

**From:** [Lawrence, Mandy D](#) on behalf of [PermitsR1MB, FW1](#)  
**To:** [BrownScott, Jennifer](#)  
**Subject:** Re: Incidental Take Permit for Aquaculture?  
**Date:** Friday, August 21, 2020 1:55:54 PM

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Hi Jennifer,

We don't currently have any permitting mechanisms for incidental take of migratory birds; however, there are incidental take permits available for eagles if you think they may be impacted by these operations

([https://www.fws.gov/pacific/eagle/permit\\_types/non\\_purposeful\\_take.html](https://www.fws.gov/pacific/eagle/permit_types/non_purposeful_take.html)).

Bigger picture regarding migratory birds and incidental take: we are still awaiting guidance on a recent court ruling on the M-Opinion. In 2018, the M-Opinion made the determination that incidental take was not prohibited under MBTA; however, a recent court decision (as of last week) has overturned that. We have not received official word on how to proceed, so I'm limited in the guidance I can give at this point as far as the regulatory implications of a project such as this.

Sorry for a sort of indirect response ... but stay tuned and hopefully I can provide clearer guidance at some point soon!

Mandy

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Migratory Bird Permit Office

HI, ID, OR, & WA

503-872-2715

[PermitsR1MB@fws.gov](mailto:PermitsR1MB@fws.gov)

<http://www.fws.gov/pacific/migratorybirds/permits/>

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**From:** BrownScott, Jennifer <jennifer\_brownScott@fws.gov>

**Sent:** Thursday, August 20, 2020 8:57 AM

**To:** PermitsR1MB, FW1 <permitsr1mb@fws.gov>

**Subject:** Incidental Take Permit for Aquaculture?

A 34 acre aquaculture operation is in the permit process for Dungeness Bay within the highest used area of Dungeness NWR for migrating shorebirds and wintering waterfowl. The operation proposes to use 20,000 PVC oyster bags on 5 acres. Loose oyster bags, cables, etc will likely wash up on adjacent refuge shorelines where they will not be retrieved until after the migration and wintering periods. There is potential for entanglement or other migratory bird impacts from the gear.

I am discussing the compatibility determination process with the applicant on Friday and would like to let them know if there are any other USFWS permits that are needed. Would this type of project require an incidental take permit? If so, what is the process?

Thanks for your assistance.

-jennifer

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