Policies

A policy is a formally approved, definitive statement of a principle or course of action to guide agency decision-making or the manners of proceeding regarding its management of fish and wildlife resources for their long-term well-being and the benefit of people. The following Florida Fish and Wildlife Conservation Commission policy was created to support implementation of, and is available in full context in Florida's Imperiled Species Management Plan. It was approved by the Commission in November, 2016.

Nest removal for inactive single-use nests of state-Threatened birds

Issue

Rule 68A-27.003(2)(a), Florida Administrative Code (F.A.C.), prohibits the take, possession, or sale of a state-designated Threatened species' nest, regardless of whether or not the nest is active or if it is important to the species when inactive. However, some bird species use a nest only once and rarely, if ever, reuse it in subsequent nesting attempts; we refer to these species here as *single-use nesters*. As such, there is no biological benefit to preventing take of nest structures in these specific cases. In the case of single-use nesters, once young have left and are no longer dependent on the nest, it will be abandoned and not used for subsequent nesting. Thus, the nest is no longer supporting essential behavioral patterns of breeding and sheltering for the species. As such, our policy is that there is no need to protect inactive single-use bird nests. This policy applies only to destruction of the nest itself and does not authorize possession of the nest or impacts to the nest substrate or the surrounding habitat. Although many taxa may make nest structures, this policy is limited to nests of state-Threatened birds. This policy does not apply to the nests of the southeastern American kestrel or Florida burrowing owl, since these species do not fit the definition of single-use nesters (i.e., inactive nests may be reused by these species). This policy is consistent with Rule 68A-27-16.003, F.A.C., and the U.S. Fish and Wildlife Service 2003 Memo for interpretation of inactive nest removal under the Migratory Bird Treaty Act.

Policy guidelines

The following definitions apply to species addressed by this policy.

Nest — A nest is a structure or place that is recognizable as being created by or used by a bird for the purpose of brooding and caring for eggs and young. Nests may consist of, but are not limited to, cavities (e.g., woodpeckers, kestrels); burrows (burrowing owls); structures composed of sticks (e.g., cardinals, wading birds), mud (e.g., swallows), or fine plant materials (e.g., marsh wrens, seaside sparrow); nest scrapes (e.g., beach-nesting birds); and nest platforms (e.g., ospreys) and nest boxes (e.g., kestrels, titmice, chickadees) once occupied by birds. In some cases, nests may simply consist of eggs and very little or no structure at all other than the ground itself (e.g., common nighthawks, sandhill cranes).

Active nest — A nest is considered active when supporting essential behavioral patterns, which occur from the point of nest building until young of the season become capable of sustained flight or permanently leave the nest. Nest building includes a breeding pair exhibiting courtship, carrying nest material, and/or engaging in construction or repair of a nest.

Inactive nest — A nest is considered inactive when it does not contain viable eggs and does not contain young that are incapable of permanently leaving the nest. An inactive nest may contain egg-shell fragments or dead chicks, but only if adult birds have stopped attending to the nest, eggs, or young is the nest considered inactive.

Nesting (breeding) season — The period of time during which a particular species usually, but not always, nests (builds or repairs nests and broods young).

Single-use nest — A nest that is used by a species once for nesting activities and is rarely, if ever, reused in subsequent nesting attempts by the same species. State-Threatened species that rarely reuse nests are Wakulla seaside sparrow, Scott's seaside sparrow, Worthington's marsh wren, Marian's marsh wren, reddish egret, little blue heron, roseate spoonbill, tricolored heron, white-crowned pigeon, American oystercatcher, snowy plover, black skimmer, least tern, and Florida sandhill crane.

Actions that do not require take permits

Some birds do not depend on the same nest to support essential behavioral patterns after the young permanently leave the nest or after the nest fails from natural processes. Such nests are defined as *single-use nests*. No permit is required to destroy an inactive single-use nest as long as the proposed level of habitat modification or degradation (including impacts to vegetation used for nesting or to nesting substrates such as beaches) prompting the removal is not deemed significant enough to result in take of the species as defined in Rule 68A-27.003, F.A.C. Note that possession of the removed nest is prohibited without a permit under Rules 68A-27.003(2)(a) and 68A-16.001, F.A.C., and the Federal Migratory Bird Treaty Act.

Protections and Prohibitions

Nests used or built by state-Threatened birds must be protected from destruction or disturbance that constitutes take including harm or harassment while they are active. Protection may entail maintaining a safe, species-specific buffer distance from equipment, traffic, pets, and other disturbances. Destruction of active nests at any time of year is prohibited without permits from FLORIDA FISH AND WILDLIFE CONSERVATION COMMISSION and U. S. Fish and Wildlife Service, regardless of whether or not it is during the typical nesting season. Note that this policy only applies to removal of nests and does not authorize modification or degradation to surrounding habitat, including substrates used for nesting (e.g., nest trees, beaches), that may result in take according to Chapter 68A-27, F.A.C. Possession of removed nests is prohibited without a permit under Rules 68A-27.003(2)(a) and 68A-16.001, F.A.C., and the Federal Migratory Bird Treaty Act.