

Migratory Bird Treaty Act

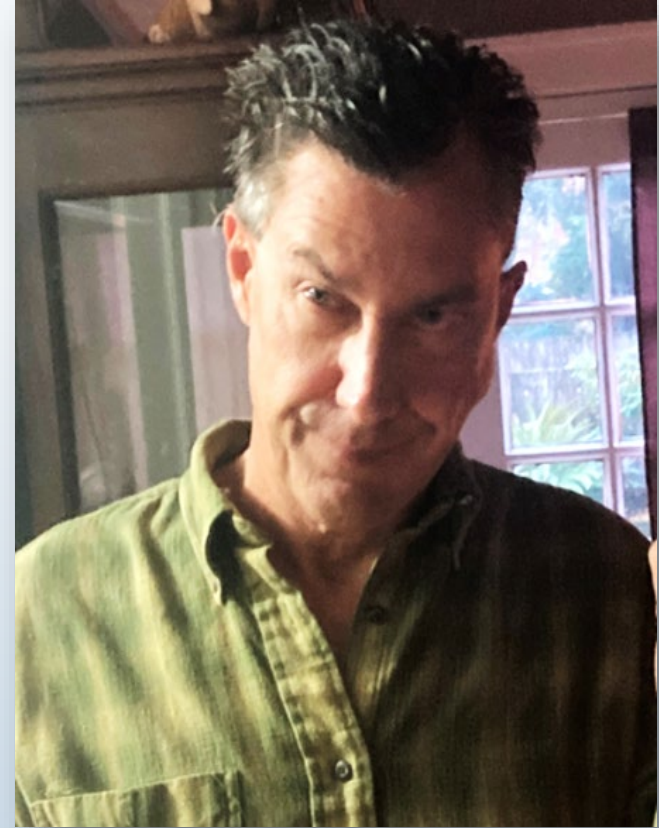


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Nick started with ODOT in 1993 as a biologist and has been with ODOT environmental since that time.

He conducts biological/botanical analysis, biological permitting, and the design of mitigation sites and post construction monitoring for ODOT

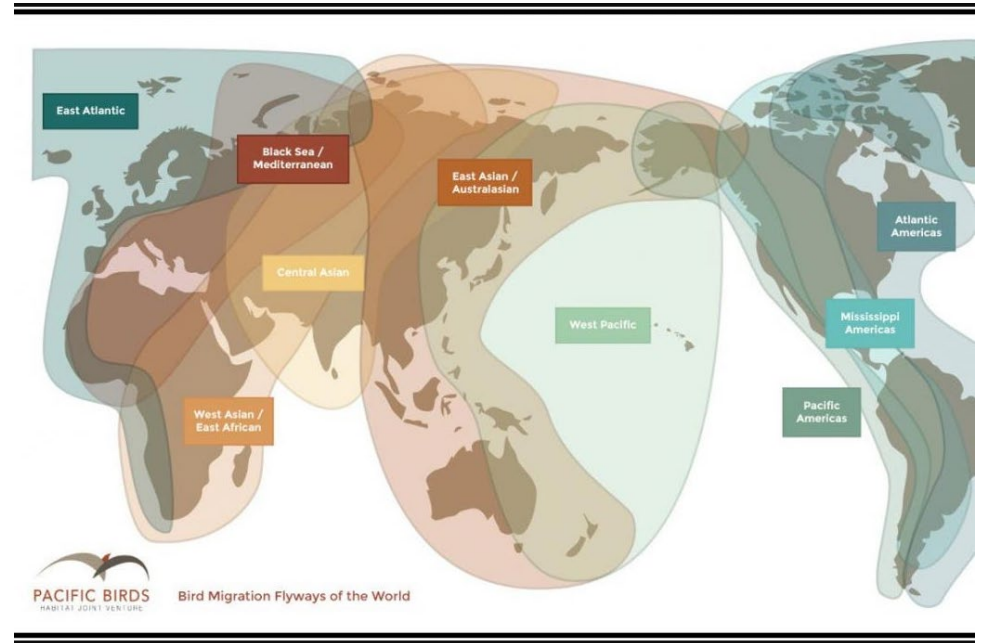


Migratory Bird Treaty Act Takeaways

1. Identify and coordinate early to minimize risk
2. Migratory birds are a common issue for projects that can impact schedule and budget
3. MBTA Issues are easy to solve during project development
 - not construction



