

DoD Conservation Conference

Savannah, Georgia



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Office of the Deputy Assistant
Secretary of the Navy
(Environment)
22-27 August 2004***

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Migratory Birds

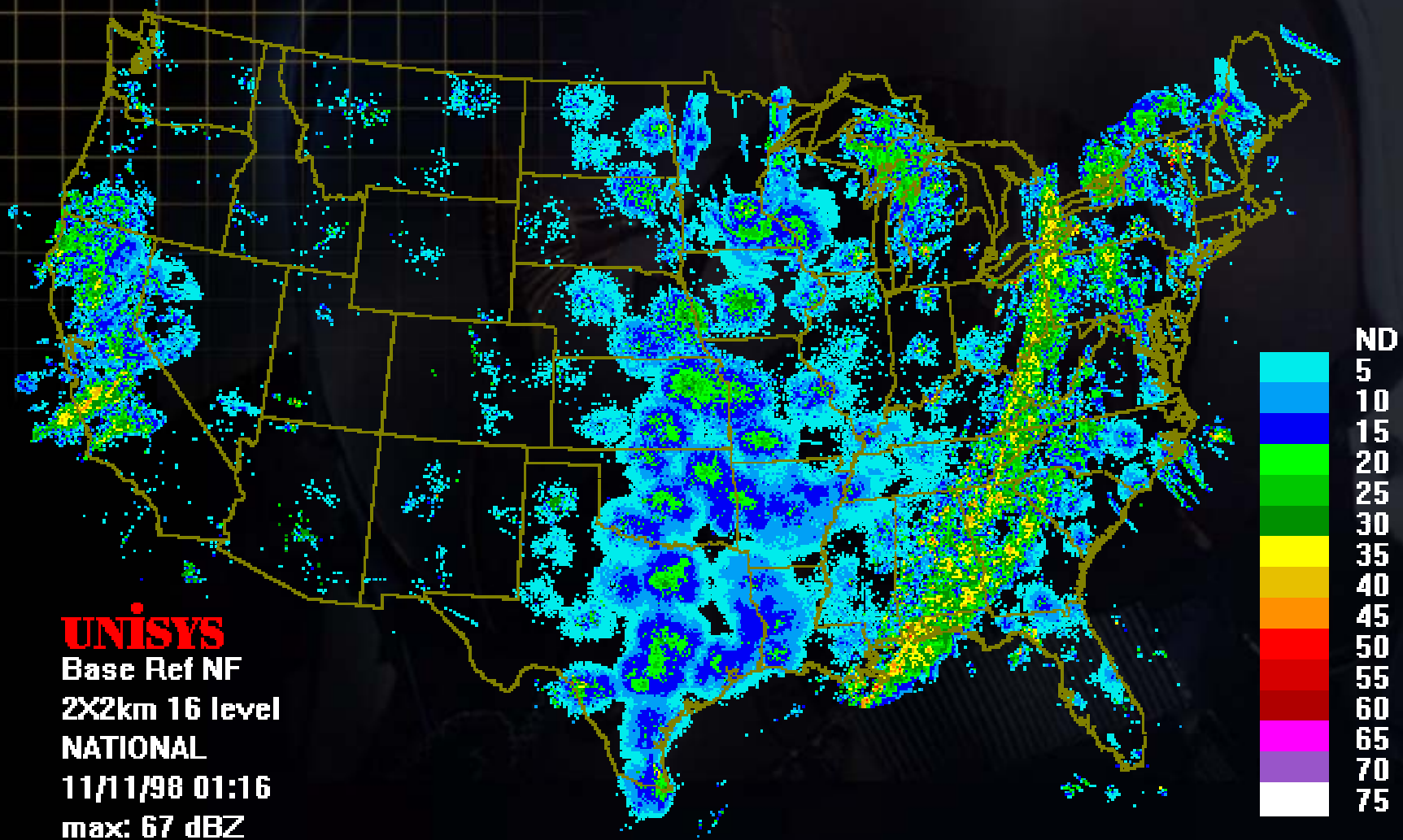
Cerulean Warbler



Cerulean Warbler, © Brian E. Small



Migratory Birds





Migratory Birds

Bird Watching* +155.2

Hiking +93.0

Backpacking +72.7

Fishing -3.0

Hunting -11.4

*Up from 21.2 to 54.1 million participants

■ Outdoor Recreation

Percent change, 1982-1995
National Survey on Recreation and the Environment
1997, Univ. of GA / USDA Forest Service



Photo © Ed Giles



Photo © Jeremiah Trimble

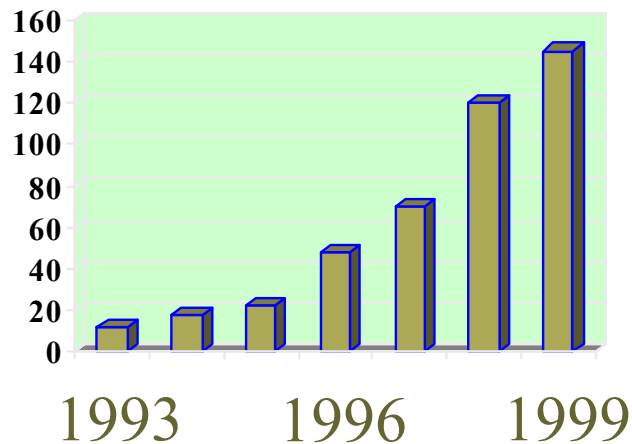
First Red-footed Falcon
in *Western Hemisphere*,
Martha's Vineyard, MA
August 2004



