

MICHIGAN
DEPARTMENT OF TRANSPORTATION

SPECIAL PROVISION
FOR
MIGRATORY BIRD PROTECTION

ENV:JDG

1 of 3

APPR:DMG:HLZ:03-24-20
FHWA:APPR:03-30-20

a. Description. Contractors are advised that bridges and large culverts similar to those in this project are often attractive places for nesting birds such as swallows and phoebes. Burrow nesting species (swallows and the Belted Kingfisher) may also take advantage of banks created during earth-moving or soil storage, making it necessary to prevent excavation of new nesting burrows. Taking of migratory birds or nests with eggs and chicks without a federal permit is prohibited by the Migratory Bird Treaty Act (16 U.S.C. 703-712). This federal law protects migratory birds, their nests and young, and provides enforcement authority to the U.S. Fish and Wildlife Service and contains severe penalties for violations. Adherence of the Department to these provisions by the FHWA is required under federal law. This special provision addresses the actions required of the Contractor to protect the above mentioned bird species as required by the Migratory Bird Treaty Act.

b. Materials. None specified.

c. Construction. Adhere to the following requirements:

1. Bridge Work - April 15 to August 15.

A. Bridge work done entirely on the deck. No special action is necessary by the Contractor provided that the work is done entirely on the deck. It is presumed that the Contractor will 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 chicks due to vibrations from equipment or other construction activity.

B. Work done entirely on the deck that would result in perforation of the deck or create strong vibrations. Activities that would potentially dislodge nests beneath the deck will require that the Contractor use exclusionary devices to deter birds from nesting beneath the bridge deck prior to start of work. If birds are present, the Contractor must determine the status of the migratory birds, their nests, and chicks and must take all actions to comply with the requirements of the Migratory Bird Treaty Act.

C. Bridge work requiring activity above and below the deck. This is the anticipated active nesting period of most migratory birds; though later dates may apply in the Upper Peninsula. Prior to commencing work within this time frame, or continuing work which will carry over into this time frame the following year, the Contractor must determine the status of the migratory birds, their nests, and chicks and must take all actions to comply with the requirements of the Migratory Bird Treaty Act

2. Bridge Work – August 16 to April 14. During this time, birds are normally not nesting; therefore, no special actions by the Contractor are necessary after an inspection is conducted to determine if birds are present.

THE FOLLOWING DISCUSSION PRESENTS MINIMUM REQUIREMENTS AND IS NOT TO BE CONSTRUED AS A COMPLETE LIST OF POSSIBLE ACTIONS REQUIRED TO COMPLY WITH THE ACT.

d. Status of Birds and Nests - Bridges.

1. If existing nests are not occupied or no new nests have been built. Install barriers (deterrents) before the nesting season to prevent nest establishment or reuse. Use netting, canvas, plastic sheeting or burlap. Different techniques may be employed, depending on the design of the bridge, providing that reasonable access is maintained for traffic under the bridge, if needed. Netting can be “diapered” around all ledges and overhangs to ensure access to any potential nesting site is obstructed. Other bridge designs may lend themselves to hanging netting, canvas or burlap over the side of a bridge. Some devices, such as a wooden beam can be employed to secure the bottom edge of the netting, canvas, plastic sheeting or burlap close to the water or ground surface. Ensure all gaps are sealed against entry by birds. Reposition any protective devices that become displaced within 8 hours.

2. If birds penetrate the barrier and/or nest building has commenced. If birds slip past the installed deterrents, the Contractor must 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 chicks are present in the nests based upon visual inspection of the nest cup, the Contractor must knock down or hose down nests with water or by other means.

3. If nests with eggs and chicks are accidentally knocked down. Make every effort not to cause a take of eggs or chicks. Taking of migratory birds or nests with eggs or chicks is prohibited by law without a federal permit. If exclusionary devices have not been erected or have not been maintained allowing for the completion and use of nest sites, no work can be conducted until cleared by Department staff. If eggs or chicks are accidentally dislodged due to work being performed on the bridge deck (as detailed in subsection c.1), deliver retrieved eggs and chicks to a licensed wildlife rehabilitation facility willing and able to accept them. Contact information can be found on the MDNR website. If this occurs, immediately contact the Environmental Section at (517) 335-2633.

4. Nests with eggs or chicks are present prior to the start of contract work. If active nests with eggs or chicks are found that would be affected by construction activities, delay work until an evaluation of nesting status is made or the birds fledge from the nest and leave the immediate area.

e. Earthwork.

1. Earthwork - April 15 to August 15. If there are existing earthen banks, conduct an inspection to determine if nest burrows or birds are present. If banks are created in sand or gravel or in soil storage piles during construction several species of birds may begin to excavate burrows to be used for nesting. Banks with a vertical face greater than 4 feet are attractive to these species. Inspect the banks and report possible nesting activity to Department staff. If burrow excavation has just begun and observation shows that no eggs

or chicks are present, grade the banks to a natural angle of repose. If the bank needs to be maintained in its existing condition, drape plastic sheeting or other materials over the area to prohibit entry by the birds. If burrows are too deep to determine if eggs or chicks are present by visual inspection, stop work that would affect the stability and/or destruction of the bank and contact the Environmental Section for further direction at (517) 335-2633.

2. Earthwork - August 16 to April 14. During this time, birds are normally not nesting; therefore, no special actions by the Contractor are necessary after an inspection is conducted to determine if birds are present.

f. Measurement and Payment. All costs for determining the need for, the placing of deterrents, and applying of all special actions including, but not limited to, removing nests, retrieving dislodged eggs and chicks and delivering them to a licensed wildlife rehabilitation center, including costs of rehabilitation, and any 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 will be considered to have been included with other items of work in the contract.

In addition, the Contractor is liable to the Department for any penalties imposed for violations to the Migratory Bird Treaty Act due to the Contractor's failure to comply with this special provision. Penalties range from fines for each incident up to potential loss of federal funding. According to the Act, a person, association, partnership or corporation which violates the Act, or its regulations is guilty of a misdemeanor and subject to a fine of up to \$500, jail up to 6 months or both. Anyone who knowingly takes a migratory bird and intends to, offers to, or sells or barbers the bird is guilty of a felony, with fines up to \$2000, jail up to 2 years or both.