- 1800's overharvest of birds for ornamental feathers for hats, unregulated hunting, egg collecting, and habitat loss led to declines of migratory birds and drove several bird species to extinction.
- 1918, Congress enacted the MBTA to implement treaties between the United States and other nations for the conservation of migratory birds.
- Treaties between nations necessary since several bird species migrate along major flyways that intermix at the poles.
- The MBTA Protects:
 - Migratory Birds
 - Nests
 - Eggs, hatchlings, and chicks





...and can affect project delivery if not identified early

- Federal law protects migratory birds and nests with eggs and young (active nests)
- Comes up when project work includes:
 - Vegetation Clearing
 - Bridge, Culvert, or Structure Work
 - Contractor equipment, temporary work bridges, and scaffolding.



Early Coordination minimizes risk to schedule and budget!



MBTA – Where MBTA Issues Occur

Potential Conflict Points

- Tree removal, pruning, and shrub clearing
- Bridge replacement, widening, rehabilitation, or painting
- Sign or light pole upgrades or replacements
- Culvert work including retrofits, extensions, or replacements
- Staging areas and contractor equipment and temporary work structures

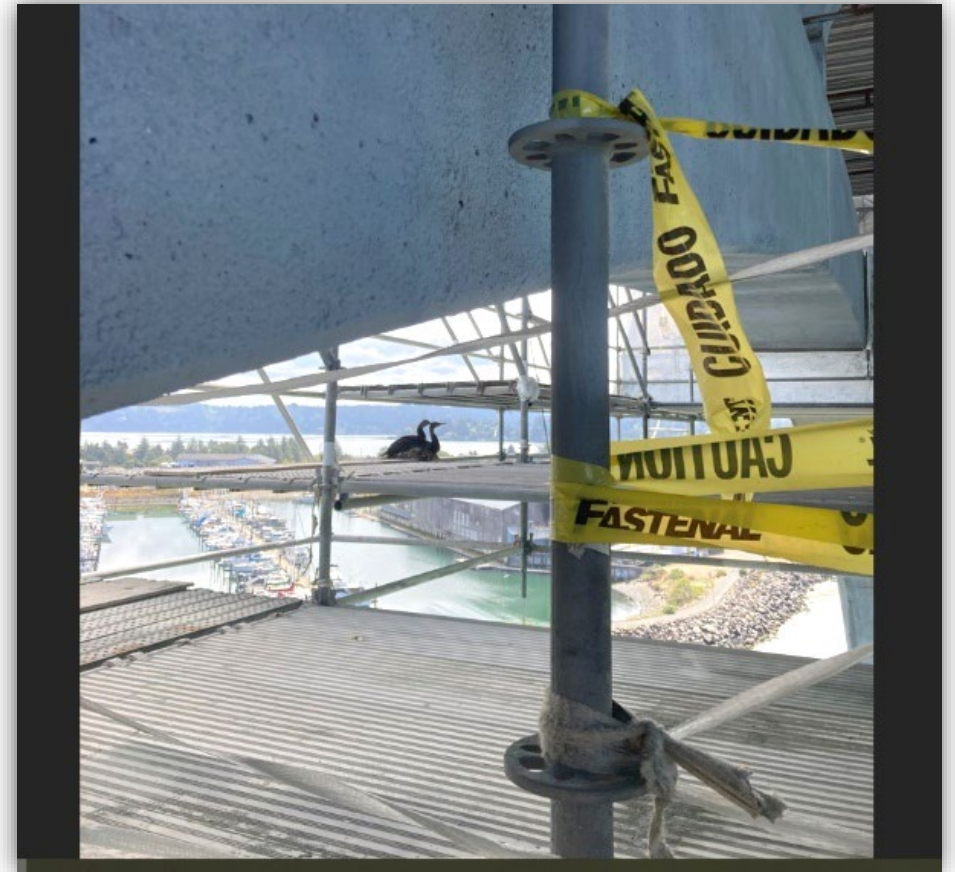
Common Species Encountered

- Swallows, Robins, songbirds
- Killdeer, Osprey, gulls, and cormorants

MBTA – Project Delivery Risks

Active nests discovered after construction begins might result in:

- Work restrictions, need to establish buffers, and avoidance areas
- Delayed work like a pause in vegetation clearing
- Nest monitoring cost to determine when birds fledge and work can resume
- Additional nest surveys
- Contractor standby costs
- Project resequencing



Late discovery often costs more than early planning.

MBTA – Early Coordination = Easy Compliance

MBTA is Usually Simple When Addressed Early

Best Practices

- Identify bird habitat and conflicts like vegetation clearing timing or structure work during project scoping
- Coordinate with REC during design to determine potential conflicts and develop a plan
- Determine if bird surveys are needed during project development to identify nesting conflicts and develop a bird management plan
- Schedule veg clearing work before or after the nest season (General Nesting Season is March 1-August 31)
- Identify who will be doing bird management (normally done by USDA Animal and Plant Health Inspection Service (APHIS) – Wildlife Services)



Most MBTA issues are solved during project development – not construction.

MBTA – Take Permit



