



United States Department of the Interior FISH AND WILDLIFE SERVICE

Division of Ecological Services
17629 El Camino Real #211
Houston, Texas 77058-3051
281/286-8282 FAX: 281/488-5882



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Thank you for your request for migratory bird information in the Clear Lake Ecological Services Field Office's area of responsibility. Please be advised that all migratory birds (see Title 50 Code of Federal Regulation, Part 10, Section 10.13) are protected by the Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703 et seq.).

Further protection for some migratory bird species lies within the provisions of the Endangered Species Act (ESA) of 1973 (16 U.S.C. 1531 et seq.) and the Bald and Golden Eagle Protection Act of 1940 (16 U.S.C. 668-668d). More people are aware of the protections afforded endangered species by the ESA than they are of the protections offered migratory birds by the MBTA and there is a fundamental difference between the two. The ESA provides for the unintentional take of endangered species if it can be mitigated while the MBTA simply does not allow the unintentional take of non-endangered migratory birds.

Unintentional take often occurs when land clearing activities, etc. destroy active nests or otherwise kill birds. This type of unintentional take is best avoided by conducting bird surveys to determine if actively nesting birds are present within the project area and avoiding habitat disturbance if they are. While MBTA permits are available to allow the deliberate take of migratory birds for specific types of activities (see Title 50 CFR, Part 21), there is no permit available for the unintentional take of migratory birds. More information regarding migratory birds can be found at <http://www.fws.gov/migratorybirds/mbpermits.html>. A summary of recommendations to help you comply with the provisions of the MBTA, while undertaking activities associated with your project is enclosed.

Regardless of your determination as to whether your project will affect migratory bird species, the Service recommends that you maintain a complete record of the evaluation, including steps leading to the determination, the qualified personnel conducting the evaluation, habitat conditions, site photographs and any other related articles.

Furthermore, please be aware that this letter addresses only the potential impacts on migratory birds. This letter should not be viewed as addressing impacts to endangered or threatened species or wetland systems. If your project requires evaluation under the ESA please contact our office or visit <http://www.fws.gov/southwest/es/EndangeredSpecies/> for a county-by-county listing of endangered species.

If we can further assist you in understanding the Migratory Bird Treaty Act, please contact Donna Anderson, Moni Belton, Kelsey Gocke, Jeff Hill, Charrish Stevens, or Arturo Vale at 281-286-8282.

