MIGRATORY BIRDS AND CONSTRUCTION

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Migratory birds utilize a variety of TxDOT infrastructure for nesting, foraging and hunting.
Habitat for migratory birds is also likely to be found in all but the most urbanized New Location and New ROW project sites.
MBTA - Migratory Bird Treaty Act of 1918
16 U.S.C. §§ 703 - 712

Unlawful to pursue, hunt, take, capture, kill or sell covered bird species.

-Part of NEPA process
-Additional state laws and regulations also apply
*Take* prohibitions of the MBTA apply to both intentional and unintentional acts.
With careful planning and environmental analysis, as well as conscientious execution of project activities, most MBTA issues will be addressed without undue delays or increased costs.
Virtually all native species are covered by MBTA. Native (and some non-native), non-migratory upland game birds protected by relevant game laws and regulations.

European Starling (*Sturnus vulgaris*)

Rock Pigeon (Feral Pigeon) (*Columba livia*)

House Sparrow (*Passer domesticus*)
TxDOT and contractors should be aware that there is the possibility that migratory birds may be nesting on existing structures, vegetation, or gravel substrate within the project limits at any time of the year, but especially during the nesting season.

Nesting seasons vary by species and region of the State, but will generally include the period from February 15 through September 30.
Not taking the necessary precautions at the proper time of year could result in significant project delays, and potentially punitive action.
Preemptive measures to avoid migratory birds
• ROW clearing
• Removal of old nests
• Exclusion devices
Avoiding Migratory Birds

Outside of the Nesting Season

Methods for Excluding Birds:
• Gels/Paints
• Netting
• Any method that prevents establishment that does not harm

Nest removal activities must not result in depositing into or allowing materials to enter waters of the state.
Permissible to destroy partially constructed nests before they are established.

If new active nests are found on the project site after construction begins, do not perform work that can interfere with or discourage birds from returning to their nests.
If vegetation clearing is not completed in the non-nesting season, there is an option to conduct surveys for active nests

- If no active nests are found, vegetation clearing must be done quickly
- Exact timeframe between surveys and clearing depends on the bird species

If active nests are found during the survey, 50 foot buffers should be placed around all active nests, and work cannot be conducted in those areas until the nests are inactive.
Depredation permit: DOES NOT APPLY
FAST Act provisions
Disaster declarations
Birds are not Deterred

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APHIS assistance with individual nests (assuming due diligence):
Emergency Procedures
1) Conduct emergency repairs to address immediate health and safety
2) Notify District Environmental Coordinator or NRM
3) Document nature, timing and scope of activity affecting migratory birds
4) Estimate the impact to birds or nests and report post-emergency
Handling a Potential Violation

1) Immediately stop work within 50 feet of nest or bird
2) Notify District Environmental Coordinator or NRM
3) Work within 50 feet should remain stopped until resolved