



## THE MIGRATORY BIRD TREATY ACT OF 1918 AND THE CRIMINAL LIABILITY OF POLLUTERS

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The Migratory Bird Treaty Act (MBTA) of 1918 created with purpose of protecting certain birds from over hunting during a time when commercial trade in birds was recognized as threat to their long term survival. The MBTA implemented into law a treaty signed in 1916 with Great Britain (for Canada), The MBTA is codified in Title 16 United States Code Section 703, which prohibits the taking, killing, or unlawful possession of migratory birds without a permit. Title 16 USC Section 707(a) makes any violation of Section 703 a misdemeanor punishable by \$15,000 fine and six months imprisonment. Misdemeanor violations of the MBTA are strict liability crimes.

In this age of heightened concern about the environment, the MBTA has become a useful tool of criminal enforcement and deterrence. When the *Exxon Valdez* ran around off Prince William Sound in March of 1989 it dumped more than 10 million gallons of crude oil into the water and onto the shorelines of Alaskan wildlife refuges. The spill had a great effect on the local wildlife, killing more than 36,000 migratory birds, including more than 100 bald eagles. Count three of the government's four count indictment of Exxon alleged violations of the MBTA. Exxon eventually settled the criminal case for \$125 million dollars.

More recently on November 7, 2007 the container ship *Cosco Busan* crashed in the Bay Bridge in the San Francisco Bay, spilling 53,000 gallons of fuel oil into the water. The oil spill killed more than 2000 migratory birds. The government charged both the pilot (who had been operating the vessel while on prescription drugs) and Fleet Management Ltd. (the Hong Kong based ship management company that operated the ship) with violations of the MBTA. The pilot, Captain John Cota, plead guilty to misdemeanor charges of violations of the MBTA and the Clean Water Act. He was sentenced to 10 months in prison. Fleet Management Ltd. later plead guilty to violations of the Oil Pollution Act of 1990, felony obstruction of justice, false statement violations, with the MBTA and other charges being dismissed. It agreed to pay a \$10 million dollar criminal penalty as part of the settlement.