

## Section 240

### Protection of Migratory Birds Biological Work Performed by the Contractor's Biologist

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.

#### **Materials And Construction Requirements**

**240.02** The Contractor shall schedule clearing and grubbing operations and work on structures to avoid taking (pursue, hunt, take, capture or kill; attempt to take, capture, kill or possess) migratory birds protected by the Migratory Bird Treaty Act (MBTA). The Contractor shall retain a qualified wildlife biologist for this project. The wildlife biologist shall have a minimum of three years experience conducting migratory bird surveys and implementing the requirements of the MBTA. The Contractor shall submit documentation of the biologist's education and experience to the Engineer for acceptance. A biologist with less experience may be used by the Contractor subject to the approval of the Engineer based on review of the biologist's qualifications.

The wildlife biologist shall record the location of each protected nest, bird species, the protection method used, and the date installed. A copy of these records shall be submitted to the Engineer.

(a) *Vegetation Removal.*

When possible, vegetation shall be cleared prior to the time when active nests are present. Vegetation removal activities shall be timed to avoid the migratory bird breeding season which begins on April 1 and runs to August 31. All areas scheduled for clearing and grubbing between April 1 and August 31 shall first be surveyed within the work limits for active migratory bird nests. The Contractor's wildlife biologist shall also survey for active migratory bird nests within 50 feet outside work limits. Contractor personnel shall enter areas outside CDOT right of way only if a written, signed document granting permission to enter the property has been obtained from the property owner. The Contractor shall document all denials of permission to enter property. The Contractor shall avoid all active migratory bird nests. The Contractor shall avoid the area within 50 feet of the active nests or the area within the distance recommended by the biologist until all nests within that area have become inactive. Inactive nest removal and other necessary measures shall be incorporated into the work as follows:

1. *Tree and Shrub Removal or Trimming.*

Tree and shrub removal or trimming shall occur before April 1 or after August 31 if possible. If tree and shrub removal or trimming will occur between April 1 and August 31, a survey for active nests shall be conducted by the wildlife biologist within the seven days immediately prior to the beginning of work in each area of tree and shrub removal or trimming. The survey shall be conducted for each phase of tree and shrub removal or trimming.

If an active nest containing eggs or young birds is found, the tree or shrub containing the active nest shall remain undisturbed and protected until the nest becomes inactive. The nest shall be protected by placing fence (plastic) a minimum distance of 50 feet from each nest to be undisturbed. This buffer dimension may be changed if determined appropriate by the wildlife

biologist and approved by the Engineer. Work shall not proceed within the fenced buffer area until the young have fledged or the nests have become inactive.

If the fence is knocked down or destroyed by the Contractor, the Engineer will suspend the work, wholly or in part, until the fence is satisfactorily repaired at the Contractor's expense. Time lost due to such suspension will not be considered a basis for adjustment of time charges, but will be charged as contract time.

2. *Grasses and Other Vegetation Management.*

Due to the potential for encountering ground nesting birds' habitat, if work occurs between April 1 and August 31, the area shall be surveyed by a wildlife biologist within the seven days immediately prior to ground disturbing activities.

The undisturbed ground cover to 50 feet beyond the planned disturbance, or to the right of way line, whichever is less, shall be maintained at a height of 6 inches or less beginning April 1 and continuing until August 31 or until the end of ground disturbance work, whichever comes first.

If birds establish a nest within the survey area, an appropriate buffer of 50 feet will be established around the nest by the CDOT biologist. This buffer dimension may be changed if determined appropriate by the CDOT biologist and approved by the Engineer. The Contractor shall install fence (plastic) at the perimeter of the buffer. Work shall not proceed within the buffer until the young have fledged or the nests have become inactive.

If the fence is knocked down or destroyed by the Contractor, the Engineer will suspend the work, wholly or in part, until the fence is satisfactorily repaired at the Contractor's expense. Time lost due to such suspension will not be considered a basis for adjustment of time charges, but will be charged as contract time.

(b) *Work on structures.*

The Contractor shall prosecute work on structures in a manner that does not result in a taking 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, they shall be removed before the nest is 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 become 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 wildlife 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.

(c) *Taking of a Migratory Bird.*

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** Wildlife Biologist will be measured by the actual authorized number of hours a wildlife biologist is on site performing the required tasks.

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.

Payment will be made under:

<b>Pay Item</b>	<b>Pay Unit</b>
Wildlife Biologist	Hour
Removal of Nests	Hour
Netting	Square Yard

Payment for Wildlife Biologist will be full compensation for all work and materials required to complete the item, including wildlife biologist, wildlife survey, and documentation (record of nest location and protection method)

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.

Clearing and grubbing will be measured and paid for in accordance with Section 201. Mowing will not be measured and paid for separately, but shall be included in the work.

Removal and trimming of trees will be measured and paid for in accordance with Section 202. Fence (Plastic) will be measured and paid for in accordance with Section 607

## **Instructions To Designers**

Include this special provision on all projects involving migratory birds and earthwork, soil disturbance, or structure work when the biological work is done by the Contractor's biologist. This includes, but is not limited to roadway earthwork, bridge demolition or construction, new signing, new lighting, new guardrail posts, erosion control, and minor drainage. Use of CDOT Maintenance personnel or others to remove nests without fledglings before construction must be coordinated with Region Environmental personnel.

Coordinate with Regional Environmental personnel to determine if wildlife biologist duties can be completed internally. Regional Environmental personnel should coordinate with design project manager to show inactive bird nests and potential nesting habitat in the plans via table or site drawing. If these activities can be done by CDOT personnel, then use the alternative special provision the alternative special provision that provides for the work to be done by a CDOT biologist.

Permission to Enter Property, form 730, must be obtained to facilitate Wildlife Biologist's ground surveys within adjacent property (area within 50 ft of work limits) where Region Environmental Personnel have determined ground nesting bird habitat may be present.. If Permission to Enter Property is denied by a property owner, record the denial and place the record in the project file to document that due diligence was pursued.

Include the following paragraph when Region Environmental Personnel have determined that Bald Eagle roosts may be present:

The wildlife biologist shall conduct dusk and dawn surveys of Bald Eagle roosts within seven days prior to the start of any construction during the winter season, November 15 to March 15. If a Bald Eagle roost is identified, construction activity shall not proceed within 0.25 mile of active nocturnal roost sites between November 15 and March 15.

Include the following paragraph when Region Environmental Personnel have determined that raptors may be present:

The wildlife biologist shall conduct raptor nest surveys within 0.5 mile of the construction site prior to the start of construction and prior to each construction phase. This survey can be done with binoculars. If construction activities are located within the Colorado Division of Wildlife (CDOW) recommended buffer zone for specific raptors, "NO WORK" zones shall be established around active sites during construction according to the CDOW standards or as recommended by the wildlife biologist in consultation with the CDOW. The "NO WORK" zone shall be marked with either fencing or signing. Work shall not proceed within a "NO WORK" zone until the wildlife biologist has determined that the young have fledged or the nest is unoccupied.

Include the following paragraph when Region Environmental Personnel have concluded that important raptor perches will be affected:

The Contractor shall install perch poles, made from 2 inch round steel sign posts with 24-inch T brackets without sign mounting holes. The poles shall be at least 12 feet in height.

Include the following paragraph when Region Environmental Personnel have concluded that important raptor perches will be affected:

Perch poles, made from steel sign posts, (2 inch round) will be measured and paid for by the linear foot according Section 614. 24-inch T brackets without sign mounting holes will not be paid for separately but shall be included in the work.