



October 19, 2023

*Sent via U.S. Mail and Email*

Ms. Larita Clark, CEO  
Metropolitan Pier and Exposition Authority  
301 East Cermak Road  
Chicago, IL 60616

**Re: Request for Enforcement of the Migratory Bird Treaty Act for Killing of Migratory Birds Caused by Management, Operation, and Regulation of McCormick Place in Chicago, IL**

Dear Ms. Clark,

On behalf of Center for Biological Diversity, we submit this letter requesting that the Metropolitan Pier and Exposition Authority, as the owner of Chicago's McCormick Place, immediately take steps to implement effective and available glass treatments to reduce bird collisions at its existing lakeside Chicago convention center in response to the tragedy that occurred on October 4, when almost 1,000 migratory birds were killed after crashing into the building's glass exterior. Although this event was unusual in the number of birds killed, it was not the first time killing of songbirds has occurred at McCormick Place.

To date, state and federal agencies and the Metropolitan Pier and Exposition Authority have failed to take adequate steps to avoid, minimize, and mitigate this ongoing injury and mortality in violation of the Migratory Bird Treaty Act (MBTA). Specifically, in an average year, between 1,000 and 2,000 migratory birds die from striking the McCormick Place Lakeside convention center, indicating that stronger measures are direly needed - not only to protect these birds from light pollution - but also to ensure that the Authority is in compliance with legal requirements in its management of McCormick Place.

As you may know, migratory birds have undergone severe population declines with buildings like McCormick Place, playing a considerable role. As acknowledged by the U.S. Fish and Wildlife Service (Service), "[o]ver the last 50 years, the total population of North American birds has declined by an estimated 3 billion birds," and "[m]any of the 1,093 species of birds protected under the MBTA [] are experiencing population declines due to increased threats across the landscape."<sup>1</sup>

The Center for Biological Diversity (Center) is a national, nonprofit organization dedicated to protecting wildlife and wild places through science, law, and creative media. The Center has worked for decades to protect migratory birds by seeking protections for individual species under federal and state laws and taking legal action to ensure migratory birds remain protected under the MBTA. The Center has offices in locations around the country to prevent the extinction of some of the most imperiled bird species living in the U.S. and other countries.

---

<sup>1</sup> Migratory Bird Permits; Authorizing the Incidental Take of Migratory Birds, 86 Fed. Reg. 54,667, 54,668 (Oct. 4, 2021).

## I. Mortality Events at McCormick & Inadequacy of Existing Protections in Place

Large mortality events like at McCormick Place tend to occur during peak migration periods in spring and fall.<sup>2</sup> Weather conditions - like opposing wind, rain, and fog - can make it difficult for birds to orientate themselves; in addition to light pollution from cities that can draw them in and trap them among deadly structures. As a result, anywhere you have glass, you have birds hitting windows, with up to one billion birds dying due to collisions with buildings annually.

Of all cities in the US, Chicago's light pollution poses the greatest risk for migrating birds. Turning off building lights is one way to reduce fatalities: A 2021 study done in McCormick Place, the same site of October 5<sup>th</sup>'s bird deaths, found that shutting off half the lights in large buildings can reduce collisions by six to 11 times.<sup>3</sup>

As you are well aware, McCormick Place is a participant of the Lights Out Chicago program, which involves buildings voluntarily switching off or dimming lights at night unless someone is inside.<sup>4</sup> During the October 4-5<sup>th</sup> incident, there was an event going on at the location, therefore, the lights were left on, and this terrible incident occurred as a result. This represents a catastrophic failure of the voluntary program, indicating additional measures are desperately needed.

Chicago and Illinois have enabled the taking of wildlife in violation of the MBTA for decades without putting in place effective, lasting action to mitigate the problem. In 2020, Chicago approved a bird-friendly design ordinance which has yet to take effect. In addition, in 2021, the Illinois governor JB Pritzker signed the Bird Safe Buildings Act, which requires "bird-friendly design to be incorporated into the construction and renovation of state-owned buildings." However, it is *existing* buildings that are often killing birds, not just new construction, therefore, this tool has had limited impact on preventing harm to migratory birds.

## II. Legal Background

The Migratory Bird Treaty Act of 1918, as amended, 16 U.S.C. § 703 *et seq.* (MBTA), is intended to ensure the sustainability of all protected migratory bird species. It implements Conventions between the United States and four other countries (Canada, Mexico, Japan, and Russia) for the protection of migratory birds.<sup>5</sup>

---

<sup>2</sup> *New York's plan to save birds from crashing into buildings: lights out*, <https://www.theguardian.com/us-news/2023/sep/07/nyc-migrating-birds-night-lights-architecture> (Sept 7, 2023).

<sup>3</sup> *Drivers of fatal bird collisions in an urban center*, Biological Sciences, <https://www.pnas.org/doi/full/10.1073/pnas.2101666118> (June 7, 2021).

<sup>4</sup> *McCormick Place's Proactive Plan to Protect Migratory Birds*, <https://www.mccormickplace.com/birds/> (last visited October 11, 2023).

<sup>5</sup> See Convention Between the United States and Great Britain for the Protection of Migratory Birds, Aug. 16, 1916, 39 Stat. 1702 (Canada Convention); Convention for the Protection of Migratory Birds and Game Mammals, Feb. 7, 1936, 50 Stat. 1311 (Mexico Convention); Convention for the Protection of Migratory Birds and Birds in Danger of Extinction, and Their Environment, Mar. 4, 1972, 25 U.S.T. 3329, T.I.A.S. No. 7990 (Japan Convention); Convention Concerning the Conservation of Migratory Birds and Their Environment, Oct. 13, 1978, 29 U.S.T. 4647, T.I.A.S. No. 9073 (Russia Convention); see also 50 C.F.R. § 10.13(a).