Authorizes the take of active nest (nest with eggs, hatchlings, or chicks) provided that reasonable avoidance and minimization measures were implemented

A few activities that show avoidance and minimization:

- Remove minimum amount of nesting habitat necessary for project implementation and do so outside of the nesting season
- Prevent migratory birds from nesting in habitat slated for removal/demolition during nesting season (e.g. exclusion)
- Inspect habitat for nest prior to clearing, avoid disturbing active nest until the young have fledged
- Consult project Biologist or REC on issues that arise during the project implementation

MBTA Take Permit does not replace planning but is a tool for situations where active nests cannot be avoided despite reasonable efforts

MBTA – Three Key Takeaways

1) Identify Needs and Coordinate Early

- Identify potential MBTA conflicts during scoping and incorporate avoidance measures during project development (i.e., schedule vegetation clearing outside of the nesting season)

2) MBTA Can Impact Schedule and Budget

- Active nests can create delays and additional costs
- Take of active nest is only authorized by permit and when avoidance and minimization measures have been implemented and failed.

3) MBTA is Easy to Incorporate When Addressed Early

- Most impacts are avoidable through planning and coordination



Bald & Golden Eagle Protection Act of 1940

B&GEPA protects eagles and their habitat, similar to the ESA protections.

Best Practices

- Identify early in project development if eagle nests are present within or adjacent to the project corridor and if a disturbance permit is needed.
- Proximity of an eagle nests to the project area may trigger seasonal work restrictions and/or noise restrictions may apply
- Key to avoid disturbance or modification of eagle habitat
- Allow time for field survey to validate nest location data and coordination with USFWS when necessary



Image from www.cityofsalem.net

Eagle issues are uncommon but can create significant project delays if discovered late.

Bats in Bridges, Culverts, and Structures



Several bat species in Oregon are conservation priorities.

Best Practices

- Identify early in project development if bat colonies (maternity, day or night roosting) are using any bridges, culverts, or structures.
- Prevent destruction of bat colonies through project timing or by installation exclusionary devices.
- Consider designing bat habitat into bridge, culvert, or structure to allow continued use post project as feasible.

Questions?

*Presented by Nicholas Testa on behalf of Paul Benton.
Please reach out to Paul Benton going forward.*

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