



DEPARTMENT OF THE ARMY  
U.S. ARMY CORPS OF ENGINEERS  
441 G STREET, NW  
WASHINGTON, DC 20314-1000

CECW-CO

MEMORANDUM FOR MAJOR SUBORDINATE COMMANDS, DISTRICT COMMANDS  
AND CHIEFS, OPERATIONS, MAJOR SUBORDINATE COMMANDS, DISTRICTS

SUBJECT: U.S. Army Corps of Engineers Migratory Bird Treaty Act Policy and Best  
Management Practices

1. REFERENCES.

- a. Migratory Bird Treaty Act (MBTA), 1918 (16 U.S.C. 703-712)
- b. USACE Environmental Operating Principles,  
<https://www.usace.army.mil/Missions/Environmental/Environmental-Operating-Principles/>
- c. Migratory Bird Conservation Act, 18 February 1929 (16 U.S.C. 715-715d, 715e, 715f-715r)
- d. Endangered Species Act, 1973 (16 U.S.C. 1531-1544)
- e. Bald (and Golden) Eagle Protection Act, 1940 (16 U.S.C. 668-668c)
- f. National Environmental Policy Act, 1969 (42 U.S.C. 4321 *et seq.*)
- g. Fish and Wildlife Coordination Act, 1934 (16 USC 661 *et seq.*)
- h. Executive Order 13186, Responsibilities of Federal Agencies To Protect Migratory Birds, 10 January 2001
- i. CECW "Migratory Bird Treaty Act and Incidental Take" Memorandum signed 28 March 2018
- j. SECDEF "Incidental Take of Migratory Birds" Memorandum signed 6 February 2018

2. BACKGROUND. In executing U.S. Army Corps of Engineers (USACE) missions, districts are faced with challenges concerning compliance with the Migratory Bird Treaty Act (MBTA) through its Environmental Operating Principles. These challenges occur on or within lands and waters managed and/or administered by USACE, those managed by

third parties through outgrants and permits, and those being proposed for future Federal Civil Works projects.

3. **PURPOSE.** This policy memorandum is intended to educate and inform staff as well as to provide Best Management Practices (BMP) on commonly performed activities to help achieve compliance with MBTA. This compliance will allow USACE to meet its responsibility to avoid or minimize negative impacts to migratory birds and their habitat while adhering to USACE policies, practices, and guidelines.

4. **APPLICABILITY.** The USACE vision is to ensure that MBTA compliance is met at all Civil Works projects, programs, and activities on USACE lands and waters. This policy memorandum is applicable to all USACE missions and projects and it supports USACE Environmental Operating Principals and will be applied to migratory bird issues in the execution of all Civil Works Programs as follows:

a. **Operations.** Operating projects will ensure that impacts to migratory birds are considered when identifying the environmental impacts of project activities. Consideration will include strategies for the protection of migratory birds and their habitats in project Operations and Maintenance activities and responsibilities and ensure these strategies are addressed in Master Plans and OMPs as appropriate. These strategies will be coordinated, as required by law, with other Federal agencies, State, local, and Tribal governments, non-government organizations, stakeholders, and partners, as applicable.

b. **Civil Works Planning Activities.** Civil Works planning documents will address migratory bird concerns in their analysis of project impacts. Collaboration with Federal agencies, State, local, and Tribal governments, non-government organizations, stakeholders, Non-Federal Sponsors, and partners, as applicable, will be maintained in developing those analyses.

c. **Regulatory Actions.** The evaluation process for individual Department of the Army (DA) permits, including coordination with the U.S. Fish and Wildlife Service under the Fish and Wildlife Coordination Act, may consider, through the appropriate public interest review factors (e.g., conservation, fish and wildlife values), potential impacts to migratory birds. Non-federal entities who obtain Department of the Army permits are responsible for contacting the appropriate local office of the U.S. Fish and Wildlife Service to determine what measures, if any, are necessary or appropriate to reduce adverse effects to migratory birds. Non-federal entities may choose to voluntarily implement one or more BMPs identified in the Corps' Migratory Bird Treaty Act Best Management Practices document if the selected BMPs do not conflict with the terms and conditions of their Department of the Army authorization.

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d. **Engineer Research and Development Center.** The Engineer Research and Development Center (ERDC) will serve as the research lead regarding agency compliance with MBTA. ERDC will support HQUSACE decisions concerning migratory birds and share information concerning their relevant activities and solicit input for future research and development work units.

5. **FOCUS.** Ensuring that impacts to migratory birds are considered in planning and implementation processes and when identifying environmental aspects and impacts of project activities on USACE lands and waters. This may require collaboration and/or coordination across USACE and with other Federal agencies, State, local, and Tribal governments, non-government organizations, stakeholders, and partners, as applicable. USACE focus will be guided by the References listed at 1.a - 1.j and the attached BMPs.

6. The point of contact for this action is Mike Richards, Program Manager for Land Use and Natural Resources who can be reached by email at [michael.g.richards@usace.army.mil](mailto:michael.g.richards@usace.army.mil) or by phone at (202) 913-4070.

Encl  
Migratory Bird Treaty Act  
Best Management Practices

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