Laws & Regulations Pertaining to Native Birds

U.S. Fish and Wildlife Service
Office of Law Enforcement
Southwest Region
Laws & Regulations Pertaining to Native Birds

U.S. Fish and Wildlife Service
Office of Law Enforcement
Southwest Region
Laws Providing Protection to Native Birds

- Migratory Bird Treaty Act (MBTA)
- Bald and Golden Eagle Protection Act
- Endangered Species Act (ESA)
- Foreign, Tribal, & State Laws
Migratory Bird Treaty Act

- History
  - In 1913, the Weeks-McLean Law went into effect. The law was established to stop commercial market hunting and the illegal shipment of migratory birds from one state to another. The Weeks-McLean Law rested on weak constitutional grounds and was later replaced by the Migratory Bird Treaty Act of 1918.

  - The MBTA was designed to put an end to the commercial trade in birds and their feathers that, by the early years of the 20th century, had wreaked havoc on the populations of many native bird species.
The Migratory Bird Treaty Act is the domestic law that affirms, or implements, the United States' commitment to four international conventions (with Canada, Japan, Mexico, and Russia) for the protection of a shared migratory bird resource. Each of the conventions protect selected species of birds that are common to both countries (i.e., they occur in both countries at some point during their annual life cycle).
Migratory Bird Treaty Act
16 USC 703

- **Purpose** – Protection of migratory birds, their parts, nests, and eggs.

- **Prohibitions** – Unless permitted, it is unlawful to pursue, hunt, take, capture, kill, possess, sell, barter, purchase, ship, export, or import any migratory birds (as defined in 50 CFR 10) or any part, nests, eggs, or product thereof.

- **Maximum Penalties** – **Felony** – 2 years imprisonment
  $2,000 per individual (take for sale or sale)

  **OR** 1 year imprisonment
  $250,000 fine (baiting)

  **Misdemeanor** – 6 months imprisonment
  $15,000 fine
Migratory Bird Treaty Act
(cont.)

- **Maximum Penalties (cont.)** - Civil – None
- **Culpability** – Strict Liability (exceptions include baiting cases and felonies)
- **Forfeiture:** Misdemeanor – All migratory birds, eggs, nests, and parts thereof.
  
  Felony – All migratory birds, eggs, nests, and parts thereof and all guns, traps, nets, and other equipment, vessels, and vehicles.
- **Rewards** - None
Bald and Golden Eagle Protection Act

**History**

- In the late 1930's, eagle populations dwindled throughout the United States and Canada. A variety of causes was suspected for the decline, including loss of habitat, illegal shooting, pesticides, electrocution from high voltage lines, and other human disturbances.

- In 1940, Congress enacted the Bald Eagle Protection Act for the sole protection of the Nation’s symbol of freedom.

- In 1962, the Bald Eagle Protection Act became the Bald and Golden Eagle Protection Act and extended protection to golden eagles.
Bald and Golden Eagle Protection Act – 16 USC 668

- **Purpose** – To protect bald and golden eagles, their nests, eggs, and parts thereof.

- **Prohibitions** – No person shall take, possess, sell, purchase, barter, offer for sale, purchase, or barter, transport, export, or import any bald or golden eagle, alive or dead, or any part, nests, or eggs thereof without a valid permit to do so.

- **Maximum Penalties:**  
  - **Misdemeanor** – 1 year imprisonment  
    - $5,000 fine  
  - **Felony** – 2 years of imprisonment  
    - $10,000 fine  
  - **Civil** - $5,000 fine
Bald and Golden Eagle Protection Act (cont.)

- **Culpability:** Criminal – Knowingly or with wanton disregard for the consequences of their act.
  
  Civil – Strict liability

- **Forfeiture** – All bald and golden eagles and parts thereof; all guns, traps, equipment, vessels, vehicles, and aircraft used in violation of this Act.

- **Rewards** – Paid to person who provides information that leads to conviction under this Act.
United States v. Moon Lake Electric Association, Inc.

- Moon Lake was a rural electrical cooperative that provided service to NE Utah and NW Colorado.
- In 1998, an information was filed by the government charging Moon Lake with 6 violations of the MBTA and 7 violations of the BGEPA due to the electrocution of migratory birds by power lines. This included the deaths of 12 golden eagles, 4 ferruginous hawks, and 1 great-horned owl.
- The govt. alleged that Moon Lake failed to install inexpensive equipment on 2,450 power poles, therefore causing the death or injury of 38 birds of prey during a 29 month period.
- Moon Lake moved to dismiss on the ground that the electrocutions were unintentional and, therefore, did not violate the MBTA or BGEPA.
Moon Lake argued that the MBTA and BGEPA prohibits only “intentionally harmful” acts such as hunting, poaching, and trapping.

The court found that the MBTA and BGEPA prohibits conduct beyond that normally exhibited by hunters and poachers, and the court did not interpret the MBTA and BGEPA as being limited to acts committed with specific motives. Therefore, the motion to dismiss the charges was denied.

Moon Lake subsequently pleaded guilty to multiple misdemeanor violations and paid $100,000.00 in fines and restitution and entered into a 3-year MOU during which it had to retrofit its power equipment.
United States v. Apollo Energies, Inc.

