

250-RICR-60-00-11

TITLE 250 – DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

CHAPTER 60 – FISH AND WILDLIFE

SUBCHAPTER 00 – N/A

PART 11 – Rules and Regulations Governing Migratory Bird Control Permits

11.1 Purpose

- A. To establish standards and procedures for the issuance of Migratory Bird Depredation Control Permits and Nest Control Permits for the taking, handling, and/or possession of any species of migratory bird, or their nests or eggs.
- B. To allow for taking of migratory birds, their eggs, or their nests to mitigate significant risk to human health and safety, income, and/or conservation of at-risk species of plants, fish, and wildlife.
- C. To ensure that migratory birds, their eggs, or their nests are not taken in such a manner as to place undue pressure on threatened or endangered species in Rhode Island and limit other species of migratory birds from becoming threatened or endangered.

11.2 Authority

Currently the USFWS and USDA regulate depredation by migratory birds but require approval for authorization within Rhode Island through regulation as administered by the Director of the Department of Environment Management under R.I. Gen. Laws §§ 20-1-2, 20-1-4, 20-1-8, 20-14-1, 20-14-1.1, 20-14-2, 20-1-22, Title 20, and Chapters 42-17.1 and 42-17.6 in accordance with the requirements of the Administrative Procedures Act, R.I. Gen. Laws Chapter 42-35.

11.3 Administrative Findings

The Division of Fish and Wildlife of the Rhode Island Department of Environmental Management is authorized to preemptively authorize permits issued by USFWS and USDA in accordance with the Migratory Bird Treaty Act and may place more restrictive but not less restrictive stipulations on any permit or form issued for use within Rhode Island. When found committing depredations upon agricultural crops, livestock, or wildlife, or when concentrated in such numbers and manner as to constitute a health or public safety hazard or other nuisance, issue permits for the taking of birds shall be handled through the USFWS and USDA. It is necessary that those authorized to take birds, or their

nests or eggs, do so in such a manner that is safe and limits undue harm to Rhode Island's natural resources. It is also necessary that persons requesting migratory bird depredation control permits know the risks and limitations of applying such control measures so that they do not incur unnecessary burden (financial or otherwise), from employing ineffective control measures.

11.4 Application

The terms and provisions of these Rules and Regulations shall be liberally construed to permit the Division to effectuate the purpose of State law, Regulations, goals, and policies.

11.5 Definitions

A. Wherever used in this Part the following terms should be construed as follows:

1. "Active nest" means a migratory bird nest that contains eggs or young (flightless or newly-flighted) birds.
2. "APHIS" means U.S. Department of Agriculture, Animal and Plant Health Inspection Service.
3. "Department" means the Department of Environmental Management.
4. "Director" means the Director of the Department of Environmental Management, or his/her duly authorized agent(s).
5. "Division" means the Division of Fish and Wildlife.
6. "Eagle" means a Bald Eagle or Golden Eagle.
7. "Form 37" means a Wildlife Services Permit Review Form completed by USDA, APHIS, Wildlife Services as recommendation for addressing damage problems or loss and required to accompany a Federal Migratory Bird Depredation Permit.
8. "Inactive nest" means a migratory bird nest without any eggs or young (flightless or newly-flighted) birds that may or may not be frequented by adult migratory birds.
9. "Migratory bird" means any bird listed on the current Federal Migratory Bird Treaty Act Protected Species (10.13 List).
10. "Raptor" means a meat-eating bird with a hooked bill and talons and includes birds in the families *Accipitridae* (e.g. hawks, harriers, and kites), *Falconidae* (e.g. falcons and kestrels), *Strigidae* (e.g. owls), *Tytonidae* (e.g. barn owls), and *Pandionidae* (i.e. Osprey).

11. "RIDEM" means the Department of Environmental Management.
12. "Take" means an action which causes harm to a migratory bird, its nest, eggs, or chicks, or any part thereof, whether intentional or otherwise. This can include harassment, lethal or non-lethal removal, hunting, or killing.
13. "USDA" means the United States Department of Agriculture.
14. "USFWS" means the United States Fish and Wildlife Service.

