

# AVIAN PROTECTION PLAN

JULY 2016

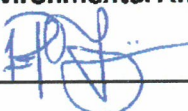
**OPPD**  
OFFICE OF PUBLIC PROSECUTION  
DAKOTA

## Document Review & Approval

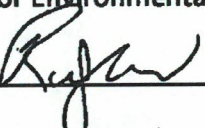
Chris Vrtiska: Supervisor T&D Maintenance Management

Signature:  Date: 12/2/2019

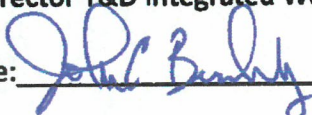
Patrick Finigan: Environmental Affairs Administrator

Signature:  Date: 12/1/2019

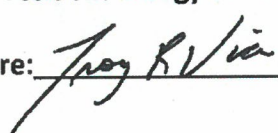
Russ Baker: Director Environmental & Regulatory Affairs

Signature:  Date: 12/3/2019

John Buckley: Director T&D Integrated Work Management

Signature:  Date: 12/4/2019

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Signature:  Date: 12/5/2019



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## **I. Preface**

The Omaha Public Power District's (OPPD) Avian Protection Plan (APP) is designed to provide the framework to implement a program to protect and conserve avian populations by reducing the risks that result from interactions with utility facilities and activities. The overall goal is to reduce avian mortality while maintaining reliable, cost efficient energy services. The avian protection planning process, and actions taken, will enhance customer service through the practice of environmental stewardship.

## **II. Regulations**

Three federal laws currently protect raptors and other birds in the United States. These laws provide civil and criminal penalties for the "take" of protected birds and can result in fines and/or imprisonment.

### **Migratory Bird Treaty Act of 1918 (MBTA) (16 U.S.C. 703-712):**

The MBTA protects all birds native to North America, with the exception of non-migratory upland game birds (e.g. quail, grouse, pheasant, turkey, etc.) and non-native birds (e.g., House sparrow, European starling, Rock (common) pigeon, etc.). The MBTA states that it is "unlawful to pursue, hunt, take, capture, kill, possess, sell, purchase, barter, import, export, or transport any migratory bird, or any part, nest, or egg or any such bird." The MBTA currently protects over 800 species of birds that occur in the U.S.

### **Threatened and Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531-1544):**

The ESA provides protection to our nation's native plants and animals that are in danger of becoming extinct and to conserve their habitats. The ESA makes it unlawful to import, export, take, transport, sell, purchase, or receive in interstate or foreign commerce any species listed as threatened or endangered.

### **Bald and Golden Eagle Protection Act of 1940 (BGEPA) (16 U.S.C. 668-668d):**

Bald and Golden eagles, their parts, nests and eggs are afforded additional protection under both the MBTA and Bald and Golden Eagle Protection Act. Bald eagles no longer listed as endangered species, but are still protected by all three acts.

### **Endangered and Threatened Wildlife and Plants; 4(d) Rule for the Northern Long-Eared Bat of 1973 (ESA) (50 CFR Part 17, 1900-1922p):**

Section 4(d) of the Endangered Species Act directs the Service to issue regulations deemed "necessary and advisable to provide for the conservation of threatened species." It allows the Service to promulgate special rules for species listed as threatened (not endangered) that provide flexibility in implementing the ESA. We use 4(d) rules to target the take prohibitions to those that provide conservation benefits for the species. This targeted approach can reduce ESA conflicts by allowing some activities that do not harm the species to continue, while focusing our efforts on the threats that make a difference to the species' recovery.



### III. Glossary

**Active Nest:** A nest with an adult, eggs, or young present. Nests are predominately *active* during the breeding season (April-September). Raptors will nest earlier than some of the other migrant bird species that move into Nebraska during the breeding season.

**Migration:** a seasonal or periodic movement of animals in response to changes in climate or food availability, or to ensure reproduction.

**Problem Structure/Line:** A structure or line used by birds (usually for perching, nesting, or roosting) that has electrocuted birds or has a high electrocution risk.

