

## **CHAPTER NINE UPDATE**

### **Incidental Takes and the Migratory Bird Treaty Act (MBTA) (pages 965-966)**

On January 7, 2021, just days before the Trump administration left office, it adopted a final rule providing that the Migratory Bird Treaty Act (MBTA) prohibited only intentional killing of migratory birds and not incidental takes. As noted in the casebook on pages 965-966, the Biden administration delayed this rule from taking effect until March 8, 2021 and opened a new public comment period. On March 8, 2021, the U.S. Department of Interior revoked the December 22, 2017 Solicitor's Opinion (M-37050), discussed on page 965 of the casebook. On May 6, 2021, the Biden administration's U.S. Fish and Wildlife Service issued a proposed rule to revoke the January 7 final regulation. The Service explained that the "effect of this proposed rule would be to return to implementing the MBTA as prohibiting incidental take and applying enforcement discretion, consistent with judicial precedent." 86 Fed. Reg. 24573 (2021).