Migratory Birds

■ *Birding Economics*

- 63 million people feed birds at home
 - ❖ *\$2.5 billion spent on seed, feeders, etc.*
- Who traveled to watch birds?
 - ❖ *25 million people*
 - ❖ *\$5.2 billion spent*
 - ❖ *\$516 million in Federal Income taxes generated*
 - ❖ *(1991 figures)*



Number of Birding Festivals



Migratory Birds

- ***Migratory Bird Treaty Act (MBTA), 16 USC 703***
- ***Originally passed in 1918***

- ❖ ***protects migratory birds***
- ❖ ***basis is multi-national treaty***
 - ❖ ***Canada (GB), Mexico, Japan, Russia***



Cactus Wren, © Chris Eberly

- ***Strict criminal liability statute***
 - ❖ ***USFWS has exclusive authority***



Migratory Birds

- ***MBTA prohibitions***

- ❖ ***“unlawful ...to pursue, hunt, take, capture, or kill any migratory bird except as permitted ...”***
- ❖ ***FWS can issue permits to allow “takes”***

- ***Extent of application***

- ❖ ***Several challenges in recent years***
- ❖ ***DOJ opined that MBTA does not apply to Federal agencies***
- ❖ ***FWS stopped issuing permits for takes***



Mountain Bluebird, © Dave Menke/FWS



Migratory Birds

- ***Humane Society v. Glickman***

- ❖ ***Federal agencies are subject to the take prohibitions of the MBTA***
- ❖ ***FWS Director's order: Federal agencies are subject to MBTA requirements***

- ***CBD v. Pirie***

- ❖ ***Navy activities at FDM resulting in take of migratory birds without a permit violated the MBTA***



Canyon Towhee, © Chris Eberly



Migratory Birds

- ***FY03 National Defense Authorization Act***

- ***Sec 315 of the NDAA***

- ❖ ***directs SOI, via rulemaking, to exempt military readiness activities from the take prohibitions of the MBTA***
- ❖ ***requires DoD, in consultation with DOI, to identify measures to **minimize, mitigate and monitor** bird takes from readiness activities***
- ❖ ***interim exemption provided until rule is finalized***



Acorn Woodpecker (USFWS)



Migratory Birds

■ ***Military Readiness Activities***

Readiness activities defined



Horned Lark, © Chris Eberly

- ❖ ***training & operations that relate to combat; and adequate & realistic testing and training of military equipment, vehicles, weapons, and sensors for proper operation and suitability for combat use***
- ❖ ***does not include routine operation of installation operating support functions***



Migratory Birds

■ ***Migratory Bird Rule***



Northern Bobwhite, © Tom Egeland

- ❖ ***efforts to promulgate a rule started Mar 03***
- ❖ ***initial DOI drafts established “conditions” upon which DOI would exempt readiness activities***
- ❖ ***DoD’s position: take exemption is unconditional***
- ❖ ***proposed rule reflects compromise language***



Migratory Birds

- ***Migratory Bird Rule***

SOI can suspend or withdraw authorization, if DoD:

- ❖ ***is in violation of a migratory bird treaty
(SOI must seek the views of the SECDEF and SOS)***
- ❖ ***has not implemented conservation measures
(SECDEF given an opportunity to discuss with SOI)***



American Redstart, © Steve Maslowski/FWS



Migratory Birds

■ ***Migratory Bird Rule***

■ ***Status***

- ❖ **Federal Register on 2 June 2004**
- ❖ **60-day comment period ended 2 August 2004**
- ❖ **573 comments received (4 +; 569 -)**
- ❖ **Awaiting USFWS review of comments**



Common Nighthawk, © Chris Eberly



Migratory Birds

- **Executive Order 13186**
 - “Responsibilities Of Federal Agencies To Protect Migratory Birds”
- ❖ ***signed by the President on 10 Jan 01***
- ❖ ***enhance coordination & communication***
- ❖ ***incorporate migratory bird conservation into agency activities***
- ❖ ***migratory birds MOU with DOI***



Green Jay (USFWS)



Migratory Birds

- **Executive Order 13186**
- **DoD's Migratory Bird MOU**
- ***activities other than readiness activities***
- ***DOI will issue a Special Purpose Permit to cover activities identified in the agency MOUs***
- ***still under development***



Burrowing Owl (USFWS)



Migratory Birds

- **Species of Concern**

- **Migratory Bird Rule, MOU**

- ***T&E list***

- ***Birds of Conservation Concern (USFWS 2002)***

- ***Bird initiatives (PIF, Waterbirds, Shorebirds, Waterfowl)***

- ***Game Birds Below Desired Condition***



Western Tanager, © Chris Eberly



- ***DoD PIF working with USFWS Div. of Mig. Birds***
- ***Species of Concern matrix via www.dodpif.org***