11.6 Requirements for Migratory Bird Control Permits

11.6.1 Requirements for Migratory Bird Depredation Control Permits

- A. A valid and current Migratory Bird Depredation Control Permit, issued by the Division, or the Federal Government is required to take, handle, or possess, for management purposes, any migratory bird, their eggs, or their chicks.
- B. A valid and current completed Form 37 (from USDA) and Migratory Bird Depredation Permit Application (from USFWS) shall serve as a valid permit for take.
- C. The Division reserves the right to rescind, negate, or reduce the quantity of allotted take, species included, and sub-permittees listed, on all Migratory Bird Depredation Permits and forms issued by or on behalf of the USFWS, and USDA.
- D. Applicants for migratory bird depredation control permit from the Division shall complete and submit a Migratory Bird Depredation Control Permit Application on forms provided by the Division. All applications for a Migratory Bird Depredation Control Permit must include the following for each year of activity:
 1. The full name and contact information for the applicant.
 2. The species and number of birds and eggs to be removed.
 3. A description of the problems and justification for control.
 4. The address for each location where control is proposed.
 5. Non-lethal methods used to mitigate migratory bird depredation.
 6. Long-term plans to mitigate damage to reduce the needs for lethal take in the future.
 7. Lethal methods of control to be employed.
 8. The full names and contact information for all sub-permittees.

- E. All Migratory Bird Depredation Control Permit holders are required to report permitted migratory bird take activities, on forms provided by the Division, no later than thirty (30) days following the expiration of their permit. All Migratory Bird Depredation Control Permit Reports must include the following:
1. The exact date, address, GPS coordinates, and number of each species of bird and egg removed.
 2. Copies of Federal permits associated with activities of the Migratory Bird Depredation Control Permit, issued by the Division.
 3. Lethal methods of take employed for each species and location.
 4. Details of any permitted bird relocation activities, including names, contact information, and letters of approval from the wildlife professionals responsible and release location landowner.
 5. A description of non-lethal tools employed during the permit year.

11.6.2 Requirements for Migratory Bird Nest Removal Permits

- A. A valid and current Migratory Bird Nest Removal Permit, issued by the Division or the Federal government, is required to take, handle, or possess, for management purposes, any inactive raptor nest.
- B. Applicants for Migratory Bird Nest Removal Permits from the Division shall complete and submit a Migratory Bird Nest Removal Permit Application on forms provided by the Division.
- C. All applicants for a Migratory Bird Nest Removal Permit must include the following information in their permit:
1. The full name and contact information for the applicant.
 2. The full names and contact information for all sub-permittees.
- D. Additionally, all applications for a Migratory Bird Nest Removal Permit must include the following for each nest to be removed and/or relocated:
1. The species of bird associated with the inactive nest to be removed or relocated.
 2. The current address for each nest to be removed or relocated.
 3. A description of the problem and justification for removing the nest.
 4. A history of the nest, including:
 - a. Current status of the nest to be removed (i.e. active vs. inactive).

- b. Evidence for nest status determination.
 - c. The last known date adults were observed at the nest.
 - 5. Details regarding available alternative nest sites for returning nesting raptors.
 - 6. A description of plans for limiting future conflicts with nesting raptors at the current nest site.
- E. Within twenty-four (24) hours of nest removal, all Migratory Bird Nest Removal Permit holders are required to report to the Division the following:
- 1. Migratory Bird Nest Removal Permit number.
 - 2. The following date and time stamped photographs:
 - a. Wide-angle photograph of the nest and nest structure immediately prior to removal.
 - b. Inside of the nest immediately before its removal.
 - 3. Date and time of nest removal.
 - 4. Address and GPS coordinates of the removed nest.
 - 5. Description of additional activities related to removal (e.g. nesting deterrents installed, nest relocation).
- F. No later than thirty (30) days following the permit's expiration, all Migratory Bird Nest Removal Permit holders are required to report to the Division, using forms provided by the Division, the following:
- 1. For each nest removed:
 - a. The date of removal activity.
 - b. The start and end times of removal (and replacement) activity.
 - c. The bird species associated with the nest removed.
 - d. The GPS coordinates for the nest removed.
 - e. The nest status (active/inactive) at the time of removal.
 - f. Whether or not a deterrent or exclosure was employed at the original nest site.