**Raptor:** Bird of prey with sharp hooked bill and sharp talons used for killing and eating prey; includes members of the Orders Falconiformes and Strigiformes, and member of the family Cathartidae (i.e. hawks, eagles, owls, falcons, osprey, and vultures).

**Take:** defined by federal regulations as: "to pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to pursue, hunt, shoot, wound, kill, trap, capture, or collect."

**Threatened and Endangered Species:** Species of animals or plants that are threatened with extinction and are protected by federal law.

**Primary active nesting season:** The primary active nesting season for migratory birds in the OPPD territory is April 1 –July 31.

### IV. Policy

OPPD personnel shall observe and comply with all applicable Federal laws regarding avian protection, and the OPPD Avian Protection Plan (APP), while enhancing reliable, cost efficient energy and customer services.

To fulfill this commitment OPPD will:

- ✓ Implement a comprehensive APP.
- ✓ Ensure compliance with applicable laws, regulations, permits, and APP procedures.
- ✓ Document bird mortalities, problem structures and lines, and problem nests.
- ✓ Provide training to improve employee and contractor knowledge of the APP and avian protection laws.
- ✓ Address issues involving OPPD facilities in areas of known raptor mortality.
- ✓ Support public and private organizations to provide education to reduce bird mortality due to interaction with power lines and structures.

OPPD's energy service and reliability will be enhanced, detrimental effects on migratory birds will be reduced, and regulatory compliance will be achieved with the implementation of this policy.

## **V. Scheduling / Planning**

Construction, maintenance and/or demolition of District facilities in a prime nesting area, including associated land-clearing, tree trimming and tree removal work that could result in the take of migratory birds, eggs, young, and/or active nests, should be scheduled to avoid the prime nesting period, if possible. Although the provisions of the MBTA are applicable year-round, most migratory bird-nesting activity in Nebraska occurs during the period of April 1 through July 15.

Some migratory birds are known to nest outside of the aforementioned prime nesting period. For example, raptors can be expected to nest in woodland habitats during February 1 through July 15, whereas a sedge wren that occupies some wetland habitats normally nest from July 15 to September 10.

For the safety of birds OPPD standard operating whenever active nests are encountered, effort will be made to leave the nest in place until the eggs have hatched and the young have left the nest.

## **VI. Line Construction Procedures**

On construction sites with habitat naturally disposed to nesting, consideration will be given to avoidance measures at the time of pre-design and pre-construction meetings.

Prior to and during construction and tree-clearing, construction personnel will follow all project specific requirements addressing avian issues.

If a construction project or activity is to occur during nesting season, OPPD will conduct an Avian Survey of the construction area prior to the scheduled start of construction to determine the absence or presence of nesting migratory birds. The survey will be done by either OPPD Forestry personnel, Line Clearance Contractor personnel for existing lines. In addition surveys will be conducted by Environmental & Regulatory Affairs for existing facilities, new construction, and land releases.

## **VII. Vegetation Management**

Vegetation management is conducted regularly to ensure safe and reliable energy delivery and to meet NERC requirements. Crews trim and remove vegetation that currently or potentially could interfere with the safe operation of the system. Crews may also trim or remove danger trees (trees outside of right-of-way that have potential to pose risk of falling into lines or structures).

During the active nesting season (April 1-July 31), line-clearance crews will inspect vegetation for active bird nests prior to performing work. Any active nests that are found and cannot be disturbed by trimming operations and the vegetation does not pose an immediate threat to safety and reliability of the system, the site will be avoided, documented and provided to the Forestry Office. After July 31, crews will return to these locations to resume maintenance activities. If the vegetation poses an imminent threat to the safety and reliability of the system, the work will be performed and the

Forestry Office will be notified of the incident. If nests are disturbed, Forestry Office will contact USFWS of the incident.

Outside of the active nesting season, vegetation will be inspected for active nests. If found and vegetation is not imminent threat to the conductors or structure, the line-clearance contractor will document on a case-by-case basis. Contractor will monitor nest until no longer active and work will be performed.

