



DEPARTMENT OF THE ARMY  
ASSISTANT CHIEF OF STAFF FOR INSTALLATION MANAGEMENT  
600 ARMY PENTAGON  
WASHINGTON, DC 20310-0600

DAIM-ED-N (200-3)

17 Aug 2001

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Army Policy Guidance on Migratory Bird Treaty Act

1. References:

a. AR 200-3, Natural Resources – Land, Forest, and Wildlife Management, 28 Feb 95

b. Migratory Bird Treaty Act, 16 USC 703-71 1

c. Humane Society v. Glickman, 217 F.3d 882 (D.C. Cir 2000).

d. 50 CFR Parts 13 & 21, U.S. Fish and Wildlife Service General Permit Procedures and Migratory Bird Permits

e. 50 CFR Part 10, Taking, Possession, Transportation, Sale, Purchase, and Barter, Exploration and Importation of Wildlife and Plants.

f. Memorandum, ADUSD (Environmental Quality), 2 Jan 01, subject: Applicability of the Migratory Bird Treaty Act to Federal Agencies (encl 1).

g. Sikes Act, as amended by the Sikes Act Improvement Act (SAIA) of 1997, 16 U.S.C. 670a et seq.

h. Executive Order 13186, Responsibilities of Federal Agencies to Protect Migratory Birds, 11 Jan 02 (encl2).

2. Major Army Commands (MACOMs) are directed to ensure that installations comply with the requirements of the Migratory Bird Treaty Act (MBTA). Recent court rulings (The Humane Society of the United States v. Glickman, reference c) and the U.S. Fish and Wildlife Services (USFWS) response (reference d) have emphasized responsibilities under the MBTA and Executive order 13186.

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3. The following Army guidance is provided for immediate implementation:

a. Intentional Take: Where the purpose of an installation action is to intentionally and directly take any migratory bird species (e.g., eradicate nuisance birds; clear nesting, addling eggs) (see reference 1e), the installation must, in accordance with Army guidance:

(1) Apply for and obtain a depredation, special purpose, or scientific collection and education permit or other regulatory authorization from the USFWS prior to taking action(s) (see reference d);

(2) Record any birds purposefully and intentionally taken under the permit and provide an annual report to the USFWS; and

(3) Comply with the guidance for unintentional take discussed next.

b. Unintentional Take: Unintentional take occurs when an installation causes take incidental to an otherwise lawful activity (e.g., military training exercises, timber harvest activities, training exercises, activities associated with agricultural/grazing outleases). Where an installation anticipates unintentional take of a bird, nest, or egg as a result of an otherwise lawful activity, the installation should, prior to project implementation:

(1) Consider and seek to minimize impacts of management activities on migratory birds in the Integrated Natural Resource Management Plan. However, specific inclusion of migratory birds in an INRMP shall not impede progress to complete the INRMP by 18 November 2001 as legally mandated in the Sikes Act Improvement Amendments.

(2) Consider the effects to migratory birds in any proposed action and address the effects, mitigation and public comment through National Environmental Policy Act documentation.

4. Executive Order 13186, Section 3 directs each Federal agency taking actions that have, or are likely to have, a measurable negative effect on migratory bird populations to develop and implement a Memorandum of Understanding (MOU) with USFWS that shall promote the conservation of migratory birds populations. When completed by DoD, the MOU will be forwarded and this policy guidance may be updates consistent with the MOU.

5. Please make this memorandum available to all installations natural resources and pest management staff by 15 Sept 01.

6. The Army Staff point of contact can be reached at 703-693-0680. The technical contact can be reached at 410-436-1556.

FOR THE ASSISTANT CHIEF OF STAFF FOR INSTALLATION MANAGEMENT.

Encl

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