- Apollo Energies owned numerous heater treaters as part of their oil production operations. The heater treaters possessed openings which allowed the entry of migratory birds, though escape from the heater treaters was difficult.
- The USFWS inspected over a dozen heater treaters belonging to Apollo Energies and recovered over 300 bird carcasses. Ten of the carcasses were identified as being protected by the MBTA.
- Based on the aforementioned findings, the USFWS initiated a public education campaign to alert the oil industry of the threat posed by heater treaters. This included Apollo Energies.
- In 2007, the USFWS again inspected Apollo Energies heater treaters and discovered 1 northern flicker carcass. Apollo Energies was convicted of one violation of the MBTA.
Apollo Energies appealed to the 10th Circuit Courts, stating that if the MBTA was a strict liability crime, then the MBTA is unconstitutional as applied to their conduct.

The Circuit Court upheld the conviction and stated “we conclude the district court correctly held that violations of the MBTA are strict liability crimes. But we hold that a strict liability interpretation of the MBTA for the conduct charged here satisfies due process only if defendants proximately caused the harm to protected birds”.

The 10th Circuit Court of Appeals has reaffirmed a key provision of the Migratory Bird Treaty Act (MBTA)– that persons violating the MBTA do not need to intentionally kill birds to be found guilty.
Not all birds receive protection from the Migratory Bird Treaty Act
Endangered Species Act

**History**

- In 1970, the Endangered Species Conservation Act of 1969 became effective, prohibiting the importation into the U.S. of species “threatened with extinction worldwide”.

- In 1973, the Endangered Species Act became law, recognizing that “endangered species of wildlife and plants are of aesthetic, ecological, educational, historical, recreational, and scientific value to the Nation and its people”. The Act expanded its scope of prohibited activities to include exportation, take, possession, and other activities involving illegally taken species, and interstate or foreign commercial activities. The implementation of a new “threatened” category was also added.

- In 1982, the ESA was amended to include a prohibition against taking plants on federal lands.
Endangered Species Act
16 USC 1538

- **Purpose** – To protect fish, wildlife, and plants listed as endangered or threatened and identify critical habitat.

- **Prohibitions** – Unless permitted by regulation, it is unlawful to import, export, take, transport, sell, purchase, or receive in interstate or foreign commerce any species listed as endangered or threatened.

**Maximum Penalties:**

- **Misdemeanor** – 1 year imprisonment
  - $50,000 fine
  - OR 6 months imprisonment
  - $25,000 fine

- **Civil** – Any person who knowingly violates
  - $25,000 fine
  - Any person who violates
  - $500 fine
Endangered Species Act (cont.)

- **Culpability:**
  - Criminal – Knowingly
  - Civil – Knowingly or strict liability

- **Forfeiture** – All fish, wildlife, and plants subject to civil action. All fish, wildlife, and plants, guns, traps, nets other equipment, vessels, vehicles, and aircraft subject to criminal conviction.

- **Rewards** – Any person who furnishes information leading to arrest, a criminal conviction, civil penalty assessment, or forfeiture of property pursuant to this Act. The reward amount is designated by the Secretary of Interior as appropriate.
Babbitt v. Sweet Home Chapter of Communities for a Great Oregon

- Plaintiffs in the case were landowners, companies, and families affected by Endangered Species Act listings, specifically spotted owls and red-cockaded woodpeckers.

- The plaintiffs challenged the ESA on its face, claiming that Congress did not intend the word "take" to include habitat modification.

- The Supreme Court upheld the regulation of the Fish and Wildlife Service defining "harm" for purposes of the "take" prohibitions of the Endangered Species Act. The Supreme Court also upheld that “harm” includes habitat modification that actually kills or injures a listed species.
Foreign, Tribal, & State Laws

- Canada and Mexico have entered into a treaty with the United States, Russia, and Japan providing protection for migratory birds (Migratory Bird Treaty Act).
- Native American Tribes may provide additional protection to native birds. This additional protection is usually granted by a Tribal Council.
- States may also provide additional protection to native birds. Most states have a list of endangered state birds which would meet this criteria.
Migratory Bird Deaths and the Industrial Factor

- Migratory bird deaths have been associated with various industrial factors, including power lines, oil pits, copper and potash mines, and wind farms.

- When bird deaths occur due to the “industrial factor”, they are still considered takes under the MBTA, whether or not the incident was unintentional.
Migratory Bird Electrocutions

- Though the USFWS/OLE may conduct investigations pertaining to bird electrocutions, charges and/or fines may not be filed if the utility company is willing to correct the problematic structures, report all bird electrocutions, and comply with any other agreements set forth by the USFWS/OLE (usually in the form of a Memorandum of Understanding (MOU) or an Avian Protection Plan (APP)).
USFWS Bird Fatality/Injury Reporting Program

- Released in 2003, the program is web-based and can be accessed over the internet using a Microsoft Internet Explorer Web browser.
- The Bird Reporting program was developed to provide a user-friendly, easily-accessed, method of allowing the members of the electric utility industry to voluntarily report bird mortalities and injuries resulting from electrocutions or collisions with electrical utility equipment.
- Use of the program is free.
- Website: https://birdreport.fws.gov
Southwest Regional Office (Albuquerque, New Mexico) – 505-248-7889

Albuquerque, New Mexico Resident Agent in Charge Office – 505-346-7828

Las Cruces, New Mexico Field Office – 575-382-2177

http://www.fws.gov/r2le/