



NEPA Migratory Bird Guidance

Introduction

Pursuant to 23 United States Code 327 and the implementing Memorandum of Understanding (MOU) executed on XX, the Maine Department of Transportation (MaineDOT) has assumed, and the Federal Highway Administration (FHWA) has assigned its responsibilities under the National Environmental Policy Act (NEPA) for highway projects and Local Agency Program (LAP). MaineDOT's assumption includes all highway projects in Maine with FHWA federal funding or other FHWA federal action. This assumption of FHWA responsibilities or NEPA Assignment includes responsibility for environmental review, interagency consultation, and approval of NEPA actions. MaineDOT will be the Lead Federal Agency for MaineDOT-sponsored highway projects.

The following provides guidance for migratory birds and provides the process for identifying and determining the appropriate level of coordination that is required.

The Migratory Bird Treaty Act (MBTA)(16 USC 703-712) was enacted in 1918 and implements various treaties and conventions between the U.S., Canada, Japan, Mexico, and the former Soviet Union for the protection of migratory birds. Under the act, taking, killing, or possessing migratory birds (other than game birds during valid hunting seasons) is unlawful. Protections extend to migratory bird nests determined to contain eggs or young. U.S. Fish and Wildlife Service (USFWS) has regulatory authority over this act.

MaineDOT Biologists are responsible for assessing, ensuring compliance, and directly consulting with USFWS under NEPA Assignment. Migratory bird information is provided to and discussed with the Team Leader. This information is incorporated into the overall NEPA decision.

1.0 Migratory Bird Coordination and Documentation

The MaineDOT Biologist and Team Leader will document the applicability of the MBTA in ProjEx and, if required, incorporate the following commitments into the contract document via a special provision:

1. Clearing and tree trimming (as defined in Standard Specifications section 201.01 will be minimized to the greatest extent practicable to complete any projects.
2. No active migratory bird nests (nests containing eggs and/or young) will be removed or destroyed.
 - a. A breeding bird survey may be completed. Clearing and trimming may be completed at any time if it is found that there is no active nest in the project area.
 - b. If an active nest is found, an appropriate buffer for the bird and the activity may be placed around the nest. This buffer will be coordinated with the ENV office.
 - c. Incidental take of swallow species nesting on bridge structures is allowed following guidance in the FAST ACT Section 1439.
3. Measures, to the extent practicable, will be used to prevent or discourage migratory birds from building nests within portions of the project area planned for construction.
4. Inactive nests will be removed from the project area to minimize the potential for reuse by migratory birds during the construction period.



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All actions will be processed and documented in MaineDOT’s ProjEx database and MaineDOT’s Environmental CPD e-file.

2.0 Links

USFWS Migratory Bird Treaty Program

<https://www.fws.gov/birds/policies-and-regulations/laws-legislations/migratory-bird-treaty-act.php>

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