To that end, the MBTA prohibits the killing of protected migratory bird species without prior authorization from the Service.<sup>6</sup> Specifically, the MBTA provides that, “[u]nless and except as permitted by regulations . . . it shall be unlawful at any time, by any means or in any manner, to pursue, hunt, take, capture, kill, attempt to take, capture or kill” migratory birds.<sup>7</sup> The Service defines “take” as “to pursue, hunt, shoot, wound, kill, trap, capture, or collect” a migratory bird, or to attempt to engage in any of those activities.<sup>8</sup> The Service has regularly investigated causes of lethal mortality, such as oil pits, power-lines, contaminated waste pools, oil spills, commercial fishing lines and nets, and wind turbines.<sup>9</sup>

The Service has used a range of strategies to ensure compliance with the MBTA’s prohibitions, including the use of notices, guidance, informally negotiated remediation, issuance of permits, and—when attempts to achieve voluntary compliance have failed—enforcement actions.<sup>10</sup> Violations of the MBTA are sorted into two categories: criminal penalties and forfeitures. Any person, association, partnership, or corporation who violates the MBTA or its implementing regulations commits a misdemeanor punishable by a fine of up to \$15,000 and imprisonment for up to six months.<sup>11</sup>

The Service maintains a list of protected migratory birds,<sup>12</sup> which includes Tennessee warblers, hermit thrush, American woodcocks and other varieties of birds that were killed due to the McCormick Place collision and many others regularly taken due to a lack of enforcement of the MBTA.

### **III. Necessary Minimization and Mitigation Measures for McCormick Place**

Activities authorized at McCormick Place and many other buildings are causing repeated and continuous unauthorized take of protected migratory birds on a massive scale, in patent violation of the MBTA. As of the date of this letter, state agencies, the Service, and Metropolitan Pier and Exposition Authority have failed to effectively or adequately avoid, minimize, and mitigate take of migratory birds. While McCormick Place voluntarily participates in the ‘Lights Out’ program, clearly this has not even come close to ensuring compliance with the MBTA.

McCormick Place should individually and collectively take immediate action to prevent and mitigate injuries and deaths of migratory birds, including taking measures to remediate its glass in order to avoid bird collisions and implement a stricter “lights out” policy during migration. Attached and below you will find additional information on several well tested products that could be applied to the glass, without impacting the look of the building, as recommended by experts in this field, and put in place by buildings in similar circumstances to McCormick Place, as well as a number of best practices that should be put in place immediately by the Authority to reduce bird strike collisions and mitigate the loss that has already occurred:

---

<sup>6</sup> There is, at present, no system for authorizing take under the MBTA by permit; however, the U.S. Fish and Wildlife Service has indicated its intent to establish such a system. Migratory Bird Permits; Authorizing the Incidental Take of Migratory Birds, 86 Fed. Reg. 54,667 (Oct. 4, 2021).

<sup>7</sup> 16 U.S.C. § 703(a).

<sup>8</sup> 50 C.F.R. § 10.12.

<sup>9</sup> *NRDC*, 478 F. Supp. 3d at 473.

<sup>10</sup> *Id.* at 473–74.

<sup>11</sup> 16 U.S.C. § 707(a). “Person” as used in the MBTA has been broadly defined to include governmental entities. See *Humane Soc’y of the U.S. v. Glickman*, 217 F.3d 882, 886 (D.C. Cir. 2000).

<sup>12</sup> 50 C.F.R. § 10.13(c).

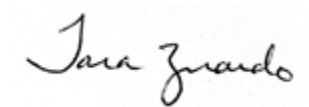
- Implement a complete “lights out” policy during migration season until the problem is corrected (see below).
- For the remainder of the year, ensure blinds, shades and/or shutters are in place and closed to reduce nighttime light that attracts and confuses birds.
- To alert birds to the presence of glass during the daytime, take immediate steps to cover portions of windows with parachute cords, tempera paint, screens, netting, tape or decals.
- Commit to applying one of many well-tested permanent products that can be installed to remediate the building’s glass, including film or tape applied to the windows, or acid-etching, fritting, and/or frosting the windows.
- Commit \$2 million to protect and restore migratory bird habitat to mitigate for the loss of birds that has already occurred.

#### **IV. Conclusion**

Activities authorized at McCormick Place continue to injure and kill migratory birds that are protected under MBTA at an alarming rate. State and federal agencies and the Metropolitan Pier and Exposition Authority have failed to adequately prevent, minimize, and mitigate these deaths and injuries, leaving thousands of birds to suffer in a tortuous and inhumane way. For these reasons, we respectfully urge the Metropolitan Pier and Exposition Authority to immediately take steps to implement effective and available glass treatments to reduce bird collisions and to keep the lights out during migration at its existing lakeside Chicago convention center.

Thank you for considering our request. If you have any questions or would like copies of the sources cited, please contact Tara Zuando at [tzuardo@biologicaldiversity.org](mailto:tzuardo@biologicaldiversity.org) or (415) 419-4210. Regardless, we respectfully request a response to this letter within thirty days so that we and other members of the interested public know whether migratory birds will be protected in the manner dictated by federal law.

Sincerely,



Tara Zuando, Esq.  
Senior Advocate  
Center for Biological Diversity  
(415) 419-4210  
[tzuardo@biologicaldiversity.org](mailto:tzuardo@biologicaldiversity.org)