**a) Incidental Take Procedures (Appendix E)**

All accidental and unintentional damage or destruction of a migratory bird, its nest, eggs, or young that results from otherwise lawful activities must be reported to the appropriate OPPD forester immediately.

**b) Auditing**

OPPD foresters will audit contractor tree crews to ensure compliance.

### **VIII. Avian Reporting System**

All avian incidents involving the MBTA, ESA, or BGEPA will be reported to OPPD forestry personnel immediately or within 24 hours following a weekend or holiday.

#### **Dead Birds**

1) If the bird death is apparently the result of electrocution or collision located within OPPD facilities or right-of-way, OPPD and/or contractor personnel are required to notify the OPPD Forestry Office. Dead birds should be left onsite. OPPD foresters will investigate the mortality, fill out the appropriate form, and, if necessary, notify the U.S. Fish and Wildlife Service.

2) If the cause of the bird death is unknown, OPPD personnel are required to notify the OPPD Forestry Office.

#### **Injured Birds**

OPPD and/or contractor personnel discovering an injured bird within OPPD facilities or right-of-way should notify the OPPD Forestry Office. No attempt should be made to capture or restrain the injured bird, unless specifically arranged with the Forestry Office. OPPD foresters will fill out the appropriate form, and notify appropriate contacts including: Nebraska Game and Parks Commission, Raptor Recovery, and Wildlife Rescue.

#### **Threatened and Endangered Species Nest**

Of the six species of birds listed as threatened or endangered in Nebraska, the most likely to be encountered in the OPPD service area are: Bald Eagles (Still Protected but not Threatened or Endangered), Piping Plover, and Interior Least Tern (Appendix G). It is unlikely that any of these three species would be encountered on a power pole, but quite possible for one to be found near river and lake habitat. Contact the OPPD Forestry Office if a problem nest is suspected to be that of a threatened or endangered species.



**Incidental Take**

OPPD and/or contractor personnel discovering the accidental and unintentional damage or destruction of a migratory bird, nest, eggs, or young that results from otherwise lawful activities, are required to notify the OPPD Forestry Office. OPPD foresters will investigate the "take," fill out the appropriate form, and, if necessary, make notification to the U.S. Fish and Wildlife Service.

**Emergency Take / Other than a Threatened and Endangered Species Nest**

OPPD and/or contractor personnel encountering an active nest during an emergency situation (i.e. electrical outage, property damage, human injury, etc.) may remove the nest from the work area and proceed with emergency activities as needed. The nest is to be left onsite. The OPPD Forestry Office is not required to be notified prior to the "take," however, after the emergency situation is secured, the OPPD Forestry Office shall be notified. OPPD foresters will investigate the "take," fill out the appropriate form and, if necessary, notify the U.S. Fish and Wildlife Service.

**Emergency Take / Threatened and Endangered Species Nest**

OPPD and/or contractor personnel encountering an active Bald Eagle nest or an area identified as an active nesting site for the Interior Least Tern and Piping Plover during an emergency situation involving an electrical outage must notify the OPPD Forestry Office immediately before disturbing the nest or entering the designated nesting area. If the emergency situation occurs during other than regular working hours, contact the OPPD System Operations Department (531-226-5681) to request the name and telephone number of the on-call OPPD forester. During regular working hours, the Forestry Office will contact the "Tern and Plover Conservation Partnership" to request emergency assistance for the OPPD crew to enter the nesting area to avoid a "take," if possible. If an emergency "take" is unavoidable, OPPD Forestry will contact the U.S. Fish and Wildlife Service for direction.

**Occupied Problem Nest**

OPPD and/or contractor personnel discovering an active nest that may interfere with normal OPPD activities are required to notify the OPPD Forestry Office. OPPD foresters will investigate the nest, examine alternatives to avoid a "take," fill out appropriate form and, if necessary, contact the U.S. Fish and Wildlife Service to request a "take."

