

Know what the laws are regarding Nestbox Trail Management

By Bernie Daniel

When we put up boxes and monitor our trails we are participating in and/or assisting in the reproduction of a wild bird species. Yes, “our” bluebirds are wild birds and no, they really are not ours! Smile! As a result our bluebird trail activities are actually covered under the Migratory Bird Treaty Act (MBTA) which makes it “.. illegal to take, possess, import, export, transport, sell, purchase, barter, or offer for sale, purchase, or barter, any migratory bird, or the parts*, nests, or eggs of such a bird except under the terms of a valid Federal permit.” And yes again, all three species of bluebirds and all other cavity nesting species we typically see (except House Sparrows and European Starlings) are covered under the MBTA.

What does this mean? It means that while our bluebirding actions are covered under the MTBA regulating agencies at federal, state, and local levels generally grant an “exception” to our efforts because they realize that we are helping native cavity nesting species. They know that without bluebirders we would have fewer bluebirds – by far. But there are limits to the exceptions that have been given to nestbox managers. We must be aware of these limits.

Most obvious is that it is not legal to remove or interfere with the nest of any other native bird species that uses our nestboxes. Some bluebirders find the territorial and egg destructive habits of a House Wren to be less than endearing. Even so it is illegal to remove a wren nest with eggs (a false or dummy nest can be removed). The same applies to all native bird species.

There are indeed many things we can do in monitoring our trails without a permit and have no concerns about violating any federal law. However, there are other things that we should not do unless we have permits (at both federal and state levels) to do them. It is important for all bluebirders to know about the MBTA and know exactly how it applies to the work we do on our trails.

Bill Abbey of the North Carolina Bluebird Society carefully researched this topic over a decade ago. In doing so he interviewed wildlife officials and then wrote an outstanding article on it. Bill’s article is from 2006 but essentially nothing has changed in this arena and his article is still as relevant and topical as when he wrote it. You can read his excellent discussion reprinted below. Please note carefully what we are allowed to do without a permit and what actually requires a permit to perform.

I make one final point. We all need to keep in mind that the exceptions that our bluebirding movement has been granted are not permanent or “in law”. These allowances could someday be withdrawn if the perception ever arose that bluebirders, as a group, are not following reasonable practices and acting prudently within the law. I believe that there is no danger that this perception exists today but we must always continue to be responsible and work within the freedoms we have been granted.

Please read Bill Abbey’s careful explanation of the MBTA as it applies to nestbox trail management.

Migratory Bird Treaty

by Bill Abbey, Clemons, North Carolina Bluebird Society

Stimulated by Myrna Pearman's article, "It's the Law", (Bluebird, Winter 2006) some North Carolina bluebird monitors initially reacted with dismay -- "WHAT!? A government agency wants me to get a permit to monitor my own Bluebirds?? Not in this life, Pal!" Well closer, less emotional reading of the article suggested that the government does not intend to interfere with your reasonable monitoring activities; this is just logical management in the interests of all native migratory birds. In order to achieve a better understanding of permitting regulations at the Federal level, various telephone calls to the Fish and Wildlife Service were made. Discussions, both up and down the chain netted the following:

1. As a bluebird nest box monitor you may proceed, WITHOUT PERMIT, to monitor your nest boxes. Activities include, "Open, close, remove and replace contaminated nest material, remove infertile, damaged or abandoned eggs, remove dead birds and other salvage needs."¹
2. If, however, you wish to "take, keep, use or display" nests—with or without eggs—fertile or otherwise, you must have and exhibit a Federal permit Special Purpose – Possession of Dead Specimens Migratory Birds.
3. Should circumstances suggest that you wish to "rescue, rehabilitate, keep or display abandoned or discarded, injured or ill migratory birds' you must have and show a Special Purpose -- Possession Permit Live Birds. (Exception: Any person who finds a sick, injured or orphaned migratory bird may, without permit, take possession of the bird in order to immediately transport it to a permitted rehabilitator").¹
4. Without such Federal permit, as only briefly summarized herein, for instance a bluebird monitor using a Bluebird nest with or without eggs in a fourth grade classroom conservation demonstration would be in violation. A bluebirder who found a nest of indisputably abandoned baby blue-birds and took them home to shelter, feed, raise and release would be in violation of Federal Law.¹

At the North Carolina State level, regulations are quite similar. Telephone conversations with the NC Wildlife Resources Commission provided more local advice. For "monitoring activities, including nest removal to repair or replace material for cause" as well as, "removal of damaged or destroyed eggs or dead young" NO PERMIT is required.²

It appears that, for the most part, existing Federal and State regulations has little or no effect on our basic nest box monitoring and record keeping activities. A review of the regulations suggests no need to change accepted monitoring procedures. Routine maintenance of boxes is unaffected. No new government regulation of any level is anticipated.

Reference to the taking and keeping of inanimate material or live birds is clear. If any reader feels uncertain about their particular situation or case...see the reference below and make the call.

Note 1: For applicants with special circumstances and unusual case issues, the permitting process anticipates exceptions for unique situations which, when explained, can be allowed by the permit issuing agent.

Note 2: Lest there be some argument fostered by the use of the term "Migratory Bird", 50 CFR 10.13 List of Migratory birds, includes all three species of Bluebirds among the twenty pages of protected birds.

Citations:

1. Michelle Outlaw, U.S. Fish and Wildlife Service, Region 4—Atlanta (404-679-7055) Telephone interview. See also: 50 CFR 10, 50 CFR 13, 50 CFR 21.
2. Dan Barnes, N.C. Wildlife Resources Commission, Raleigh (919-707-0061)

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