



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS UNITED STATES AIR FORCE
WASHINGTON, DC

JUN 10 2002

MEMORANDUM FOR ALMAJCOM/SE/JA/CE

FROM: AF/SE

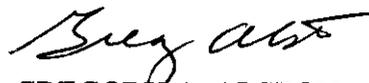
SUBJECT: Bird/Wildlife Aircraft Strike Hazard (BASH) Depredation Permits

The U.S. Court of Appeals for the District of Columbia, in *Humane Society v. Glickman*, 217 F.3d 882 (DC Cir 2000), affirmed a district court ruling that federal agencies are not exempt from the Migratory Bird Treaty Act (MBTA). The court concluded "that because the Wildlife Services division of the Department of Agriculture did not obtain a permit from the Department of the Interior, its implementation of the Integrated Goose Management Plan by taking and killing Canada Geese violates §703 of the Migratory Bird Treaty Act." The United States Fish and Wildlife Service (USFWS) now requires federal agencies to apply for a depredation permit before taking nuisance migratory birds. Under the MBTA a "take" occurs when a federal agency would "pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to pursue, hunt, shoot, wound, kill, trap, capture, or collect" a migratory bird. The Code of Federal Regulations guidance on depredation permits (50 CFR Part 21.41, paragraph (a)) states, "No permit is required merely to scare or herd depredating migratory birds other than endangered or threatened species or bald or golden eagles."

Air Force installations located in the United States or its territories must request migratory bird depredation permits before taking any action necessary for health and safety reasons, to include BASH program implementation. Reasonable effort must first be made to use non-lethal means to solve any problems prior to taking lethal action. Compliance with the provisions of the MBTA does not relieve Air Force installations from their responsibilities under the Endangered Species Act. Installations are potentially subject to stringent penalties for the taking of endangered migratory birds.

Any proposal to take, or otherwise impact, migratory birds is subject to the National Environmental Policy Act (NEPA) (42 U.S.C. § 4321 *et seq.*) and 32 CFR Part 989 (Air Force Environmental Impact Analysis Process). Once a permit is issued, installations will maintain records as dictated under the terms of the permit. In addition, a memorandum for record listing other options considered or taken, as well as consultations with federal, state, or local wildlife officials, should be maintained in support of applying for and having the depredation permit.

This memorandum has been coordinated with HQ AF/ILEVQ, and AFLSA/JACE. If you have any other questions concerning this matter, please contact Mr. Eugene A. LeBoeuf, DSN 246-5679 (eugene.leboeuf@kafb.saia.af.mil) or Maj Peter R. Windler, DSN 246-5674 (pete.windler@kafb.saia.af.mil). POC for AFLSA/JACE is Ms. Lauryne Wright, DSN 426-9166 (lauryne.wright@pentagon.af.mil). POC for HQ AF/ILEVQ is Maj Alan Holck, DSN 664-0632 (Alan.Holck@pentagon.af.mil).



GREGORY A. ALSTON
Colonel, USAF
Acting Chief of Safety