



United States Department of the Interior
FISH AND WILDLIFE SERVICE



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MBPM-2-02
Date: January 15, 2025

MIGRATORY BIRD PERMIT MEMORANDUM

SUBJECT: Authorizations to take migratory bird nests and contents.

PURPOSE: The purpose of this memorandum is to clarify the application of the Migratory Bird Treaty Act (MBTA; 16 U.S.C. §§ 703-712) to the take of migratory bird nests.

BACKGROUND: The MBTA protects migratory birds, including any part, nest, or egg of any such bird, as defined in 50 CFR 10.12. The List of Migratory Birds protected can be found at 50 CFR 10.13 and includes over 1,100 species of birds. The MBTA prohibits the possession, sale, barter, purchase, shipment, export, import, transport, shipment, and take of migratory birds, including any part, nest, or egg of any such bird. Take is defined in 50 CFR 10.12 to mean pursue, shoot, wound, kill, trap, capture, or collect, or attempt to do so. The U.S. Fish and Wildlife Service (Service) implements the MBTA through regulations that authorize the take, in specific circumstances, of migratory birds, including nests, eggs, and chicks.

This Migratory Bird Permit Memorandum (MBPM) replaces the previous MBPM-2 Nest Destruction (April 15, 2003) and the Destruction and Relocation of Migratory Bird Nest Contents (June 12, 2018). This MBPM does not supersede or apply to other relevant Federal, State, or Tribal laws and regulations, including the Endangered Species Act (16 U.S.C. §§ 1531–44; ESA) and the Bald and Golden Eagle Protection Act (16 U.S.C. §§ 668–668d; Eagle Act). The regulations pertaining to bald eagle and golden eagle nests can be found at 50 CFR Part 22.

TERMS:

In-use nest: a nest that contains viable eggs or nestlings. A nest becomes in-use when the first egg is laid and remains in-use until nestlings fledge and are no longer dependent on the nest. In-use nests were previously called ‘active’ nests.

Inactive nest: a nest that does not contain viable eggs or nestlings. Nests that are being built or tended by adult birds prior to an egg being laid are considered inactive. Nests are also considered inactive once nestlings fledge and are no longer dependent on the nest. Inactive nests include unattended nests, even if non-viable eggs or nestling remains are present.

POLICY 1 – Inactive Nests: An inactive nest can be destroyed without a permit, or other MBTA authorization, provided no person retains possession of the nest or its contents, including,

non-viable eggs or deceased birds or chicks. Relocation of an inactive nest requires authorization as the relocation process requires a person to collect and be in possession of the nest.

Regulatory Justification

The MBTA specifically protects migratory bird nests from possession, sale, purchase, barter, transport, import, export, and take. Within the regulatory definition of take, only the term “collect” could apply to the nest itself. Because the MBTA does not prohibit the destruction of a migratory bird nest alone, a permit or other regulatory authorization is not required to destroy a nest that is inactive.

Individual Responsibility

It is the responsibility of the individual destroying an inactive nest to ensure the take of migratory birds, nestlings, or viable eggs will not occur. While the destruction of a nest by itself is not prohibited under the MBTA, nest destruction that results in unpermitted take of migratory birds, nestlings, or viable eggs, is illegal and fully prosecutable under the MBTA. Nesting behaviors of many migratory bird species can make it difficult to determine whether a nest is in use. The biological and behavioral characteristics of some migratory bird species can increase the risk of an MBTA violation for taking an in-use nest, particularly colonial nesting species, burrowing species, and secretive species. It is the responsibility of the individual conducting activities intended to or likely to destroy the nest to ensure that the nest is inactive and that destroying it will not take migratory birds, viable eggs, or chicks. We recommend conducting activities outside of nesting season because doing so reduces the risk of take.

Additional Protections

Even when inactive, migratory bird nests may be protected by additional Federal, State, Tribal, and local laws. For example, Federal protection of the inactive nests of bald eagles and golden eagles and MBTA species that are also on the list of species protected by the ESA (*see* 50 CFR 17.11). It is the responsibility of the individual to determine whether there are additional protections and restrictions prior to destroying an inactive nest.

POLICY 2 – Take of In-Use Nests: Destruction of an in-use nest requires MBTA authorization. MBTA authorization is also required to relocate a nest, whether the nest is in-use or inactive. This is because relocation of a nest requires collection and possession of the nest. Destruction of an in-use nest or relocation of any nest requires compliance with MBTA regulations and, if a permit is required, any conditions attached to the permit.

There are multiple types of permits and regulatory authorizations available for the take or relocation of nests, including the take of nests for research purposes (50 CFR 21.73), for depredation purposes (50 CFR subpart D), or in accordance with a special purpose permit (50 CFR 21.95). The Migratory Bird Permit Office can assist in determining the correct permit type or regulatory authorization for an activity. The Service will ensure that permit requests for nest destruction are for situations where it is necessary and consistent with the MBTA and its governing regulations.

/s/ Jerome Ford, 1/15/2025

Assistant Director – Migratory Birds