



# United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Oregon State Office

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Portland, Oregon 97208



**In Reply Refer to:**

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Instruction Memorandum No. OR-2009-018

To: DMs, DSDs, Staff, and Branch Chiefs

From: State Director, Oregon/Washington

Subject: Migratory Bird Treaty Act (MBTA) – Clarification of WO  
IM2008-050 for Western Oregon

This document provides clarification of Washington Office IM 2008-050, Migratory Bird Treaty Act (MBTA) – Interim Management Guidance as it applies to Western Oregon. Washington Office IM 2008-050 and other guidance transmitted to the districts relates to addressing MBTA issues in the development of project prescriptions and their analysis through National Environmental Policy Act (NEPA) processes. Refer to that body of guidance when analyzing projects that may affect migratory birds.

The following clarification is provided to guide project planning and NEPA conformance:

1. IM 2008-050 sets guidance only; the Best Management Practices offer suggestions for possible actions.
2. Neither the IM nor the MBTA require that we conduct pre-disturbance surveys.
3. The Endangered Species Act (ESA) defines the concept of “take” differently than the MBTA. Removing habitat that may be occupied by migratory birds does not constitute unintentional take under the MBTA. If a migratory bird is not listed under the ESA, we do not need to provide it with ESA-level protections.
4. Apply the IM guidelines to bird populations and their habitats rather than to individual birds. When we analyze a project, we should focus on the desired future condition of the habitat and the resulting long term effects on bird populations rather than on the short term impacts to individuals. If we expect the project to provide improved habitat for birds of conservation concern, we should not need to specify seasonal restrictions to conform to the MBTA, except under extraordinary circumstances.

Follow the steps below when determining whether a project conforms to the MBTA:

1. Determine if species of conservation concern may be present in the affected habitat during project implementation. We can make this determination by referring to the U.S. Fish and Wildlife Service Birds of Conservation Concern list and Partners In Flight (PIF) Bird Conservation Plans for that Bird Conservation Region (BCR). Use that information to determine whether the species occur in the habitat type in question. Again, we are not required to conduct surveys to determine presence/absence.

2. Determine the extent of the effect of the prescription on the overall habitat type in the BCR.

3. Determine the proportion of the affected habitat in relation to the total amount of that habitat type within the geographical area. Vegetative zones and physiographical BCRs, as defined by PIF, represent the appropriate scale of consideration for the geographical area.

4. If the prescription affects a significant proportion (as defined in 3 above) of the habitat in question, if that habitat is limited, if the prescription will not provide long term habitat improvements for species of conservation concern, and if species of conservation concern will more than likely be present during the disturbance, then we should consider seasonal restrictions.

**Contact:** If you have any questions, please contact George Buckner, Wildlife Biologist, at 503-808-6081.

**Districts with Unions** are reminded to notify their unions of this Information Bulletin and satisfy any bargaining obligations before implementation. Your servicing Human Resources Office or Labor Relations Specialist can provide you with assistance in this matter.

Signed by  
Michael S. Mottice  
Associate State Director

Authenticated by  
Paj Shua Cha  
Records Section

Distribution  
WO-230