OPPD forestry and/or Environmental & Regulatory affairs personnel will complete the designated forms related to the incident):

- Raptor Mortality Form (Appendix H)

**IX. Record Keeping**

The OPPD Forestry Office will be the official office for the hard copies of all avian reports and associated communications with regulatory agencies. OPPD Environmental & Regulatory Affairs will be copied on all communications with regulatory agencies and

that information will be available online in OPPD's Environmental Management System (EMS.) These records will be retained according to OPPD record policies.

The OPPD Forestry Office will provide one copy of an incident to the USFWS office in Grand Island, NE.

## **X. Training**

OPPD forestry personnel will provide training to appropriate company personnel and contractors to include the OPPD Avian Protection Plan (APP), avian protection laws, liability issues, and avian species identification. OPPD's training goals are as follows:

- Why OPPD is implementing an APP?
- What are the OPPD, customer, and environmental benefits?
- How will the information gathered from avian surveys be used?
- What are the laws and liabilities regarding OPPD's APP?
- What procedures are to be followed in investigating, reporting, and handling of birds covered by the APP?

This training will be given to all new employees that may encounter avian species.

## **XI. Power Line Design**

Design goals *should*:

- Be both proactive in regards to risk analysis studies and reactive from the avian reporting process.
  - Structures that have been reported to have caused mortality to a migratory bird will be retrofitted to minimize the risk of injury on the site in the future. Every attempt will be made to retro-fit structures within 30 days of reported mortality. If the retrofit designed cannot be implemented within 30 days, the U.S. Fish and Wildlife Service will be notified of delay.
- Take into consideration avian safe designs and avian safe modifications

## **XII. Other Endangered or Threatened Species**

The U.S. Fish and Wildlife Service listed the northern long-eared bat (*Myotis septentrionalis*), as "threatened" under the Endangered Species Act.

The agency has approved a rule that lays out the guidance on how to address incidental take of northern long-eared bats during the course of forest management activities and or landowner interaction, known as a 4(d) rule. This rule was published in the Federal Register on January 14<sup>th</sup>, 2016 and became effective on February 16<sup>th</sup>, 2016.

### **XIII. Key Resources**

#### **Omaha Public Power District**

1210 West Sixth Street

Papillion, NE 68046

Forestry Office

Chris Vrtiska, Supervisor T&D Maintenance Management

(531) 226-5314

[ctvrtiska@oppd.com](mailto:ctvrtiska@oppd.com)

#### **Omaha Public Power District**

444 South 16<sup>th</sup> Street Mall

Omaha, NE 68102

Environmental and Regulatory Affairs Office

Patrick Finigan, Environmental Affairs Administrator

(531) 226-2521

[pjfinigan@oppd.com](mailto:pjfinigan@oppd.com)

#### **US Fish & Wildlife Service**

John F. Cochnar

Supervisory Fish and Wildlife Biologist

Programmatic consultations

(308) 382-6468 ext.: 203

[john\\_cochnar@fws.gov](mailto:john_cochnar@fws.gov)

#### **U.S. Fish and Wildlife Service**

9325 S. Alda Road

Wood River, Nebraska 68883

Amanda Ciurej

Fish and Wildlife Biologist

Nebraska Ecological Services Field Office

308-382-6468, ext. 211

[amanda\\_ciurej@fws.gov](mailto:amanda_ciurej@fws.gov)

