

EFCOG Best Practice #56 Managing Migratory Birds and In-Use Nest

Facility: Idaho Cleanup Project at the Idaho National Laboratory

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Brief Description of Best Practice:

Implement a step by step prevention and management of Migratory Birds nesting in buildings and structures undergoing renovation and nesting on equipment used to perform work.

Prevention is the best defense, good practices prevent nesting:

- Patrolling daily to identify bird nesting activity
- Using propane cannons and other noise making devices
- Using Bird X and Bird Shield, which are Environmental Protection Agency (EPA)-approved deterrents to nesting
- Using sticky netting to prevent the formation of nests
- Using water cannons
- Removing all nests, not in use, to prevent recurring nesting.



However, if the mitigation actions are not successful and the work scope cannot be rescheduled and will result in considerable schedule delays and cost increases, perform the following steps:

- Document nests with birds and eggs using color photographs to ensure correct identification of birds and nest location
- If the nest contains eggs, then whenever possible, reschedule or redesign work to avoid direct impacts on the nest until the eggs are verified to have hatched and fledged from the nest. Noise alone does not disturb many species of nesting birds, so work may still be able to continue in the vicinity of the nest
- Document the mitigation efforts that the project has taken to prevent nesting in the building or structure undergoing demolition and the equipment used in performance of project work scope
- Contact the nearest United States Fish & Wildlife Service (FWS) Regional Office to obtain local and available wildlife rehabilitators with the applicable license who can take possession of the nest and fledglings. Obtain concurrence that the nest and fledglings can be transferred to the rehabilitator
- Obtain a Special Purpose Permit for Miscellaneous "Takes" of certain migratory bird per 50 CFR 21 Part 27, this will allow your project folks to remove migratory birds listed on the approved permit to a licensed rehabilitator without consultation with the U.S. FWS
- In the absence of a permit and with concurrence from the U.S. FWS Regional Office, if no rehabilitators in the area are available or cannot take the nest then physically move the nest to a safe place
- Document the date and time of move and final location. If possible, monitor the nest to see if the eggs hatch and/or the brood fledges (leaves the nest on their own) and document the event, since U.S. FWS monitors these actions.



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Why the best practice was used:

During decommissioning of the Engineering Test Reactor Complex (ETR), the mating and nesting behavior of barn swallows presented the challenge of preventing the swallows from building their nests upon, or within, buildings scheduled for demolition by the Idaho Cleanup Project (ICP). The nesting season for swallows runs from May through September, and coincides with the peak field season for building demolition. The ICP faced the possibility of delaying demolition beyond the summer field season, if the very determined nesting swallows managed to build their nests on the wrong buildings. Also other activities have been interrupted by discoveries of bird nests belonging to species protected under the Migratory Bird Treaty Act (16 USC § 701 et seq.) and regulations (50 Code of Federal Regulations [CFR] Parts 10, 13, 21, and 22), which apply to U.S. Department of Energy (DOE) activities via Executive Order 13186 (January 17, 2001).

What are the benefits of the best practice:

This best practice creates a path forward to avoid cessation of work, lengthy schedule impacts and civil and criminal penalties under the Migratory Bird Treaty Act. The prevention efforts were highly successful, and no instances of successful egg-laying were identified on the buildings where the deterrence measures were employed. This enabled the ICP to successfully complete demolition of the ETR ahead of schedule. Where eggs were found at the Test Area North (TAN) consultation with FWS identified a rehabilitator who then directed ICP how to remove fledglings after the eggs hatched and transport the nest to the rehabilitators' location. Work was then resumed on the building demolition with minimal delays.



What problems/issues were associated with the best practice:

A DOE FWS Memorandum of Understanding was signed by both DOE and U.S. FWS that directs DOE to seek Special Purpose Permits under 50 CFR 21.27 to notify FWS local regions that some takes will be necessary to complete cleanup of DOE areas. However, Region 1 was totally unfamiliar with the MOU but they were willing to work with us and provide the name of a rehabilitator but were not willing to agree in writing that our actions were sanctioned by their office. CWI legal recommended that we obtain a Special Purpose Permit via 50 CFR 21.27. This will enable movement of fledglings without consultation with U.S. FWS. The permit must specify personnel who will be performing activities as a "permittee" and list their qualification and identify the migratory bird species that will be taken.

How the success of the Best Practice was measured:

We have experienced no cessation of work or lengthy schedule impacts due to the presence of migratory birds or nests-in-use.

Description of process experience using the Best Practice:

See paragraph under "Why Was Best Practice Used?"