cruelty charge for killing a cat.