- g. Whether or not an alternative nest platform was constructed within one hundred fifty feet (150') of the original nest site.
 - h. Whether or not adults of the species were present immediately prior to removal.
- 2. A USFWS permit number for any active nest removed.
- 3. A description of the types of exclosures or deterrents used at each nest removal site.
- 4. Justification for each nest site at which exclosures or deterrents were not installed.
- 5. Justification for each nest site at which an alternative nest structure of equal or greater height to the original nest structure was not constructed within one hundred fifty feet (150') of the original nest site.

11.7 Exemptions

- A. A migratory bird control permit is not required to take, handle, or possess a migratory bird for those holding a valid hunting license or other permit or license issued by the Department during those regulated seasons within the stipulations permitted by Regulations governing holders of a valid hunting license or other permits or licenses issued by the Department.
- B. Raptors may be trapped, transported, and released without a migratory bird control permit, issued by the Division, prior to submitting Form 37 to USFWS.

11.8 Violations

- A. Persons subject to these Rules may also be subject to other Regulations of the Department and may also be subject to Federal Regulations.
- B. The Rules shall be construed in harmony with other Department Regulations and the Regulations of Federal agencies. Nothing in these Rules shall affect the Director's power and duty to issue or require any form of wildlife monitoring, wildlife management, enforcement action, or other action pursuant to any other regulatory program administered or enforced by the Director.
- C. Any person, firm or corporation who violates any provision of these Regulations shall be subject to an administrative penalty of up to five hundred dollars (\$500.00) for the first (1st) violation and not to exceed one thousand dollars (\$1000.00) for the second (2nd) violation and any subsequent violations.
- D. The Director may require any permittee subject to these Rules to provide any information deemed necessary to determine compliance with these Rules. Failure to disclose such information shall be cause for initiating appropriate

enforcement action and shall constitute valid cause for denial of any Departmental approvals under these Rules or the suspension of any approval or permit issued hereunder.

11.9 Appeal and Hearing Procedures

A. Opportunity for Hearing

1. Denials – Any person whose application for a permit, permit renewal, or other approval, has been denied by the permitting agency, acting through Fish and Wildlife, may appeal to the Administrative Adjudication Division, for review of the decision on which the denial is based.
2. Violations – Any person who has been issued a notice of violation of any of the provisions of these Rules, may request a hearing from the Administrative Adjudication Division, subject to the provisions of R.I. Gen. Laws § 42-17.1-2(u).
3. Hearings and Administrative Procedure – Pursuant to the authority granted to the Department in R.I. Gen. Laws § 42-17.7-9:
 - a. Any person who seeks an adjudicatory hearing in order to contest an enforcement action which alleges violation(s) of these Rules and Regulations must file said request in writing with the clerk of Administrative Adjudication Division, 235 Promenade Street, 3rd Floor, Providence, Rhode Island, 02908 within twenty (20) days of receipt of the contested agency enforcement action.
 - b. Any person who seeks an adjudicatory hearing relative to the denial of a permit or sub-permit arising under these Rules and Regulations must file said request in writing with the clerk of Administrative Adjudication Division, 235 Promenade Street, 3rd Floor, Providence, Rhode Island 02908 within thirty (30) calendar days of receipt of the contested agency action.

250-RICR-60-00-11

TITLE 250 - DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

CHAPTER 60 - FISH AND WILDLIFE

SUBCHAPTER 00 - N/A

PART 11 - RULES AND REGULATIONS GOVERNING MIGRATORY BIRD CONTROL PERMITS

Type of Filing: Adoption

Agency Signature

Agency Head Signature

Agency Signing Date

Department of State

Regulation Effective Date

Department of State Initials

Department of State Date