

107-C-273 MIGRATORY BIRD PROTECTION

(Adopted 09-16-21)

Description

This work shall consist of protecting migratory bird species as required by the Migratory Bird Treaty Act, MBTA, in accordance with 105.03.

Materials

Materials shall be as required and as described herein.

Construction Requirements

The structures may, or may not, have shown evidence of use, such as nests, by a bird species protected under the MBTA during previous inspections. Every effort shall be made by the Contractor not to disturb any nests with eggs or young.

Intentional taking of migratory birds or nests with eggs or young without a federal permit is prohibited by the Migratory Bird Treaty Act, 16 U.S.C. 703-712.

During the period between May 1 and September 7, bridge work on structures with migratory birds will be allowed provided the procedure below is implemented:

No special action is necessary by the Contractor for bridge work performed entirely on the deck as long as the Contractor shall not require access to areas where birds are nesting and contract work will not result in the disturbance of nesting adults, or to their eggs or young. Disturbance is any activity that would result in reproductive failures or the killing of eggs or young.

For bridge structures that have previous or current evidence of use and where the work will be done entirely on the deck that may result in perforation of the deck or create strong vibrations that could potentially dislodge nests beneath the deck or that requires activity above and below the deck to include removal shall require that the Contractor use exclusionary devices to deter birds from nesting beneath the deck prior to start of work. If birds are present, the Contractor shall determine the status of the birds, their nests, and young and shall take any and all actions necessary to meet the requirements of the MBTA.

For bridge work performed from September 8 to April 30, birds are normally not nesting; therefore, no special actions by the Contractor are necessary after an inspection is conducted to determine that no birds are present.

Avoidance and Minimization Measures

Measures designed to avoid and minimize impacts to migratory birds nesting on structures shall be implemented prior to April 30 and be maintained throughout the nesting season. The Contractor shall be responsible for developing a project specific avoidance and minimization plan that shall be as approved by the Engineer. Avoidance and minimization measures shall include, but shall not be limited to:

After inspection and confirmation that no active nests with eggs or young are present, the Contractor shall remove existing nests and other nesting debris from the bridge girders or other surfaces that will be

impacted by the project.

After nest removal, exclusion devices shall be installed on the structure, especially if the start of construction will be delayed after April 30. Exclusion devices may include plastic sheeting, canvas, burlap or other material to block access to the underside of bridges and exterior girders. Ledge protectors, such as coil, pin and wire, can be placed on structures to prevent nest building where appropriate. The use of weather resistant polypropylene netting with 1/4 in. or smaller openings is also an option but is not recommended since it can trap adult birds.

After nest removal, hazing or harassment devices using sight or sound to scare the birds away may be installed on the structure. Materials may include mylar flagging and auditory speakers. Other sensory deterrents such as active construction, predator models, scare balloons and sonic devices may also be used.

The Contractor shall inspect the underside of the existing structure on a routine basis to ensure that nests are removed prior to egg laying and that exclusion devices that have been damaged are repaired. If eggs or young are present, construction activity that may impact those nests shall not occur and the Department's Office of Environmental Services shall be contacted. No additional contract time will be granted if eggs or young are found.

If approved by the Engineer, the Contractor shall consider not removing nests that are near, but not in, the immediate work area. The nests may also be screened from construction to prevent impacts. Work may continue if the active nests will not be destroyed and if parent birds will not be precluded from tending their nests to the extent that eggs or young are negatively impacted.

Status of Birds and Nests

If birds penetrate the barrier or nest building has commenced, the Contractor shall determine how birds are entering the underside of the bridge and adjust or repair the barrier to prevent further access. If nest building or repair of existing nests has begun, but no eggs or young are present in the nests based upon visual inspection of the nest and activity of the adults, the Contractor shall remove the nests.

Every effort shall be made by the Contractor not to disturb any nests with eggs or young. If active nests with eggs or young are found that would be affected by construction activities, work shall be delayed until an evaluation of nesting status and avoidance and minimization measures implemented or the birds fledge from the nest.

Method of Measurement

Monitoring the structures, removal of nests and the furnishing, installation, and removal of bird deterrents, and all other activities associated with the migratory bird protection as described herein will not be measured for payment.

Basis of Payment

All costs for determining the need for, the placing of deterrents and all costs associated with conducting work in compliance with the Migratory Bird Treaty Act as stated herein will not be paid for separately but shall be included in the cost of other items.