



United States Department of the Interior
OFFICE OF THE SOLICITOR
Washington, D.C. 20240

April 11, 2025

M-37085

Memorandum

To: Secretary
Assistant Secretary – Fish and Wildlife and Parks

From: Acting Solicitor

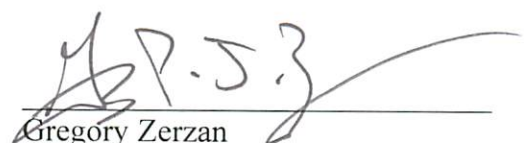
Subject: Withdrawal of Solicitor Opinion M-37065 “Permanent Withdrawal of Solicitor Opinion M-37050 ‘The Migratory Bird Treaty Act Does Not Prohibit Incidental Take’”

On December 22, 2017, Principal Deputy Solicitor Daniel H. Jorjani issued a legal opinion, M-37050, which concluded that the prohibitions of the Migratory Bird Treaty Act (“MBTA”) do not apply to the accidental or incidental taking or killing of migratory birds. This opinion was subsequently vacated in *Natural Resources Defense Council v. U.S. Dep’t of the Interior*, 478 F. Supp. 3d 469 (S.D.N.Y. 2020). At the request of the United States, the United States Court of Appeals for the Second Circuit dismissed the Department of the Interior’s (“Department”) appeal on March 2, 2021. The Department is not convinced that the matter would not have benefited from further review.

On January 20, 2025, President Trump issued Executive Order (EO) 14154, titled “Unleashing American Energy,” directing the heads of each federal agency to implement plans to “suspend, revise, or rescind all agency actions identified as unduly burdensome. . .” On February 3, 2025, Interior Secretary Doug Burgum directed relevant Department officials to “suspend, revise, or rescind documents” that conflict with the President’s direction, and identified among such documents M-Opinion M-37065.

In light of the directions of the President and the Secretary, and because the withdrawal of M-37050 was done without allowing for proper review by the Court of Appeals, M-37065 is repealed. All bureaus and offices are directed to consider M-Opinion M-37050 as authoritative and binding on the Department, except with respect to actions relying on such opinion that are to be taken within the jurisdiction of the United States District Court for the Southern District of New York.

This Memorandum revokes and withdraws M-37065.


Gregory Zerzan