

Section 240

Protection of Migratory Birds During Structure Work

Section 240 is hereby added to the Standard Specifications for this project as follows:

Description

240.01 This work consists of protecting migratory birds during construction work on structures.

Materials And Construction Requirements

240.02 Work On Structures.

The Contractor shall prosecute work on structures in a manner that does not result in a taking (pursue, hunt, take, capture or kill; attempt to take, capture, kill or possess) of migratory birds protected by the Migratory Bird Treaty Act (MBTA).

The Contractor shall not prosecute the work on structures during the primary breeding season, April 1 through August 31, unless he takes the following actions:

- (1) The Contractor shall remove existing nests prior to April 1. If the Contract is not awarded prior to April 1 and CDOT has removed existing nests, then the monitoring of nest building shall become the Contractor's responsibility upon Notice to Proceed.
- (2) During the time that the birds are trying to build or occupy their nests, between April 1 and August 31, the Contractor shall monitor the structures at least once every three days for any nesting activity.
- (3) If the birds have started to build any nests, the nests shall be removed before they are completed. Water shall not be used to remove the nests if nests are located within 50 feet of any surface waters.
- (4) Installation of netting may be used to prevent nest building. The netting shall be monitored and repaired or replaced as needed. Netting shall consist of a mesh with openings that are $\frac{3}{4}$ inch by $\frac{3}{4}$ inch or less.

If an active nest becomes established, i.e., there are eggs or young in the nest, all work that could result in abandonment or destruction of the nest shall be avoided until the young have fledged or the nest is unoccupied as determined by the CDOT biologist and approved by the Engineer. The Contractor shall prevent construction activity from displacing birds after they have laid their eggs and before the young have fledged.

If the project continues into the following spring, this cycle shall be repeated. When work on the structure is complete, the Contractor shall remove and properly dispose of netting used on the structure.

The taking of a migratory bird shall be reported to the Engineer. The Contractor shall be responsible for all penalties levied by the U. S. Fish and Wildlife Service (USFWS) for the taking of a migratory bird.

Method Of Measurement

240.03 Removal of nests will be measured by the actual number of man-hours spent removing inactive nests just prior to and during the breeding season, April 1 through August 31. During this period, the Contractor shall submit to the Engineer each week for approval a list of the workers who removed nests and the number of hours each one spent removing nests

Netting will be measured by the square yard of material placed to keep birds from nesting on the structure. Square yards will be calculated using the length of netting measured where it is attached to the ground and the average height of the netting where it is attached to the structure.

Basis Of Payment

240.04 The accepted quantities measured as provided above will be paid for at the contract unit price for each of the pay items listed below that appear in the bid schedule.

Pay Item	Pay Unit
Removal of Nests	Hour
Netting	Square Yard

Payment for Removal of Nests will be full compensation for all work and material required to complete the work.

Payment for netting will be full compensation for all work and material required to complete the item. Overlaps of netting will not be measured and paid for separately, but shall be included in the work. Maintenance and replacement, removal, and disposal of netting will not be measured and paid for separately, but shall be included in the work.

Instructions To Designers

Include this special provision on all projects that involve migratory birds and have only structure (bridge or CBC) work. This work includes, but is not limited to bridge demolition, repair or construction and minor drainage. Use of CDOT Maintenance personnel or others to remove nests without eggs or fledglings before construction must be coordinated with Region Environmental personnel.

If these activities cannot be done without soil disturbance or earthwork then use one of the alternative special provisions that requires either a Contractor or CDOT biologist to survey the project for migratory birds..