#### **Nebraska Game & Parks Commission**

2200 North 33<sup>rd</sup> Street

Lincoln, NE 68503

Joel Jorgensen, Non-Game Program Coordinator

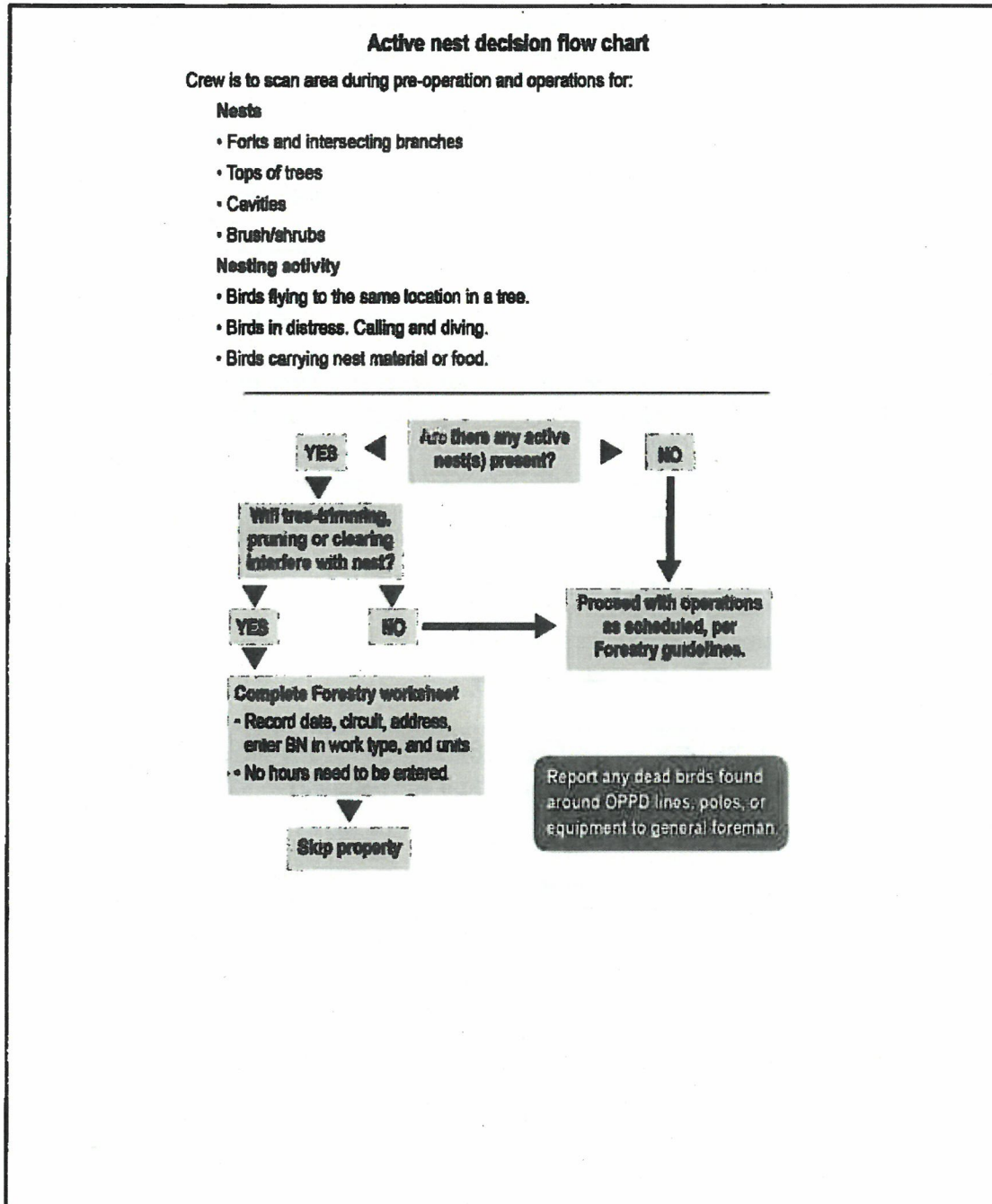
(402) 471-5440

[Joel.jorgensen@nebraska.gov](mailto:Joel.jorgensen@nebraska.gov)



