

Bald and Golden Eagle Protection Act & Migratory Bird Treaty Act

- BGEPA and MBTA prohibit incidental take of bald and golden eagles and migratory birds
- Over 1,000 species protected by MBTA, including eagles and ESA-listed species
- USFWS takes the position that MBTA does prohibit incidental take
- Some Circuit Courts have held MBTA does not apply to incidental take
- MBTA is a strict liability criminal statute
- USFWS has stated those implementing “beneficial practices” for migratory birds will be at less risk of enforcement

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- USFWS is developing a permit program for MBTA (currently stuck at OIRA)
- BGEPA prohibits incidental take of eagles or disturbance or removal of eagle nests
- Civil or criminal penalties possible under BGEPA
- Eagle permit program is available, but can be lengthy and costly depending on type of permit
- Many states also regulate migratory birds and nesting habitat

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- Raptor and eagle nest surveys prior to construction can help avoid liability exposure under BGEPA, MBTA, and state and local regulations
- BMPs to avoid and minimize impacts to avian species, particularly during nesting season can also help minimize liability
- MBTA permit program TBD
- Amendments to BGEPA permit program will be finalized late 23/early 24