

Frequently Asked Questions for How to Assess Migratory Bird Impacts

What is the scope of the Migratory Bird Treaty Act (MBTA)?

The MBTA states that it is illegal to pursue, hunt, take, capture, kill, or sell “migratory” birds or any of their parts (e.g., feathers, eggs, nests), alive or dead, as defined in 16 U.S.C. §§ 703-712. The MBTA is a strict liability statute, meaning that any take, intentional or not, is prohibited without regulatory authorization.

What is a migratory bird?

The statutory definition of “migratory bird” includes all species listed in any one of the four international conventions, which the MBTA implements. Some birds protected by the MBTA may be resident, non-migratory species in the biological sense. There are 1,007 species currently on the MBTA protected list (50 CFR 10.13).

What is “take” of a migratory bird?

Take is defined as pursuing, hunting, shooting, wounding, killing, trapping, capturing, or collecting or attempting to pursue, hunt, wound, kill, trap, capture or collect a migratory bird (50 CFR § 10.12). Take includes actions that are intentional (e.g., hunting or depredation control) and unintentional (or incidental), meaning that the impact or harm to the bird is not the purpose of the activity (e.g., when a bird is electrocuted by a power line or flies into a communications tower). Take is illegal, except when authorized by the Department of the Interior, which can issue a permit with specific take parameters (i.e., where the take of the bird must be the intent of the proposed activity). The permits are issued by regional U.S. Fish & Wildlife Service (USFWS) permit offices (www.fws.gov/migratorybirds/mbpermits.html).

Are there additional responsibilities/obligations for eagles?

Yes. The two species of eagles that are native to the United States have additional protection under the Bald and Golden Eagle Protection Act (BGEPA; 16 U.S.C. §§ 668-668d), which prohibits taking Bald and Golden Eagles, their nests, parts and eggs (www.fws.gov/migratorybirds/baldeagle.htm). BGEPA defines take as “to pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest or disturb.” “Disturbance” relates to activities that affect the viability of eagle populations (e.g., from nest or chick abandonment), which would result from otherwise normal, lawful business practices such as operating a communication tower or powering a grid. USFWS can issue permits to take, possess, and transport bald and golden eagles (www.fws.gov/migratorybirds/baldeagle.htm). No permit authorizes the sale, purchase, barter, trade, importation, or exportation of eagles, or their parts or feathers.

If the INRMP addresses eagle protection, does that satisfy legal requirements?

Not necessarily. Developing an Integrated Natural Resources Management Plan (INRMP) alone does not fulfill responsibilities under BGEPA. To ensure a project or action meets BGEPA obligations and responsibilities, the installation should review relevant information (www.fws.gov/migratorybirds/mbpermits/regulations/BGEPA.PDF), including, but not necessarily limited to, eagle presence, breeding, feeding, territorial defense, stopover habitat, overwintering range, and staging. Installation natural resources personnel should discuss this information with their USFWS counterparts to ensure that relevant and appropriate eagle-related recommendations are incorporated into an INRMP.

What are the Department of Defense's (DoD's) responsibilities under Executive Order 13186?

Executive Order 13186 (<http://ceq.hss.doe.gov/nepa/regs/eos/eo13186.html>) identifies federal agency responsibilities to protect migratory birds and their habitats, and directs executive departments and agencies to undertake actions that will further implement the MBTA. The Order also directs federal agencies to develop a Memorandum of Understanding (MOU) with USFWS to promote the conservation of migratory bird populations, including their habitats, when their actions have, or are likely to have, a measurable negative effect on migratory bird populations. Neither the Executive Order nor the MOU authorize the take of migratory birds.

Does DoD have a Migratory Bird MOU with USFWS?

Yes. See www.fws.gov/migratorybirds/Partnerships/DoDMOUfinalSignature.pdf.

Are Military Readiness activities exempt from the Migratory Bird Treaty Act?

No. Regardless of whether an activity is readiness related or not, the impacts of the activity must be assessed through the National Environmental Policy Act (NEPA) process. In February 2007, USFWS issued a Rule that authorizes incidental take of migratory birds for military readiness activities provided the installation has considered the environmental impacts of that activity through the NEPA process using the best scientific data available, and provided the Military Services confer and cooperate with USFWS to develop and implement appropriate conservation measures to minimize or mitigate significant adverse effects of the proposed action.

What are DoD's responsibilities under NEPA?

NEPA requires all federal agencies, project proponents using federal funds, or projects where federal permits have been issued to analyze and document the environmental impacts of those actions (<http://ceq.hss.doe.gov>). Examining the potential impacts to migratory birds is included in this requirement.

Do I need to include birds in my INRMP?

Yes. INRMPs incorporate an adaptive management approach that promotes learning while the outcome is yet unknown, and allows for future decisions to be based on the analyses of the monitoring data. USFWS and DoD are working together to develop a model or template as well as guidance on this topic.