## Active Nest Procedures

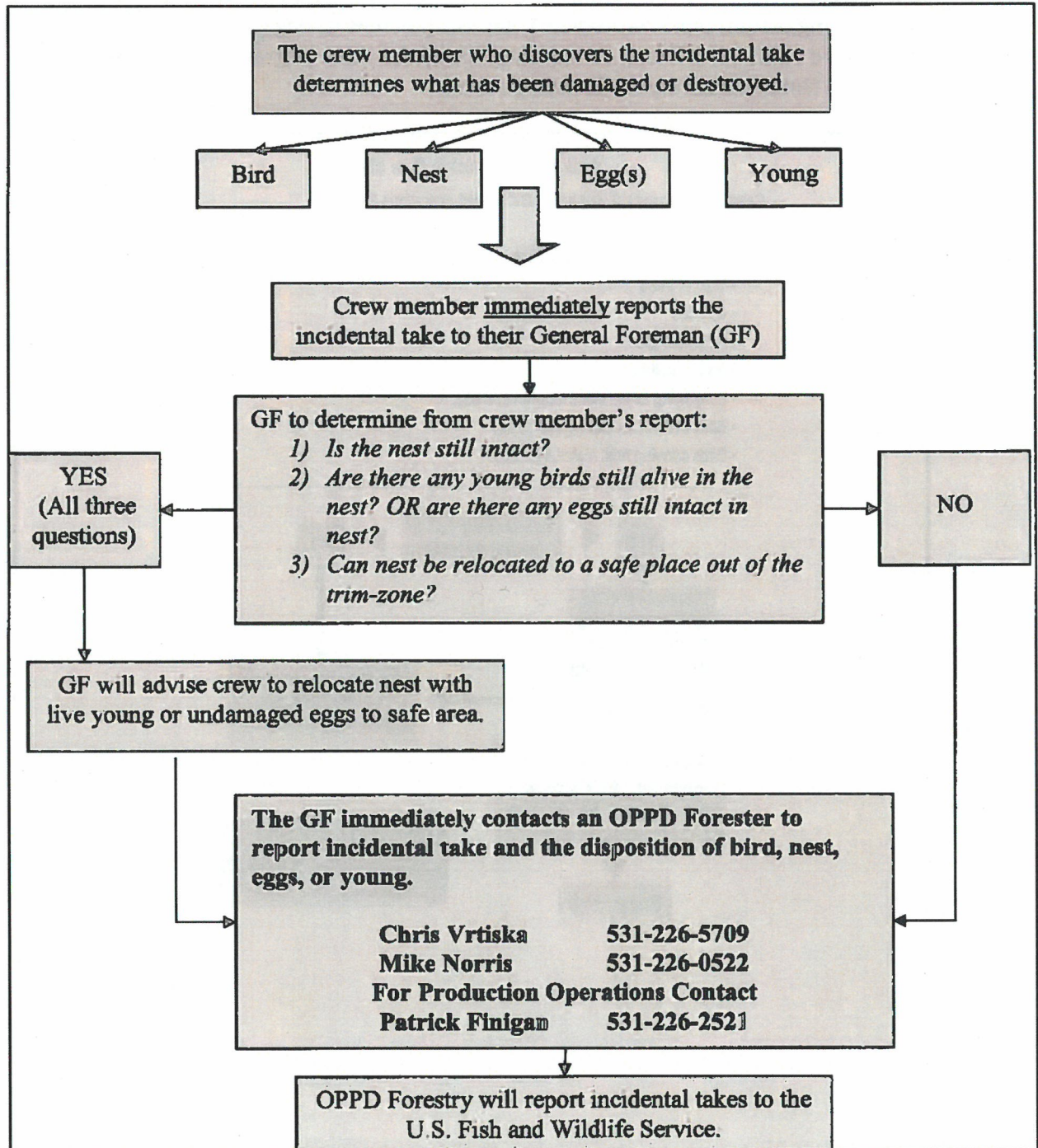
**Active Nest:** A nest with and adult, eggs, or young present. Nests may be *active* during the breeding season (April-September). Raptors (i.e. hawks, eagles, owls, falcons, osprey, and vultures) will nest earlier the some of the other migrant bird species that move into Nebraska during the breeding season.



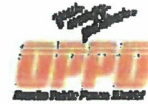


## Incidental Take Procedures

**Incidental take:** Accidental and unintentional damage or destruction of a migratory bird, its nest, eggs, or young that results from otherwise lawful activities.







