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Department of Defense
OFFICE OF PREPUBLICATION AND SECURITY REVIEW

Migratory Bird Compliance Training

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Management Burden

- DoD is the 5th largest land managing agency, but harbors more sensitive species *per acre* than any other federal land managing agency (i.e., highest density of listed species)
 - Nearly 450 federally-listed species (threatened and endangered)
 - Over 550 species at-risk
 - ~60 of these species exist only on DoD lands
- Top 10 DoD Expenditures in Fiscal Year 2017
 - Desert tortoise, red-cockaded woodpecker, San Clemente loggerhead shrike, blue whale, humpback whale, northern long-eared bat, western snowy plover, steelhead trout, fin whale, California least tern
- Fiscal Year 1991-2017 DoD Expenditures
 - \$1.41B total spent on listed species, nearly \$544M on birds
 - 9 of top 10 cumulative expenditures = for birds
 - Positive trend for birds; Management efforts are helping



Mission Relevance

- **Managing birds is compatible with mission, and training can benefit birds and other species**
 - Hawaiian Stilt at MCB Hawaii
 - Henslow's Sparrow and Grasslands
- **Enhancing flexibility and reducing regulatory burdens**
 - Encourage proactive management to avoid and prevent species from becoming listed.
 - Collect and consolidate data to facilitate species delistings



Safety is our top priority

➤ **Managing for Bird/Wildlife Airstrike Hazards (BASH)**

- Saves pilot lives
- Reduces damage costs to aircraft
- Benefits wildlife

➤ **Prevention is Key**

- NR activities can make a difference





Bottom Line

➤ DoD will continue to manage as we have

- *Guidance on Addressing Migratory Bird Management in Integrated Natural Resources Management Plans* (Aug 2017)
 - <https://www.denix.osd.mil/nr/priorities/birds/guidance/addressing-migratory-bird-management-in-integrated-natural-resources-management-plans-guidance-2017/>
- DOI issued Solicitor's Opinion M-37050 (Dec 2017)
- Deputy Assistant Secretary Memo: *Incidental Take of Migratory Birds* (Feb 2018)
 - <https://denix.osd.mil/nr/>



Backup slides



Policy/Guidance

- DOI issued Solicitor's Opinion M-37050 (Dec 2017)
 - States the Migratory Bird Treaty Act (MBTA) applies only to deliberate acts intended to take birds and does not include incidental take
- U.S. Fish and Wildlife Service (USFWS) issued Guidance on the Recent M-Opinion affecting the MBTA (Apr 2018)
 - USFWS interprets the M-Opinion to mean that the MBTA's prohibitions on take apply only when the *purpose* of an action is to take migratory birds
- Solicitor's Opinion M-37050 alone does not:
 - Rescind the "military readiness rule" (50 C.F.R. §21.15), §315 of the FY2003 National Defense Authorization Act, Executive Order 13186, or the resulting Memorandum of Understanding with USFWS
 - Address the split of opinions among the five Circuit Courts of Appeal that have addressed the question of whether the MBTA criminalizes some instances of incidental take



DoD Policy/Guidance

- Deputy Assistant Secretary Memo: *Incidental Take of Migratory Birds* (Feb 2018)
 - Clarifies that DoD personnel should continue current practices to minimize incidental take and continue to follow existing guidance

- *Guidance on Addressing Migratory Bird Management in Integrated Natural Resources Management Plans* (Aug 2017)
 - Consolidates and clarifies existing bird management requirements
 - Key content: Migratory Bird Treaty Act, Executive Order 13186, and Military Readiness Rule
 - http://www.dodnaturalresources.net/Addressing_Migratory_Bird_Management_in_INRMPs_-_Guidance_2017_final.pdf



Policy/Guidance

- DOI hosted an MBTA meeting on June 28
 - Discussed miscommunications among USFWS field staff and installations regarding requirements relating to the Military Readiness Rule
 - USFWS legal counsel said if there is confusion and their staff is issuing poor guidance, then USFWS may need to issue clarifying guidance to their staff

- Deputy Assistant Secretary Memo: *Incidental Take of Migratory Birds* (Feb 2018)
 - Continues to stand and DoD will not modify its guidance or issue any additional guidance