

Part 610 – National Environmental Compliance Handbook

Subpart H – Exhibits

610.111 Migratory Birds/Bald and Golden Eagle Protection Act Evaluation Procedure Guide Sheet

MIGRATORY BIRDS/ BALD AND GOLDEN EAGLE PROTECTION ACT EVALUATION PROCEDURE GUIDE SHEET

Note: This guide sheet includes evaluation guidance for compliance with both the Migratory Birds Treaty Act, Executive Order 13186 (2001), and the Bald and Golden Eagle Protection Act. Both sections must be completed if eagles are identified within the area of potential effect.

SECTION I: MIGRATORY BIRDS TREATY ACT

In the lower 48 states, all species except the house sparrow, rock pigeon, common starling, and nonmigratory game birds such as pheasants, gray partridge, and sage grouse, are protected.

STEP 1

Could the proposed action or alternative result in a take (intentionally or unintentionally) to any migratory bird, nest or egg? The term "**take**" means to pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to pursue, hunt, shoot, wound, kill, trap, capture, or collect (50 CFR Section 10.12). (**Note:** The MBTA does not prohibit the destruction of a migratory bird nest alone (without birds or eggs) provided that no possession occurs during the destruction (USFWS, Migratory Bird Memorandum, MBPM-2, April, 2003).)

If "No," additional evaluation is not needed concerning migratory birds. **Document the finding, including the reasons, on the NRCS-CPA-52 and proceed with planning.**

If "Yes," go to Step 2.

STEP 2

Is it the purpose of the proposed action or alternative to intentionally take a migratory bird or any part, nest, or egg (such as, but not limited to, controlling depredation by a migratory bird or removal of occupied nests of nuisance migratory birds)? **Note:** Take of migratory game birds is exempt, as provided for under State and Federal hunting regulations.

If "No," go to Step 3.

If "Yes," document the effects, including the reasons, on the NRCS-CPA-52. Inform the client that they must obtain a permit from USFWS and any required State permit before the action is implemented.

STEP 3

Have adverse effects on migratory birds been mitigated (avoided, reduced, or minimized) to the maximum practicable extent?

If "No," modify the alternative and **repeat Step 1.** If client is unwilling to modify the action then NRCS must discontinue assistance until issue has been resolved with USFWS.

If "Yes," document mitigation measures on the NRCS-CPA-52 and in the plan. **Go to Step 4.**

STEP 4

Will unintentional take of migratory birds, either individually or cumulatively, result in a measurable negative effect on a migratory bird population?

If "No," additional evaluation is not needed concerning migratory birds. **Document the finding, including the reasons, on the NRCS-CPA-52 and proceed with planning.**

If "Yes," additional principles, standards, and practices must be developed in coordination with USFWS to further lessen the amount of unintentional take (Executive Order 13186(3)(e)(9)). **Repeat Step 1 or indicate which of the following options is pursued by the client (pick one):**

- The client will obtain a permit from USFWS before the action is implemented.
- NRCS may need to terminate assistance. Contact the NRCS State environmental specialist or wildlife biologist.

SECTION II: BALD AND GOLDEN EAGLE PROTECTION ACT

STEP 1

Will the proposed action or alternative result in the take, possession, sale, purchase, barter, or offer to sell, purchase, or barter, export or import "of any bald or golden eagle, alive or dead, including any part, nest, or egg, unless allowed by permit"? (The term "**take**" is defined as "pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest or disturb" a bald or golden eagle. The term "disturb" under this act means to agitate or bother a bald or golden eagle to a degree that causes, or is likely to cause, based on the best scientific information available, injury to an eagle; a decrease in its productivity by substantially interfering with normal breeding, feeding, or sheltering behavior; or nest abandonment by substantially interfering with normal breeding, feeding, or sheltering behavior.)

If "No," additional evaluation is not needed. **Document the finding, including the reasons, on the NRCS-CPA-52 and proceed with planning.**

If, "Yes," go to Step 2

STEP 2

Can the proposed action or alternative be modified to avoid the adverse effect? Refer to the National Bald Eagle Management Guidelines for measures that can be taken to avoid disturbing nesting bald eagles and their young.

If "No," document the finding, including the reasons, on the NRCS-CPA-52. Contact the NRCS State biologist or appropriate NRCS official about working with the client and USFWS to permit the action or finding another alternative action to avoid adverse effects prior to providing final designs or implementing the proposed action or alternative. No permit authorizes the sale, purchase, barter, trade, importation, or exportation of eagles, or their parts or feathers. The regulations governing eagle permits can be found in 50 CFR Part 22.

If "Yes," modify the alternative and **repeat Step 1.** If the client is unwilling to modify the action then NRCS may need to discontinue assistance. Contact the NRCS State environmental specialist or wildlife biologist for assistance.