## Threatened & endangered bat and bird species that may be found in the OPPD Service area



### PIPING PLOVER

**Status:** Threatened

**Description:** L 7 1/4" (18 cm). Sexes similar. Very pale above, white below. In breeding plumage has single complete black breast band. Sometimes the breast band can be incomplete, especially in females and juveniles. White forehead and small black cap. Legs are orange. Bill is yellow with black tip.

**Habitat:** Sparsely vegetated shorelines of shallow water bodies. Prefer shorelines with areas of bare sand, and sandy or pebbly mud.

(OPPD Service area: sandbars and sandpit lakes along Missouri River & Lower Platte River)

**Status/Range:** Occasional to rare spring and fall migrant and rare local summer resident

**Call:** Clear piping *peep-lo*.

**Similar species:** Killdeer



### INTERIOR LEAST TERN

**Status:** Endangered

**Description:** L 9" (23 cm) W 20" (51 cm). Sexes similar. Breeding adults show distinctive white forehead against black cap and nape; gray above and white below; orange-yellow bill with dark tip; orange-yellow legs. Conspicuous black wedge on outer primaries is visible in flight. Short deeply forked tail. Non-breeding birds lack black cap, instead having a dark eye stripe. Juvenile birds are mottled gray-brown above and white below.

**Habitat:** Migrants can be found on lakes, rivers, and reservoirs. Nesting is done mainly on river sand bars or islands, but sometimes also on barren shorelines, gravel beaches, or newly cleared land.

(OPPD Service area: sandbars and sandpit lakes along Missouri River & Lower Platte River)

**Status/Range:** Uncommon spring and fall migrant in eastern part of the state. Highly local summer resident in Platte and Niobrara River valleys. Local breeder.

**Call:** Sharp *kit, kit*, and repetitive *dee-dee*.

**Similar:** Common Tern, Forster's Tern



### BALD EAGLE

**Status:** Protected

**Description:** L 31-37" (79-94 cm) W 70-90" (178-229 cm). Sexes similar. Adults (over 5 years) have white head, neck, and tail. Contrasting black-brown body. Yellow bill. Immatures entirely brown, with whitish wing linings and a dark bill. Females are larger than males.

**Habitat:** Wintering eagles are found in ice-free areas along larger rivers and reservoirs with trees nearby. Eagles prefer to perch in tall cottonwoods near the water.

(OPPD Service area: ALL rivers & lakes)

**Status/Range:** Uncommon spring and fall migrant. Locally common winter resident near major rivers and reservoirs.

**Call:** Thin chittering note.

**Similar:** Immature similar Turkey Vulture, Golden Eagle, and Red-tailed Hawk.





#### **NORTHERN LONG-EARED BAT**

**Status:** Endangered

**Description:** L 3-3.7"(7.62-9.40 cm) W 9-10"(22.86-25.40 cm) . The fur and wing membranes are light brown in color, long ears, and are slightly longer in tail and wing size compared to other Myotis.

**Habitat:** During the spring and summer, northern long-eared bats spend the day roosting in trees or artificial structures, switching to a new roost every other day on average. In the fall, northern long-eared bats migrate to caves to hibernate. Depending on the latitude, this may occur at any time between September and November, and the bats emerge between March and May. They typically hibernate together with much larger numbers of bats of other species, although hibernating groups of northern long-eared bats may still number in the hundreds.

**Status/Range:** Northern long-eared bats are widely distributed in the eastern United States and Canada, with the exception of the very southeastern United States and Texas.

**Call:** Can be identified by the echolocation call though only by a trained individual.

**Similar:** Little Brown bat, Indiana Bat

*Photos and text provided by: Nebraska Game & Parks Commission, Nebraskaland Magazine.*

Appendix (D)

Name of Electric Utility \_\_\_\_\_


Specimen # \_\_\_\_\_

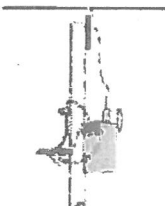
(The same number as on the carcass tag  
attached to dead raptor)

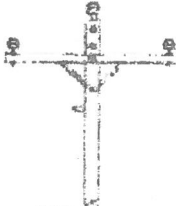
**Raptor Mortality Report**

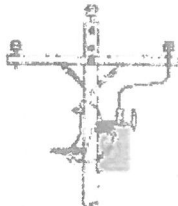
Send report to: Nebraska Field Supervisor, US Fish and Wildlife Service, 203 West Second Street,  
Grand Island, NE 68801. Phone: 308.382.6468—Extension 22

1. Date of Discovery \_\_\_\_\_ Status of Bird—Alive \_\_\_\_\_ Dead \_\_\_\_\_
2. Estimated date mortality/injury occurred \_\_\_\_\_
3. Date report sent to Fish and Wildlife Service \_\_\_\_\_
4. Location—(state, county, section, range and township: give exact location, i.e.: 2 miles East of  
Don's DX station, go North to 7<sup>th</sup> pole, marked #207YY; attach map or sketch on back if possible.)  
\_\_\_\_\_  
\_\_\_\_\_
5. Species, sex, age (if known) of bird \_\_\_\_\_
6. Probable cause of mortality/injury (electrocution, gunshot etc.) \_\_\_\_\_
7. Disposition of Bird \_\_\_\_\_  
\_\_\_\_\_
8. Name, work address & phone number of person making report. \_\_\_\_\_  
\_\_\_\_\_
9. If probable electrocution, check pole type from those below:  

  
☐ No crossarm

  
☐ No crossarm—transformer

  
☐ crossarm(s)

  
☐ crossarm(s)—transformer

☐ other—describe and sketch on back
10. Is pole type unique (i.e., taller, different configuration, etc., or similar to other poles in vicinity?) \_\_\_\_\_  
\_\_\_\_\_

# BIRD MORTALITY/NEST RECORD FORM

\*Please refer to "Raptor Mortality Report" if you encounter a dead raptor.

(1) Date of Discovery: \_\_\_\_\_

(2) ☐ Dead Bird      ☐ Nest      ☐ Live/Injured Bird

*\*\* Please attach picture of  
dead bird and/or nest*

(3) Total # of Birds \_\_\_\_\_ # Eggs \_\_\_\_\_ #Young Birds \_\_\_\_\_

(4) Species of bird (if known) \_\_\_\_\_

(5) Band/Tag Description (if any) \_\_\_\_\_

(6) Probable cause of mortality/injury:

☐ Collision      ☐ Electrocution      ☐ Unknown      ☐ Other \_\_\_\_\_

Comments: \_\_\_\_\_  
\_\_\_\_\_

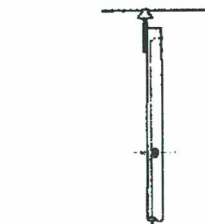
(7) Finder's Name & Phone: \_\_\_\_\_

(8) Location: Address \_\_\_\_\_

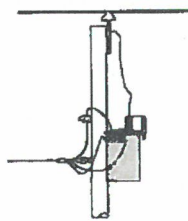
Line Name/Circuit # \_\_\_\_\_

Structure Identification # \_\_\_\_\_

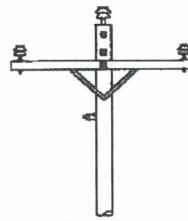
(9) If probable electrocution, check structure type from those below:



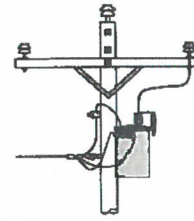
☐ No cross-arm



☐ No cross-arm transformer



☐ cross-arm(s)



☐ cross-arm(s)-transformer

☐ Other – describe and sketch on back

(10) Is pole type unique (i.e., taller, different configuration, etc. or similar to other poles in vicinity?)

\_\_\_\_\_



**(11) Disposition of Bird/Nest:** *(i.e. discarded, buried, nest relocated, etc.)* \_\_\_\_\_

**(12) Signature of Reporter:** \_\_\_\_\_ **Date reported to USFWS:** \_\_\_\_\_

Send report to: Nebraska Field Supervisor, USFWS, 203 West 2<sup>nd</sup> Street, Grand Island, NE 68801. Phone (308)382-6468 Ext 22

